Cox Inall Ridgeway Indigenous Legal Assistance Program Review Team

Strategic Advisor: Dr Aden Ridgeway
Acting Director: Yatungka Widders-Hunt
Indigenous Legal Experts: Eloise Schnierer and Patricia Adjei
Additional Peer Reviewers: Julian Thomas (Urbis)
Sub-Editing Assistance: Catherine Wood and Elisabeth Laidlaw
Senior Consultants: Sylvie Ellsmore, Fiona Ng, Kaylie Harrison, Summer May Finlay and Shaun Edwards
Consultants: Renee Thomson, Shannay Holmes and Marlee Silva

© Cox Inall Ridgeway

Others may use, copy, distribute and display content included in this report with attribution for non-commercial purposes, consistent with the terms of Non-Commercial Creative Commons (CC) Licence 4.0 International.

Information provided to Cox Inall Ridgeway on a confidential base has been de-identified. Confidential information provided to the review will not be used for another purpose without the express permission of the organisation or individual who provided the information.
Acknowledgements

Cox Inall Ridgeway would like to acknowledge and pay respect to Aboriginal and Torres Strait Islander Elders and community members, and the staff and board members of Aboriginal and Torres Strait Islander Legal Services for contributing to the review of the Indigenous Legal Assistance Program. Cox Inall Ridgeway would also like to thank the Commonwealth Attorney-General’s Department, Legal Aid Commissions, Community Legal Centres, Family Violence Prevention Legal Services, magistrates, court staff, other agency staff and other stakeholders for their insights and contributions to the review. Cox Inall Ridgeway acknowledges and thanks the Indigenous Legal Assistance Program Advisory Group and our subject matter experts for their guidance and expertise during the review, and Urbis for its advice and assistance.

List of acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCO</td>
<td>Aboriginal Community Controlled Organisation</td>
</tr>
<tr>
<td>AGD</td>
<td>Commonwealth Attorney-General’s Department</td>
</tr>
<tr>
<td>ALRM</td>
<td>Aboriginal Legal Rights Movement</td>
</tr>
<tr>
<td>ATSILS</td>
<td>Aboriginal and Torres Strait Islander Legal Service</td>
</tr>
<tr>
<td>ATSILS Qld</td>
<td>Aboriginal and Torres Strait Islander Legal Services Queensland</td>
</tr>
<tr>
<td>ALS NSW/ACT</td>
<td>Aboriginal Legal Service (New South Wales/ Australian Capital Territory)</td>
</tr>
<tr>
<td>ALSWA</td>
<td>Aboriginal Legal Service of Western Australia</td>
</tr>
<tr>
<td>CAALAS</td>
<td>Central Australian Aboriginal Legal Aid Service</td>
</tr>
<tr>
<td>CIR</td>
<td>Cox Inall Ridgeway</td>
</tr>
<tr>
<td>CLE</td>
<td>Community Legal Education</td>
</tr>
<tr>
<td>CLC</td>
<td>Community Legal Centre</td>
</tr>
<tr>
<td>Court users</td>
<td>Court users including court officials</td>
</tr>
<tr>
<td>CSP</td>
<td>Collaborative Service Planning</td>
</tr>
<tr>
<td>Cth</td>
<td>Commonwealth Government</td>
</tr>
<tr>
<td>DSM</td>
<td>Indigenous Legal Assistance Program Data Standards Manual</td>
</tr>
<tr>
<td>FAM</td>
<td>Indigenous Legal Assistance Program Funding Allocation Model</td>
</tr>
<tr>
<td>FCLC</td>
<td>Federation of Community Legal Centres</td>
</tr>
<tr>
<td>FVPLS</td>
<td>Family Violence Prevention Legal Services</td>
</tr>
<tr>
<td>ILAP</td>
<td>Indigenous Legal Assistance Program</td>
</tr>
<tr>
<td>LAC</td>
<td>Legal Aid Commission</td>
</tr>
<tr>
<td>NAAJA</td>
<td>North Australian Aboriginal Justice Agency</td>
</tr>
<tr>
<td>NACLC</td>
<td>National Association of Community Legal Centres</td>
</tr>
<tr>
<td>NATSILS</td>
<td>National Aboriginal and Torres Strait Islander Legal Services</td>
</tr>
<tr>
<td>NLA</td>
<td>National Legal Aid</td>
</tr>
<tr>
<td>NPA</td>
<td>National Partnership Agreement on Legal Assistance Services 2015-2020</td>
</tr>
<tr>
<td>TACLS</td>
<td>Tasmanian Aboriginal Community Legal Service</td>
</tr>
<tr>
<td>ToR</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>VALS</td>
<td>Victorian Aboriginal Legal Service</td>
</tr>
<tr>
<td>VLA</td>
<td>Victoria Legal Aid</td>
</tr>
</tbody>
</table>
# Table of Contents

**ACKNOWLEDGEMENTS** ................................................................................................................................. 3

**LIST OF ACRONYMS** ................................................................................................................................. 3

**TABLE OF CONTENTS** ................................................................................................................................. 4

Tables, Figures and Case Studies ....................................................................................................................... 6

**EXECUTIVE SUMMARY** ............................................................................................................................. 7

Overview ............................................................................................................................................................... 7

Aboriginal and Torres Strait Islander disadvantage in the justice system ......................................................... 9

Commonwealth funding for Indigenous legal assistance .................................................................................. 10

Indigenous Legal Assistance Program 2015-2020 ........................................................................................... 10

The ILAP review .................................................................................................................................................... 11

Stakeholder outreach and review methods .......................................................................................................... 12

Best practice service delivery to Aboriginal and Torres Strait Islander peoples ................................................ 12

Efficiency of investment in response to demand ............................................................................................... 14

Future directions for Indigenous legal assistance funding ............................................................................... 14

Recommendations ................................................................................................................................................ 16

Review findings and insights .............................................................................................................................. 19

**BACKGROUND** ........................................................................................................................................... 22

1. INTRODUCTION ............................................................................................................................................... 22

2. LEGAL ASSISTANCE IN AUSTRALIA ........................................................................................................ 23

   Access to justice and the legal assistance sector ............................................................................................ 23

   Indigenous legal service providers .................................................................................................................. 25

   Government funding for legal assistance programs ....................................................................................... 26

3. ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL NEEDS .................................................................. 29

   Overrepresentation in the criminal justice system ......................................................................................... 29

   Victims of crime .................................................................................................................................................. 32

   Civil law ............................................................................................................................................................... 33

   Family law and child protection ...................................................................................................................... 34

   Complex needs .................................................................................................................................................. 35

   Demand drivers ................................................................................................................................................ 35

4. INDIGENOUS LEGAL ASSISTANCE PROGRAM (ILAP) ........................................................................... 41

   History of Indigenous legal assistance funding ............................................................................................. 41

   Recent previous reviews ................................................................................................................................. 41

   ILAP 2015-2020 ............................................................................................................................................... 42

   Best practice service delivery .......................................................................................................................... 44

5. ILAP REVIEW .................................................................................................................................................... 49

   Terms of Reference .......................................................................................................................................... 49

   Scope of the review .......................................................................................................................................... 49

   Concurrent legal assistance service reviews .................................................................................................. 49

6. REVIEW METHODOLOGY ............................................................................................................................ 50

   Cultural principles .......................................................................................................................................... 50
Mixed methods approach .......................................................................................................................... 50
Consultations ........................................................................................................................................ 51
Submissions ............................................................................................................................................ 52
Stakeholder representation ....................................................................................................................... 53
ILAP Review Advisory Group .................................................................................................................. 55
Confidentiality and consent ...................................................................................................................... 55
Limitations .............................................................................................................................................. 55

ILAP REVIEW FINDINGS AND INSIGHTS ................................................................................................. 57

ToR 1 - DELIVERY OF SERVICES ........................................................................................................ 57
i. Cost effectiveness and efficiency ......................................................................................................... 61
ii. Quality of service and value for money ................................................................................................ 68
iii. Culturally appropriate and culturally safe service delivery .............................................................. 72
iv. Accessibility ...................................................................................................................................... 75
Future directions and opportunities for reform ToR 1 ............................................................................ 79

ToR 2 - COLLABORATIVE SERVICE PLANNING (CSP) .................................................................... 80
i. Implementation of CSP ....................................................................................................................... 81
ii. Contribution of CSP to the ILAP ....................................................................................................... 86
iii. Collaboration for holistic service delivery ....................................................................................... 89
Future directions and opportunities for reform ToR 2 ............................................................................ 93

ToR 3 - FUNDING ALLOCATION ........................................................................................................... 94
i. Directing services to priority areas of demand ................................................................................... 97
ii. Funding allocation model .................................................................................................................. 101
iii. Certainty in funding ........................................................................................................................ 103
Future directions and opportunities for reform ToR 3 ............................................................................ 105

ToR 4 – PERFORMANCE MONITORING, REPORTING AND DATA COLLECTION .................... 106
i. Utility of performance monitoring and reporting .............................................................................. 108
ii. Compliance and financial reporting ................................................................................................ 111
iii. Implementation of the Data Standards Manual (DSM) .................................................................. 113
Future directions and opportunities for reform ToR 4 ............................................................................ 115

ToR 5 - GOVERNANCE, ROLES AND RESPONSIBILITIES ............................................................ 116
i. Role of Commonwealth, State and Territory Governments .............................................................. 118
ii. Role of ATSILSs ............................................................................................................................... 121
iii. Role of the NATSILS ....................................................................................................................... 122
Future directions and opportunities for reform ToR 5 ............................................................................ 124

ToR 6 – OTHER AREAS AND OPPORTUNITIES FOR IMPROVEMENT ........................................ 125
i. Strategic litigation and law reform .................................................................................................... 126
ii. Workforce challenges ...................................................................................................................... 130
iii. Alternative funding models ............................................................................................................ 133
Future directions and opportunities for reform ToR 6 ............................................................................ 134

RECOMMENDATIONS, FUTURE DIRECTIONS AND OPPORTUNITIES FOR REFORM ............... 135

BIBLIOGRAPHY ...................................................................................................................................... 141

APPENDIX A – REVIEW OF ILAP TERMS OF REFERENCE ................................................................. 151

APPENDIX B – TERMS OF REFERENCE FOCUS QUESTIONS ............................................................ 155
Tables, Figures and Case Studies

Figure 1 Aboriginal and Torres Strait Islander incarceration rates .......................... p10
Figure 2 Criminal and civil legal assistance funding in Australia 2001-2001 to 2012-2013 .... p27
Figure 3 The four government-funded legal assistance providers 2012-2013 ...................... p28
Figure 4 Indigenous Australians as a proportion of the population, and the prison population .... p30
Figure 5 Key drivers of Indigenous incarceration ...................................................... p37
Figure 6 Model of social and emotional wellbeing .................................................... p47
Figure 7 Review consultations - Stakeholder representation ........................................ p53
Figure 8 Organisations consulted by stakeholder type ............................................... p55
Figure 9 ATSILSs’ services provided nationally – 2007-2008 to 2016-2017 – breakdown by service type p63
Figure 10 ATSILSs’ services provided nationally, breakdown by matter type 2007-2008 to 2016-2017 p64
Figure 11 Number of services by client remoteness, 2007-08 to 2016-17 (criminal matters only) p99

Table 1 Aboriginal and Torres Strait Islander population estimates and projections for 2011 to 2026 p38
Table 2 Indigenous Legal Assistance Program Funding 2014-15 to 2020-2021 ...................... p43
Table 3 ILAP funding provided to individual ATSILSs 2015-16 to 2016-2017 ...................... p43
Table 4 Selection criteria for fieldwork locations ...................................................... p51
Table 5 Fieldwork locations ....................................................................................... p52
Table 6 Submissions received by the review ................................................................. p52
Table 7 Consultations by jurisdiction and stakeholder group type ................................. p54
Table 8 Consultation respondents by jurisdiction ...................................................... p54
Table 9 Description of ATSILSs’ services ...................................................................... p62
Table 10 Location of ATSILSs’ offices ......................................................................... p76
Table 11 Salary comparison Legal Aid NSW and ALS NSW/ ACT ....................................... p131

Case Study ‘Casey’ – assistance provided by ALS NSW/ACT ........................................ p69
Case Study ‘Adam’ – assistance provided by VALS ...................................................... p69
Case Study Working with community and respecting cultural protocols, APY Lands Courts Circuit p73
Case Study Working with culture, elders, community and blending customary and western law, ALSWA p74
Case Study VALS CLE Activities .................................................................................... p77
Case Study SA Nunga Court ......................................................................................... p83
Case Study Qld Community Justice Groups ....................................................................... p83
Case Study NAAJA & MIWATJ Health Justice Partnership .............................................. p89
Case Study NAAJA Indigenous Throughcare Project .................................................... p90
Case Study NAAJA Kunga Stopping Violence Program ................................................ p91
Case Study ALS NSW/ACT Ngurrambai Bail Support Program ...................................... p92
Case Study AL$WA Youth Engagement Program ......................................................... p99
Case Study TACLS criminal law services ....................................................................... p100
Case Study AL$WA Ms Dhu and the imprisonment for unpaid fines ................................. p127
Executive Summary

Overview

This is the final report of the review of the Indigenous Legal Assistance Program 2015-2020 (the ILAP). Cox Inall Ridgeway (CIR) was contracted by the Attorney-General’s Department (AGD) of the Commonwealth of Australia to conduct an independent review of the program, which provides the primary funding for Aboriginal and Torres Strait Islander legal assistance services in Australia.

Aboriginal and Torres Strait Islander peoples are significantly overrepresented in the criminal justice system and face disproportionate disadvantage across the justice system, including substantial barriers to accessing legal assistance services. By funding culturally appropriate legal assistance services, the ILAP aims to ensure Aboriginal and Torres Strait people can access justice and can equitably exercise their rights.\(^1\)

The ILAP provides direct grants to Aboriginal and Torres Strait Islander Legal Services (ATSILSs) to deliver frontline legal assistance and related services to Aboriginal and Torres Strait Islander clients in line with the objectives of the ILAP. ATSILSs are community controlled Aboriginal and Torres Strait Islander organisations who have been providing legal assistance to Aboriginal and Torres Strait Islander communities since the 1970s, with the support of Commonwealth funding. The ILAP also funds the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) as a peak body advocating and providing support for continuous improvement of the ILAP and the delivery of services by Indigenous legal assistance providers.

The objectives of the ILAP are to improve access to justice for Aboriginal and Torres Strait Islander people, to reduce the disproportionate disadvantage experienced by Aboriginal and Torres Strait Islander people in the justice system, and to provide cost effective legal assistance. The ILAP service delivery principles are:

- legal assistance services are focused on and accessible by Aboriginal and Torres Strait Islander people, particularly priority clients, nation-wide,
- quality legal assistance services are appropriate, proportionate and tailored to clients’ needs and capabilities,
- legal assistance providers, governments and other service providers collaborate to provide joined up services to address clients legal and other problems,
- legal problems are identified and resolved at the earliest opportunity before they escalate, and
- Aboriginal and Torres Strait Islander people are empowered to understand and protect their legal rights and responsibilities and to address, or prevent, legal problems.

The AGD is responsible for managing and administering ILAP funding to ATSILSs and the NATSILS. With current funding arrangements under the ILAP due to expire in June 2020 the Attorney-General of Australia, the Hon Christian Porter MP, announced an independent review of the ILAP to be completed by the end of 2018. The purpose of the ILAP review is to assess the effectiveness, efficiency and appropriateness of the ILAP as a mechanism for achieving its objectives and outcomes, and identify opportunities for improvement.

CIR is a specialist Indigenous agency engaged to conduct the national review of the ILAP, with research and advisory support from Urbis. Urbis is concurrently conducting an independent review of the National Partnership Agreement on Legal Assistance Services 2015-2020 (NPA), which funds Legal Aid Commissions (LACs) and Community Legal Centres (CLCs), and is administered by states and territory governments. Simultaneous reviews or evaluations are being conducted for Family Advocacy and Support Services (FASS) by Inside Policy Pty Ltd, for the Family Violence Prevention Legal Services Programme (FVPLS Programme) by

---

\(^1\) AGD 2014b.
Charles Darwin University, for the Family Law system by the Australian Law Reform Commission (ALRC) and for specialist Domestic Violence Units and Health Justice Partnerships by Social Compass.

The high-level findings of the ILAP review are that:

- the ILAP provides essential funding that enables the delivery of unique and specialised legal assistance services for Aboriginal and Torres Strait Islander peoples,
- the services delivered by ATSILSs with the support of ILAP funding are cost effective, high quality, culturally appropriate and accessible, to the extent possible within available resources, consistent with the objectives and outcomes of the ILAP,
- the current focus on the delivery of criminal law services by ATSILSs is consistent with the objectives, outcomes and service delivery principles of the ILAP, and
- there are opportunities to improve the ILAP, to strengthen the delivery of legal assistance services to Aboriginal and Torres Strait Islander peoples.

The ILAP provides support for primarily criminal legal assistance services. The review concluded that the current focus of service delivery on criminal justice legal assistance is broadly appropriate, given the scale and urgency of criminal justice needs within Aboriginal and Torres Strait Islander communities. At the same time, it is acknowledged there are significant gaps in services for Aboriginal and Torres Strait Islander people across the legal assistance sector, particularly in relation to civil, family and child protection needs. There are opportunities to enhance the cost effectiveness of government investment through the ILAP by expanding its scope to better address civil, family and child protection issues, and to better support the delivery of early intervention and holistic programs that are likely to help curb future demand. Care must be taken to ensure that any change in scope of services does not impact the delivery of existing legal assistance services, or create new gaps in service delivery.

The ILAP supports the delivery of unique and specialised types of legal assistance services by ATSILSs. ATSILSs are widely recognised as appropriate organisations to continue to provide services, as Aboriginal and Torres Strait Islander community controlled organisations possessing the necessary knowledge, skills and expertise to provide culturally appropriate services. The review finds that there are opportunities to strengthen the outcomes of the ILAP by establishing more robust partnerships between ATSILSs, the NATSILS and the Commonwealth. Partnerships could entail facilitating a co-design approach to the delivery of legal assistance services to Aboriginal and Torres Strait Islander peoples, and encouraging greater state and territory investment. Such an approach is consistent with evidence-based models of best practice for the delivery of programs and services to Aboriginal and Torres Strait Islander communities and acknowledges the leading role that ATSILSs and the NATSILS have been playing in facilitating access to justice over many decades. The importance of whole of government responses, including state and territory governments would acknowledge the multi-dimensional factors driving the disadvantage faced by Aboriginal and Torres Strait Islander people in the justice system.

The review makes headline recommendations about the ILAP and identifies a number of opportunities for future reform or improvement. Findings and insights from the review are summarised in relation to the Terms of Reference (ToR) areas for the review: delivery of services; collaborative service planning; funding arrangements; performance monitoring, reporting and data collection and governance.
Aboriginal and Torres Strait Islander disadvantage in the justice system

Effective and efficient targeting of services requires understanding the context of the drivers for legal demands and trends for Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people are especially vulnerable to legal problems and experience, and face particular barriers accessing legal services. It is well documented that there is a chronic overrepresentation of Aboriginal and Torres Strait Islander people across all age groups and genders in the criminal justice, juvenile detention and child protection systems. Aboriginal and Torres Strait Islander people also have high levels of need in relation to civil and family law assistance.

The persistent and growing overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system has been identified as a national tragedy. Nationally, Aboriginal and Torres Strait Islander young people are 25 times more likely to be incarcerated than other young people, Aboriginal and Torres Strait Islander men are 11 times more likely to be imprisoned than other adult men, and Aboriginal and Torres Strait Islander women are 15 times more likely to be imprisoned than other women. These trends and rates of overrepresentation are increasing over time.

Additionally, Aboriginal and Torres Strait Islander rates of child removal, contact with the police, charge and arrest far outweigh non-Indigenous populations. Drivers of the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system include the disproportionate socioeconomic disadvantage they face. Areas of disadvantage include (but are not limited to) housing, employment, education, health, disability, child protection, family and domestic violence, sexual abuse, substance abuse and intergenerational trauma.

The chronic overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, high levels of socioeconomic disadvantage and high levels of legal need are understood in the context of intergenerational trauma and dispossession faced by Aboriginal and Torres Strait Islander people in Australia. This context is important in understanding the ongoing barriers that Aboriginal and Torres Strait Islander people face when seeking legal assistance, particularly the reluctance to access non-Aboriginal and Torres Strait Islander specific, mainstream services. There is a high level of need for family, civil and child protection legal assistance services.

The review report includes a high-level overview of key current trends and drivers for legal assistance need within Aboriginal and Torres Strait Islander communities including in relation to the criminal justice system, victims of crime, family and child protection legal needs, civil law needs and multifaceted disadvantage. While it is beyond the scope of the review to conduct an in-depth analysis of these broader issues, it provides important background that informs the review of the ILAP, particularly in relation to the assessment of whether services are appropriately directed towards priority areas of need and are the best use of Commonwealth resources.

---

3 See ALRC 2018, at page 37, quoting former Attorney-General of Australia, Senator the Hon George Brandis QC. See also Thorpe 2018 and ALRM 2018b.
4 PwC 2017, at page 19.
5 PwC 2017, at page 23, Section 2.3 ‘Underlying causes of Indigenous incarceration’.
**Commonwealth funding for Indigenous legal assistance**

The Commonwealth Government provides funding for legal assistance services through the ILAP and other program including the NPA and the National Plan to Reduce Violence Against Women and their Children 2010-2022. In total the AGD reports that the Commonwealth Government is providing over $1.7 billion in funding for legal assistance services delivered by LACs, CLCs and ATSILS for the five years 2015-2020, including approximately $74 million per annum through the ILAP program (or $369 million over the five years 2015-2020). The strategic direction for the funding of legal assistance services, including the ILAP, is outlined in the National Strategic Framework for Legal Assistance 2015-2020.

**Indigenous Legal Assistance Program 2015-2020**

The ILAP is a five-year funding program due to expire on 30 June 2020. The ILAP’s objectives are intended to be achieved by funding the delivery of services such as: legal advice, non-legal support, referrals, community legal education, duty lawyer assistance, casework and representation across all law types, as well as early intervention and prevention activities. The ILAP also provides funding for sector development and a number of program support activities, and aims to promote an integrated and efficient legal services sector through support for collaborative service planning (CSP).

The ILAP currently provides funding via direct grant funding agreements. There are currently ILAP agreements between the Commonwealth Government and:

- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT),

---

6 AGD 2018b.
• Aboriginal and Torres Strait Islander Legal Services Queensland (ATSILS Qld),
• Aboriginal Legal Service WA (ALSWA),
• North Australian Aboriginal Justice Agency (NAAJA) – operating in the Northern Territory,
• Aboriginal Legal Rights Movement (ALRM) – operating in South Australia,
• Victorian Aboriginal Legal Service (VALS),
• Tasmanian Aboriginal Community Legal Service (TACLs) – currently auspice by VALS, and
• The NATSILS, the national peak body – currently auspiced by VALS who has a funding agreement on behalf of NATSILS.

The ILAP program model includes a means test for access to services, and a secondary criterion to target support for priority client categories based on selected areas of socio-economic disadvantage. The funding allocation model (or FAM), determines the share of funding for each state and territory jurisdiction, includes a ‘cost factor’ weighting formula for remoteness, costs of wages and service delivery in remote areas.

Within five-year ILAP grant agreements, ATSILSs are provided flexibility to determine the type of legal assistance services provided by legal type and region through operational plans negotiated annually with the Commonwealth. The AGD reports that this allows ATSILSs to use their knowledge and respond to local conditions, trends and needs.\(^7\)

ATSILSs predominantly provide legal assistance services in relation to criminal law matters through the ILAP, representing approximately 80% of the ATSILSs services provided nationally. ATSILSs often operate in locations where there are no other legal assistance services available.

The ILAP review

The purpose of the ILAP review is to assess the effectiveness, efficiency and appropriateness of the ILAP as a mechanism for achieving its objectives and outcomes within available resources, and identify best practice and opportunities for improvement. The detailed Terms of Reference (or ToR) direct the review of the ILAP to have particular regard to:

1. delivery of cost effective, high quality, culturally appropriate and accessible Indigenous legal assistance services,
2. the implementation of Collaborative Service Planning (CSP),
3. the effectiveness, efficiency and appropriateness of funding arrangements to meet the objectives and outcomes of the ILAP,
4. the utility of performance monitoring and reporting arrangements,
5. the extent of engagement of Commonwealth Government, state and territory governments, ATSILSs, the NATSILS and the legal assistance sector in supporting a joined-up approach, and
6. opportunities for improvement.

The review of the ILAP is an independent assessment conducted in parallel with a number of other reviews and evaluations including: the NPA; FASS; the FVPLS Programme; the family law system; and specialist Domestic Violence Units and Health Justice Partnerships. Other relevant reviews recently completed include the Australian Law Reform Commission (ALRC) Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples.

The outcomes of the review of the ILAP will help to inform future funding arrangements for Indigenous legal assistance services from 1 July 2020. It is outside the scope of the review of the ILAP to conduct new

\(^7\) AGD 2018b.
research or in-depth analysis of the broader issues, including the level of Indigenous legal need in Australia and whether existing funding is sufficient to meet that need.

**Stakeholder outreach and review methods**

The ILAP review was conducted by CIR with research and advisory support from Urbis. An ILAP Advisory Group including representatives of ATSILSs and the wider legal assistance sector was established to provide input to the review at key stages.

Ninety-nine (99) national face-to-face and telephone consultations were conducted with 177 stakeholders and 59 organisations across the justice sector. The CIR review team travelled to metropolitan and rural or very remote locations in each jurisdiction and attended Circuit, Bush, Local, District, Children’s, Koori and Nunga Courts. Consultations were undertaken with a selection of court users and court officials including magistrates, other legal assistance providers, community organisations, and government representatives. The site visit selection criteria prioritising ensured a representative sample of Aboriginal and Torres Strait Islander communities and a diversity of voices were included in the review.

Stakeholders in the justice sector were also invited to make submissions in response to a discussion paper via a closed submission process accessed through a temporary online portal. The review received 18 submissions. A list of submissions provided is included in Table 6.

A desktop analysis was completed of a broad range of internal documents including ILAP program data, performance reports, grant agreements and operational plans. A literature review was undertaken with a focus on verifying key issues, trends and analysis provided by ATSILSs, the Commonwealth, community organisations and other legal assistance provider stakeholders through submissions and consultations.

The CIR team worked closely with Urbis in relation to the parallel review of the NPA. The research team at Urbis supported the ILAP review with selected coding of stakeholder interviews, analysis and administrative support. Representatives of the CIR and Urbis teams met regularly, and jointly with representatives from the AGD. CIR presented to the NPA Advisory Group meetings and met with the evaluation team for the FVPLS Programme to share findings. CIR also engaged expert Indigenous legal experts to undertake peer reviews of the findings and draft report. Further details about the conduct of the review are included in the methodology section of the main body of the report.

**Best practice service delivery to Aboriginal and Torres Strait Islander peoples**

The aims of the ILAP review includes the identification of best practice. ‘Best practice’ is not defined under the ILAP or the National Framework for Legal Assistance. It was beyond the scope of the review to undertake an in-depth analysis of what constitutes best practice in Aboriginal and Torres Strait Islander legal assistance service delivery. Where possible, the review has considered available literature, and stakeholders’ and practitioners’ views of what make up the key aspects of best practice as it relates to the delivery of legal assistance services to Aboriginal and Torres Strait Islander people.

Broadly, best practice is understood to refer to quality services which deliver, or contribute to, intended and positive outcomes for clients. In the case of the ILAP, these outcomes are equitable access to justice, the ability to access legal services and a reduction in disadvantage in the justice system. Key aspects of best practice legal assistance to Aboriginal and Torres Strait Islander clients include but is not limited to:

- appropriate legal expertise,
- culturally appropriate service delivery,
• cultural safety,
• trauma informed approaches,
• holistic service delivery,
• community control, participation and governance,
• culturally aware/trained workforce,
• joined up and or collaborative service delivery with other support services,
• strength-based approach to addressing clients’ needs, and
• ability to encourage or require more culturally appropriate responses from the justice system to clients.

Some of these aspects are discussed in brief below, and in more detail in the body of the report.

**Culturally appropriate and culturally safe services**

The ILAP objectives include the delivery of culturally appropriate services to Aboriginal and Torres Strait Islander peoples. The ILAP provides funding for service delivery to ATSILSs in recognition that these organisations provide specialist, culturally appropriate services tailored to Aboriginal and Torres Strait Islander clients. Although culturally appropriate service delivery is not defined by ILAP funding agreements, it is commonly understood as service delivery which understands, respects and reflects the cultural background of the client, including reflecting an understanding of the person’s cultural background, family and community context, including socio-economic, historical and other influences. Cultural appropriateness is essential to ensuring effective communication and accessibility in service delivery. In the context of the delivery of Aboriginal and Torres Strait Islander legal assistance, this includes ensuring legal issues are identified, understood, and appropriate legal instructions can be given. ATSILSs are widely acknowledged as providing culturally appropriate services to clients. ‘Cultural safety’ is a related concept which refers to respectful services, delivered by Aboriginal and Torres Strait Islander community-led organisations that adopt a holistic, whole-of-life, person-centred response to their clients.

**Trauma-informed approaches**

Trauma-informed approaches acknowledge and address both current and historical, ongoing intergenerational trauma experienced by Aboriginal and Torres Strait Islander people due to the adverse impacts of colonisation. Trauma-informed approaches are critical for effective and respectful engagement between Aboriginal and Torres Strait Islander people and service providers. Social and emotional wellbeing is a holistic concept referring to an individual’s connection to culture, land, ancestry, spirituality, community and family. Strengthening cultural identity is considered critical to social and emotional wellbeing. Legal assistance and other services provided which aim to address the social and emotional wellbeing of the person using trauma-informed approaches are generally regarded as best practice.

**Holistic service delivery**

‘Holistic service delivery’ is another term which the literature and practitioners often use to refer to the service delivery which considers or seeks to address needs beyond the immediate legal assistance required by clients. Holistic service delivery seeks to connect clients with services that meet the diversity of their needs, in recognition that these needs tend to be connected – for example, a mental health issue can be the primary reason that a client has been charged with a criminal offence.

---

8 AGD 2018b.
9 See for example: Farrelly and Carlson 2011 and Bainbridge et al 2015. See also submissions to the ILAP review provided by the NATSILS, National FVPLS Forum and the AGD. Further literature on culturally appropriate service delivery is discussed in more detail in the main body of the ILAP review report.
10 Herring et al 2013.
12 Commonwealth of Australia 2013a, at page 23.
Community-control
As discussed in more detail in the review report, there is an increasing body of evidence in Australia, and internationally that best practice approaches to service delivery to address Aboriginal and Torres Strait Islander disadvantage are those that operate within a framework of community control. Aboriginal and Torres Strait Islander community control is defined as local communities having control of their response to issues that directly affect their community. The integration of Aboriginal and Torres Strait Islander knowledge into service delivery, carried out by a culturally appropriate and skilled workforce, high levels of community participation, and governance models founded in self-determination that have the confidence and support of their clients or members have been identified as factors supporting effective service delivery. ATSILSs are Aboriginal and Torres Strait Islander community controlled organisations.

Efficiency of investment in response to demand
Both government and non-government stakeholders consulted for the review were acutely aware of the importance of investing in medium to long-term programs and early prevention responses, to prevent entry or return to the justice system. The consultations and literature review found that programs which address criminogenic needs related to socio-economic disadvantages, such as diversion and rehabilitation programs, justice reinvestment, through-care and therapeutic responses aimed at reducing Aboriginal and Torres Strait Islander disadvantage were key to breaking entrenched cycles of offending and preventing or reducing other legal problems.

ATSILSs generally reported that despite the ILAP seeking to support early intervention and prevention, as service providers they are constrained in their efforts to undertake these programs and generally to implement best practice holistic approaches for all clients. Constraints were a result of: the quantum of funds available through both Commonwealth, state and territory programs; the demands of front line service delivery; and potentially the restrictions placed on the release and use of ILAP funding. Examples of innovative, best practice programs were identified by the review, but it is noted that these were often pilot programs that did not have secure long-term funding, or relied on funding streams separate from the ILAP.

Other legal assistance providers and court users including court officials also expressed concern about the lack of investment in programs designed to reduce future legal needs. This view was repeatedly expressed alongside strong concern that the resources used to support the existing legal assistance services provided by ATSILSs, particularly criminal legal services, not be reduced, which could result if resources are redirected to expanded early intervention and prevention. Rather, stakeholders in the legal assistance sector would prefer to see additional resources made available to address early intervention and prevention, especially Commonwealth and state and territory investment. It was outside the scope of the review to assess whether the quantum of funding available through the ILAP is sufficient to meet current and projected legal needs for Aboriginal and Torres Strait Islander peoples.

Future directions for Indigenous legal assistance funding
There was a consistent view reported by ATSILSs, other legal assistance providers and legal stakeholders that maintaining dedicated grant funding through a program such as the ILAP, provided directly by the Commonwealth to ATSILSs and the NATSILS, is important to ensure the continuation of essential legal assistance services to Aboriginal and Torres Strait Islander people. There was also a consistent view expressed to the review that this is an appropriate approach in recognition of ATSILSs’ reputation as trusted, community controlled organisations who are the preferred providers of legal assistance services within

---

Aboriginal and Torres Strait Islander communities, and have been providing relevant services for nearly 50 years.

It was outside the scope of the review to evaluate the viability of alternative funding arrangements to the ILAP for the administration of Indigenous legal assistance. However, there was a strong view expressed by all stakeholders consulted, with the exception of the AGD, that the ILAP should remain a dedicated Commonwealth administered program, and should not be moved into or under another funding program, such as incorporated with the NPA.

There was also strong stakeholder support for ongoing and increased Commonwealth leadership to drive national efforts to address unmet legal needs, including cross portfolio and increased state and territory investment in Indigenous legal assistance and other programs to reduce the disproportionate disadvantage of Aboriginal and Torres Strait Islanders people in the justice system. The AGD, ATSILSs, LACs and CLCs all expressed concern about the lack of state and territory government investment in Indigenous legal assistance, particularly as the states and territories are responsible for the criminal justice system and control key drivers of demand for legal assistance, such as policing activities, criminal laws and sentencing practices. There was also concern that the varying levels of state and territory government support for ATSILSs across jurisdictions contribute to inconsistent levels of service for Aboriginal and Torres Strait Islander people and, in those jurisdictions where support is weak, is a barrier to effective CSP and the efficient delivery of services.
**Recommendations**

The ILAP review identified twelve headline recommendations as outlined below. The main body of the review report identifies additional opportunities for reform and future directions to consider.

<table>
<thead>
<tr>
<th>Headline Recommendations</th>
<th>Terms of Reference</th>
</tr>
</thead>
</table>
| **1** To facilitate a sustainable, community-controlled Indigenous legal assistance sector, Commonwealth Government funding should continue to be delivered through a standalone, specific purpose funding program with minimum five-year funding terms. | ToR 1 – Including appropriateness and utility of current funding arrangements  
ToR 5 – Including the roles and responsibilities of the Commonwealth and others in addressing Indigenous legal need |
| **2** In order to further strengthen the delivery of culturally appropriate legal assistance services to Aboriginal and Torres Strait Islander people, the aims and objectives of the Indigenous Legal Assistance Program should be amended to promote Aboriginal and Torres Strait Islander self-determination. | ToR 1 – Including appropriateness of current funding arrangements with regard to accessibility, effectiveness, cultural appropriateness, cultural expertise and models of service delivery  
ToR 6 – Future opportunities for improvement of the program |
| **3** Overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system remains a priority area of need. The future Indigenous Legal Assistance Program should support the provision of greater levels of legal assistance in other areas where possible, but not where this leads to increased levels of unmet criminal law need. | ToR 1 – Including appropriateness of current funding arrangements to address priority needs  
ToR 3 – Including effectiveness of funding arrangements in light of drivers of demand |
| **4** The Commonwealth Government should work with Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services to develop and implement strategies to facilitate greater consistency of Collaborative Service Planning at the national and state/territory levels in the future. | ToR 2 – Including the implementation of collaborative service planning |
| **5** In recognition that a high level of legal need is present and that current funding arrangements deliver cost effective, high quality, culturally appropriate and accessible legal services consistent within the objectives of the Indigenous Legal Assistance Program, future arrangements under the Indigenous Legal Assistance Program should continue to provide funding for Aboriginal and Torres Strait Islander Legal Services to deliver legal assistance services to Aboriginal and Torres Strait Islander clients. | ToR 1 – Including the impact of the ILAP to promote services which are effective, efficient, high quality, culturally appropriate and represent value for money  
ToR 3 – Including the effectiveness, efficiency and appropriateness of funding arrangements for ATSILSs and the NATSILS |
<table>
<thead>
<tr>
<th>Number</th>
<th>Headline Recommendations</th>
<th>Terms of Reference</th>
</tr>
</thead>
</table>
| 6      | In order to support an effective Indigenous legal assistance sector, the Indigenous Legal Assistance Program should continue **funding for the National Aboriginal and Torres Strait Islander Legal Services** to provide sector development and support, program support, and other activities which address Aboriginal and Torres Strait Islander disadvantage in the justice system, including law reform activities.                                                                 | ToR 1 – Including the appropriateness of current funding arrangements in consideration of the current landscape of the legal assistance sector  
ToR 3 – Including effectiveness, efficiency and appropriateness of funding arrangements for ATSILSs and the NATSILS  
ToR 5 – Including the broader role of the NATSILS                                                                                                                                                                                                                                           |
| 7      | To ensure appropriate and effective oversight of the Indigenous Legal Assistance Program, future management and administration of the Indigenous Legal Assistance Program should be provided by a **Commonwealth Department with specialised skills, expertise and cultural competency**. Future changes to the management and administration of the Indigenous Legal Assistance Program should be considered following the completion of the national reviews and/or evaluations of current funding arrangements for Family Violence Prevention Legal Services, Legal Aid Commissions and Community Legal Centres. | ToR 1 - Including appropriateness and utility of current funding arrangements  
ToR 3 – Including interaction of ILAP and other funding arrangements  
ToR 4 – Including utility of performance monitoring and reporting arrangements  
ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and the NATSILS                                                                                                                                   |
| 8      | To strengthen and streamline the future Indigenous Legal Assistance Program, the Commonwealth Government, Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services should work in **partnership to co-design aspects of the future funding model**, including but not limited to the program logic, program benchmarks, program objectives and outcomes. |
|        | ToR 4 – Including utility of performance monitoring and reporting arrangements, including collection of service data  
ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and the NATSILS                                                                                                                                                                                                  |
<p>| 9      | In order to further enhance <strong>performance monitoring and reporting</strong>, the Commonwealth Government, Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services should work collaboratively to identify ways to streamline reporting and increase funding transparency and certainty. | ToR 4 – Including utility of performance monitoring and reporting arrangements                                                                                                                                                                                                                                                                                 |
| 10     | The Commonwealth Government, Aboriginal and Torres Strait Islander Legal Service and the National Aboriginal and Torres Strait Islander Legal Services should work in partnership to <strong>strengthen and enhance data collection</strong> and data collection processes, in order to improve the focus and use of data to capture and inform outcomes, and to better identify and respond to priority areas of need. | ToR 4 – Including utility of performance monitoring and reporting arrangements                                                                                                                                                                                                                                                                                 |
| 11     | Consistent with the Indigenous Legal Assistance Program objective of reducing Aboriginal and Torres Strait Islander disadvantage in the justice system, the Indigenous Legal Assistance Program should support the direction of funding to <strong>strategic litigation</strong>.                                                                 | ToR 6 – Including opportunities for enhancement of the program                                                                                                                                                                                                                                                                                     |</p>
<table>
<thead>
<tr>
<th>Headline Recommendations</th>
<th>Terms of Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>12</strong> Consistent with the Indigenous Legal Assistance Program objective of reducing Aboriginal and Torres Strait Islander disadvantage in the justice system, and to address persistent perceptions from Indigenous Legal Assistance Program grant recipients that the Indigenous Legal Assistance Program does not support <em>law reform and advocacy work or research</em>, the Indigenous Legal Assistance Program should incorporate a clear definition of activities that can be undertaken under the program.</td>
<td>ToR 6 – Including opportunities for enhancement of the program</td>
</tr>
</tbody>
</table>
Review findings and insights

Terms of Reference 1 – Delivery of Services: The review found that the ILAP supports ATSILSs to deliver effective, efficient, culturally appropriate and value for money legal assistance to Aboriginal and Torres Strait Islander peoples, consistent with program objectives and outcomes.

ILAP provides the primary funding for legal assistance services provided by ATSILSs, with variation across jurisdictions. ATSILSs in each jurisdiction manage a high volume of legal matters, clients in crisis and with complex needs, and large and growing demand. Nationally, the ILAP supports ATSILSs to service a high level of demand for critical, frontline response in criminal law, including providing legal representation for clients at risk of incarceration as a service priority.

Concerns were expressed that services were stretched to the extent that was not sustainable in the medium to long-term, particularly when higher levels of demand are projected across all areas of law but particularly in relation to further increasing incarceration rates, particularly for women and young people, and increased child protection and family law needs.

There was a strong desire across the board, including by ATSILSs themselves, for ATSILSs to provide expanded civil, family and child protection legal assistance services, and greater services aimed at early intervention. However, this was constrained by a lack of resources and a lack of culturally appropriate alternative criminal legal assistance services for Aboriginal and Torres Strait Islander people to access if ATSILSs were to cut back their criminal practices and redirect existing funding to other areas.

With the support of the ILAP, ATSILSs are widely acknowledged as providing quality, culturally appropriate and culturally safe legal assistance to Aboriginal and Torres Strait Islander clients. Stakeholders identified ATSILSs’ engagement of Aboriginal and Torres Strait Islander staff, knowledge of and connection to the local community, trust within the local community and cultural expertise and knowledge of cultural protocols, as factors supporting the delivery of quality, appropriate tailored services for Aboriginal and Torres Strait Islander clients.

ATSILSs employ a range of strategies to reach clients across their respective states and territories, including through regional offices, outreach clinics, community legal education, and collaborative service planning with LACs and other services. However, significant levels of unmet need were reported in some regional and remote areas by ATSILSs, magistrates and LACs. At some bush courts and remote circuits, ATSILSs are the only legal assistance service available.

Terms of Reference 2 – Collaborative Service Planning: The review found that CSP is being implemented through a range of formal and informal strategies, partnerships, information sharing and collaborative arrangements, beyond those required under ILAP funding agreements. Although understandings of CSP vary, it is actively implemented to maximise the reach of legal assistance to areas of greatest need, to address the diversity of needs which are driving demand for legal assistance services, to provide holistic responses where possible within available resources, to increase efficiency and to avoid duplication.

Long running and diverse networks of relationships exist between ATSILSs, government agencies, LACs, CLCs and community organisations which support CSP, as well as joined-up service delivery and general service coordination. There is variation in the implementation of CSP reported across jurisdictions, with the demands of front line service delivery reported as limiting the capacity of ATSILSs to actively participate in all relevant CSP forums, and variations in levels of information sharing and coordination by some ATSILSs, legal assistance providers and government agencies.
There were mixed views expressed as to whether the ILAP actively supports the implementation of CSP, and whether CSP in itself should be a measure of performance under the ILAP. At the same time, CSP was widely supported as a valuable activity by all stakeholders.

Terms of Reference 3 – Funding Arrangements: The review found that ILAP funding arrangements were generally supported by ATSILSs and long-term five-year funding agreements were received positively. There was a perception reported amongst ILAP grant recipients that ILAP funding allocation criteria and decisions are not transparent, and the beneficial impacts of funding certainty have been partly offset by the impacts of the expected funding reductions in 2017 (ultimately reversed) and forecast reductions in funding from 2020-2021. There was support from ATSILSs and the NATSILS for the Commonwealth Government to update the ILAP funding model and some administrative arrangements through a cooperative, co-design process.

The Funding Allocation Model (FAM) for the ILAP that is used to determine funding between ATSILSs, within the overall available funding, includes appropriate areas of focus but does not take sufficient account of: the complexity and diversity of legal assistance needs for individual clients; the full costs of providing services to regional and remote areas; and wage and other service cost increases.

The flexibility provided through the ILAP for ATSILSs to determine service priorities and service locations within their jurisdiction based on knowledge of local community needs remains appropriate. Although, current approaches to mapping and weighting legal need could be improved in the longer term through the development of data sets and analytical approaches that better capture the complexity of individual client needs, and could assist with future service planning.

Terms of Reference 4 – Performance Monitoring, Reporting and Data Collection: There are mixed views from ILAP funding recipients of the reforms introduced in 2015 to ILAP reporting, monitoring and compliance systems. Some of the recent ILAP reforms, particularly to data systems, have led to some improvements in the collection of consistent and comparable data. However, the review found that the transition and implementation of the National Data Standards Manual (DSM) varied.

There was concern expressed that: reporting remains focused on outputs and compliance, rather than performance and outcomes; does not accurately capture the services delivered by ATSILSs, and full use of the data collected is not being made. At the same time, there was the support to streamline reporting further where possible, to ensure that the staff and financial resources required for data reporting does not unduly impact the core business of delivering legal services.

The unique service models of different ATSILSs, coupled with ongoing challenges with inconsistent interpretation of data definitions within ATSILSs and across the broader legal assistance sector, mean that further work is needed to develop comparable data between ATSILSs and with the sector. Ongoing data development work is likely to require further investment within the sector, both in terms of the maintenance of collection and reporting systems over time, and to better align interpretations of the DSM.

The AGD and the NATSILS on behalf of ATSILSs raised concerns about the capacity of the AGD to manage ILAP compliance and financial reporting, including concerns about the compliance approach not taking appropriate account of different ATSILSs’ risk profiles.

Terms of Reference 5 – Governance, Roles and Responsibilities: The review found that the Commonwealth and ATSILSs had generally fulfilled their roles under the ILAP. Within the community, ATSILSs play a significant role in the community beyond the delivery of legal assistance services. ATSILSs are well positioned to undertake additional activities which are consistent with the objectives of the ILAP, including law reform and expanded service delivery, in coordination with other Aboriginal and Torres Strait Islander services such as FVPLSs and other mainstream legal assistance providers like LACs and CLCs.
The ILAP has supported the NATSILS to play a coordination and collaboration role between ATSILSs, government, the legal sector, other community-controlled services and non-indigenous services, consistent with the objectives of the ILAP.

There was broad support amongst the stakeholders consulted for the review for the Commonwealth to continue as the primary funder of ATSILSs and other Indigenous legal assistance services, through a stand-alone specific purpose fund such as the ILAP. There was also broad support amongst the stakeholders consulted for the review that future Indigenous legal assistance services receive increased support from state and territory governments.

**Terms of Reference 6 – Opportunities for Reform**: The review identified other potential areas of improvement for the ILAP, including but not limited to: expanded support for strategic litigation and law reform activities; support for sector growth and investment; increased staff retention; and moving towards wage parity with non-Indigenous specific legal assistance.

Pursuing strategic litigation, including test cases, was identified as a valuable activity which contributes to the ILAP objective of reducing Aboriginal and Torres Strait Islander disadvantage in the legal system. There is a perception amongst ATSILSs, the NATSILS and the broader legal assistance sector that expensive cases, strategic litigation, including test cases, are not sufficiently supported by the current ILAP.

While ATSILSs and the NATSILS undertake law reform activities where possible within available resources, it was reported that there are significant demands for expert advice for ATSILSs and the NATSILS in relation to policy and law reform from government agencies, justice agencies, other legal assistance providers and the community sector. There is a perception amongst ATSILSs, the NATSILS and the broader legal assistance sector that law reform activities are not supported by the ILAP.

Finally, workforce challenges were identified as a significant issue impacting efficient and equitable service delivery. ATSILSs experience significant challenges attracting and retaining staff, in part due to lower salaries offered compared to LACs. ATSILSs staff experience higher workloads than their counterparts in LACs. A number of ATSILSs expressed concerns that the current approach, where services are ‘stretched’ to respond to increasing demand, was not sustainable and was leading to staff burnout.
Background

1. Introduction

The Commonwealth Government funds culturally appropriate legal assistance services for Aboriginal and Torres Strait Islander people through the Indigenous Legal Assistance Program (ILAP). The Commonwealth Attorney-General’s Department (AGD) administers ILAP funding. The key objectives of the ILAP are:

- improving access to justice for Indigenous Australians,
- reducing the disproportionate disadvantage experienced by Indigenous Australians in the justice system, and
- providing cost effective legal assistance.

The ILAP provides direct grants to Aboriginal and Torres Strait Islander Legal Services (ATSILSs) to deliver frontline legal assistance and related services to Aboriginal and Torres Strait Islander clients in line with the objectives of the ILAP. The ILAP funds legal assistance services across Australia focused on:

- discrete assistance such as information, referral, legal advice, non-legal support and task assistance,
- community legal education and early intervention and prevention activities,
- facilitated resolution processes,
- duty lawyer assistance, and
- representation services for criminal, civil and family law matters.

The ILAP also funds the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) as a peak body advocating and providing support for continuous improvement of the ILAP and delivery of services by Indigenous legal assistance providers.

The Commonwealth currently provides ILAP funding to seven ATSILSs, and to the NATSILS, through direct ILAP grant agreements to deliver legal assistance services from 81 office locations nationally, with additional attendance at circuit courts, bush courts and outreach legal support to metropolitan, regional and remote areas.

The current ILAP program is a five-year funding program due to expire on 30 June 2020. The outcomes of the ILAP review will help inform future Commonwealth funding arrangements for Indigenous legal assistance services from 1 July 2020.

---

14 Background about the history of Indigenous legal assistance funding, and the background to the ILAP program, are discussed in this report at: ‘Background - 2. Legal Assistance in Australia’ and ‘4. Indigenous Legal Assistance Program (ILAP)’.

15 AGD 2014b and ILAP Review Terms of Reference, at Appendix A.

16 Refer to Clause 3, Attachment B, ILAP Funding Agreement, Version AGD ILAP June 2015, unpublished, as provided to CIR.

17 Background about ATSILSs and other legal assistance providers are discussed in this report at: ‘Background - 2. Legal Assistance in Australia’ and ‘Review Findings and Insights - ToR 1 Delivery of Services’. The role of NATSILS is discussed in this report at: ‘Review Findings and Insights – ToR 5 Governance Roles and Responsibilities, iii Role of NATSILS’.

18 NATSILS 2018b, and email advice from NATSILS to CIR Review team, December 2018, as to updated location of offices. A list of ATSILSs’ office locations as of December 2018 is included in the report at Table 10. The AGD advised that ATSILSs are funded to provide services from 70 locations, nationally: AGD 2018b.

19 Discussion about the services provided through the ILAP by ATSILSs is included in this report at ‘Review Findings and Insights - ToR 1 Delivery of Services’.

20 AGD 2018b.
2. Legal assistance in Australia

Access to justice and the legal assistance sector

Many Australians experience legal problems that they cannot resolve on their own. However, the cost of accessing private legal representation, along with a range of other factors, can prevent many people from gaining effective access to justice.\textsuperscript{21} Realising equal access to justice for all Australians means providing fair and equitable access to legal assistance, without economic, geographic, social, cultural, linguistic or other barriers.\textsuperscript{22}

Legal problems can have considerable impacts on an individual’s health, financial and social circumstances.\textsuperscript{23} Unmet civil legal needs and protracted legal disputes represent significant costs for individuals, the community and government.\textsuperscript{24} Insufficient legal support for people engaged with the criminal justice system can lead to unfair or inappropriate justice outcomes, and large costs for individuals, communities and governments.\textsuperscript{25}

Aboriginal and Torres Strait Islander people are especially vulnerable to legal problems, and experience particular challenges accessing legal services. They have been identified as a key group in Australia who are missing out on legal services relative to their level of need.\textsuperscript{26} Aboriginal and Torres Strait Islander people are not only more likely to experience both criminal and civil legal problems, but are also more likely to experience legal problems which are complex and compounded by socio-economic disadvantage, and historical and cultural factors.\textsuperscript{27} Multiple inquiries and studies have identified that overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system is driven by the high levels of disadvantage experienced by Aboriginal and Torres Strait Islander people in areas including: housing, employment, disability, education, substance abuse, child protection, family violence and sexual abuse, intergenerational trauma and social exclusion and isolation.\textsuperscript{28}

As discussed in more detail in later sections of this report, non-Aboriginal and Torres Strait Islander specific legal services may not be delivered in a culturally sensitive way and may not be readily available in regional and remote areas where there are significant Aboriginal and Torres Strait Islander communities. Issues including anxiety, lack of familiarity, fear of detention, and reluctance to use non-Aboriginal and Torres Strait Islander specific legal assistance services have been demonstrated to affect access to justice for Aboriginal and Torres Strait Islander people.\textsuperscript{29}

The legal assistance sector provides legal support, advice, representation and related services at no or low cost to groups that might otherwise be prevented from accessing legal services because of their circumstances or background. The Commonwealth Government and state and territory governments provide financial support to the four main service providers for legal assistance in Australia:

- ATSILSs, which are Aboriginal and Torres Strait Islander community-controlled organisations,
• Legal Aid Commissions (LACs), which are independent statutory authorities under state and territory legislation,
• Community Legal Centres (CLCs), which are not for profit community organisations, and can include Aboriginal and Torres Strait Islander services, and
• Family Violence Prevention Legal Services (FVPLSs). FVPLSs provide culturally safe legal services and assistance to indigenous victims/survivors of family violence or sexual assault.

The Commonwealth has, since the 1967 referendum, had the power to legislate for Aboriginal and Torres Strait Islander people. The Commonwealth is the largest funder for Indigenous specific legal assistance services. With the support of the ILAP, ATSILSs deliver the majority of criminal legal services to Aboriginal and Torres Strait Islander people in Australia. Across the jurisdictions, ATSILS also deliver a significant range of family law services, child care and protection law services, civil law services and a range of other legal and community services that vary between jurisdictions.

FVPLSs deliver counselling and legal services to Aboriginal and Torres Strait Islander people who are victim-survivors of family violence or sexual assault. CLCs and LACs provide legal services and community programs for vulnerable and disadvantaged Australians, including Aboriginal and Torres Strait Islander people. The National Association of Community Legal Centres (NACLC) advises that:

- 11.5% of CLC clients nationally are Aboriginal and/or Torres Strait Islander peoples, and
- 42.3% of CLCs who responded to the 2017 NACLC National Census of Community Legal Centres indicated they have a specialist program for Aboriginal and/or Torres Strait Islander peoples.

LACs are the primary providers of criminal legal assistance for non-Indigenous Australians, and a significant provider of civil law assistance, family law assistance and community legal education. There is significant variation in the services provided by LACs by jurisdiction, representing different community profiles, legal contexts and availability of other legal assistance providers. In some locations, LACs are the primary provider of both civil and criminal services for the Indigenous and non-Indigenous community, including in some regional and remote locations which are not serviced by ATSILSs or FVPLSs.

The NATSILS advised that in relation to the National Aboriginal and Torres Strait Islander Social Survey 2014-15, Indigenous respondents were asked if they had accessed either an ATSILS, LAC or other legal services in the last year. Of the respondents who had accessed either an ATSILS or LAC only in the past 12 months, approximately 60% of Aboriginal and Torres Strait Islander people used an ATSILS, and 40% had used a LACs (the percentages excludes the number of respondents who had accessed other legal service providers such as a private lawyer, FVPLS or CLC).

National Legal Aid (NLA) reports that in 2017-2018 LACs delivered 80,517 ‘intensive’ services to Aboriginal and Torres Strait Islander people; 23,119 more than in 2012-2013. It advises that there has been a 1% decrease in service numbers to Aboriginal and Torres Strait Islander people between 2017-2018 and 2016-

---

30 AGD 2018b.
31 AGD 2018b and NATSILS 2018b.
32 Allen Consulting Group 2014 and NATSILS 2018b, at Section 3.3.
33 NACLC 2018b, referencing Report from CLASS (data reporting system), and the NACLC 2018a National Census of Community Legal Centres, 2017 National Report.
34 ABS 2016b and NATSILS 2018b, at pages 15, referencing unpublished data provided by the ABS to NATSILS on 28 August 2018 which are further disaggregated results from the ABS 2016b, National Aboriginal and Torres Strait Islander Social Survey, 2014-15 in data cube Table 15: Safety, law and justice, by sex, age and remoteness, Aboriginal and Torres Strait Islander persons aged 15 years and over — 2014–15 (estimate). The published data in ABS, NATSIISS 2014-15, Table 15 results for “Other” legal services do not disaggregate the proportion of respondents who accessed either a CLC, FVPLS or private lawyer, nor the percentages for accessing either an ALS or LAC.
2017 but the numbers of Aboriginal and Torres Strait Islander people accessing more intensive LAC services, proportionate to all clients accessing such services, continued to rise in 2017-2018.\textsuperscript{35}

Some examples of recent LAC service levels reported by individual jurisdiction include:

- Legal Aid New South Wales reported that 12.8\% of its clients were Aboriginal and/or Torres Strait Islander in 2016-2017.\textsuperscript{36}
- Legal Aid Queensland reported that 15.2\% of grants of legal aid approved in 2017-2018 were to Aboriginal or Torres Strait Islander people.\textsuperscript{37}
- The Northern Territory Legal Aid Commission reported that 37\% of clients assisted in 2015-2016 identified as Aboriginal and/or Torres Strait Islander.\textsuperscript{38}

The final report of the review of the NPA includes further information about legal assistance services provided in the 2017 Financial Year by LACs to Aboriginal and Torres Strait Islander peoples, by jurisdiction.\textsuperscript{39}

Some legal assistance and community legal education are also provided by other not-for-profit organisations, other government agencies such as Ombudsmen’s offices, Anti-Discrimination Boards and private legal firms and practitioners acting in a pro bono capacity.

### Indigenous legal service providers

ATSILSs and FVPLSs provide legal assistance service to Aboriginal and Torres Strait Islander people.\textsuperscript{40} ATSILSs were established in the early 1970s as part of a broader national movement to enhance the legal and civil rights of Aboriginal and Torres Strait Islander people. Prior to the establishment of ATSILSs, most Aboriginal people appearing before the Courts were not represented by a solicitor, and many pleaded guilty to offences unaware of their rights and obligations under the law.\textsuperscript{41}

ATSILSs were established in different ways in different parts of Australia. For example, the ALS NSW/ACT was established in 1970 as a partnership between Aboriginal lawyers and activists, and the University of Sydney students and academics. By 1975 there was an ATSILS in every state and territory across Australia.\textsuperscript{42} ATSILSs are independent community organisations. The number of ATSILSs has varied over the years. Between 2004 and 2006 the number of ATSILSs receiving Commonwealth funding reduced from 25 to nine (9).\textsuperscript{43}

Along with the NATSILS, today there are seven (7) ATSILSs funded through ILAP, one servicing each state and territory. The ILAP currently provides funding through direct grants to:\textsuperscript{44}

- **Aboriginal and Torres Strait Islander Legal Service Queensland (ATSILS Qld):** Established in 1972, ATSILS Qld is a state-wide organisation consisting of 25 offices and 190 staff.

\[35\] NLA 2018, at pages 4-5. The NLA refers to ‘Intensive’ services as duty lawyer services as an example and excludes information or advice services that are delivered quickly and in high volumes.

\[36\] Legal Aid Commission of NSW 2017.

\[37\] Legal Aid Queensland 2018.

\[38\] NT Legal Aid Commission 2016.

\[39\] Urbis Forthcoming. At the time of completing this review report, the final report from the NPA review was under consideration by the Commonwealth Government.

\[40\] Consistent with ILAP grant agreements, some minor or incidental services can be provided to non-Indigenous people.

\[41\] ALRM 2018a.

\[42\] ALS NSW/ACT Undated.

\[43\] AGD 2018b. For discussion of the history of Commonwealth funding in relation to the number of ATSILSs see ‘Background - 4. Indigenous Legal Assistance Program (ILAP)’.

\[44\] Descriptions of ATSILSs listed are from NATSILS 2018b, unless otherwise noted.
• **Aboriginal Legal Rights Movement (ALRM):** Incorporated in 1973, ALRM is an organisation of over 60 staff, with offices in Adelaide and three regional centres. It provides services across South Australia to approximately 21 major Aboriginal language groups.

• **Aboriginal Legal Service of Western Australia (ALSWA):** ALSWA was established in 1973 in Perth, having developed from the Justice Committee of the New Era Aboriginal Fellowship Inc. in the late 1960s.\(^{46}\) Today ALSWA have 13 offices and over 100 staff across Western Australia.

• **Aboriginal Legal Service NSW ACT (ALS NSW/ACT):** The Aboriginal Legal Service in Redfern in 1970 was the first Aboriginal Legal Service established in Australia.\(^{46}\) ALS NSW/ACT was created in 2006 when six regionally-based Aboriginal Legal Services came together to form one state-wide service. ALS is staffed by 212 staff in 24 offices and branches.

• **North Australian Aboriginal Justice Agency (NAAJA):** NAAJA provides legal services to Aboriginal people and their families and is the largest legal practice in the Northern Territory. It has 149 staff across five offices.

• **Victorian Aboriginal Legal Service Co-operative Limited (VALS):** VALS consists of nine offices and more than 50 staff.

• **Tasmanian Aboriginal Community Legal Service (TACLS):** TACLS commenced in 2015, consisting of 19 staff servicing two offices. TACLS is currently auspice through VALS.

**The NATSILS:** the NATSILS was established as a peak representative body in 2007. The NATSILS provides coordinating services, policy development, program support and sector development. The seven ATSILSs make up the membership of the NATSILS. The NATSILS employs two staff.\(^{47}\)

FVPLSs are the other major Indigenous legal service providers in Australia. FVPLSs provide culturally safe legal services and assistance to Indigenous victims/survivors of family violence or sexual assault. There are 14 organisations across Australia funded by the Department of the Prime Minister and Cabinet’s Indigenous Advancement Strategy as part of the *National Plan to Reduce Violence Against Women and their Children 2010-2022*.

There are also a number of Aboriginal and Torres Strait Islander organisations which provide legal services predominantly or exclusively to Aboriginal and Torres Strait Islander people.\(^{48}\)

**Government funding for legal assistance programs**

The AGD in its submission to the ILAP review reports that the Commonwealth Government is providing over $1.7 billion to LACs, CLCs and ATSILSs over five years to 2020.\(^{49}\) Government funding is directed primarily to

\(^{45}\) ALSWA Undated.  
\(^{46}\) ALS NSW/ACT Undated.  
\(^{47}\) NATSILS 2018a.  
\(^{48}\) Examples include CLC, Wirringa Baiya based in Sydney. The Wirringa Baiya receives Commonwealth funding under NPA and state funding from bodies including the NSW Department of Justice, the NSW Public Purpose Trustees, the Rural Women’s Outreach Program and the NSW Department of Family and Community Services: Wirringa Baiya Undated.  
\(^{49}\) AGD 2018b, at page 45.
the four main legal assistance providers: ATSILSs, LACs, CLCs and FVPLSs. Aboriginal and Torres Strait Islander specific legal services are funded primarily by the Commonwealth Government.\footnote{Law Council of Australia 2018a.}

The Commonwealth provides funding through the ILAP to ATSILSs and the NATSILS. The Commonwealth also funds the FVPLSs through the \textit{National Plan to Reduce Violence Against Women and their Children 2010-2022},\footnote{AGD 2018b, at page 28.} to LACs and CLCs through the NPA, which includes Aboriginal and Torres Strait Islander people as a priority client group,\footnote{NLA 2018a.} and some additional sources.\footnote{See summary of Commonwealth funding for legal assistance at Attachment C of the AGD’s submission to the ILAP review: AGD 2018b.} Under the Indigenous Advancement Strategy (IAS), the Commonwealth Government has committed $121.2 million to the Family Violence Legal Prevention Services sector over five years to 30 June 2020. This investment includes an additional $3.5 million allocated to six family violence prevention legal services, under the \textit{Third Action Plan of the National Plan to Reduce Violence Against Women and Their Children}.\footnote{Commonwealth of Australia 2016b.}

State and territory governments also provide significant funding for legal assistance. Historic and current levels of funding provided through the ILAP are discussed later in this report.\footnote{See Table 2 and Table 3 of this report.} Current comparative figures of total government funding across legal assistance services were not available at the time of publication of the report. The Productivity Commission (2014) has previously reported the breakdown of funding for legal assistance services between the Commonwealth and states and territories: Refer to Figures 2 and 3 below.

The Productivity Commission reported that together, the four legal assistance providers received around $730 million in government funding in 2012-13, representing around 0.14 per cent of all government spending.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Figure2.png}
\caption{Criminal and civil legal assistance funding in Australia 2000-2001 to 2012-2013}
\end{figure}

\textit{Source:} Productivity Commission. 2014. \textit{Access to Justice Report Figure 5, Volume 1, p26}
<table>
<thead>
<tr>
<th>Legal aid commissions (LACs)</th>
<th>Community legal centres (CLCs)</th>
<th>Aboriginal and Torres Strait Islander legal services (ATSILS)</th>
<th>Family violence prevention legal services (FVPLS)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Where are they located?</strong></td>
<td><strong>What are their objectives?</strong></td>
<td><strong>Who do they target?</strong></td>
<td><strong>What are their funding arrangements?</strong></td>
</tr>
<tr>
<td>8 LACs</td>
<td>200 CLCs</td>
<td>8 ATSILS</td>
<td>14 FVPLS</td>
</tr>
<tr>
<td>• In all states and territories</td>
<td>• In all states and territories</td>
<td>• One in each state, two in the NT; ACT serviced by NSW</td>
<td>• In all states and territories except ACT and Tasmania</td>
</tr>
<tr>
<td>• Metropolitan, regional and remote services including regional offices</td>
<td>• Mainly in metropolitan and regional areas</td>
<td>• Majority of outlets in regional and remote areas</td>
<td>• Service 31 high need regional, rural and remote areas</td>
</tr>
<tr>
<td><strong>Commonwealth</strong></td>
<td><strong>State &amp; territory</strong></td>
<td><strong>Other</strong></td>
<td><strong>National Partnership Agreement (NPA) and funding administered by the state and territory governments</strong></td>
</tr>
<tr>
<td>$212.6 m</td>
<td>$36.7 m</td>
<td>--</td>
<td>Funding administered by LACs in most states except SA where provided through the Attorney-General’s Department (SA). NT and ACT administered by the Australian Government</td>
</tr>
<tr>
<td>State &amp; territory: $366.5 m</td>
<td>$30.9 m</td>
<td>--</td>
<td>Funding administered by the Australian Government</td>
</tr>
<tr>
<td>Other: $30.4 m</td>
<td>$22.0 m</td>
<td>--</td>
<td>Funding administered by the Australian Government</td>
</tr>
</tbody>
</table>

**Source:** Productivity Commission 2014, Access to Justice Arrangements. Inquiry Report No. 72, Figure 4, page 25.
3. Aboriginal and Torres Strait Islander legal needs

This section of the report provides a high-level overview of legal needs and trends in demand for legal services within Aboriginal and Torres Strait Islander communities, drawing on insights from research literature and the consultations undertaken with ATSILSs and the legal assistance sector. It is outside the scope of this review to provide an in-depth or comprehensive analysis of Indigenous legal need in Australia, and whether existing funding is sufficient to meet those needs.56

Overrepresentation in the criminal justice system

The persistent and growing overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system is well documented and has been identified as a national tragedy.57

A significant proportion of the Aboriginal and Torres Strait Islander population has current or historical experience of contact with police, arrest or charge. In 2014–15, around one in seven (15%) Aboriginal and Torres Strait Islander people aged 15 and over reported that they had been arrested in the previous five years (20% of males and 9.2% of females). In the same year, it was reported that approximately 35% of Aboriginal and Torres Strait Islander people had been formally charged by police at least once in their lifetime (48% of males and 23% of females).58 Approximately nine per cent (9%) of Aboriginal and Torres Strait Islander people (aged 15 years and over) reported a period of incarceration in their lifetime.59

Nationally, Aboriginal and Torres Strait Islander young people are 25 times more likely to be incarcerated than other young people, Aboriginal and Torres Strait Islander adult men are 11 times more likely than other adult men, and Aboriginal and Torres Strait Islander women are 15 times more likely to be imprisoned than other women.60

The recent national Australian Law Reform Commission (ALRC) Inquiry into Incarceration Rate of Aboriginal and Torres Strait Islander Peoples found that in 2016 Aboriginal and Torres Strait Islander people:

- Made up around two per cent (2%) of the national population, yet constituted 27% of the national prison population.61
- Were seven times more likely than non-Indigenous people to be charged with a criminal offence and appear before the courts.
- Were 12.5 times more likely to receive a sentence of imprisonment than non-Indigenous people.
- Were more likely to experience multiple periods of imprisonment – 76% of Aboriginal and Torres Strait Islander prisoners had been in prison previously, compared to 49% of non-Indigenous offenders.62

The ALRC (2018) reported that there is significant variation in the rate of overrepresentation between jurisdictions, reflecting the diversity of current and historical criminal laws and policing, judicial and custodial practices, as well as the diversity of communities.

56 Refer to ILAP Review Terms of Reference included at Appendix A of this report.
57 See ALRC 2018, page 37, quoting former Attorney-General of Australia, Senator the Hon George Brandis QC. See also Thorpe 2018 and ALRM 2018b.
59 Productivity Commission 2016: At 4.13.1 reports that in 2014 15, 91.2 per cent of Aboriginal and Torres Strait Islander Australians (aged 15 years and over) reported never having been incarcerated, citing ABS 2016b.
60 PwC 2017, at page 19.
61 ABS 2018b.
Using 2016 figures, the ALRC reports that:

- In the Northern Territory, Aboriginal and Torres Strait Islander peoples constituted 20% of the general population and 84% of the prison population.
- In Victoria, Aboriginal and Torres Strait Islander peoples constituted 1% of the general population and 8% of the prison population.
- Comparing the different rates of incarceration between jurisdictions, the Australian Capital Territory (ACT) and Western Australia had the highest levels of Aboriginal and Torres Strait Islander overrepresentation ratio in Australia in 2016 (17.7% and 16.4% respectively) compared to non-Aboriginal and Torres Strait Islander populations, though it is noted that the ACT’s smaller Aboriginal and Torres Strait Islander population makes this figure unreliable. Tasmania had the lowest overrepresentation rate at 3.5.63

An analysis by Price Waterhouse Coopers (PWC) (2017) found similar figures: refer to Figure 4 below.

**Figure 4: Indigenous Australians as a proportion of the population, and the prison population**

---


**Source:** PwC 2016. Indigenous Incarceration: Unlock the Facts

---

63 ALRC 2018, page 93 and page 95 Figure 3.2: Imprisonment rates (per 100,000 persons) by Aboriginal and Torres Strait Islander status by jurisdiction, 2016 figures.
Women and young people

The overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system is greatest amongst Aboriginal and Torres Strait Islander women (34% of the national prison population) and young people.\(^{64}\) The Australian Institute of Health and Welfare (AIHW) reports that there has been a reduction in the number and rate of young people under supervision in recent years, nationally. However, overrepresentation rates have increased, with approximately half (50%) of the young people under supervision (including young people in detention) on any given day being Aboriginal and Torres Strait Islander young people (2016-17 figures).\(^{65}\)

The incarceration of Aboriginal and Torres Strait Islander women has particular implications for families and communities. It is estimated that 80% of Aboriginal and Torres Strait Islander women in prisons are mothers,\(^{66}\) and Aboriginal and Torres Strait Islander women are more likely than other women to have carer responsibilities.\(^{67}\) Aboriginal and Torres Strait Islander female prisoners are also disproportionately more likely than their non-Indigenous counterparts to: have experienced family violence and sexual abuse; have a mental illness or cognitive disability; have substance abuse issues; have entered into the child protection system as children; have earlier and more frequent criminal justice contact—including police contact and incarceration; be living in unstable housing or homeless; be unemployed; and have lower levels of educational attainment.\(^{68}\) Aboriginal and Torres Strait Islander men are also overrepresented in many of these areas. There is a documented link between having ever been charged with a criminal offence, and the greater likelihood of being a victim of crime for Aboriginal and Torres Strait Islander people.\(^{69}\)

Growth in overrepresentation

The overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system has grown persistently over time\(^{70}\) and is projected to continue, increasing the likely future demand for legal assistance services.

In the 20 years since the Royal Commission into Aboriginal Deaths in Custody, the proportion of prisoners that are Aboriginal and Torres Strait Islander almost doubled from 14% to 26% (1991 to 2011). The highest rate of growth since 1993 has been in the Northern Territory, where the Aboriginal and Torres Strait Islander imprisonment rate has more than doubled. The lowest growth over this time period has been in South Australia, where the Aboriginal and Torres Strait Islander imprisonment rate rose by 26%.\(^{71}\) Against a backdrop of increasing incarceration of both men and women in Australia generally,\(^{72}\) the overrepresentation of Aboriginal and Torres Strait Islander men and women is growing most strongly, and is projected to continue. The incarceration rate for Aboriginal women is up 148% since 1991.\(^{73}\)

---

\(^{64}\) Productivity Commission 2016.

\(^{65}\) AIHW 2018c. The AIHW reports that approximately 17% of all young people under supervision were in detention in 2016-17.

\(^{66}\) Human Rights Law Centre and Change the Record Coalition 2017.

\(^{67}\) ALRC 2018. Analysis developed by ALRC using data from: ABS 2016a.

\(^{68}\) As above.

\(^{69}\) Bryant 2009.

\(^{70}\) Lyneham and Chan 2013, as quoted at section 1.2 in ANAO 2015.


\(^{72}\) ABS 2018d.

\(^{73}\) Human Rights Law Centre and Change the Record Coalition 2017.
Nationally the number of Aboriginal and Torres Strait Islander young people under supervision (including detention) has been reducing, with increases in some selected jurisdictions. On an average day in 2012–13 Aboriginal and Torres Strait Islander young people aged 10–17 were 15 times as likely as non-Indigenous young people to be under supervision, rising to 18 times as likely in 2016–17.74 The rate of overrepresentation of Aboriginal and Torres Strait Islander young people aged 10–17 under supervision on an average day was lowest in Tasmania and highest in Western Australia in 2016-17.75 Research commissioned by the Royal Commission into the Protection and Detention of Children in the Northern Territory from Deloitte Access Economics (2017) reported that on current trends (without proposed reforms) it was estimated that the number of supervised youths in the Northern Territory would grow by almost 70% (based on growth in apprehensions) from 2016 to 2027, representing 628 youths, or 257 more youths in 2027 than in 2016.76

**Victims of crime**

Aboriginal and Torres Strait Islander people experience violence (particularly family and domestic violence) at rates well above those of non-Indigenous Australians.77 The Australian Bureau of Statistics (ABS) reports that in 2017, Aboriginal and Torres Strait Islander persons were more likely to be the victim of assault than non-Indigenous persons by a ratio of 2.8 times in New South Wales; 5.9 times in South Australia; and 6.4 times in the Northern Territory.78 It was reported in the *National Aboriginal and Torres Strait Islander Social Survey in 2014-15* that:

- In the previous 12 months, 13% of Aboriginal and Torres Strait Islander people aged 15 and over had experienced physical violence, and 16% had been threatened with physical violence.
- Almost two-thirds (63%) of women and more than one-third (35%) of men who had experienced physical violence reported that the perpetrator of the most recent incident was a family member.
- More than two-thirds (68%) of people who had experienced physical violence reported that alcohol or other substances contributed to the most recent incident.79 Alcohol or another substance is considered to contribute to most physical assaults within the wider community, but at lower rates than for the Aboriginal and Torres Strait Islander population.80

The AIHW indicates that Aboriginal and Torres Strait Islander people, in particularly women, are at greater risk of family, domestic and sexual violence. In 2014-13, Aboriginal and Torres Strait Islander women were 32 times as likely to be hospitalised due to family violence and Aboriginal and Torres Strait Islander children were seven times more likely to be the subject of substantiated child abuse or neglect compared to non-Indigenous children in 2015-2016.81

In relation to children, the AIHW reports that in 2015-2016 Aboriginal and Torres Strait Indigenous children were seven (7) times as likely to be the subject of substantiated child abuse or neglect as non-Indigenous

---

74 AIHW 2018c.
75 As above.
76 Representing 628 youths, or 257 more youths in 2027 than in 2016. The report concluded that the potential return on investment if reforms proposed by the Royal Commission were implemented were $3.40 for every $1 spent by the NT Government: Deloitte Access Economics 2017.
77 AIHW 2017a.
78 ABS 2018c. The ABS advise that Indigenous status data for other states and territories are not of sufficient quality and/or do not meet ABS standards for national reporting in 2017.
79 AIHW 2017a, referencing ABS 2016b.
80 ABS 2018c.
81 AIHW 2018b.
Exposure to family and domestic violence for children can have a substantial impact on a child’s development, physical and mental wellbeing and schooling.\textsuperscript{82} As a national trend, the victimisation rate for Australians has been decreasing in recent years, for key types of violent crime, with the exception of sexual assault. However, the assault victimisation for Aboriginal and Torres Strait Islander adults varied by jurisdiction, with decreases in NSW between 2016 and 2017, and increases in South Australia and Northern Territory.\textsuperscript{84} It is acknowledged that victimisation and family violence figures may be influenced by policing and strategies to increase reporting. Both under and over policing has been reported as an issue for Aboriginal and Torres Strait Islander communities.\textsuperscript{85}

Civil law

Civil law need has been identified as the greatest area of unmet legal need in Australia, for both Aboriginal and Torres Strait Islander people and other Australians, with the level and severity of needs varying across different communities and depending on the nature of the legal issue.\textsuperscript{86} The key areas of civil law needs identified for the Australian community generally include: family, consumer, housing and government, with family law needs amongst the most substantial.\textsuperscript{87}

Aboriginal and Torres Strait Islander people are more likely to experience unmet civil legal need than other Australians.\textsuperscript{88} The Indigenous Legal Needs Project identifies seven priority areas of civil law need for Aboriginal and Torres Strait Islander people are: housing (tenancy), discrimination, credit and debt and associated consumer law, social security, child protection and wills and estates.\textsuperscript{89} Racism and discrimination are also a priority area of non-criminal legal need for Aboriginal and Torres Strait Islander people.\textsuperscript{90}

Tenancy was reported as the most common civil law need. Aboriginal and Torres Strait Islander people are 14 times more likely to be homeless,\textsuperscript{91} with lack of access to secure housing and crisis accommodation a key underlying factor precipitating, or exacerbating, a person’s interaction with the justice system.\textsuperscript{92}

Aboriginal and Torres Strait Islander people experience greater legal needs arising from interaction with government agencies than the wider Australian community. Aboriginal and Torres Strait Islander people are significantly more likely to be in receipt of social security payments, be involved in child protection systems or be living in public housing than many other groups of Australians.

Aboriginal and Torres Strait Islander people are reported less likely to seek assistance with resolving civil legal problems than other Australians,\textsuperscript{93} with the majority of Aboriginal and Torres Strait Islander people not seeking legal assistance to resolve a civil or family law problem.\textsuperscript{94}

\textsuperscript{82} AIHW 2018b. For definition of ‘substantiation’ see Family law and child protection sub-section of this report, see later in the report at footnote 101.
\textsuperscript{83} AIHW 2017a.
\textsuperscript{84} ABS 2018d.
\textsuperscript{85} ALRC 2018.
\textsuperscript{86} Coumarelos et al. 2012.
\textsuperscript{87} Productivity Commission 2014.
\textsuperscript{88} As above.
\textsuperscript{89} Allison, Cunneen and Schwartz 2017.
\textsuperscript{90} As above.
\textsuperscript{91} SNAICC et al. 2017.
\textsuperscript{92} Law Council of Australia 2018a.
\textsuperscript{93} See Allen Consulting Group 2014, quoting Coumeralos et al. 2012.
\textsuperscript{94} Allison, Cunneen and Schwartz 2017.
Aboriginal and Torres Strait Islander people face a range of barriers to accessing legal assistance (as discussed later in this report) including a lack of culturally safe options, the location of services, poor historic and recent experiences with mainstream legal service providers, and a low level of knowledge of legal options other than ATSILSs.\textsuperscript{95} The Indigenous Legal Needs Project found that while Aboriginal and Torres Strait Islander people are under-represented in initiating legal action, they tend to be pulled into legal systems involuntarily for certain types of matters, such as social security debt, tenancy evictions and child removal.\textsuperscript{96} Aboriginal and Torres Strait Islander people are less likely to have legal issues resolved quickly, and are more likely to have a legal issue resolved through a formal court process than less formal or costly options such as government bodies.\textsuperscript{97}

**Family law and child protection**

Family problems are reported to be the highest proportion of substantial legal problems (78\%) for Australians, and as legal problems have the highest mean number of adverse consequences.\textsuperscript{98} Family law needs within Aboriginal and Torres Strait Islander families are reportedly higher than family law needs for other Australians, and are unmet to a significant degree.\textsuperscript{99}

The number of Australian children receiving child protection services has increased in recent years. Children from very remote areas were four (4) times as likely as those from ‘major cities’ to be the subject of a ‘substantiation’.\textsuperscript{100} In the five years between 2012–13 and 2016–17, the rate of children receiving child protection services increased for all children, with the rate of increase much higher for Aboriginal and Torres Strait Islander children (a rise of 25\%).

In 2016–2017, Aboriginal and Torres Strait Islander children were seven (7) times as likely as non-Indigenous children to have received child protection services.\textsuperscript{101} The number of Aboriginal and Torres Strait Islander children on child protection orders rose steadily in the period, from 14,455 on 30 June 2013 to 19,662 on 30 June 2017, with rates rising from 49.9 to 65.3 per 1,000.\textsuperscript{102} Again, there is significant variation between jurisdictions. In the Northern Territory, there was an increase in notifications for all children of 600\% between 2006–2007 and 2015–2016. The Royal Commission into the Protection and Detention of Children in the Northern Territory reported that half (50.3\%) of Aboriginal children have been the subject of a notification or report to child protection by the age of 10.\textsuperscript{103}

Aboriginal and Torres Strait Islander children are being removed from their home at highly disproportionate rates, with growing numbers of child removals prompting concerns from Aboriginal and Torres Strait Islander groups, human rights groups and others about a new ‘Stolen Generation’.\textsuperscript{104} Aboriginal and Torres

---


\textsuperscript{96} Allison, Cunneen and Schwartz 2017.

\textsuperscript{97} Wei and Macdonald 2018.

\textsuperscript{98} Coumarelos et al. 2012.


\textsuperscript{100} AIHW 2018a. ‘Substantiation’ generally refers to where a child protection or other relevant body has concluded that there is reasonable cause to believe that a child has been, or is being, abused or neglected. Definitions vary between jurisdictions.

\textsuperscript{101} AIHW 2018a.

\textsuperscript{102} As above.

\textsuperscript{103} Royal Commission into the Protection and Detention of Children in the Northern Territory 2017, Volume 1, page 30.

\textsuperscript{104} SNAICC et al. 2017. SNAICC has estimated that on the current trends of removal for Aboriginal and Torres Strait Islander children in care will almost triple in size by 2035. See also Law Council of Australia and former Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Gooda, quoted in Kembrey 2015.
Strait Islander children were 10 times as likely as non-Indigenous children to be admitted to out-of-home care (or OOHC) during 2016–17 (1.4 per 1,000). Overrepresentation rates between jurisdictions vary, with the highest being Western Australia (16.2 times), the ACT (13 times), and Victoria (12.8 times).

Children in out-of-home care are more likely to be in juvenile detention and be incarcerated as adults. The AIHW found that between 1 July 2014 and 30 June 2016, young Aboriginal and Torres Strait Islander people aged 10–16 were 16 times as likely as non-Indigenous Australians of the same age to be both in the child protection system and under youth justice supervision. Both child removal and juvenile detention have been identified as key drivers of adult incarceration.

Through the ILAP review, ATSILSs, other legal assistance providers and other stakeholders identified legal needs associated with child protection matters as a high priority for Aboriginal and Torres Strait Islander communities, with a high level of anxiety about the immediate and intergenerational impacts from high and increasing rates of child removal as a result of child protection systems and family law matters.

Complex needs

In addition to a high level of criminal legal needs, including repeated criminal law problems, Aboriginal and Torres Strait Islander people are more likely to experience multiple, intersecting legal problems. ATSILSs and other legal assistance providers consistently reported to the review that Aboriginal and Torres Strait Islander clients rarely present with only a criminal law issue, and have additional complex legal and non-legal needs which require significant support.

This finding is consistent with research which indicates that Aboriginal and Torres Strait Islander people are more likely to experience multiple civil law problems, being overrepresented in a number of the groups most likely to experience civil legal problems, including people with a disability, people who have been unemployed, people with lower levels of education, people who have lived in social housing, or people who live in regional areas. Multifaceted and complex legal needs can make issues more challenging to resolve, with individual cases tending to require more time and resources from legal assistance services to resolve.

Demand drivers

The level of demand for legal assistance services in Australia within the general community, and particularly for Aboriginal and Torres Strait Islander peoples, appears to be increasing over time, across criminal, civil and family law needs, despite significant investment from Commonwealth, state and territory governments. There is also evidence that legal assistance needs are increasing in complexity, as well as quantity. Some additional analysis of drivers of demand identified through the literature review and the review consultations are considered in brief below.

---

105 AIHW 2018a.
106 SNAICC et al. 2017 quoting 2015 data.
107 Law Council of Australia 2018a.
108 AIHW 2017b.
110 Allison, Cunneen and Schwartz 2017.
111 Law Council of Australia 2018a.
112 Coumarelos et al. 2012, Chapter 3.
113 As above.
115 Law Council of Australia 2018a.
Criminal justice system

The ALRC’s national inquiry into incarceration rates of Aboriginal and Torres Strait Islander people identified a range of current criminal justice system practices and laws which are contributing significantly to high rates of Aboriginal and Torres Strait Islander contact with the criminal justice system. There is significant variation across jurisdictions, but key drivers include: tougher bail laws, mandatory sentencing, lack of availability of community based sentencing options, high rates of charges and convictions for summary and minor offences including driving offences, and over-policing.116

The ALRC suggests that law reform should focus on reducing the disproportionate incarceration of Aboriginal and Torres Strait Islander peoples who are cycling through the criminal justice system serving short sentences of two years and under, as this group of offenders represent approximately 45% of Aboriginal and Torres Strait Islander people entering prison117. An increasing number of Aboriginal and Torres Strait Islander women are becoming incarcerated because of non-violent and minor offences, including as a consequence of fine default.118 High rates of reoffending are driven in part by limited access to diversion, rehabilitation, education and employment options for people who have been charged with a criminal offence.

Socio-economic drivers

The ALRC national inquiry concluded that, consistent with the findings of the 1991 Royal Commission into Aboriginal Deaths in Custody, the fundamental causes for overrepresentation of Aboriginal and Torres Strait Islander people in custody are not located within the criminal justice system, but are rather the result of the socio-economic disadvantage and marginalisation that many Aboriginal and Torres Strait Islander communities experience.119 In order to determine allocations of funding between jurisdictions, the ILAP Funding Allocation Model (FAM) includes consideration of disadvantage drivers, as discussed later in this report.

Socio-economic disadvantage is a driver of crime for all communities120 and is also a driver for civil law, family law and child protection needs.121 It is well documented that Aboriginal and Torres Strait Islander people experience disproportionate disadvantage in relation to education, employment, disability, health, housing, child protection, family violence and abuse and substance abuse.122 Intergenerational trauma, social exclusion and racism experienced by Aboriginal and Torres Strait Islander people have been identified as additional factors contributing to Aboriginal and Torres Strait Islander disadvantage.123 With some exceptions, particularly in relation to education, the gap of disadvantage experienced between Aboriginal

116 See also Law Council of Australia 2018a.
117 ALRC 2018, at Section 4.1.13.
118 ALRC 2018, and MacGillivray and Baldry 2015. It is noted that in most jurisdictions fine default does not directly lead to incarceration, with some exceptions such as Western Australia. However, there are well documented patterns of fine default by Aboriginal and Torres Strait Islander women leading to escalating penalties, which in turn lead to incarceration: see for example ALRC 2018, Chapter 6 Fines and Drivers Licences.
120 See for example Productivity Commission 2016. The Productivity Commission identifies key socio-economic drivers of crime from Australian research including: substance abuse, child neglect and abuse, school completion and employment. The Productivity Commission identifies the main risk factors linked to violent offending by Aboriginal and Torres Strait Islander people include high risk alcohol consumption, illicit drug use, being male, being young, childhood experience of violence and abuse, exposure to pornography, poor schooling, low income, unemployment), poor housing, mental illness and lack of access to services (particularly in remote areas of Australia).
122 See for example the Prime Minister’s Closing the Gap Reports, and the Productivity Commission 2016.
123 PwC 2017, at 2.3 ‘Key drivers of Indigenous incarceration’.
and Torres Strait Islander peoples and other Australians is not projected to close in the short to medium term significantly.\textsuperscript{124}

Incarceration has a compounding effect on disadvantage experienced and contributes to an ongoing cycle of incarceration, both for ex-prisoners and for their families.\textsuperscript{125} As discussed above, the incarceration of Aboriginal and Torres Strait Islander women can increase the likelihood of children for whom they have a carer responsibility entering the child protection system,\textsuperscript{126} and both child removal and juvenile detention have been identified as key drivers of adult incarceration.\textsuperscript{127}

**Figure 5: Key drivers of Indigenous incarceration**

Source: Australian Government Department of the Prime Minister and Cabinet 2017. *Closing the Gap Prime Minister’s Report*, as included in PwC 2017, at Figure 3, page 6.

**Population growth**

The ILAP FAM considers the estimated Aboriginal and Torres Strait Islander population when determining the allocation of funding between jurisdictions. The ILAP Programme Guidelines (2014b) refer to population

---

\textsuperscript{124} Commonwealth of Australia, Department of the Prime Minister and Cabinet 2018, and Productivity Commission 2016.

\textsuperscript{125} ALRC 2018, at footnote 158.

\textsuperscript{126} ALRC 2018, at footnote 160.

\textsuperscript{127} ALRC 2018, at 15.1, PwC 2017, at page 24.
estimates from the ABS Data Series 3238.0, published in 2014.128 More recently the ABS estimated a larger Aboriginal and Torres Strait Islander population than previous projections, and a different population breakdown between states and territories than the estimates on which the current ILAP funding distribution is based.

Following the most recent Australian Census - in June 2017 - it was estimated that there were 761,300 Aboriginal and Torres Strait Islander people, or 3% of the total Australian population.129 Nationally, this is an increase of 18.4% in five years (between the 2011 and 2016 Census) building on a previous large increase of 20.5% (between the 2006 and 2011 Census).130 The population growth was largest in NSW.131

Table 1: Aboriginal and Torres Strait Islander population estimates and projections 2011 to 2026

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>208,476</td>
<td>229,452</td>
<td>216,176</td>
<td>265,685</td>
<td>27%</td>
<td>36,233</td>
<td>251,953 to 289,808</td>
</tr>
<tr>
<td>VIC</td>
<td>47,333</td>
<td>53,817</td>
<td>47,788</td>
<td>57,767</td>
<td>22%</td>
<td>3,950</td>
<td>60,114 to 71,379</td>
</tr>
<tr>
<td>QLD</td>
<td>188,954</td>
<td>213,712</td>
<td>186,482</td>
<td>221,276</td>
<td>17%</td>
<td>7,564</td>
<td>237,111 to 278,019</td>
</tr>
<tr>
<td>SA</td>
<td>37,408</td>
<td>41,613</td>
<td>34,184</td>
<td>42,265</td>
<td>13%</td>
<td>652</td>
<td>45,553 to 52,321</td>
</tr>
<tr>
<td>WA</td>
<td>88,270</td>
<td>97,681</td>
<td>75,978</td>
<td>100,512</td>
<td>14%</td>
<td>2,831</td>
<td>106,773 to 121,836</td>
</tr>
<tr>
<td>TAS</td>
<td>24,165</td>
<td>27,052</td>
<td>23,572</td>
<td>28,537</td>
<td>18%</td>
<td>1,485</td>
<td>29,895 to 34,724</td>
</tr>
<tr>
<td>NT</td>
<td>68,850</td>
<td>74,543</td>
<td>58,248</td>
<td>74,546</td>
<td>8%</td>
<td>3</td>
<td>79,644 to 87,486</td>
</tr>
<tr>
<td>ACT</td>
<td>6,160</td>
<td>7,121</td>
<td>6,508</td>
<td>7,513</td>
<td>22%</td>
<td>392</td>
<td>8,037 to 9,674</td>
</tr>
<tr>
<td>National</td>
<td>669,881</td>
<td>744,956</td>
<td>649,171</td>
<td>798,365</td>
<td>19%</td>
<td>53,409</td>
<td>819,391 to 945,594</td>
</tr>
</tbody>
</table>

The figures from the 2016 Census are the actual count (‘actual population count’) (see column C) and the estimate from the ABS of the real number of Aboriginal and Torres Strait Islander people, taking into account factors such as under-reporting (see column D).

Sources:
Columns A, B, G: ABS 2014. 3238.0 - Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2026, at Main Features Table 1.3 and Tables 1-9 in Data Cube: Projected population, Aboriginal and Torres Strait Islander Australians, components of change and summary statistics - Australia, states and territories, 2011-2026.

128 Commonwealth Attorney-General’s Department 2015a, at Footnote 2. Additional data sets used for disadvantage drivers are include at page 6. For data source see ABS 2014, 3238.0 - Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2026 in data cube: Projected population, Aboriginal and Torres Strait Islander Australians, components of change and summary statistics - Australia, states and territories, 2011-2026.
129 ABS 2018b: Although only 649,171 people identified as Aboriginal and/ or Torres Strait Islander in the 2016 Census, it is estimated that the actual number of people is 761,300. For actual Census count see ABS 2018a.
130 ABS 2018a.
131 As above.
The ABS had projected that the Aboriginal and Torres Strait Islander population could reach between 907,800 and 945,600 people by 2026.\(^{132}\) These projections were based on 2011 Census data. The 2016 Census indicates that the Aboriginal and Torres Strait Islander population is growing even faster than anticipated. Table 1, Column F (above) demonstrates the difference between what had been previously projected as the population for 2016, and the updated estimates following the 2016 Census. Population projections for 2020 to 2026 (Table 1, Column G) are therefore likely to be underestimated, particularly in the three largest states where population growth has been strongest: NSW, Qld and Victoria.\(^{133}\)

The ABS attribute the population growth identified in the 2016 Census primarily to demographics: a higher than average birth rate; people entering and leaving the population through migration; variation in Census coverage and response rates; and more people changing if they identify as an Aboriginal or Torres Strait Islander person between Census years.

The recent demographic estimates indicate that the growth is primarily a result of the number of Aboriginal and Torres Strait Islander people born in the period (aged 0-4 years), with substantial growth also in the numbers of young people aged 14 years and under.\(^{134}\) This picture is consistent with feedback provided by some ATSILSs and other legal assistance providers that there has been a significant increase in demand for their services particularly in relation to children and young people.

**Scarcity of wrap around, therapeutic, rehabilitation and early intervention and prevention services**

Consistently, ATSILSs and legal assistance services stakeholders reported the lack of access to early intervention, therapeutic, rehabilitation and wrap around services to prevent clients from entering or returning to the justice system. Feedback about a lack of options to address client’s complex needs, and to prevent offending or reoffending, is consistent with the finding of the ALRC Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples.\(^{135}\) As discussed later in this report, although the ILAP does not preclude ATSILSs using funds for early intervention and prevention services, most of ATSILS resources are allocated to demands for frontline service delivery responding to a client’s current legal issues. A lack of these options delivered either by ATSILSs or other organisations can contribute to the cycle of offending and disadvantage, driving or contributing to legal need.

**Investment in legal assistance services**

Investment in legal assistance can prevent simple problems spiralling into complex problems which require significant or protracted support.\(^{136}\) Unmet civil problems can also escalate into criminal matters.\(^{137}\) The failure to address legal needs can therefore lead to costs for government both in terms of legal assistance service demands and other costs, particularly where legal issues lead to periods of incarceration.

Submissions received by the ILAP review consistently articulated the view that there is an insufficient level of funding provided for legal assistance services to Aboriginal and Torres Strait Islander peoples through the ILAP and other sources to meet the current level of legal need.\(^{138}\) It is outside the scope of the review to

---

\(^{132}\) ABS 2014, at Media Release 30 April 2014 ‘Aboriginal and Torres Strait Islander population may exceed 900,000 by 2026’

\(^{133}\) Updated population projections for 2020 to 2026 using 2016 Census data were not available at the time of publication of this report. The population estimates noted at Table 1, Column G are based on 2011 Census data.

\(^{134}\) ABS 2018a, at Table 1.1.

\(^{135}\) The ALRC recommends more diversion, support and rehabilitation programs before, during and after incarceration, noting significant gaps in options in regional and remote areas: ALRC 2018. See also Law Council of Australia 2018a.


\(^{137}\) Productivity Commission 2014.

\(^{138}\) See for example submissions provided to the review by the NATSILS, NACLC, NLA and the Law Council of Australia.
consider the sufficiency of the funding for ILAP to meet levels of current or projected need, or to undertake a cost-benefit analysis of increasing investment in legal assistance services.

In brief, summarised below are examples identified from the literature estimating potential additional investment needed to the legal assistance sector generally, and other relevant costs and savings for Australian governments:

- The Productivity Commission’s Access to Justice Inquiry (2014) estimated that there was a pressing gap in civil legal assistance services requiring additional investment of approximately $200 million per annum across both the Aboriginal and Torres Strait Islander and non-Indigenous communities; $120 million from the Commonwealth and $80 million from the states and territories. The Productivity Commission analysed the costs avoided by providing legal assistance for family violence matters and estimated that the expected benefits to the wider community from providing assistance with family violence matters ranged from $1400 per case to more than $4400 per case.

- PwC (2017) estimates that Indigenous incarceration is costing the Australian economy $7.9 billion per year and this cost is rising. PwC estimates that closing the gap between Indigenous and non-Indigenous rates of incarceration would generate savings to the Australian economy of $18.9 billion per year in 2040.

- The Law Council of Australia (2018a) recommended that Commonwealth, state and territory Governments invest significant additional resources in the legal assistance sector to address the critical need for civil and criminal legal assistance services, suggesting that at a minimum this should include $390 million per annum.\(^\text{139}\)

- The Law Council of Australia also reported that broadly:
  - the costs of imprisonment in 2016-2017 involved a total net operating expenditure by Commonwealth and state and territory governments of $4.1 billion, or approximately $104,000 per prisoner per year.
  - the costs of juvenile detention in 2015-2016 involved total government spending of over $482 million, or around $541,000 per young person in detention-based supervision per year.
  - the real recurrent costs of policing in 2016-2017 cost Commonwealth and state and territory governments close to $11 billion per year.
  - the costs of child protection in 2015-2016 cost Commonwealth and state and territory governments $4.8 billion per annum (of which relatively little was spent on family support services; a key early intervention and prevention measure).
  - the costs of violence against women and children in 2015-2016 were estimated at $22 billion.
  - the costs of specialist homelessness services in 2016-2017 to Commonwealth and state and territory governments was estimated at $763.6 million (at p19).\(^\text{140}\) Indigenous-specific figures were not available.

\(^{139}\) Law Council of Australia 2018a, at page 39.

\(^{140}\) Law Council of Australia 2018a.
4. Indigenous Legal Assistance Program (ILAP)

History of Indigenous legal assistance funding

The Commonwealth Government has been providing funding for Indigenous specific legal assistance since the 1970s under various programs and arrangements. The Commonwealth has, since the 1967 referendum, had the power to legislate for Aboriginal and Torres Strait Islander people. The Commonwealth has historically made grants to state and territory governments, and grants directly to Aboriginal and Torres Strait Islander organisations, for the purpose of advancing Aboriginal and Torres Strait Islander development.

Administration of the ILAP’s predecessor programs was transferred to the AGD from the former Aboriginal and Torres Strait Islander Commission (ATSIC), an Aboriginal and Torres Strait Islander national body, in 2004. In 2004, the Commonwealth Government introduced a competitive tender process to test the market for Indigenous legal assistance services. The national grants program which was eventually replaced by the ILAP was called the Legal Aid Assistance for Indigenous Australians (or LEGA) program. The Commonwealth also made a number of one-off injections of funding for Indigenous legal services between 2007 and 2009.

There was a reduction in the number of ATSILSs as a result of the 2004-5 tender process, including several ATSILSs combining to provide services for larger geographical areas. The AGD in its submission to the ILAP Review (2018) noted the contentious nature of the tender process undertaken. Commentary received from ATSILSs through the consultation for the review suggested that the contestability process had confirmed that commercial and non-Aboriginal and Torres Strait Islander specific legal service providers were not able to be competitive in the provision of Indigenous legal services, with ATSILSs providing services at much lower costs than other potential providers.

In 2011, the Commonwealth Government returned to funding service delivery to ATSILSs through direct grant agreements. Between 2011 and 2013, the ILAP consisted of four funding sub-programs:

- Indigenous Legal Assistance - the core activity of providing legal services to Indigenous people,
- Indigenous Test Cases (discontinued in 2012),
- Law Reform, Research and Policy Development, and
- Program Support and Development.

Recent previous reviews

In 2015, the Australian National Audit Office (ANAO) conducted an independent performance audit of the ILAP. Key recommendations from that review were to develop the ILAP’s performance measurement and reporting framework, and to improve systems and processes to facilitate capturing, monitoring and reporting of data. The ANAO review led to a number of amendments to the ILAP, including:

- implementation of flexible arrangements in how ATSILSs deliver services,
• the development of the Indigenous Quality Practice Portal and the National Legal Assistance Data Standards Manual (DSM) which aim to support the collection and analysis of relevant performance information and monitor delivery against Service Standards,
• revised performance and reporting requirements, with reports linked directly to payments,
• the requirement to plan and target services to defined priority clients, and
• an updated FAM that use more contemporary measures of disadvantage.

A number of other national reviews also informed Commonwealth funding programs for legal assistance in recent years, including the Productivity Commission Inquiry into Access to Justice Arrangements (2014) and the Review of the National Partnership Agreement for Legal Assistance Services conducted by the Allen Consulting Group (2014) (the previous NPA review). The reviews broadly found that relevant and appropriate services were being provided by the legal assistance sector through the support of government funding, but that there were opportunities for reforms to promote a nationally integrated system of legal assistance, to increase collaboration, to better direct funding to areas of priority need and to increase cost efficiency.

Reforms to the legal assistance sector were implemented under the umbrella of the National Strategic Framework for Legal Assistance Services 2015-2020 (the Strategic Framework). The Strategic Framework is intended to underpin all legal assistance arrangements and establish the shared objective of a ‘national, integrated system of legal assistance that is focused on improving access to justice for disadvantaged Australians and maximising service delivery within available resources’.  

Specific reforms introduced following those reviews that intersected with or are relevant to the ILAP included:

• increased emphasis on working collaboratively with state and territory governments, law and justice agencies and other legal assistance providers,
• requiring legal assistance service providers to focus their services on people experiencing financial disadvantage,
• introduction of a new evidence-based funding allocation model,
• introduction of the requirement for ATSILS to participate in collaborative service planning,
• introduction of priority client groups, in which ATSILS are encouraged to plan and target their services to, and
• introduction of new data standards to align with the broader legal assistance sector as captured by the National Legal Assistance Data Standards Manual.

ILAP 2015-2020

The current ILAP is a five-year funding program due to expire on 30 June 2020. The ILAP objectives, outcomes, and service delivery principles are specified in the ILAP Programme Guidelines (2014b). The key objectives of the ILAP are to:

• improve access to justice for Indigenous Australians,
• reduce the disproportionate disadvantage experienced by Indigenous Australians in the justice system, and
• provide cost effective legal assistance.  

147 AGD 2014a.
148 AGD 2014b.
Over five years from 2015 to 2020 the Commonwealth Government will provide over $370.1 million to the ILAP\(^{149}\) (see Table 2). The current allocation of ILAP funding to service providers is outlined in Table 3.

### Table 2: Indigenous Legal Assistance Program Funding 2014-2015 to 2020-2021

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Indigenous Legal Assistance Programme</td>
<td>74,311 (1)</td>
<td>72,387 (2)</td>
<td>73,585 (3)</td>
<td>74,463 (4)</td>
<td>74,365 (4)</td>
<td>75,202 (4)</td>
<td>70,173* (4)</td>
</tr>
</tbody>
</table>

**Sources:**
(2) Table 2.1.1, Budgeted expenses for Outcome 1, Program 1.6 in Budget 2016-17, Portfolio Budget Statements 2016-2017, Budget Related Paper No. 1.2: Attorney-General’s Portfolio (Commonwealth of Australia 2016a: page 20).
(3) Table 2.1, Budgeted expenses for Outcome 1, Program 1.6, Portfolio Budget Statements 2017-2018: Attorney-General’s Department. (Commonwealth of Australia 2017: page 20)
(4) Table 2.1: Budgeted expenses for Outcome 1, Program 1.6 in Budget 2018-19, Portfolio Budget Statements 2018-2019, Budget Related Paper No. 1.2: Attorney-General’s Portfolio. (Commonwealth of Australia 2018: page 19)
*2020-21 figures are budget estimates beyond the current funding period. ILAP funding beyond 30 June 2020 is yet to be determined by the Commonwealth.
Figures include minor variation from collated figures of ILAP funding provided to individual ATSILSs, at Table 4, AGD 2018b.

Within the overall quantum of funding, funding is allocated between jurisdictions using the FAM, which takes into account the size of a jurisdiction’s Aboriginal and Torres Strait Islander population, the proportion of this population in high disadvantage groups, and differences between jurisdictions in the cost of delivering services. The previous ILAP FAM used age, gender and ‘Indigenous-only language cost factors’. The FAM is discussed later in the report.\(^{150}\)

### Table 3: ILAP funding provided to individual ATSILSs 2015-2016 to 2019-2020

<table>
<thead>
<tr>
<th></th>
<th>2015-2016 ($’000)</th>
<th>2016-2017 ($’000)</th>
<th>2017-2018 ($’000)</th>
<th>2018-2019 ($’000)</th>
<th>2019-2020 ($’000)</th>
<th>Total ($’000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALS NSW/ACT</td>
<td>$17,800</td>
<td>$17,968</td>
<td>$18,008</td>
<td>$17,995</td>
<td>$18,221</td>
<td>$89,991</td>
</tr>
<tr>
<td>VALS</td>
<td>$4,209</td>
<td>$4,325</td>
<td>$4,355</td>
<td>$4,375</td>
<td>$4,447</td>
<td>$21,710</td>
</tr>
<tr>
<td>ATSILS Qld</td>
<td>$17,921</td>
<td>$18,423</td>
<td>$18,507</td>
<td>$18,533</td>
<td>$18,813</td>
<td>$92,196</td>
</tr>
<tr>
<td>ALSWA</td>
<td>$12,358</td>
<td>$12,661</td>
<td>$12,657</td>
<td>$12,610</td>
<td>$12,745</td>
<td>$63,031</td>
</tr>
<tr>
<td>ALRM</td>
<td>$4,777</td>
<td>$4,891</td>
<td>$4,894</td>
<td>$4,882</td>
<td>$4,936</td>
<td>$24,379</td>
</tr>
<tr>
<td>TACLS</td>
<td>$2,372</td>
<td>$2,444</td>
<td>$2,459</td>
<td>$2,467</td>
<td>$2,504</td>
<td>$12,245</td>
</tr>
<tr>
<td>NAAJA</td>
<td>$8,175</td>
<td>$8,358</td>
<td>$10,735</td>
<td>$13,054</td>
<td>$13,161</td>
<td>$53,483</td>
</tr>
<tr>
<td>CAALAS</td>
<td>$4,674</td>
<td>$4,808</td>
<td>$2,338</td>
<td>-</td>
<td>-</td>
<td>$11,820</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$72,285</strong></td>
<td><strong>$73,877</strong></td>
<td><strong>$73,953</strong></td>
<td><strong>$73,915</strong></td>
<td><strong>$74,826</strong></td>
<td><strong>$368,856</strong></td>
</tr>
</tbody>
</table>

**Source:** Table 4, ILAP funding provided to ATSILSs included in AGD Submission to the ILAP Review.
Figures include minor variation from collated figures of ILAP funding from budget estimates. Figures may not sum due to rounding.

\(^{149}\) AGD 2018b.

\(^{150}\) See ‘Review Findings and Insights - ToR 3 Funding Allocation’.
ATSILSs must deliver services in line with the Strategic Framework. As a Commonwealth Grants program, the ILAP must also be administered in accordance with the *Public Governance, Performance and Accountability Act 2013* (Cth) and the Commonwealth Grants Rules and Guidelines. Within the framework of five-year ILAP grant agreements, ATSILSs are provided flexibility to determine the type of legal assistance services provided by legal type and region through operational plans negotiated annually with the Commonwealth. The AGD reports that this allows ATSILSs to use their knowledge and respond to local conditions, trends and needs. ATSILSs are not required to deliver pre-determined service numbers, and they determine the locations in which to deliver their services. The service delivery principles for the ILAP and focus of services are outlined later in the report.

**Best practice service delivery**

The aims of the ILAP review includes the identification of best practice. ‘Best practice’ is not defined under the ILAP or the *National Framework for Legal Assistance* (the strategic framework). It was beyond the scope of the review to undertake an in-depth analysis of what constitutes best practice in Aboriginal and Torres Strait Islander legal assistance services. Where possible, the review has considered selected literature, and stakeholders’ and practitioners’ views of what make up the key aspects of ‘best practice’, as it relates to the delivery of legal assistance services to Aboriginal and Torres Strait Islander people. A brief discussion of these aspects is below.

Broadly, best practice is understood to refer to quality services which deliver, or contribute to, intended and positive outcomes for clients. In the case of the ILAP, these outcomes are equitable access to justice, the ability to access legal services and a reduction in disadvantage in the justice system. Key aspects of best practice legal assistance to Aboriginal and Torres Strait Islander clients include but is not limited to:

- appropriate legal expertise,
- culturally appropriate service delivery,
- cultural safety,
- trauma informed approaches,
- holistic service delivery,
- community control, participation and governance,
- culturally aware/trained workforce,
- joined up and or collaborative service delivery with other support services,
- strength-based approach to addressing clients’ needs, and
- ability to encourage or require more culturally appropriate responses from the justice system to clients.

**Culturally appropriate service delivery and cultural safety**

The objectives of the ILAP include the delivery of culturally appropriate services to Aboriginal and Torres Strait Islander peoples. Related concepts include ‘cultural competency’ and ‘cultural safety’. The ILAP provides funding for service delivery to ATSILSs in recognition that these organisations provide specialist,

---

151 AGD 2018b, at page 18.
152 AGD 2018b.
153 See ‘Review Findings and Insights - ToR 1 Service Delivery’.
154 NAAJA c2017.
155 Cultural safety can be defined as: An environment that is safe for people: where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience, of learning, living and working together with dignity and truly listening. Sourced from: Williams 1999, CLC NSW 2016. See also: NATSILS 2018b, National FVPLS 2018.
culturally appropriate services tailored to Aboriginal and Torres Strait Islander people. Although culturally appropriate service delivery is not defined in ILAP funding agreements, it is commonly understood as service delivery which respects and reflects the cultural background of the client, including the person’s cultural background, family and community context, and socio-economic, historical and other experiences.

Cultural appropriateness is essential to ensuring effective communication in service delivery. In the context of the delivery of Aboriginal and Torres Strait Islander legal assistance, this includes ensuring that legal issues are identified and understood, and that appropriate legal instructions can be given. Aspects of culturally appropriate service delivery as supported by the ILAP are discussed later in the report. They include the employment of Aboriginal and Torres Strait Islander staff by ATSILSs, client services officers and court support officers who have specialist knowledge about the needs of local communities.

Cultural safety includes more than just cultural competency. It is a decolonisation process of embedding an Aboriginal and Torres Strait Islander worldview at all levels including policy, management and at the individual level. For example, cultural safety can mean overarching principles for behavioural and attitudinal change in eliminating racism and inequality in policy and service provision.

A culturally safe approach adopts a holistic, whole-of-life, person-centred response to clients, where legal issues are viewed as inseparable from the social determinants of health and wellbeing, as well as the historic and ongoing experience of intergenerational trauma, marginalisation and discrimination. Through this approach, such service delivery seeks to encourage individuals in the Aboriginal and Torres Strait Islander community who might otherwise have negative predispositions and fear surrounding the justice system, to seek out the legal assistance required.

In the context of the ILAP Review cultural safety was defined according to the local context of each Aboriginal and Torres Strait Islander community and can include (but is not limited to):

- recognition and respect for Aboriginal and Torres Strait Islander peoples’ human rights through achieving social justice and equality,
- reducing the discrimination and inequalities experienced by Aboriginal and Torres Strait Islander people in the justice system,
- Indigenous staff representation and leadership at the service,
- adherence to cultural protocols,
- identified positions, equal opportunities and career pathway progression for Aboriginal and Torres Strait Islander people,
- ongoing cultural competency and awareness training that is locally tailored for all staff,
- understanding of ongoing intergenerational trauma and its impact on Aboriginal and Torres Strait Islander rights,
- understanding social and emotional wellbeing in fulfilling the cultural needs of clients,
- principles of self-determination and empowerment for Aboriginal and Torres Strait Islander community-led and controlled solutions and services, and
- a holistic approach to improving justice outcomes.

---

156 AGD 2018b.
157 See for example: Farrelly and Carlson 2011 and Bainbridge et al 2015. See also submissions to the ILAP review provided by the NATSILS, National FVPLS Forum and AGD.
158 See ‘Review Findings and Insights – ToR 1 Delivery of Services’.
160 Commonwealth of Australia and Department of Health 2017 and Department of the Prime Minister and Cabinet 2017.
161 Fogarty et al. 2018.
Trauma-informed approaches

Trauma-informed approaches acknowledge and address both current and historical, ongoing intergenerational trauma experienced by Aboriginal and Torres Strait Islander people due to the adverse impacts of colonisation. Herring et al. (2013) indicate that trauma-informed approaches are critical for effective and respectful engagement between Aboriginal and Torres Strait Islander people and service providers. In practice, ATSILSs have advised that where resources permit, they will assist their clients by utilising trauma-informed approaches and by linking clients to culturally safe, wrap around services as part of a therapeutic healing framework to address the impacts of trauma which may manifest in their legal problems. Aboriginal and Torres Strait Islander peoples contact with the criminal, detention and care systems can have a significant impact of their health and wellbeing as it can disrupt family life, employment, education and participation in the community.

Social and emotional wellbeing is a holistic concept referring to an individual’s connection to culture, land, ancestry, spirituality, community and family. Strengthening cultural identity is considered critical to social and emotional wellbeing. The key here is that legal assistance and other services provided which generally aim to address the social and emotional wellbeing of the person using trauma-informed approaches is regarded as an important part of best practice.

Holistic or ‘wrap around’ service delivery

A holistic approach also recognises the interconnection and interdependent nature of factors impacting clients’ circumstances. Holistic service delivery seeks to connect clients with services that meet the diversity of their needs, and their social and emotional wellbeing, in recognition that these needs tend to be connected – for example, a mental health issue can be the primary reason that a client has been charged with a criminal offence. Holistic service delivery is a goal of legal assistance services and related programs in many jurisdictions, in recognition of the importance of addressing the causes of someone’s legal issue, not just the legal issue itself. For Aboriginal and Torres Strait Islander clients, a holistic approach may also be more consistent with worldviews that emphasise relationship and connection.

Community controlled service delivery

Community control is defined as “local communities having control of issues that directly affect their community”. Many studies have demonstrated an association between community control and delivery of services leading to better outcomes for Aboriginal and Torres Strait Islander people, in Australia and international contexts. The greatest distinction between these and other models of care is the role of culture and the embedding of a community’s cultural values, knowledge and beliefs into service delivery. This is carried out through a culturally appropriate and skilled workforce; high levels of community

162 Herring et al 2013.
163 Commonwealth of Australia 2013a.
165 Commonwealth of Australia 2013a, at page 23.
166 See for example the discussion of holistic service delivery in Aboriginal and Torres Strait Islander Social Justice Commissioner 2005.
167 See for example, Legal Aid NSW Domestic and Family Violence Strategy 2016-2018 which aims to deliver client-centred and holistic services to people who are affected by domestic and family violence and the NPA aims to facilitate holistic service delivery through collaborative service planning: Legal Aid of NSW c2016.
170 Tsey et al. 2010.
participation; and self-determination and empowerment. The Commonwealth Government has strongly acknowledged the unique benefits and pivotal role that community controlled organisations and their peak bodies play in improving outcomes for Aboriginal and Torres Strait Islander people.

Figure 6: Model of social and emotional wellbeing


A recent review of literature on ‘what works’ in Aboriginal and Torres Strait Islander service delivery to address disadvantage concluded that the evidence shows “a rare consensus of views on what processes contribute to the success or otherwise of Indigenous targeted policies and programs.” The overarching themes for successful program delivery are identified as: integration of Aboriginal and Torres Strait Islander knowledge and aspirations in decision making, commitment to doing projects with, rather than for, Aboriginal and Torres Strait Islander people, working together through genuine partnerships and shared leadership, and adequate and secure resourcing. Programs are unlikely to be effective if they do not have a high level of Indigenous ownership, involvement and community support from conception to implementation.

Research into successful mechanisms for engaging with Indigenous (including Aboriginal and Torres Strait Islander) communities consistently demonstrates direct links between well-functioning Indigenous governance models and sustainable outcomes. Dodson and Smith define best practice governance

---

171 Harfield et al. 2018.
172 Commonwealth of Australia 2013b
173 Cox 2014, at page 8.
174 Dodson and Smith 2003.
structures as those that have the confidence and support of their constituents, have the appropriate capacity and authority to make decisions, and are accountable for their actions and decisions. The greatest successes are grounded in effective participatory processes that operate within a framework of Indigenous self-determination.175

Experience overseas also emphasises the importance of investing in Indigenous governance capacity and self-determination. In the United States, for example, federal Native American policy has focused since the 1970s on promoting self-determination through internal self-governance. Against a backdrop of Indigenous disadvantage that is similar to the Australian context, "this policy has proven to be the only policy that has worked to make significant progress in reversing otherwise distressed social, cultural and economic conditions in Native communities."176 Successful outcomes have been tied to empowering Indigenous peoples to develop capable governing institutions that in turn can support sustainable social programs of their own design.

The evidence makes it clear that when working in a complex and dynamic context, community governance principles are considered best practice because it is the community that holds the most significant knowledge of its problems and how to effectively engage the community in addressing them. Incorporating measures that facilitate self-determination in decision making, community control and governance building contribute to successful outcomes in Aboriginal and Torres Strait Islander communities, especially in relation to community justice programs.177

175 Hunt 2013.
176 Cornell and Kalt 2010.
177 Hunt 2013.
5. ILAP review

Terms of Reference

The purposes of the ILAP review are to assess the effectiveness, efficiency, appropriateness and progress of the ILAP as a mechanism for achieving its objectives and outcomes. Additionally, the review seeks to identify best practice and opportunities for improvement to inform program learning and future funding arrangements (2020 onwards). The ToR direct the review to have particular regard to:

1. delivery of cost effective, high quality, culturally appropriate and accessible Indigenous legal assistance services,
2. the implementation of Collaborative Service Planning (CSP),
3. the effectiveness, efficiency and appropriateness of funding arrangements to meet the objectives and outcomes of the ILAP,
4. the utility of performance monitoring and reporting arrangements,
5. the extent of engagement of Commonwealth Government, state and territory governments, ATSILSs, the NATSILS and the legal assistance sector in supporting a joined-up approach, and
6. opportunities for improvement.

For further details refer to:

- Appendix A – ILAP Terms of Reference,
- Appendix B - Terms of Reference Focus Questions, and

Scope of the review

The review methodology and scope of the review are discussed in the following section of this report. The ToR for the review specifies that it is outside the scope of the review to undertake:

- new research or-depth analysis on Indigenous legal need or whether existing funding is sufficient to meet Indigenous legal needs, or
- assess value for money through direct comparison between legal assistance providers.

Concurrent legal assistance service reviews

The ILAP review commenced at the same time as reviews of other major legal assistance funding programs. The Commonwealth has commissioned Urbis to conduct an independent review of the NPA, which funds LACs and CLCs, as is administered by states and territory governments. Simultaneous reviews or evaluations are also being conducted for FASS by Inside Policy Pty Ltd, the Family Violence Prevention Legal Services Programme by Charles Darwin University, for the Family Law system by the ALRC and specialist Domestic Violence Units and Health Justice Partnerships by Social Compass.

CIR and Urbis coordinated throughout the ILAP and NPA reviews, shared insights, findings and data relevant to each review throughout the project. Both teams held regular meetings for ongoing updates on the project, data management and development of key findings. While the review plan initially contemplated the ILAP and NPA consultations occurring concurrently, the majority of sites selected and availability of stakeholders for both reviews did not significantly align and were conducted separately. Where possible,

---

178 See ‘Background – 6. Review Methodology’.
both review teams co-jointly ran consultations, either face-to-face or via telephone. The Urbis and CIR review teams also shared results, data and draft reports.

6. Review methodology

Cultural principles

Cox Inall Ridgeway (CIR) upholds its cultural principles of acknowledging, respecting and prioritising Aboriginal and Torres Strait Islander voices and diversity of representation. These principles are at the heart of CIR governance, operations and approach. A key aspect of implementing cultural principles is ensuring indicators of success, effectiveness, culturally appropriate services and needs are defined and driven by Aboriginal and Torres Strait Islander services. The consultations aimed to capture strengths-based outcomes and innovations beyond ATSILSs outputs and culturally safe services defined in each community. Thus, CIR aimed to capture the impact of the ILAP funding mechanism and program design on ATSILSs and the NATSILS at a service delivery and systems level.

The research team conducting the fieldwork was comprised of at least one Aboriginal or Torres Strait Islander staff member. Where possible, CIR aimed to have both a male and female Aboriginal or Torres Strait Islander staff representative for cultural and gender safety. Senior Directors provided oversight, and Indigenous legal subject matter experts ensured a cultural lens was applied throughout the review process.

Mixed methods approach

The ILAP review adopted a mixed methods approach to triangulate multiple data sources to strengthen the rigour and findings from the evidence. Evidence included primary data from first-hand sources such as consultations, including existing published secondary literature and unpublished papers and data sourced from public and government databases. Quantitative statistical data indicating numerical values were supported with qualitative data to explain the meaning of the findings in context. A multiple validation process for quality assurance included two reviewers cross-checking analysis and evidence together with the consultants working in the field in addition to reviewing and editing by CIR’s Indigenous legal subject matter experts. The Strategic Advisor provided overall guidance and direction throughout the review.

A literature review was undertaken of published secondary and unpublished data in relevant reports and journals, including current evaluations in the justice sector, which provided the context for Australia’s justice and Indigenous legal sectors. Some of the online databases sourced included the Australian Bureau of Statistics (ABS), the AIHW and NSW Bureau of Crime Statistics and Research.

Primary data was obtained through consultation interviews and discussion paper submissions. Interviews with permission to record were professionally transcribed. Coding of the primary data was performed in NVivo, a coding software. Manual coding was performed for annotated interviews without recording permissions. Analysis, synthesis and tabulation of the multiple sources of data ensured validation of findings to support the report. Further sources included, but were not limited to ATSILSs public annual reports, ATSILSs reporting data for the AGD and data from the AGD IRIS database system. The IRIS database stores the mandatory quantitative data reporting captured by ATSILSs according to the criteria set out in the National Legal Assistance Data Standards Manual as part of the reforms from 2015.

179 Silverman 2015.
180 AGD 2015b.
The review methodology consisted of four stages: planning, conducting the review, drafting the report and consultation on the draft report before finalisation. The key elements of the approach included:

- **Development of the Review Plan**, drawing on rapid analysis of preliminary documentation and data, feedback from the Advisory Group and consultation with the AGD’s Project Management Team.
- **National consultations** in every jurisdiction to collect a representative sample of perspectives and feedback from the justice sector.
- Design and delivery of a **closed submissions process**, supported by a **discussion paper** providing stakeholders two months to complete and lodge submissions via a temporary online web portal or email.
- Integrated **analysis and synthesis of primary and secondary data** from consultations, discussion papers and existing reports, datasets and findings from the NPA Review.
- **Engagement with the Advisory Group** throughout the review process including inception, development of the review plan, consultations, analysis and review of key documents.
- **Review of the draft report** by the Advisory Group and the AGD.

**Consultations**

The review team visited 25 locations, including a maximum of two remote or very remote locations alongside one metropolitan location to ensure all state and territory jurisdictions were covered.

A ten-point selection criterion (see below) for choosing site visits was created to ensure a diverse, representative sample. The sites represent a select sample of rural/remote and metropolitan areas but are not all inclusive of all of ATSILSs’ operational contexts. Locations for site visits included were bush courts, remote circuit courts, local, district, children’s, Koori and Nunga courts, and ATSILSs’ offices.

In consultation with ATSILSs and the NATSILS, stakeholders were identified for participation to target a representative sample of ATSILSs legal and non-legal staff, collaborative legal and non-legal stakeholders, partnering government and Aboriginal community-controlled organisations (refer to Table 4).

Face-to-face consultation was prioritised to increase engagement. Attendance and observation in courts enabled the review team to witness ATSILSs and multiple justice stakeholders operate in their respective environments. Teleconferences were offered for flexibility and to extend outreach in areas beyond the selected fieldwork locations or where unforeseen meeting cancellations occurred.

<table>
<thead>
<tr>
<th>Table 4: Selection criteria for fieldwork locations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Location with a high representation of the legal assistance services sector, with three or more services present such as LACs, CLCs, ATSILSs and FVPLSs.</td>
</tr>
<tr>
<td><strong>2</strong> Location with low to medium representation of the legal assistance services sector, with under three legal services present.</td>
</tr>
<tr>
<td><strong>3</strong> Remote/Rural location - areas which are accessible through the provision of outreach legal assistance services (such as through a court circuit) to rural or very remote communities.</td>
</tr>
<tr>
<td><strong>4</strong> Strengths-based example – Legal assistance services in the area are recognised as having made substantial progress in relation to one or more of the ILAP goals.</td>
</tr>
<tr>
<td><strong>5</strong> Location with examples of collaborative services planning and practice.</td>
</tr>
<tr>
<td><strong>6</strong> Location with distinct factors such as areas with extensive culturally specific legal need.</td>
</tr>
<tr>
<td><strong>7</strong> Location that is characterised by challenging conditions for legal assistance providers to assist clients (for example, limited/unsatisfactory facilities or scarcity of support services).</td>
</tr>
<tr>
<td><strong>8</strong> Locations with high needs or demand for legal assistance and services.</td>
</tr>
<tr>
<td><strong>9</strong> Locations with a range of challenges, such as remoteness and travel.</td>
</tr>
<tr>
<td><strong>10</strong> Locations with language and interpreter barriers where English at least a second language.</td>
</tr>
</tbody>
</table>
**Table 5: Fieldwork locations**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Urban</th>
<th>Rural/ Remote/Regional</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Australian Capital Territory</strong></td>
<td>Canberra</td>
<td>Queanbeyan</td>
</tr>
<tr>
<td><strong>New South Wales</strong></td>
<td>Redfern, Parramatta</td>
<td>Dubbo and Lismore</td>
</tr>
<tr>
<td><strong>Northern Territory</strong></td>
<td>Darwin</td>
<td>Alice Springs and Maningrida bush court</td>
</tr>
<tr>
<td><strong>Queensland</strong></td>
<td>Cairns*</td>
<td>Mount Isa and Thursday Island</td>
</tr>
<tr>
<td><strong>South Australia</strong></td>
<td>Adelaide and Port Adelaide</td>
<td>Anangu Pitjantjatjara Yankunytjatjara (APY) Lands circuit court (Fregon, Mimili and Indulkana)</td>
</tr>
<tr>
<td><strong>Tasmania</strong></td>
<td>Hobart</td>
<td>Launceston and Devonport</td>
</tr>
<tr>
<td><strong>Victoria</strong></td>
<td>Melbourne and Broadmeadows</td>
<td>Mildura</td>
</tr>
<tr>
<td><strong>Western Australia</strong></td>
<td>Perth**</td>
<td>Derby and Fitzroy Circuit and Broome</td>
</tr>
</tbody>
</table>

*Cairns was not visited due to unforeseen cancellation of flights. Teleconferences were conducted for available stakeholders. **Teleconference consultations for stakeholders in Perth, Albany and Kalgoorlie were conducted in replacement of site visits.

**Submissions**

A national Discussion Paper provided an opportunity for stakeholders in the justice sector to participate in the ILAP review outside of consultations. The discussion paper questions (refer to Appendix E) were developed in consultation with the Advisory Group and were adapted from the ToR focus questions provided by the AGD at the onset of the review (refer to Appendix B).

The submissions were targeted to ATSILSs, CLCs, LACs, ACCOs, FVPLSs, key bodies, peak bodies, Commonwealth, state and territory governments. The NATSILS prepared a collective submission to the ILAP Review on behalf of the ATSILSs. In addition, NAAJA, ALRM, VALS and ALSWA provided individual submissions into the ILAP Review.

The period for lodgement of submissions was from 1 August 2018 to 5 October 2018. The review team received 18 responses to the discussion paper, from the organisations listed in Table 6.

**Table 6: Submissions received by the review**

<table>
<thead>
<tr>
<th>Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aboriginal Legal Service of Western Australia (ALSWA)</td>
</tr>
<tr>
<td>Aboriginal Legal Rights Movement (ALRM)</td>
</tr>
<tr>
<td>Australians for Native Title and Reconciliation (ANTaR)</td>
</tr>
<tr>
<td>Australian Legal Assistance Forum (ALAF)</td>
</tr>
<tr>
<td>Change the Record</td>
</tr>
<tr>
<td>Commonwealth Attorney-General’s Department (AGD)</td>
</tr>
<tr>
<td>Law and Justice Foundation NSW</td>
</tr>
<tr>
<td>Law Access Limited</td>
</tr>
<tr>
<td>Law Council of Australia</td>
</tr>
<tr>
<td>The National Aboriginal and Torres Strait Islander Legal Services (NATSILS)</td>
</tr>
<tr>
<td>National Association of Community Legal Centres (NACLC)</td>
</tr>
<tr>
<td>National Family Violence Prevention Legal Services Forum (National FVPLS Forum)</td>
</tr>
<tr>
<td>National Legal Aid (NLA)</td>
</tr>
<tr>
<td>North Australian Aboriginal Justice Agency (NAAJA)</td>
</tr>
<tr>
<td>Queensland Department of Justice and Attorney-General</td>
</tr>
<tr>
<td>Tasmanian Aboriginal Centre (TAC)</td>
</tr>
<tr>
<td>Tasmanian Regional Aboriginal Communities Alliance (TRACA)</td>
</tr>
<tr>
<td>Victorian Aboriginal Legal Service (VALS)</td>
</tr>
</tbody>
</table>
The discussion paper submission process was promoted via the AGD and Advisory Group networks, through social media, email and via the AGD website. The review team concurrently promoted the discussion paper process throughout the national consultations to target potentially interested stakeholders. Discussion paper responses could be provided publicly or confidentially and published outside of the review if desired.

**Stakeholder representation**

Consultations and fieldwork were conducted in all eight jurisdictions nationally covering a diverse representation of metropolitan, rural, regional, very remote areas including bush and circuits courts. In total, 177 stakeholders were involved in 99 consultations conducted across all eight jurisdictions and 59 organisations.

The consultations included lawyers, management and identified Aboriginal and Torres Strait Islander staff who work alongside the lawyers. Non-legal staff included Court Support Officers, Client Service Officers, Aboriginal Liaison Officers or Bail Support Officers.

Other stakeholders included lawyers, management and administrative staff from LACs, CLCs, FVPLSs and the private sector; national policy and advocacy groups; and public servants from various government departments such as the AGD, Department of the Prime Minister and Cabinet, and state and territory justice and corrections agencies.

Aboriginal community-controlled organisations (ACCOs) stakeholders provided insight into the well-established collaborative partnerships. Site visits to courts provided opportunities to consult with court users and court officials such as magistrates, judges and Elders, who provided their perspectives on ATSILSs’ services in terms of delivering justice for Aboriginal and Torres Strait Islander people in court. Refer to Tables 1.3 and 1.4 for a breakdown of cohort representation and stakeholder groups. Appendix D features the full stakeholder consultation list.

![Figure 7: Consultations - Stakeholder Representation*](image)

**N-177**

- **10.7%** Community sector
- **10.7%** Court users & court officials
- **15.2%** Government representative
- **9.6%** FVPLSs, LACs & CLCs
- **4.5%** Other legal sector
- **49.1%** ILAP funding recipients

*Note: Stakeholder group types are listed in Table 7 below
### Table 7: Consultations by jurisdiction and stakeholder group type

<table>
<thead>
<tr>
<th>Type of stakeholder</th>
<th>ACT</th>
<th>NSW</th>
<th>NT</th>
<th>QLD</th>
<th>SA</th>
<th>VIC</th>
<th>TAS</th>
<th>WA</th>
<th>National / Peak or International</th>
<th>TOTAL</th>
<th>% of cohort</th>
<th>No. of Orgs</th>
</tr>
</thead>
<tbody>
<tr>
<td>ILAP funding recipients (ATSILSs and the NATSILS)</td>
<td>4</td>
<td>21</td>
<td>18</td>
<td>7</td>
<td>10</td>
<td>9</td>
<td>6</td>
<td>10</td>
<td>2</td>
<td>87</td>
<td>49.1%</td>
<td>8</td>
</tr>
<tr>
<td>FVPLSS, LACs and CLCs</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>6</td>
<td>1</td>
<td>4</td>
<td></td>
<td>17</td>
<td></td>
<td></td>
<td>9.6%</td>
<td>8</td>
</tr>
<tr>
<td>Other legal sector (includes peak bodies)</td>
<td>4</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td></td>
<td>8</td>
<td></td>
<td></td>
<td>4.5%</td>
<td>7</td>
</tr>
<tr>
<td>Government representatives</td>
<td>8</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>12</td>
<td></td>
<td></td>
<td>27</td>
<td></td>
<td></td>
<td>15.2%</td>
<td>10</td>
</tr>
<tr>
<td>Court users including court officials</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>6</td>
<td>3</td>
<td>2</td>
<td></td>
<td>19</td>
<td></td>
<td></td>
<td>10.7%</td>
<td>11</td>
</tr>
<tr>
<td>Community sector</td>
<td>4</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>8</td>
<td></td>
<td>2</td>
<td>19</td>
<td></td>
<td></td>
<td>10.7%</td>
<td>15</td>
</tr>
<tr>
<td>TOTAL</td>
<td>4</td>
<td>41</td>
<td>25</td>
<td>11</td>
<td>24</td>
<td>21</td>
<td>15</td>
<td>21</td>
<td></td>
<td>177</td>
<td>59</td>
<td></td>
</tr>
</tbody>
</table>

**Stakeholder Group Types:**

- **ILAP funding recipients** - ATSILSs and the NATSILS
- **FVPLSS, LACs and CLCs** – Family Violence Prevention Legal Services, Legal Aid Commissions, Community Legal Centres
- **Other legal sector** - information and referral services, legal agencies, law societies, state and national legal peak bodies
- **Government representatives** - Commonwealth and state/territory departments including AGD, Department of the Prime Minister and Cabinet, Justice and Corrections, Aboriginal Affairs
- **Court users including court officials** – actors in the justice sector and regular users of the services of the court. This includes judges or magistrates, police, court administrators
- **Community sector** – including Aboriginal community based organisations and other support and advocacy services

### Table 8: Consultation respondents by jurisdiction

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>ACT (excludes Cth AGD)</th>
<th>National (includes Cth AGD and Peak Bodies)</th>
<th>NSW</th>
<th>NT</th>
<th>QLD</th>
<th>SA</th>
<th>TAS *</th>
<th>VIC *</th>
<th>WA</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of respondents</td>
<td>4</td>
<td>21</td>
<td>42</td>
<td>25</td>
<td>11</td>
<td>24</td>
<td>15</td>
<td>21</td>
<td>15</td>
</tr>
<tr>
<td>No. of Organisations</td>
<td>1</td>
<td>8*</td>
<td>15</td>
<td>6</td>
<td>4</td>
<td>9*</td>
<td>5*</td>
<td>8*</td>
<td>4</td>
</tr>
<tr>
<td>Total no. of Organisation types</td>
<td>59 organisations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Note: Some respondents represent more than one jurisdiction or organisation.*
**ILAP Review Advisory Group**

An ILAP Review Advisory Group was established to provide a representative forum for consultation and provide guidance, relevant data, input and perspectives on key issues throughout the review. The Advisory Group was comprised of fifteen representatives from ATSILSS, national legal assistance sector peak bodies and research organisations or industry bodies with expertise in the justice sector, in addition to a member from the AGD and Department of the Prime Minister and Cabinet. Refer to Appendix F for the full list of Advisory Group members.

Regular monthly meetings and workshops were held to obtain ILAP Advisory Group input into: key documents including the ILAP review plan, thematic coding framework; preliminary review findings; preliminary review recommendations; and the preliminary draft report.

**Confidentiality and consent**

Organisations and individuals who participated in the consultations and/or provided submissions identified whether they wished their feedback to be confidential, and not shared beyond CIR. Participants’ names were allocated a unique code number for de-identified analysis and reporting (R1-177).

**Limitations**

In addition to the areas of the review that was out of scope, there are several limitations and caveats that should be noted in relation to the review. It was not possible within the limitations of the review to undertake the following:

- Direct consultation with clients of ATSILSS to determine client satisfaction. The review instead relied on client survey data collected by individual ATSILSS and observations from stakeholders familiar with ATSILSS’ services, such as magistrates and other legal assistance and/or community services to whom ATSILSS refer clients.
• Audits of ATSILS’s or the NATSILS’s financial, compliance, monitoring of expenditure or acquittal of funds. The review undertook a limited desktop analysis of internal ILAP financial information provided by the AGD and ATSILSs, and limited literature review of publicly available financial information from ATSILSs.

• A cost-benefit analysis in respect to legal assistance service delivery or in-depth analysis of value for money. As has been noted in prior reviews of legal assistance services, cost-benefits and value for money analyses are complex. The review provides a limited, qualitative focused assessment of cost-benefits and value for money, and summarises key current literature regarding cost-benefits from legal assistance services in Australia, where this was readily available.

• Assessment of the appropriateness of the quantum of funds provided by the ILAP. A summary of comments provided by stakeholders in relation to the quantum of funds, where it is relevant to the ToR for the review, for example in relation to efficiency and quality of service, are noted in brief in the report.

• Detailed analysis of the process or structure of state level funding distribution, or evaluation of alternative funding options to the ILAP. Investigation of alternative funding options to the ILAP were not included in the review plan, or explicitly discussed through the consultations. Where alternative future funding options were suggested or discussed by stakeholders during the course of the review, these are canvased briefly in the report. A limited desktop analysis was undertaken where possible to inform commentary of the pros and cons of alternative models suggested. The report does not make any recommendations or findings as to alternative funding options to the ILAP.
ILAP Review Findings and Insights

ToR 1 - Delivery of services

Term of Reference 1 of the Review is to assess the effectiveness, efficiency and appropriateness of the ILAP and its progress towards meeting its objectives and outcomes, with regard to:

a. the appropriateness and utility of the objectives and outcomes in supporting the delivery of legal assistance services, including consideration of:
   i. relevance of the current landscape of the legal assistance sector, and
   ii. existing research about Indigenous legal need and service delivery.

b. whether the ILAP promotes Indigenous legal assistance services that are effective, efficient, accessible and appropriate, including cultural appropriateness, and represent value for money, including consideration of:
   i. integrated legal and non-legal services
   ii. the cultural expertise and broader role that ATSILS provide within Indigenous and non-Indigenous communities
   iii. the use of different modes of service delivery, and
   iv. value for money* as consisting of a range of factors, including cost of service delivery, and qualitative factors relating to services, service location, client complexity, among others.

c. whether the ILAP has improved the targeting of legal assistance services and the early identification and resolution of legal problems for Aboriginal and Torres Strait Islander people with the greatest legal need, particularly priority clients, using available analysis and bodies of research.

* Value for money will not involve service delivery comparisons between legal assistance providers.

Context

The objectives and outcomes of the ILAP are to improve access to justice for Aboriginal and Torres Strait Islander Australians, to reduce the disproportionate disadvantage experienced by Aboriginal and Torres Strait Islander people in the justice system, and to provide cost effective legal assistance.181 The Background sections of this report provide an overview of the significant and ongoing disadvantage that Aboriginal and Torres Strait Islander people face in the justice system, particularly in relation to criminal justice.182

The Programme Guidelines: Indigenous Legal Assistance Program 2015-16 state that: “The intractable disadvantage experienced by Indigenous people impacts on the rates of offending, violence and incarceration experienced by them. ILAP addresses this aspect of their disadvantage by providing the culturally appropriate legal assistance services necessary to ensure that Indigenous people can effectively access justice.”183 Definitions and understandings of ‘culturally appropriate’ service delivery are discussed in the Background section of this report, and below.

The ILAP meets its objectives through direct grants to “Indigenous legal assistance providers who have a proven ability to efficiently, effectively and equitably deliver Indigenous legal assistance and can deliver on the objectives, priorities and outcomes detailed in [the ILAP] guidelines.”184 ILAP grants are provided to

---

181 See AGD 2104b and Terms of Reference for ILAP Review at Appendix A.
182 Consideration of legal needs and key drivers of demand in relation to the effectiveness, efficiency and appropriateness of the ILAP are also discussed later in this report at: ‘Review Findings and Insights - ToR 3 Funding Allocation’.
183 AGD 2014b, at page 3.
ATSILSs to deliver direct legal assistance services and related activities, including community legal education (CLE) and law reform and advice work, and to the NATSILS for sector and program assistance.

Under their ILAP grant agreements with the AGD, ATSILSs are required to provide services focused on:

- discrete assistance such as information, referral, legal advice, non-legal support and task assistance,
- community legal education and early intervention and prevention activities,
- facilitated resolution processes,
- duty lawyer assistance, and
- representation services for criminal, civil and family law matters.  

ILAP grant agreements specify that ATSILSs should provide criminal, family and civil law services. The grant agreements specify that criminal law services should prioritise assisting persons in custody, matters where a sentence of imprisonment may be imposed or where the defendant is a child. Civil law services should prioritise assisting people with problems that are likely to have a significant adverse impact if not resolved, including where there are implications for a person’s safety, health and wellbeing, access to government benefits or homelessness. Assistance with certain civil legal problems is restricted, including native title, conveyancing (though property settlement support in relation to family law is permitted in some cases) and personal injury. Grant agreements specify that family law services should prioritise assisting people who have experienced or are at risk of family violence, complex matters involving children or where a child’s safety is at risk. Alternative dispute resolution is to be promoted where possible.

With the framework of five-year ILAP grant agreements, ATSILSs are provided flexibility to determine the type of legal assistance services provided by legal type and region through operational plans negotiated annually with the AGD. The broader ILAP service delivery principles are:

- legal assistance services are focused on and accessible by Aboriginal and Torres Strait Islander people, particularly priority clients, nation-wide,
- quality legal assistance services are appropriate, proportionate and tailored to clients’ needs and capabilities,
- legal assistance providers, governments and other service providers collaborate to provide joined up services to address clients legal and other problems,
- legal problems are identified and resolved at the earliest opportunity before they escalate, and
- Aboriginal and Torres Strait Islander Australians are empowered to understand and protect their legal rights and responsibilities and to address, or prevent, legal problems.

---

185 Clause 3, Attachment B, ILAP Funding Agreement, Version AGD ILAP June 2015, unpublished, as provided to CIR.
186 Clause 9, Attachment B, ILAP Funding Agreement, Version AGD ILAP June 2015, unpublished, as provided to CIR.
187 Clauses 10-17, Attachment B, ILAP Funding Agreement, Version AGD ILAP June 2015, unpublished, as provided to CIR.
188 Funding flexibility is discussed later in this report at: ToR 3 – Funding Arrangements.
189 ‘Quality’ legal assistance is defined by ILAP grant agreements as follows: “Quality legal assistance services are appropriate, proportionate and tailored to clients’ needs and capabilities.” See ILAP Grant Agreements (various) 2015, Version AGD ILAP June 2015, unpublished, as provided to CIR, at Schedule Particulars, Deliverables. In addition, performance indicators outlined in ILAP grant agreements include client surveys, to indicate that people are receiving quality services that are: “delivered respectfully and make a positive difference to people’s legal outcomes (as required under the agreement)”. 
The AGD reports that this allows ATSILSs to use their knowledge and respond to local conditions, trends and needs. ATSILSs are not required to deliver pre-determined service numbers, and they determine the locations in which to deliver their services.

Certain clients are defined as ‘priority clients’ to receive services. ATSILSs must plan and target services to Aboriginal and Torres Strait Islander people experiencing financial disadvantage and falling into one or more of the following groups where possible:

- Children and young people up to 24 years,
- Older people aged over 65 years,
- People experiencing, or at risk of, family violence,
- People experiencing, or at risk of, homelessness,
- People in custody and prisoners,
- People residing in rural and remote areas,
- People with a disability or mental illness,
- People with a low proficiency in English,
- People with low education levels, and
- Single parents.\(^{191}\)

ATSILSs are also required to “pay special attention to the needs of Indigenous Australians from regional and remote areas not serviced by mainstream legal assistance providers”.\(^{192}\)

The sub-sections below provide an overview of services provided by the ILAP through ATSILSs, and includes discussion of those services in relation to cost effectiveness, efficiency, quality of service, value for money, cultural appropriateness, and accessibility including the reach of services to regional and remote areas.

<table>
<thead>
<tr>
<th>Headline Recommendations</th>
</tr>
</thead>
</table>
| **1** To facilitate a sustainable, community-controlled Indigenous legal assistance sector, Commonwealth Government funding should continue to be delivered through a **standalone, specific purpose funding program** with minimum five-year funding terms. | ToR 1 – Including appropriateness and utility of current funding arrangements
ToR 5 – Including the roles and responsibilities of the Commonwealth and others in addressing Indigenous legal need |
| **2** In order to further strengthen the delivery of culturally appropriate legal assistance services to Aboriginal and Torres Strait Islander people, the aims and objectives of the Indigenous Legal Assistance Program should be amended to promote Aboriginal and Torres Strait Islander self-determination. | ToR 1 – Including appropriateness of current funding arrangements with regard to accessibility, effectiveness, cultural appropriateness, cultural expertise and models of service delivery |

\(^{190}\) AGD 2018b. See Clause 19, Attachment B, ILAP Funding Agreement, that “the Grantee must allocate the appropriate level of resources for each category of legal services”.

\(^{191}\) Clause 6, Attachment B, ILAP Funding Agreement, Version AGD ILAP June 2015, unpublished, as provided to CIR.

\(^{192}\) Clause 8, Attachment B, ILAP Funding Agreement, Version AGD ILAP June 2015, unpublished, as provided to CIR.
<table>
<thead>
<tr>
<th>Headline Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>3</strong> Overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system remains a priority area of need. The future Indigenous Legal Assistance Program should support the provision of greater levels of a legal assistance in other areas where possible, but not where this leads to increased levels of unmet criminal law need.</td>
</tr>
<tr>
<td>ToR 1 – Including appropriateness of current funding arrangements to address priority needs</td>
</tr>
<tr>
<td>ToR 3 – Including effectiveness of funding arrangements in light of drivers of demand</td>
</tr>
<tr>
<td><strong>5</strong> In recognition that a high level of legal need is present and that current funding arrangements deliver cost effective, high quality, culturally appropriate and accessible legal services consistent within the objectives of the Indigenous Legal Assistance Program, future arrangements under the Indigenous Legal Assistance Program should continue to provide funding for Aboriginal and Torres Strait Islander Legal Services to deliver legal assistance services to Aboriginal and Torres Strait Islander clients.</td>
</tr>
<tr>
<td>ToR 1 – Including the impact of the ILAP to promote services which are effective, efficient, high quality, culturally appropriate and represent value for money</td>
</tr>
<tr>
<td>ToR 3 – Including the effectiveness, efficiency and appropriateness of funding arrangements for ATSILSs and the NATSILS</td>
</tr>
<tr>
<td><strong>6</strong> In order to support an effective Indigenous legal assistance sector, the Indigenous Legal Assistance Program should continue funding for National Aboriginal and Torres Strait Islander Legal Services to provide sector development and support, program support, and other activities which address Aboriginal and Torres Strait Islander disadvantage in the justice system, including law reform activities.</td>
</tr>
<tr>
<td>ToR 1 – Including the appropriateness of current funding arrangements in consideration of the current landscape of the legal assistance sector</td>
</tr>
<tr>
<td>ToR 3 – Including effectiveness, efficiency and appropriateness of funding arrangements for ATSILSs and the NATSILS</td>
</tr>
<tr>
<td>ToR 5 – Including the broader role of the NATSILS</td>
</tr>
<tr>
<td><strong>7</strong> To ensure appropriate and effective oversight of the Indigenous Legal Assistance Program, future management and administration of the Indigenous Legal Assistance Program should be provided by a Commonwealth Department with specialised skills, expertise and cultural competency. Future changes to the management and administration of the Indigenous Legal Assistance Program should be considered following the completion of the national reviews and/or evaluations of current funding arrangements for Family Violence Prevention Legal Services, Legal Aid Commissions and Community Legal Centres.</td>
</tr>
<tr>
<td>ToR 1 - Including appropriateness and utility of current funding arrangements</td>
</tr>
<tr>
<td>ToR 3 – Including interaction of ILAP and other funding arrangements</td>
</tr>
<tr>
<td>ToR 4 – Including utility of performance monitoring and reporting arrangements</td>
</tr>
<tr>
<td>ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and the NATSILS</td>
</tr>
</tbody>
</table>
i. Cost effectiveness and efficiency

Key findings

- Through the ILAP, ATSILSs provide primarily criminal legal assistance services. All ATSILSs also provide civil law and family law legal assistance services. The proportion of ILAP funded civil and family law legal assistance services has increased over time.

- Where possible, ATSILSs access diverse networks to provide clients with appropriate referrals to other services to address legal needs. This includes when ATSILSs do not have the capacity to meet legal needs, where there is a conflict of interest or where clients need support from non-legal services.

- Services funded by ILAP and provided by ATSILSs contribute to court efficiency including by supporting Aboriginal and Torres Strait Islander clients to attend court, engage with legal processes, and understand instructions such as compliance with bail conditions.

- Funded primarily through the ILAP, Aboriginal Client Service Officers, Field Officers, Aboriginal Liaison Officers, Court Officers and non-legal staff employed by ATSILSs have important and diverse functions supporting clients and facilitating effective and efficient frontline legal assistance.

- As the primary providers of legal assistance services for Aboriginal and Torres Strait Islander people, ATSILSs face significant service delivery pressures which appear to be growing over time. These pressures include: large and unmet criminal, civil and family law needs, regional and remote service gaps, funding limitations, and expectations from the community and government agencies that ATSILSs will deliver a large volume and range of services beyond those for which they are funded.

- Efficiency is impacted by a high turnover of ATSILSs staff, particularly legal staff.

- The focus of the ILAP on prioritising legal assistance for the most urgent, direct legal needs is appropriate given the high level of immediate criminal law needs within Aboriginal and Torres Strait Islander communities. However, this approach limits the long-term impact of ILAP funding, because significant investment is not being directed towards activities designed to reduce future demand, for example to programs which prevent legal issues from escalating or break the cycle of repeat offending.

ATSILSs provide a range of services consist with ILAP agreements

All ATSILS provide criminal law, civil or family law, and child care and protection legal assistance services. The range of services provided by ATSILSs are summarised below at Table 9. As discussed later in the report, ILAP funding is directed towards frontline services. ATSILSs’ programs such as Custody Notification Services or throughcare programs tend to rely on alternative funding sources, including other Commonwealth funding and state/territory funding.

193 See ‘Review Findings and Insights – ToR 3 Funding Allocation’.
Table 9: Description of ATSILS’ services

<table>
<thead>
<tr>
<th>Area</th>
<th>Description of services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal law</td>
<td>Criminal law work includes duty work, advice, casework, dispute resolution and appeals. ATSILS represent both children and adults. Criminal law work also includes helping to establish and running Aboriginal sentencing courts such as Nunga courts (ALRM), Murri courts (ATSILS Qld) and Koori courts (VALS and ALS NSW/ACT).</td>
</tr>
<tr>
<td>Civil law</td>
<td>Civil law work is varied across the ATSILSs but can includes advice, dispute resolution and casework on legal issues on: tenancy; infringements (for example VALS has set up an Infringement Clinic); victims of crime and compensation; complaints on police, prison and other government authorities; human rights and discrimination motor vehicle; insurance; personal injury; stolen generations and reparations schemes; family violence and sexual assault; social security; consumer affair; health care complaints; forfeiture or seizure of property; adult guardianship; employment. Civil law work also includes support to access commissions of inquiry, i.e. The Royal Commission into Child Sexual Abuse.</td>
</tr>
<tr>
<td>Child protection/ care and protection</td>
<td>ATSILS assist with care applications, child removal, child protection orders and advice, contact orders and therapeutic orders, out-of-home care placement and kinship carers.</td>
</tr>
<tr>
<td>Family law</td>
<td>All ATSILSs conduct family law work. This includes specialist family law services in general family law matters involving children, as well as dispute resolution.</td>
</tr>
<tr>
<td>Custody Notification Service and in custody visitor schemes</td>
<td>Custody Notification Services are on-call 24/7 support workers and lawyers for notifications from police when an Aboriginal or Torres Strait Islander person is taken into custody to provide welfare checks and legal advice. These can take the form of a phone call or visitor service.</td>
</tr>
<tr>
<td>Youth legal services</td>
<td>VALS’s Balit Ngulu was Australia’s only legal service dedicated to Aboriginal young people which was forced to close its doors in September 2018 due to lack of government funding. NAAJA has an Indigenous Youth Justice Worker and runs the Children in Care and Youth Detention Advice Service (CICAYDAS).</td>
</tr>
<tr>
<td>Deaths in custody inquests</td>
<td>Every ATSILS does coronial work on death in custody cases. This includes providing information, support and legal representation to the families through the coronial process.</td>
</tr>
<tr>
<td>Strategic litigation</td>
<td>In some instances, ATSILSs will run strategic litigation to combat policies or laws contributing to the overrepresentation of, or breaching the human rights of, Aboriginal and Torres Strait Islander people.</td>
</tr>
<tr>
<td>Community Legal Education Law reform</td>
<td>CLE can take a number of different forms, but usually includes community workshops in relation to topics including driving offences, extraordinary driver’s licences, police relations and complaints, the court system, compliance with court and parole orders and domestic violence laws, including how to obtain and comply with a restraining order. Each ATSILS undertakes limited law reform initiatives. This includes submission writing, government relations, coalition work and sitting on committees.</td>
</tr>
<tr>
<td>Community support programs</td>
<td>ATSILSs have a range of community support programs that include Client Support Officers, Bail Support Officers, Field Officers and Court officers; Throughcare programs; and other justice programs</td>
</tr>
</tbody>
</table>

Source: Edited version of Table 1 including in NATSILS 2018b.

The particular service provided to a client will depend on their needs and could include information or initial advice, one-off representation at a court or tribunal - known as duty lawyer assistance, or ongoing legal assistance and representation in the form of casework services.  

194 ANAO 2015.
ATSILSs provide a large volume of services through the ILAP

ATSILSs delivered between 193,123 and 209,844 services to clients in 2016-17. The AGD advised the review that over the last ten years the average annual growth in services by ATSILSs is 4%. Accurate data on service numbers are limited for reasons including the transition of data reporting systems in the period, and the likely under-reporting of some matters, particularly simple or short advice services.

The NATSILS and ATSILSs advised that, over the reporting period, an increasing proportion of matters were casework matters, which require greater time and resources to be allocated than advice services. The AGD reported that since the introduction of the ILAP there had been a 44% increase in the number of casework matters, and a corresponding 14% decrease in legal advice matters, and 6% decrease in duty lawyers matters.

The delivery of more intensive case legal assistance support is also reported by other legal assistance providers. That is, it is not a trend limited to Aboriginal and Torres Strait Islander clients. As discussed later in the report, a decline in the number of recorded advice numbers may also be a result of underreporting.

Figure 9: ATSILS services provided nationally – 2007-08 to 2016–17 – breakdown by service type

![Graph showing services provided by ATSILSs from 2007-08 to 2016-17]

N=1,756,260 matters.

Source: AGD 2018b, Submission to the ILAP Review, at Figure 5, page 38.

---

195 The AGD advises that ATSILSs provided a total of 193,123 services in 2016-2017. NATSILS 2018b advises based on data from the AGD, that ATSILSs collectively represented clients in 209,844 matters in the same period.

196 AGD 2018b, at page 35. Conversely, the ANAO 2015 reported that ATSILSs provided 208,456 services in 2013-2014, suggesting that service levels have not increased over the period. Data quality issues are discussed later in the report: see ‘Review Findings and Insights – ToR 4 Performance Monitoring, Reporting and Data Collection.’

197 Both the AGD and NATSILS identified that data on ATSILSs’ service levels collected through the ILAP is not complete.

198 The AGD reports that case services are “the more intensive services provided by ATSILSs and involve a service provider taking carriage of a matter (legal problem) in an ongoing, representative capacity: AGD 2018b, at page 37, referencing the Data Protocol – Indigenous Legal Assistance Programme 2014.


200 See for example Urbis Forthcoming, Productivity Commission 2014 and NLA 2018.

201 See ‘Review Findings and Insights – ToR 4 Performance Monitoring, Reporting and Data Collection.’
The broad range of activities provided through casework includes both legal representation and other forms of support. ATSILs provide legal assistance services that include both legal support and support from Aboriginal and Torres Strait Islander support officers.

For example:

*The Client Support Officer proceed[s] with welfare checks, make appointments with relevant referral services — either in-house or externally — and accompany the client to these appointments throughout the court journey. Additional supports can include brokerage for funding related to damaged effects such as housing due to family violence to prevent loss of tenancy. Follow up 'check-ins' with the client after the court matter is resolved... to ensure the client’s wellbeing and safety is on track. For criminal matters where the client is in custody, the check-ins become more frequent to ensure the risk of deaths in custody can be reduced.*202

**ATSILs provide primarily criminal law services**

The key services provided to its clients under the ILAP are criminal services, with approximately 80% of service provision being provided for this law type.203 Over time, there has been a combined increase in civil, family and violence protection services. NATSILS advised the review that service figures do not include death in custody inquests, custody notification services, a number of CLE services, community justice programs and some other services provided by ATSILs, where these are funded outside the ILAP.204

---

**Figure 10: ATSILs services provided nationally, breakdown by matter type, 2007-2008 to 2016-2017**

```
<table>
<thead>
<tr>
<th>Year</th>
<th>Violence protection</th>
<th>Family</th>
<th>Civil</th>
<th>Criminal</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007-08</td>
<td>1</td>
<td>6</td>
<td>7</td>
<td>85</td>
</tr>
<tr>
<td>2008-09</td>
<td>1</td>
<td>4</td>
<td>8</td>
<td>87</td>
</tr>
<tr>
<td>2009-10</td>
<td>1</td>
<td>4</td>
<td>9</td>
<td>86</td>
</tr>
<tr>
<td>2010-11</td>
<td>1</td>
<td>4</td>
<td>10</td>
<td>86</td>
</tr>
<tr>
<td>2011-12</td>
<td>1</td>
<td>4</td>
<td>9</td>
<td>85</td>
</tr>
<tr>
<td>2012-13</td>
<td>2</td>
<td>5</td>
<td>11</td>
<td>83</td>
</tr>
<tr>
<td>2013-14</td>
<td>2</td>
<td>7</td>
<td>12</td>
<td>80</td>
</tr>
<tr>
<td>2014-15</td>
<td>2</td>
<td>12</td>
<td>12</td>
<td>80</td>
</tr>
<tr>
<td>2015-16</td>
<td>2</td>
<td>10</td>
<td>11</td>
<td>82</td>
</tr>
<tr>
<td>2016-17</td>
<td>2</td>
<td>11</td>
<td></td>
<td>82</td>
</tr>
</tbody>
</table>
```

*Source: AGD 2018b. Submission to the ILAP Review, at Figure 2, page 37.*

---

202 Consultation with stakeholder R12.
203 AGD 2018b, NATSILS 2018b.
204 NATSILS 2018b.
The AGD’s submission to the ILAP review includes further detail about the trends in service provision under the ILAP in the funding period. These include that in 2016-2017:

- Overall, services were provided 67% to men and 32% to women.
- Criminal law services were provided 56% to men and 22% to women.
- Civil law services were provided equally to men (50%) and women (48.45%).
- Family law services were provided primarily to families (54%).

The focus on criminal law matters reflects the very high demand for these services, in the context of ongoing and significant overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system. The overrepresentation of Aboriginal and Torres Strait peoples in the criminal justice system is discussed in earlier sections of the report.

Other reasons for the focus on criminal law service provision through the ILAP suggested through submissions to the review or during the consultations, include: the historic high rate of contact by Aboriginal and Torres Strait Islander people with the criminal justice system and with ATSILSs; and the lack of alternative, culturally appropriate criminal justice services for Aboriginal and Torres Strait Islander people to access. Greater service levels provided to men reflects the higher levels of contact by men with the criminal justice system.

**ATSILSs also provide important civil law and family law services**

While ATSILSs provide significant family and civil law services through the ILAP, the NATSILS, ATSILSs, service providers and researchers have identified civil and family law services as significant and urgent areas of need.

The AGD advised the review that, while criminal law matters continue to represent the bulk of services provided by ATSILSs, there has been an increase in the proportion of civil law and family law services over time, coinciding with the introduction of the ILAP (see Figure 10 above). There has also been an increase in more intensive civil law and family law services in the form of casework. Further details of the trends in family and civil law service delivered through the ILAP in the funding period are outlined in the AGD’s submission to the review.

The review heard that ATSILSs deliver services efficiently

The review heard consistently that ATSILSs operate efficiently, working hard to ‘stretch’ resources where possible to reach the maximum number of clients, with some concerns expressed that this approach is not sustainable and was leading to staff burnout. The AGD notes in its submission:

> A key characteristic [of] service delivery under the ILAP is the high volume of services provided by ATSILSs. ATSILSs have extensive reach [and] are known to be dedicated to ensuring legal representation is given to as many clients as possible and, as a result, stretch services thinly.

---

205 AGD 2018b, at Attachment D – The ILAP and Delivery of Services, Table 3.
206 NATSILS 2018b, AGD 2018b.
207 See ‘Background – 3. Aboriginal and Torres Strait Islander Legal Needs’.
208 AGD 2018b, at page 39.
209 Staffing issues and sustainability are discussed later in this report: see ‘Review Findings and Insights - ToR 6 Other areas and opportunities for improvement ii Workforce challenges’.
210 AGD 2018b, at page 33.
The following comment from a magistrate is representative of the views expressed by court users in relation to the large volume of services provided by ATSILSs to clients:

... But what I’ve seen in [major regional area] is, they are run off their feet, they really are. Because they also look after [other regional centre] ... The [ATSILS] is very lucky that they always get committed people because they work very hard.... I just know what I see in court.211

The wider legal assistance sector also delivers efficient services.212 It was suggested to the review that ATSILSs may provide a higher volume of services at a lower cost compared to their counterparts in other legal assistance services.

NAAJA reported that in 2016/2017 NAAJA had 22 lawyers working on a total of 5303 casework matters (criminal matters only in this figure), and attended to an average of 241 casework matters in 2016/2017. By comparison, the Northern Territory Legal Aid Commission had 15 lawyers working on a total of 2946 casework matters, therefore attended to an average of 196 casework matters each in 2016/2017. On these figures, the average NAAJA caseload exceeds that of the Northern Territory Legal Aid Commission by 45 clients per year.213 The figures do not indicate how complex or complicated the various matters are.

Aboriginal and Torres Strait Islander staff play a role in supporting effective service delivery
The review heard consistent feedback that Aboriginal and Torres Strait Islander staff within ATSILSs, and non-legal staff, play an important role in supporting effective service delivery. This included supporting direct legal service provision, such as taking instructions, facilitating engagement of the clients, and assisting lawyers before, during and after court to ensure the client understand their orders.214

The local cultural and community knowledge of the staff was consistently highlighted in consultations:

The fact that the field officers are Indigenous, even if they’re not from the same area, but a lot are, they have language in common. They have knowledge of the family relationships in the area and understanding of cultural issues... and the ability to convey that to the lawyers... the presence of the field officers is the real medium by which the culturally-important things can be addressed.215

They are closely connected to grass roots organisations and grass roots people, so they are better informed about what the issues are, who the families are, what the connections are, which organisations can be tapped in to. There’s a significant amount of cultural knowledge I suppose, that can be tapped in to, that organisations, that other organisations just do not have.216

The services provided through the ILAP support the effective functioning of courts
The Australian National Audit Office (ANAO), citing research undertaken in 2009, has previously highlighted that effective legal assistance arrangements provide benefits for the overall justice system:

There is a direct relationship between the efficiency of the court and the provision of legal aid. Efficiency is achieved through the provision of information, advice, legal assistance, dispute resolution, and representation for matters that would otherwise be self-representing. Costs to the

211 Consultation with stakeholder R66.
212 See for example Productivity Commission 2014 and NLA 2018.
213 NAAJA 2018, statistics sourced from the NAAJA submission in to the review
214 See for example consultation with stakeholder R47.
215 Consultation with stakeholder R132 (Magistrate).
216 Consultation with stakeholder R47.
justice system are also avoided because cases are diverted from court rather than needing a hearing or decision by the court.217

The CIR review team observed during its site visits to regional and remote courts that ATSILSs provide a significant percentage, and in some locations the majority, of legal advice services in local criminal courts. Some stakeholders reported that in some locations courts would be unable to function, or would function much less efficiently, were it not for ATSILSs providing representation and support for Aboriginal and Torres Strait Islander clients.

In South Australia, for example, the CIR review team observed the efficiency and pressure of the high caseloads serviced by ALRM ranging from 60 to over 140 matters per day in the remote Anangu Pitjantjatjara Yankunytjatjara (APY) lands court circuit, which was reported by ATSILS staff as the standard volume of matters serviced in the region. A South Australian magistrate reported to the review that the court system would “grind to a halt” without the ALRM’s services, including ALRM staff liaison between community services, police, prosecutions in the APY lands. The magistrate advised that without the ALRM, unrepresented Aboriginal and Torres Strait Islander people would struggle to engage in the court system.218

In the Northern Territory comments received from magistrates and judges included:

NAAJA lawyers represent 95% of the criminal court list in [remote area]. Represent nearly all the clients on the circuit court as well. Very close to 100% Indigenous children.

If there was not NAAJA, the courts would be overwhelmed. Trying to deal with people unrepresented – you need to be there to understand it. Makes the judge have to act as a lawyer as well, find out personal background, take instruction, running hearing without a lawyer when you’re the judge is virtually impossible. Just on that alone – NAAJA provides a bang for your buck that is integral. I have 60 people on the list for tomorrow, two people representing 30-35 people each.

If NAAJA was cut it would be a disaster. It couldn’t happen.219

217 ANAO 2015, at Footnote 12.
218 Consultation with stakeholders R3, R4 and R68.
219 Consultations with stakeholders R76 and others.
ii. Quality of service and value for money

Key findings

- ATSILSs demonstrate quality criminal legal advocacy because they are sufficiently well prepared, understand their clients, can best articulate client need and are best placed to recommend and be successful in securing appropriate sentencing and other legal outcomes for clients.

- ATSILSs undertake a range of support strategies to ensure clients attend and can actively participate in court processes. These can range from providing referral pathways, transporting clients to and from court, following up post-court and facilitating family and community participation in resolving matters. Stakeholders reported that these support services play an important role in increasing access to justice, reducing the risk that clients will breach court orders, and reducing the risk that clients will be incarcerated.

- The ILAP supports the delivery of value for money Indigenous legal assistance services through ATSILSs.

- While ATSILSs deliver quality services, high workloads, resource limitations and the time pressures of court processes limit the ability of ATSILSs to provide best practice, individually tailored legal assistance. There exists a tension between quality legal services and the pressure to service a very high volume of clients.

- ATSILSs are implementing a diverse range of programs which aim to prevent future legal assistance need, including programs to prevent or reduce future offending. These programs primarily rely on funding outside the ILAP.

- ATSILSs and several legal assistance stakeholders reported concerns that under the current funding approach, there was an expectation that ATSILSs would continue to deliver services for Aboriginal and Torres Strait Islander clients with less resources or cost to government than LACs, and that this approach was inequitable.

ATSILSs provide quality services, under significant pressures

The review heard that high workloads meant that clients often had very limited time with ATSILSs’ staff, particularly clients appearing before court. Across various jurisdictions, the review heard that ATSILSs would commonly receive large new clients lists from the court daily, with short time pressures to receive client instructions and make applications or enter a plea. For example, one magistrate commented:

*Lists are huge. Fresh in custody every day. 36 fresh in 1 day once – police did a warrant sweep. 60-100 matters per day. [Court] has been known to sit until 6pm some nights.*

ATSILSs’ staff repeatedly raised concerns about these time pressures, and the potential impact on access to justice for Aboriginal and Torres Strait Islander people.

However, even in the context of these pressures, the review heard that the ATSILSs generally demonstrate a high quality of criminal legal advocacy because they are well prepared, understand their clients, can best articulate their needs and are best placed to recommend and be successful with negotiating appropriate outcomes or sentencing options, including sentencing options that divert clients from prison.
For example, magistrates in different jurisdictions commented to the review team that:

> The service they provide is unequivocally — that it is, excellent. They are strong advocates for their clients. They go way above and beyond what is normally expected... They are always well prepared — really, really well prepared, and fight hard for their clients. I have nothing but the best to say about the ALS solicitors that appear before me.\(^\text{220}\)

Some limited client satisfaction surveys were conducted in the funding period. The AGD noted in its submission that 97% of clients surveyed advised they would either "strongly agree" or "agree" with recommending their legal service to other people.\(^\text{221}\) For example, a client of ATSILS Qld commented:

> I felt the service was really good, personal and cultural needs were well accepted... staff are good listeners and understood Aboriginal Social complexity. I would recommend ATSILS to other members of [the] community.\(^\text{222}\)

A key quality of the service provided by ATSILSs reported to the review was that ATSILSs would go ‘above and beyond’ where possible, to support clients with issues related to their legal problem.

**Case study - ‘Casey’ – assistance provided by ALS NSW/ACT**

Casey, a young Aboriginal child with an intellectual disability was represented by ALS NSW/ACT. After receiving a 12 month suspended control order and probation order for an indecent assault charge, Casey was arrested by police for possession of marijuana. This was not pursued by the police, and he was released shortly after. A few weeks later, Casey breached his bail conditions by not reporting to police. The police filed a detention application to change the conditions of his bail. The Magistrate allowed the application and, if successful, would mean that Casey would receive a control order to spend in full time custody in a Juvenile Detention Centre. The ALS was successful in ensuring Casey was only issued a caution under the Children (Criminal Proceedings) Act 1987 (NSW) and was not subjected to a full time custodial sentence. The ALS brought to the court’s attention the fact that the marijuana belonged to Casey’s father. Furthermore, Casey’s intellectual disability and the fact that he had no prior drug offences, were also relevant factors. As a result, the Magistrate dismissed the police application with a caution and allowed Casey to remain on his previous suspended control order and probation orders.\(^\text{223}\)

**Case study ‘Adam’ – assistance provided by VALS**

Adam is a 43 year old Aboriginal male who has a long history with substance abuse whom VALS assisted through our ReConnect program. ... Adam advised [his VALS] caseworker that he had long standing issues with drugs and alcohol and wanted to attend Wulgunggo Ngalu Learning Place. The caseworker assisted Adam to submit an application and supported him through the assessment process. Adam was able to secure a place at Wulgunggo Ngalu where he received assistance with drugs & alcohol, mental health, life skills and cultural strengthening. Adam was also assisted with his art and was supported and guided by the caseworker in how to advertise and sell his artwork to earn income. Adam was also supported to undertake cultural strengthening activities which he reported as never having done before

\(^{220}\) Consultation with stakeholder R66.

\(^{221}\) AGD 2018b, at page 35.

\(^{222}\) ATSILS Qld client survey report 2017, quoted in AGD 2018b.

\(^{223}\) Law Council of Australia 2018b, quoting National Aboriginal and Torres Strait Islander Legal Services, Submission No 121 to the Law Council of Australia, *The Justice Project*, October 2017.
but being needed in order to address the disconnect from family and culture he felt. After being discharged from Wulgunggo Adam reported, over the proceeding months, as being committed to staying out of jail and indicated an intention to support his family and undertake a TAFE course on art. 224

While there is clearly a tension between the pressure to deliver a high volume of services and to deliver high quality services, the review did not hear evidence of limited time leading to pressure on ATSILSs’ clients to accept poor outcomes, for example, pressure to plead guilty in criminal matters.

**Services delivered through the ILAP represent value for money**

As noted in the previous section, there are strong indications that ATSILSs deliver a high volume of services even compared to other providers. The review heard that ATSILSs are able to provide low cost services as a result of a range of factors including low wages. It was also reported to the review that it was common for staff to work hours over and above those for which they are funded. A judge commented to the review:

> I think that the individual solicitors that work for the [ATSILS], overwhelmingly do their absolute best, notwithstanding the fact that they know they’re getting paid less than their Legal Aid counterparts. I don’t think it affects their performance at all. What it does affect, is the length of time they stay, because if they do have an opportunity to go over to the Legal Aid Commission for more money, usually doing less work .... 225

Staffing issues are discussed in more detail later in the report. 226

**Prevention, early intervention, diversion and holistic services are provided where possible**

A range of stakeholders, including the AGD and ATSILSs, expressed strong support for ATSILSs to provide a greater level of early intervention, wrap-around and follow-up services than is currently provided through the ILAP.

In order to reduce disadvantage in the criminal justice system in the medium to long-term stakeholders spoke strongly in support of increasing ATSILSs’ family, care and protection work which is directed at preventing the removal of children. This support was seen as helping curtail the common trajectory from out of home care, to youth detention, adult offending and adult imprisonment.

The review heard about a number of examples of promising, successful and innovative prevention, early intervention, diversion, rehabilitation and through-care programs and initiatives. These are primarily funded and supported outside of the ILAP. These examples include, but are not limited to:

- Balit Ngulu, ReConnect and Community Justice Programs (Vic),
- Family Violence Client Service Officer positions (Vic),
- Ngurrambah Bail Support and Yarrabi Bamirr Programs (ACT),
- ALSWA Youth Engagement Program (WA),
- Djidji Nyitti Family Law Service (WA),
- NAAJA and ATSILS QLD through-care Programs (NT and Qld),
- Kunga Program (NT), and
- Women’s Offender Strategy and Aboriginal Visitors Scheme (SA).

---


225 Consultation with stakeholder R47.

226 See ‘Review Findings and Insights - ToR 6 Other areas and opportunities for reform, ii Workforce challenges’.
A number of these examples are profiled as case studies in this report.

**Some stakeholders raised concern that the structure of legal assistance funding was inequitable**

Some concerns were raised during the review that there was an expectation that ATSILSs would deliver services for Aboriginal and Torres Strait Islander clients with less resources or cost to government than mainstream legal service providers, and that this approach was discriminatory. In particular, examples of comments on the disparity of funding between ATSILSs and LACs were noted in the review:

In my view is you have to argue that there’s a level of structural racism going on in a way that those funds are distributed... that structural difference in funding is really obvious when you do start to do those direct comparators in a jurisdiction between the [ATSILS] and other criminal defence organisations... I don’t think the funding formula properly takes into consideration the actual cost of doing business in jurisdictions.\(^{227}\)

In comparison to mainstream legal aid services who have grown immensely. If you do a 10 year comparison, you would see the growth in finding how we’re actually starting – and say every five years we go backwards. We never get back to the original place what we were originally.... I was astounded to see very minimal growth and increase in funding in the Aboriginal legal service.\(^{228}\)

The disparity of funding allocation between ATSILS and LACs ... its offensive that ATSILS should receive less funding compared to LACs.\(^{229}\)

---

\(^{227}\) Stakeholder consultation R160.  
\(^{228}\) Stakeholder consultation R68.  
\(^{229}\) Stakeholder consultation R46.
iii. Culturally appropriate and culturally safe service delivery

Key findings

- ATSILSs provide culturally appropriate services that incorporate an understanding of the diversity of Aboriginal and Torres Strait Islander communities and cultures, of social and emotional wellbeing and the impacts of intergenerational trauma.

- ATSILSs’ delivery of culturally safe services is enabled by a high level of trust within Aboriginal and Torres Strait Islander communities, supported in turn by high levels of direct community engagement (often led by respected community members). At the client level, ATSILSs’ staff are skilled at communicating legal concepts and processes to Aboriginal and Torres Strait Islander clients.

- Cultural safety and the principles of Aboriginal and Torres Strait Islander community control are embedded in ATSILSs’ governance, board structures, strategies, staff employment practices, interagency collaboration, service planning and service delivery approaches.

- Aboriginal and Torres Strait Islander staff within ATSILSs play an important role as cultural conduits between clients, court users and justice systems.

The ILAP supports culturally appropriateness and culturally safe service delivery

The review heard universally from stakeholders that ATSILSs provide culturally appropriate and/or culturally safe services. Culturally appropriate service delivery and cultural safety, as discussed earlier in the report, were evident in direct service delivery and embedded in ATSILSs’ service planning and governance structures.

ATSILSs implemented both formal and informal strategies to ensure cultural competency amongst staff, including detailed onboarding, mentoring and training activities for staff. One example a formal framework is NAAJA’s Cultural Competency Framework 2017-2020. Under the framework of cultural competence is implemented through:

- Management of the organisation by an Aboriginal board.
- Having Aboriginal people serve senior roles across the practice and key roles across the workforce, including a commitment to ensure that Aboriginal people constitute a minimum of 60% of overall staffing numbers; and that Aboriginal people serve in senior roles including the CEO, Principal Legal Officer and other senior positions.
- Providing quality education and professional development program for staff.
- Integration of learnings in cultural competency across the practice, which includes a Certificate in Cultural Competency to increase cultural sensitivity and to both promote effective work communication and enhance relationships between Aboriginal and non-Aboriginal people; and delivery of cultural appropriate trauma-informed training by AMSANT, so NAAJA staff understand how trauma effects communities.
- Being culturally responsive and adaptive to local and regional contexts, which includes a thorough and comprehensive induction process, introduction to Elders on a staff member’s first visit to a community; working with local Law and Justice groups; and an appropriate dress policy.
• Being accountable in this work, including through a cultural competency committee, which has senior oversight of the framework within the organisation, with an annual review and evaluation of the framework.230

Aboriginal and Torres Strait Islander staff play a key role in culturally appropriate service delivery

The central role that Client Support Officers, Field Officers and other Aboriginal and Torres Strait Islander staff play in developing trust with the community and being able to act as a cultural conduit between non-Indigenous lawyers and clients, was highlighted to the review.

The NATSILS (2018b) advises in its submission to the review that, on average across ATSILS, over 40% of staff are Aboriginal or Torres Strait Islander people, including:

• 47% of VALS and ALRM staff,
• 48% of ATSILS Qld staff, and
• 56% of ALS NSW/ACT staff.

Comments heard by the review included:

[Field Officers] were the intermediaries between clients and family and the lawyer, and they enabled things to get done, and they were often the conduit, the way in which a lot of the information is passed which otherwise wouldn't be passed on... because they had a field officer who they knew, he was part of their community, they trusted him or her, and if that person said that the lawyer was okay, then the lawyer was okay.231

ATSILSs’ staff were also seen as playing an important role in building the cultural capacity of courts:

They (ATSILS) add that value to our judiciary. So, when sentencing an Aboriginal person, they understand the impacts of colonisation when sentencing, and why that person may display the behaviours they have in the community. It’s not just because they’re a bad person, but there’s extra layers of colonisation that impacts. (ATSILS Lawyers) hit that nail on the head. That’s how important (ATSILS) is to the criminal justice system because they bring the cultural lens for sentencing.232

Case study — Working with community and respecting cultural protocols, APY Lands Courts Circuit

The ALRM lawyers and Field Officers will work together with the Senior Aboriginal Justice Officer and courts to determine if access to the lands are permissible and if any cultural events are taking place prior to entering the lands or proceeding with the circuit court. There are a few Sorry Camps in the APY lands. There were a few deceased members of the community and funerals occurring at the same time as the designated court dates. ALRM and the Aboriginal Justice Officers advised the court users, magistrates and Courts Administration Authority to postpone the courts as many members of the community were highly likely not to appear in court and breach court order due to Sorry Business.233

231 Consultation with stakeholder R147.
232 Consultation with stakeholder R23.
233 Consultation with stakeholders R4, R6, R7.
Case study — Working with culture, elders, community and blending customary and western law, ALSWA

ALSWA were able to get bail for a young girl who had killed her very violent boyfriend because her community wanted to punish her using traditional methods. ALSWA was able to involve an elder, a senior community member of the young girls’ community and organised for the father of the deceased man to appear in court to give evidence. Traditional punishment was an alternative to jail and critical for the reconciliation process that enabled the women to be accepted back into her community. The young girl became a highly regarded senior member of her community and is involved in a program where her local people liaise with the local magistrates, police and other court users to bridge the understanding between the local Aboriginal and non-Aboriginal people in court processes.234

234 Consultation with stakeholder R127.
iv. Accessibility

Key findings

- Through the ILAP, ATSILSs deliver a range of services to maximise the reach and accessibility of legal assistance to Aboriginal and Torres Strait Islander communities, consistent with the objectives and grant requirements of the ILAP. ATSILSs implement a variety of different strategies to maximise the accessibility of legal assistance services within available resources including but not limited to: community legal education, outreach clinics, regional offices, presence at remote, circuit and bush courts, and 24-hour telephone advice.

- ATSILSs plan and deliver services with regard to priority clients, within available resources.

- Throughout the review, stakeholders highlighted significant and growing levels of unmet legal needs in relation to criminal law, civil law, family law and child protection, and ongoing barriers faced by clients to accessing an appropriate level of service, particularly where clients have complex or high needs.

- ATSILSs plan and deliver services with regard to maximising regional and remote accessibility, within available resources. ATSILSs generally work closely with LACs in particular to maximise coverage of regional and remote locations.

- ATSILSs and a number of other legal assistance providers reported that regional and remote areas are under-serviced, and expressed concern that gaps in services in regional and remote locations are increasing.

- Due to insufficient access to interpreters in some locations, language remains a significant barrier for some Aboriginal and Torres Strait Islander people receiving appropriate legal assistance services and understanding court processes.

ATSILSs maximise the reach of service delivery to regional and remote areas within available resources

The AGD reported to the review that a key characteristic of the services delivered under the ILAP had been the increasing proportion of services to regional and remote areas. ATSILSs currently operate in 81 office locations (see Table 10 below), with outreach services to a wide range of other locations.

ATSILSs advised the review that office locations were selected with the aim of maximising service reach, within available resources. ATSILSs, other legal assistance providers and court users reported to the review that there remain significant gaps in service provision where offices do not exist.

---

235 AGD 2018b, at Figure 8.
Table 10: Location of ATSILSs’ offices

<table>
<thead>
<tr>
<th>Aboriginal and Torres Strait Islander Legal Service</th>
<th>State</th>
<th>Locations</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATSILS Qld</td>
<td>Qld</td>
<td>27 locations – Brisbane, Strathpine, Cleveland, Ipswich, Beenleigh, Southport, Maroochydore, Toowoomba, Murgon, Hervey Bay, Goondiwindi, Bundaberg, Roma, Gladstone, St George, Rockhampton, Charleville, Cunnamulla, Mackay, Townsville, Palm Island, Cairns, Mount Isa, Normanton, Bamaga, Thursday Island, Wacol</td>
</tr>
<tr>
<td>ALRM</td>
<td>SA</td>
<td>4 locations – Adelaide, Port Augusta, Ceduna, Port Lincoln</td>
</tr>
<tr>
<td>ALSWA</td>
<td>WA</td>
<td>12 locations – Albany, Broome, Bunbury, Carnarvon, Derby, Geraldton, Halls Creek, Kalgooorie, Kununurra, Northam, Perth, South Hedland</td>
</tr>
<tr>
<td>ALS NSW/ ACT</td>
<td>NSW</td>
<td>22 locations – Sydney, Canberra, Nowra, Parramatta, Redfern, Wollongong, Moruya, Armidale, Grafton, Kempsey, Lismore, Moree, Newcastle, Tamworth, Bathurst, Bourke, Broken Hill, Dubbo, Griffith, Wagga Wagga, Walgett, St Marys</td>
</tr>
<tr>
<td>NAAJA</td>
<td>NT</td>
<td>5 locations – Darwin, Palmerston, Katherine, Alice Springs, Tennant Creek</td>
</tr>
<tr>
<td>TACLS</td>
<td>TAS</td>
<td>2 locations – Launceston, Hobart</td>
</tr>
<tr>
<td>VALS</td>
<td>VIC</td>
<td>9 locations – Geelong, Ballarat, Bairnsdale, Mildura, Heywood, Shepparton, Morwell, Swan Hill, Melbourne</td>
</tr>
</tbody>
</table>

A number of ATSILSs offices closed during the period, with others opening. The impact of the closure of ATSILS offices due to resource constraints in areas like Murray Bridge, Coober Pedy and Port Lincoln, for example, is reported to have led to greater distances being travelled by ALRM staff to deliver services to a larger area:

In the past five years, ALRM reduced three country based offices, namely Murray Bridge, which has been operating for at least 30 years, Port Lincoln which was operated from the 1990s and Coober Pedy office which was opened in about 2012, but closed shortly thereafter, essentially because it was financially unsustainable and to reduce the risks of industrial action by staff, all who were solo based employees providing 24/7 services.236

Comments heard by the review also included:

It takes several days to travel on dirt road(s). The [ATSILS lawyers] are unable to have adequate breaks during remote circuit courts as they prepare all the files in the morning and at night after a full day of court [where it can be standard to have between 100-150 cases per day] combined with extensive travel.237

Remote community services are also impacted by the costs of travel, not only for staff, but for clients who would not otherwise be able to access court. Additionally, the expenses of living remotely, and the health and safety concerns for staff, as well as clients who present with multiple issues in a remote setting, also impact upon the recruitment and retention of staff in remote areas.238

Impacts from office changes and closures in the funding period are discussed further later in the report.239

236 ALRM 2018, at page 34.
237 Consultation with R68 and R3.
238 Consultation with stakeholders R45, R127.
239 See ‘Review Findings and Insights - ToR 4 Performance Monitoring, Reporting and Compliance’.
The NATSILS in its submission to the review provided a list of the range of outreach locations and courts to which ATSILSs provide services. ATSILSs and other stakeholders consulted during the review expressed concern with the necessary ‘fly-in-fly-out’ servicing model to some remote areas. This restricts the frequency of ATSILSs visiting an area to provide face to face advice at intervals which could vary between two weeks to three months. While a range of alternative outreach strategies were used by ATSILSs, including phone advice, the importance of providing face to face legal services was emphasised, particularly for clients with low literacy.

ATSILSs service many remote and regional areas that others do not. ATSILSs are the only service provider in a number of remote locations where there are predominantly Aboriginal and Torres Strait Islander populations. As discussed later in the report in relation to CSP, ATSILSs commonly coordinate with LACs to ensure that some service is available to regional and remote areas, within resource constraints.

In locations where an ATSILS is the only service provider, Aboriginal and Torres Strait Islander clients can be left unrepresented due to conflicts of interest – for example, in family violence matters where both the alleged offender and victim are clients of the ATSILS. ATSILSs use strategies such as paying private solicitors (which is costly), offering in-kind travel support, and appearing as a ‘court friend’ to provide some assistance to clients who would otherwise go unrepresented due to a conflict of interest.

**All ATSILSs undertake Community Legal Education (CLE) activities**
CLE is also an important strategy in improving accessibility of legal assistance and is often undertaken by Client Support Officers and non-legal staff. The aim of CLE is to “equip and empower Aboriginal and Torres Strait Islander people to navigate the justice system and achieve better outcomes in their lives.”

The ILAP directly funds and supports ATSILS to undertake community legal education, and ATSILSs often collaborate with other providers to jointly deliver legal education services. Information is developed to be culturally appropriate and can be delivered through card and sticker packs, movie nights, yarning circles, or a justice bus — a mobile community legal centre. Topics covered in education sessions include driving offences, police relations, the court system, compliance with court and parole procedures and family violence laws. The NATSILS in its submission to the review provided a range of case studies regarding CLE activities, including those funded by sources other than the ILAP, including:

**CASE STUDY: VALS CLE ACTIVITIES**

**Housing:** In 2017, VALS partnered with Aboriginal Housing Victoria, the Tenants Union of Victoria and Victoria Legal Aid to deliver community information sessions in a roadshow around the state to tenants of Aboriginal housing and other community members to talk about tenants’ rights and how people can get assistance. In addition to the community information sessions, individual advise was also able to be delivered to people as their legal needs determined, creating referrals also for legal need beyond housing issues.

The NATSILS also submitted to the review that CLE is limited by funding arrangements. Challenges in delivering greater levels of CLE service include: the limited number of dedicated CLE staff and limited travel funding.

---

240 At Appendix B, NATSILS 2018b.
241 See ‘Review Findings and Insights – ToR 2 Collaborative Service Planning (CSP)’.
242 NATSILS 2018b, at page 44.
243 NATSILS 2018b, at page 47.
244 NATSILS 2018b.
**Language remains a barrier for clients**

The ILAP review heard that there was both a lack of funding available to engage interpreters and a lack of qualified interpreters available in many areas. This is consistent with the finding of the ALRC Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (2018), which found that some jurisdictions with high proportions of remote communities operate without state-funded dedicated interpreter services, and that some Aboriginal and Torres Strait Islander people may find it difficult — if not impossible — to understand legal proceedings without an interpreter.

A shortage of interpreters, including interpreters qualified for court proceedings, can mean that:

- ATSILS’ practitioners experience difficulties in taking instructions to inform their clients.
- The absence of having female interpreters entrenches Aboriginal and Torres Strait Islander women’s inability to provide evidence in court especially for domestic and family violence matters.
- Cases are delayed, which may lead to, for example, extended time in custody for an Aboriginal or Torres Strait Islander defendant.245
- In some instances, cases may proceed without an interpreter, at the risk of Aboriginal and Torres Strait Islander clients not understanding outcomes that affect them directly.246
- Aboriginal and Torres Strait Islander people may not understand questions put to them by police, or in the courtroom and this may result in wrongful imprisonment. This may lead to Aboriginal and Torres Strait Islander people pleading guilty without cause.247

With ILAP support, ATSILSs are implementing a range of strategies in cooperation with courts, LACs and state and territory agencies, to varying degrees across jurisdictions, to support clients facing criminal court with interpreter services.

---

245 NAAJA 2012.
246 As above.
Future directions and opportunities for reform ToR 1

1. In the context of significant and ongoing disadvantage faced by Aboriginal and Torres Strait Islander people in the justice system, a future ILAP should retain a focus on improving access to justice and reducing the disproportionate disadvantage experienced by Aboriginal and Torres Strait people.

2. Program guidelines for a future ILAP should continue to support Aboriginal and Torres Strait Islander legal assistance providers who have a proven ability to efficiently, effectively and equitably deliver Indigenous legal assistance (ATSILSs).

3. Future program guidelines and other program documents should explicitly acknowledge that Aboriginal and Torres Strait Islander community controlled organisations are best placed to deliver culturally appropriate and culturally safe legal assistance services to Aboriginal and Torres Strait Islander communities.

4. The Commonwealth, the NATSILS and ATSILSs should work in partnership to more clearly articulate the meaning of ‘culturally appropriate’ legal assistance services under the ILAP. This work could also inform other grant programs providing legal service funding for Aboriginal and Torres Strait Islander people.

5. The Commonwealth, the NATSILS and ATSILSs should work in partnership to develop future frameworks for ILAP service delivery, including the potential development of service benchmarks to allow comparable workload expectations across legal assistance grant programs.

6. While the priority disadvantage categories broadly capture key areas of disadvantage, they should be reassessed in light of current and projected overrepresentation trends. The use of priority disadvantage categories should also be re-assessed as to whether they are the most appropriate way to target and respond to the complex, multifaceted disadvantage commonly experienced by ATSILSs’ clients.

7. The Commonwealth, the NATSILS and ATSILSs should work with relevant state and territory agencies, FVPLSs, LACs and CLCs to develop strategies to expand interpreter services. This could include consideration of:
   a. Increasing investment in remote, very remote and regional areas where there are linguistically diverse Aboriginal and Torres Strait Islanders communities, particularly where English is the second, third or fourth language spoken,
   b. Expanding the availability of both female and male interpreters in courts, to support cultural and gender safety for clients to disclose matters related to family and domestic violence, and
   c. Directing future ILAP grant funding towards expanding the pool of available interpreters or employing interpreters within ATSILSs, where this does not lead to a reduction in levels of other criminal legal assistance.

8. Future funding arrangements should consider the important role that ATSILSs’ staff play in strengthening the cultural competency of the justice system, and consider what strategies could be put in place to support or enhance this work.
ToR 2 - Collaborative Service Planning (CSP)

Term of Reference 2 of the Review is to assess the effectiveness, efficiency and appropriateness of the ILAP and its progress towards meeting its objectives and outcomes, with regard to the implementation of collaborative service planning, and the extent to which it is contributing to the objectives and outcomes of the ILAP.

Context

Collaborative service planning (CSP) is a requirement for service providers under the ILAP. The *Programme Guidelines: Indigenous Legal Assistance Program 2015-16* state that: “Indigenous legal assistance providers will work collaboratively with state and territory justice agencies and other legal assistance providers including LACs and community legal centres to enhance coordinated service delivery across the sector. This will include attending and participating in jurisdictional service planning processes.”

CSP was introduced as a requirement under both the ILAP and the NPA by the Commonwealth Government in response to recommendations of the Productivity Commission’s *Access to Justice Arrangements Inquiry*. CSP is not specifically defined under the ILAP, but aims to ensure services are coordinated across the legal assistance sector and are targeted to those most in need. CSP also aims to contribute to cost effectiveness by reducing duplication and supporting the delivery of legal assistance services which are tailored and proportionate to the client’s individual needs.

This section of the report also includes a discussion of collaborative or joined up service delivery under the ILAP. The ILAP Service Delivery Principles include that legal assistance providers, governments and other service providers should “collaborate to provide joined up services to address clients legal and other problems”. Collaborative, coordinated or joined up service delivery is more likely to address the diversity of an individual client’s needs and provide a holistic response. Collaborative or joined up service models support best-practice, holistic service delivery.

<table>
<thead>
<tr>
<th>Headline Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>4</strong></td>
</tr>
</tbody>
</table>

---

248 AGD 2014b, at page 4.
250 AGD 2018b and NATSILS 2018b. Guidance in relation to CSP is also provided under the NPA.
251 AGD 2014a and AGD 2018b.
252 AGD 2014b.
253 The *National Strategic Framework for Legal Assistance 2015-2020* identifies collaboration as supporting ‘joined-up services’ between legal and non-legal providers, in order to enable people’s problems to be dealt with holistically and in a way which is tailored to meet an individual’s diverse needs. This also includes the provision of dedicated, culturally appropriate legal assistance services for Indigenous clients: AGD 2014a.
254 Holistic and best practice service delivery are also discussed in this report at: ‘Background – 4, Indigenous Legal Assistance Program (ILAP), Best practice service delivery’ and ‘Review Findings and Insights - ToR 1 Delivery of Services’.
i. Implementation of CSP

Key findings

- CSP for Indigenous legal assistance services is being actively implemented through a range of formal and informal strategies, partnerships, information sharing and collaborative arrangements, forums and committees.
- Both CSP and collaborative, coordinated or joined-up service delivery are supported by long running and well-established networks between the NATSILS, ATSILSs, other legal assistance providers, ACCOs, government agencies and community organisations.
- The capacity of ATSILSs and other partners to actively contribute to CSP varies across jurisdictions.
- There is potential for CSP to be improved or enhanced, including in relation to the delivery of services to regional and remote areas.

*CSP is being actively implemented through a range of strategies with the support of the ILAP*

Feedback collected through the consultations and submissions to the review was consistent in reporting that regular collaboration occurs between ATSILSs, legal assistance providers, ACCOs, government agencies and the community sector, in order to plan the delivery of legal assistance services to priority areas of need in a coordinated way.\(^{255}\)

CSP for the delivery of legal assistance services occurs through a range of formal and informal arrangements. Every ATSILSs participates in CSP forums that includes state and territory legal assistance forums which meet quarterly at a minimum.\(^{256}\) National forums such as the Australian Legal Assistance Forum (ALAF) is a mechanism for engagement between the peak legal bodies which meet twice a year. The ALAF facilitates informing CSP by promoting cooperation between legal assistance service providers, regularly disseminates information and informs governments on coordinated recommendations.\(^{257}\)

These forums bring together a large number of organisations, legal service providers, community and government agencies to consider legal assistance issues in a cooperative way. A detailed list of organisations that participate in legal assistance forums with ATSILSs at the state/territory level was provided by the NATSILS and is included at Appendix G.\(^{258}\)

Other mechanisms to support CSP include written agreements between organisations, interagency forums focused on community service delivery, working groups, and information sharing arrangements. Formal Memorandums of Understanding (MOUs) exist between ATSILSs and LACs in most if not all jurisdictions.

---

\(^{255}\) See for example, the AGD advised in its submission to the review that ATSILSs are very active participants in the (legal assistance) planning processes and provided a number of examples (at Attachment E, 2018b). See also NATSILS 2018b and NLA 2018a.

\(^{256}\) NATSILS 2018b.

\(^{257}\) AGD 2018b and NATSILS 2018b.

\(^{258}\) Further information about ATSILSs participation in CSP with other legal assistance providers for each jurisdiction was identified by the review of the *National Partnership Agreement on Legal Assistance Services 2015-2020*: Urbis Forthcoming.
Some examples of written agreements to support CSP between ATSILSs and other organisations are listed below.

These include agreements established before the current ILAP funding period:

- Legal Aid NSW and the ALS NSW/ACT signed a MOU in 2006 and a Statement of Commitment in 2011. The agreement formalises protocols for ‘warm’ referrals\(^ {259}\) and cross referral pathways for clients. The MOU includes salary support for ALS Aboriginal Field and Care and Protection Officers.\(^ {260}\)

- An MOU between VLA and VALS facilitates the exchange of information, expertise, practice resources, data, research, training opportunities and contact details. It confirms that VLA will provide support for VALS clients and provide details relevant to client matters to VALS in a timely matter.\(^ {261}\)

- The Western Australia Family Law Pathways Network (WAFLPN) facilitates collaboration between ALSWA, Legal Aid WA, WA Departments of Communities, Family Court of WA, Community Legal Centres Association of WA, and other services providers, with the aim of improving assistance to separated or separating families.\(^ {262}\)

- An MOU between TACLS and the Tasmanian Regional Aboriginal Communities Alliance (TRACA) supports the development, provision, promotion and administration of appropriate access to legal assistance to Aboriginal and Torres Strait Islander people in Tasmania. This includes TRACA providing cultural awareness training for TACLS staff and acting as a cultural advisory group to TACLS.\(^ {263}\)

- The Victorian Aboriginal Justice Advisory Committee (AJAC) and the nine Regional Aboriginal Justice Advisory Committees (RAJACs) established throughout Victoria are collectively developing a partnership with ACCOs including VALS, the Victorian Aboriginal Education Association Inc, and the Victorian Attorney-General’s Department. The committees support the Victorian Departments of Justice and Human Services to improve service delivery, accessibility and justice outcomes.\(^ {264}\)

**Well established relationships and networks exist between ATSILSs and other relevant organisations**

During the consultations, legal assistance providers and community organisations across jurisdictions consistently reported that the provision of legal assistance services by ATSILSs is supported by long running, positive relationships and well-established networks. As previously discussed in this report,\(^ {265}\) local relationships and networks are essential to ensure effective service delivery to Aboriginal and Torres Strait Islander clients.

These networks and relationships are seen to support coordination in both the planning and delivery of services, including warm referrals between organisations for ATSILSs’ clients. NACLC, for example, reported

\(^ {259}\) ‘Warm referrals’ refers to a service contacting another service on a client’s behalf to provide information, a handover or otherwise support transition between the services for the client. Warm legal assistance referrals can involve the passing of case information or case histories, and/ or providing a summary of client instructions so that the client does not need to repeat their instructions in detail to the new service. For more information on warm referrals see for example: Forell et al. 2013.

\(^ {260}\) See NSW Department of Justice 2012, Legal Aid Commission NSW and ALS NSW/ ACT 2013 and Legal Aid Commission NSW 2018.


\(^ {262}\) Western Australia Family Law Pathway Networks 2017.

\(^ {263}\) NATSILS 2018b, Case Study at page 33.

\(^ {264}\) Department of Justice and Community Safety Victoria. Undated.

\(^ {265}\) See: ‘Review Findings and Insights - ToR 1 Delivery of Services’.
that 15% of CLCs partner with ATSILSs in the delivery of legal services, 11% of CLCs partner with ATSILSs in policy, advocacy and law reform projects, and 10% of CLCs partner with ATSILSs in the delivery of community legal education.266

An example of the implementation of effective CSP and coordinated service delivery is demonstrated in Victoria by the Barreng Moorop Youth Justice Program. This involves VALS, the Victorian Aboriginal Child Care Agency (VACCA) and Jesuit Social Services working in partnership to plan holistic responses and link clients to wrap-around support options. These include referrals to community services, intensive caseworker support and preventive programs.

There is evidence of ATSILSs supporting collaboration between services and court users to create innovative and culturally responsive sentencing outcomes for Aboriginal and Torres Strait Islander clients, who present higher overall rates of breach due to non-attendance at court.

**Case study, SA Nunga Court**

ALRM in South Australia (SA), for example, leverage their long-standing relationships with magistrates, Aboriginal Justice Officers, Elders, community representatives and social service providers to support the Nunga Court. The Nunga Court is a culturally appropriate sentencing court that enables Aboriginal and Torres Strait Islander court uses to have their voice heard in a culturally appropriate way, and with the support of relevant services267. ALRM provides capacity building and training for the “Granny’s Group” of Elders or ‘Respected Persons’ to participate in the courts. Elders volunteer their time to participate in the Nunga Court. The Nunga Court model resulted in a turnaround of non-attendance reduced from 75% to 25% in the first year of operation and has inspired the development of other Koori courts and similar nationally.268 The program sits within the SA Magistrates Court.

**Case study, Qld Community Justice Groups**

In the Thursday Island and Northern Peninsula Areas of Queensland, Community Justice Groups were initiated in 2008 in the absence of Murri Courts in these areas. Community Justice Groups are informal collaborative partnerships involving ATSILS Qld, prosecutors, magistrates, probation and parole officers and Elders. Through Community Justice Groups, Elders volunteer to provide counsel in courts and participate in dispute mediation. Magistrates report that cultural mediation often results in matters resolving without court intervention or before a plea is taken. ATSILS Qld plays a key role in driving successful outcomes for Community Justice Groups by applying their cultural and legal experience to identify appropriate clients and matters for cultural mediation.269 Funding for Community Justice Groups is provided by the Queensland Government. The ILAP does not provide funding for courts programs, but the participation of ATSILSs staff in these programs and courts is consistent with the terms of ILAP funding agreements.

---

266 NACLC 2018a, reporting figures from the National Census of Community Legal Centres. 2017 National Report
267 Courts Administration Authority of SA Undated.
268 Consultation with stakeholder R4.
269 Consultation with stakeholder R153.
Barriers and limitations impacting collaboration across both planning and service delivery were reported to the review. Examples reported to or identified by the review included:

- The NATSILS (2018b), NACLC (2018b) and some individual ATSILSs reported that there is inconsistency and limited information-sharing in some jurisdictions. Considerable variation in the implementation of CSP across stakeholders in different jurisdictions was also identified by the NPA review conducted in 2018.270

- Some ATSILSs reported an apparent reluctance amongst selected government agencies to involve ATSILSs in service planning or policy reform at early stages. Some ATSILSs suggested tensions in relationships between ATSILSs and justice agencies in selected jurisdictions because of the advocacy role played by ATSILSs, for example, one ATSILS staff member reported: “[Department] are not good at information sharing. Once you make a criticism of them in court, they shut down on you”.271 The views of state and territory justice agencies regarding collaboration with ATSILSs and other legal assistance providers were not captured in the review.

- At the same time, some ATSILSs’ staff reported that they receive greater demands for their advice and consultation from government and other agencies that they can respond to within available resources.

- The review consistently heard that ATSILSs lacked the capacity to fully participate in all potential partnership or collaboration opportunities, in terms of both service planning and service delivery. Some other legal assistance providers and government representatives reported that ATSILSs were not able to participate in interagency forums consistently. The NATSILS in its submission to the review, and some individual ATSILSs’ staff, identified that time allocated to service planning competes with frontline service delivery. Some legal assistance providers also identified this as a reason that ATSILSs’ staff did not consistently participate in all planning, service delivery or partnership opportunities.

- The NATSILS (2018b) reported that it does not have sufficient resources to engage on national issues with state and territory governments in a collaborative and strategic way.

- As previously discussed,272 it was repeatedly reported that there is a lack of (culturally) appropriate services to collaborate with, or to refer clients to, in some locations. This picture is consistent with the findings of the recent ALRC’s Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (2018) that identified a lack of support services and rehabilitation options as a driver of demand for legal services. Lack of culturally safe services is also a barrier for Aboriginal and Torres Strait Islander people accessing assistance or successfully completing programs.

- Staff turnover can be a barrier to CSP and collaborative service delivery, as new staff take time to build knowledge and contacts.

- Various ATSILSs reported that the short-term nature of available funding for piloting and implementing early intervention and wrap around services from various funding sources is a barrier to sustaining collaborative partnerships to deliver these kinds of services.

270 Urbis Forthcoming.
271 Consultation with stakeholder R84.
272 See ‘Review Findings and Insights - ToR 1 Delivery of Services’.
The AGD submission to the review identified examples where it considers that CSP could have been improved in relation to regional and remote service delivery in the funding period. The AGD reported:

- The Legal Services Commission of South Australia (LSCSA) withdrew services in the Anangu Pitjantjatjara Yankunytjatjara (APY) lands of South Australia. It did not consult with other service providers. Because of this withdrawal, the ALRM has stated that it ‘carries the burden of representation of services in the APY lands’. The LSCSA is reluctant to provide services due to cost and the remoteness of the APY lands.273

- As part of a restructure approved by its board, the ALS NSW/ACT closed its office in Taree in July 2017. Legal Aid NSW wrote to the AGD to indicate that it was not consulted and that this would have an impact on its service delivery. Legal Aid NSW has subsequently closed one of its Aboriginal and Torres Strait Islander focused parole programs to meet the costs of servicing the gaps left by the closure of the ALS NSW/ACT Taree office.274

- Legal Aid Western Australia closed the Kalgoorlie office resulting in a lack of legal aid lawyers available in Kalgoorlie, and a lack of alternatives for ALSWA to refer clients to, where there was a conflict of interest.275

The review also heard other examples of both justice agencies and ATSILSs making changes to their service delivery in the reporting period, leading to concerns about inadequate consultation or coordination, such as the change or closure of bush courts in the Northern Territory.

In each of these cases, the withdrawal of one service provider from an area consequently resulted in another service provider taking the overflow of demand and absorbing the costs of servicing clients. This ‘gap shifting’ was identified as an area of concern by several stakeholders during the consultation for the review.

273 AGD 2018b. See also discussion of the impact of the withdrawal of Legal Services Commission of South Australia withdrew services from APY Lands in NATSILS 2018b.
274 AGD 2018b, at page 43.
275 AGD 2018b, at page 37.
ii. Contribution of CSP to the ILAP

Key findings

- CSP and collaborative or joined up service delivery are being actively implemented to maximise the reach of legal assistance to areas of greatest need, to avoid duplication, to address the diversity of needs which are driving demand for legal assistance services, and to provide holistic responses where possible within available resources.

- Significant examples of duplication or competition between ILAP funded services and other services were not identified.

- CSP is supported by key stakeholders – including the Commonwealth, the AGD, ATSILSs and the NATSILS and other legal assistance providers - as a valuable activity.

- Effective CSP and collaborative or joined up service delivery requires time and resources to share information, plan, consult, and develop and maintain relationships.

- There are mixed views as to whether the ILAP actively supports the implementation of CSP, and whether CSP in itself should be a measure of performance under the ILAP.

CSP and coordinated service planning are being implemented consistently with the aims of ILAP

ATSILSs actively participate in CSP processes across various sectors with the goal of addressing general disadvantage within the wider Aboriginal and Torres Strait Islander community, which is consistent with the objectives of the ILAP.

ATSILSs identified CSP and coordination in service planning as part of standard operations. They reported that coordinated or joined up service delivery has been implemented over many years in order to maximise the reach of services and where possible address the needs of clients holistically. This is consistent with the aim of CSP as identified by the AGD to “focus finite resources towards areas of greatest legal need and maximise service delivery with minimal duplication.”

While CSP is actively implemented, greater investment in CSP as a tool for research and mapping of need was suggested by several stakeholders. CSP was seen as a valuable mechanism to identify and respond to current or projected service gaps. However, a number of ATSILSs and legal assistance sector stakeholders consulted for the review raised concerns that information about service gaps did not result in resources being allocated to fill those gaps, for a range of reasons which included the large scale of need within the community for legal assistance services, and resource constraints.

276 AGD 2018b, at page 42.

277 For example, NATSILS 2018b.
**Duplication and competition were not identified by the review**

The ILAP review did not identify evidence of significant service duplication or competition between the services funded by ILAP and delivered by ATSILSs, and other legal assistance services. Generally, ATSILSs and other stakeholders reported that cooperative relationships exist between ATSILSs and other legal assistance providers, court users, government agencies, Aboriginal and Torres Strait Islander organisations and community service providers. The culturally safe services provided by ATSILSs were viewed by stakeholders consulted for the review as complementary to the services provided by the broader legal assistance sector.

Where ATSILSs and other legal assistance providers deliver a similar service, duplication did not result due to the large scale of need within the community.

NLA reported that CSP across the legal assistance sector (including ATSILSs) had been adversely affected by both concerns about competitive funding environments and the potential future funding reductions.

The potential effects of competition on collaboration were also identified by the review of the NPA conducted in 2018.

**CSP and collaboration in service delivery are considered valuable activities by the sector**

CSP is considered a valuable activity by the Commonwealth Government, the AGD, ILAP service providers, and other legal assistance providers. Perspectives from individual practitioners on CSP under ILAP provided to the review include:

- **TACLS**: TACLS continues to attend the service planning meetings. We see these meetings as an opportunity to hear from other service providers as to the issues they face within the legal services sector and as a useful opportunity to encourage collaboration on projects.

- **NAAJA**: The meetings are transparent and informative, and the NTLAF (the Northern Territory Legal Assistance Forum) members and Commonwealth and NT government agencies have good working relationships.

- **ALRM**: Collaborative Service Planning has been useful, to provide a holistic response to Aboriginal clients and communities. They are however limited to the rationalisation of and improved cooperation within work that is undertaken with limited and static resources for an ever-increasing demand. In other words, they help to some degree, in addressing legal needs, but they do so in circumstances where the paint is already spread much too thinly.

**There are mixed views as to the value of CSP as a performance measure under the ILAP**

While the review consistently heard that there is strong support for CSP to continue and be enhanced under the ILAP, the NATSILS (2018b) suggested that CSP in itself is not a valuable measure of performance under the ILAP, particularly as ATSILSs and the NATSILS are not provided specific resources to participate in CSP.

---

278 NATSILS in its submission noted that a lack of information sharing had led to some duplication of services. An example of competition reported to the review was provided by the Tasmanian Aboriginal Corporation (TAC). TAC was a previous recipient of ILAP funding.


280 Consultation with stakeholders R62 and R63, and consultation with FVPLS evaluation team.

281 NLA 2018a.

282 Urbis Forthcoming.


284 AGD 2018b.

285 NATSILS 2018b.

286 NATSILS 2018b, at page 54.
and that CSP activities can compete with direct service delivery. The AGD (2018b) identified that it is difficult to measure the impact that CSP has in facilitating the objectives of the ILAP.

There is support for the Commonwealth to take a greater leading role in supporting CSP

Stakeholders including the AGD, NLA, ALAF, NACLC and the NATSILS identified that the Commonwealth is well placed to support greater consistency for CSP. The NLA, for example, advised that in 2018 Victoria Legal Aid hosted a Collaborative Service Planning Symposium attended by key representatives from most Australian jurisdictions, and that it may be more efficient and appropriate for the Commonwealth to facilitate collaboration events on a national scale.287 The NATSILS in its submission to the ILAP review noted that the Commonwealth Government is the only common stakeholder which attends CSP at state and territory levels, yet information and insights from these processes are not consistently communicated to other legal assistance sector bodies to assist their planning. This indicates a further opportunity for the Commonwealth to enhance mechanisms for communication and information exchange.

287 NLA 2018b.
iii. Collaboration for holistic service delivery

Key findings

- The review identified numerous examples of legal assistance being delivered in a holistic way by ILAP recipients through formal and informal collaborations that result in positive outcomes.

- While the ILAP supports joined-up service delivery where possible within available resources, the review did not identify examples of holistic service delivery funded exclusively through the ILAP.

ATSILSs seek to provide holistic service delivery where possible

Consistent with the aims of the ILAP, ATSILSs provide joined-up services where possible within resource constraints. The review found that a holistic approach to service delivery is a key principle for ATSILSs. Some ATSILSs refer to their service as a ‘one-stop-shop’, providing clients access to legal services and to other community and social support services that impact on their wellbeing and justice outcomes.288

ATSILSs staff consulted during the review reported that they generally lacked the resources to provide a best practice, holistic response to a diverse range of clients’ needs within available resources. However, the review identified a number of examples of innovative, collaborative, holistic service delivery and initiatives to increase cultural safety in the justice system. Some examples are included below, and in other sections of the report.

Case Study: NAAJA & MIWATJ HEALTH JUSTICE PARTNERSHIP

The NATSILS reported to the review that in 2017, NAAJA initiated the development of a Health Justice Partnership (HJP) with the Miwatj Health Aboriginal Corporation in remote Nhulunbuy, NT. The resulting Máwaya HJP focuses on unmet civil legal needs as a social determinant of health. A pilot program funded a HJP Social Worker for six (6) months. The pilot led to improved coordination of legal services at Nhulunbuy, more holistic responses for mutual clients/patients and greater awareness amongst health professionals of legal issues and referral pathways. The pilot is currently being reviewed, and there is a focus on secure future funding. The NATSILS reports that this may be the first HJP between an Aboriginal Community Controlled Health Organisation and an ATSILS.289

ATSILSs also demonstrated examples of holistic service delivery in their implementation of ‘throughcare’ or post release support programs, delivered with the support of funding sources beyond the ILAP.290

Throughcare projects aim to reduce repeat offending by addressing the needs of young people and adults in the prison system and supporting their successful reintegration within the community.291 Throughcare varies by project, reflecting a localised or ‘place-based’ approach. Challenges faced by throughcare projects, as


289 Consultation with stakeholders R12 and R68.

290 NATSILS 2018b, at page 88.

291 This includes: ATSILS Qld, NAAJA, VALS, ALSWA and ALS NSW/ACT.

292 Council of Australian Governments, as quoted in ALRC 2018, at 5.43 in relation to the Commonwealth Prison to Work program.
with other holistic service delivery, includes gaps in essential community services in the community, such as housing.293

Case Study: NAAJA INDIGENOUS THROUGHCARE PROJECT

The NAAJA Indigenous Throughcare Project provides intensive pre- and post-release rehabilitation and reintegration services for Aboriginal prisoners from the Darwin Correctional Centre and Don Dale Juvenile Detention Centre. The program provides case management and referral services for individual prisoners to assist them in accessing opportunities as required for rehabilitation, accommodation, employment, education, training, health, life skills, reconnection to family and community and social connectedness.

The NAAJA engages with Aboriginal prisoners and juvenile detainees in the six months prior to their release and continues to work with clients for the six months after their release from custody. Clients are assessed on their willingness to engage with the service and their demonstrable level of high need, indicated for example by homelessness, literacy issues, lack of community support or substance abuse.

Since commencement in February 2010, the Throughcare Team has case managed 912 clients. The NATSILS reports that 117 (approximately 13%) clients have returned to prison whilst being under the program, compared to the NT recidivism rate of 60%.294

The Report into Royal Commission into the Protection and Detention of Children in the Northern Territory highlighted the value of the NAAJA program, to fill a gap in adequate exit planning and arrangements for post-release services by the Northern Territory Government.295 It also acknowledges the contribution of increased cooperation between the NAAJA and youth detention case management services in enhancing the quality of the throughcare support. The Throughcare Project is funded by the Department of Prime Minister and Cabinet.

Programs designed to provide holistic legal assistance tend to be funded from other sources

In a number of cases, ATSILSs receive funding support through sources other than the ILAP to support collaborative activities, including alternative Commonwealth grant programs, state and territory funding grants and other revenue streams.

The NATSILS reported in its submission to the review that most of ATSILS’s early intervention and prevention programs, wrap-around, rehabilitation and throughcare services have been funded through sources other than the ILAP. The Commonwealth Government through the National Strategic Framework for Legal Assistance Services 2015-2020 acknowledges that fully joined-up legal assistance services are costly to implement, and should only be pursued where appropriate and practicable within resource limitations.296

293 ALRC 2018.
294 NATSILS 2018b, at page 37.
295 The Report into Royal Commission into the Protection and Detention of Children in the Northern Territory 2017.
Case Study: NAAJA KUNGA STOPPING VIOLENCE PROGRAM

The Kunga program works with women in custody at the Alice Springs Correctional Centre for a violent offence. It aims to reduce recidivism rates, support women to transition back into the community, and increase the safety of women and children through stopping cycles of violence.

The program provides a four-week training course in prison focused on developing skills, resilience and confidence regarding their response to violence, relationships, coping strategies and healing. The clients receive continued visits from case managers and are assisted to make plans for their release in relation to employment, education, transitional housing and finances. The program continues to work with women for 12 months after they are released through intensive support, home visits, referrals, mentoring and a drop-in space in central Alice Springs.297

From January to June 2018, the Kunga program worked with 50 women using local facilitators. Staff also worked directly with clients in communities both in Alice Springs and in remote areas of the NT.

Participants indicate the program is demonstrating positive effects. Participant ‘Grace’ said:

*It made me think about my community and how we end up in prison. I didn’t know about how to control (the situation), but when this program came it helped me to…think how we should be a strong person*298.

The Kunga program staff work collaboratively with many government and non-government partners to help provide holistic support to women and their families. These include: Alice Springs Correctional Centre, Community Corrections, NT Police, Anglicare, Catholic Care, NPY Women's Council, Alice Springs Women's Shelter, NT Legal Aid Commission, Mental Health Association Central Australia, Sexual Assault Referral Centre, Territory Families, Lutheran Care, Mission Australia (Stuart Lodge and Post Release Program), Territory Housing, Centrelink, Central Australian Youth Link Up Service (CAYLUS), Tangentyere, Central Australia Mental Health Service, Drug and Alcohol Services Australia Limited (DASA), Central Australian Aboriginal Alcohol Programmes Unit (CAAAPU), Barkly Region Alcohol and Drug Abuse Advisory Group Incorporated (BRADAAG), The Council for Aboriginal Alcohol Program Services (CAAPS) and Affordable Housing, Tennant Creek Women's Refuge, Relationships Australia, and Grevillia Child Care (YMCA).299

The Institute of Criminology and The Northern Institute are partnering for a formal evaluation of the Kunga Project at the 12-month mark. The Kunga Program receives funding under the General Grants Safety and Wellbeing Program from the Department of the Prime Minister and Cabinet.

There is interest in this program being replicated in other jurisdictions. For example, the ALRM will trial the Kunga Program for Aboriginal women based at the Port Augusta prison, with the support of a grant from the South Australian Government.301

---

297 NAAJA Undated.
298 Maddocks 2016.
299 NATSILS 2018b, at page 37.
300 As above.
301 Department of Corrective Services South Australia c2017.
Case Study: ALS NSW/ACT NGURRAMBAI BAIL SUPPORT PROGRAM

The Ngurrambai Bail support program is funded by the ACT Government, Justice and Community Safety Directorate. The bail support program is aimed at reducing the number of Aboriginal people on remand and the time spent on remand by providing court based and outreach client support. This program may be undertaken on a voluntary basis or mandated as a condition of bail. The program will help with support, treatment and monitoring and supervision of the client to help complete their Bail Conditions successfully. The program aims are to reduce re-offending while in bail, decrease court appearances and provide magistrates and police with alternatives to remand or incarceration. ALS will set up a Care Plan for the client, support the client throughout the bail period and link them with referrals to other supports. This program has been observed to have reduced the rates of clients’ breaching their bail conditions within a year of its inception.\(^\text{302}\)

\(^{302}\) NATSILS 2018b, ALS NSW/ACT 2018, and consultations with R108, R110 and R111.
Future directions and opportunities for reform ToR 2

9. Future ILAP arrangements should consider how CSP for legal assistance service delivery to Aboriginal and Torres Strait Islander people can be supported at all levels: national, state/territory and regional/local.

10. Future ILAP arrangements should consider how ATSILSs can be supported to participate in CSP activities in a way that does not compete with frontline service delivery.

11. Future CSP processes should be governed by clear structures and timetables, which include appropriate processes for ATSILSs to be involved and sufficient time for community consultation where necessary.

12. Opportunities to enhance CSP across the legal assistance sector through Commonwealth leadership should be considered. These could include:
   a. clear national standards for CSP which could be applied across legal assistance funding programs,
   b. national inter-agency forums,
   c. coordination across national peak legal assistance bodies,
   d. facilitation of increased state and territory government participation,
   e. facilitation of strategic information sharing, and
   f. promoting best practice within the sector.

13. Future ILAP arrangements should consider opportunities to provide greater support for the NATSILS to provide national strategic sector support for CSP.

14. Future ILAP arrangements should consider how CSP can be enhanced as both a tool for research and for mapping need.

15. Future ILAP arrangements should consider how CSP can be enhanced as a mechanism to facilitate or require legal assistance services to fill identified priority service gaps.
ToR 3 - Funding Allocation

Term of Reference 3 of the ILAP Review is to assess the effectiveness, efficiency and appropriateness of the ILAP and its progress towards meeting its objectives and outcomes, with regard to the effectiveness, efficiency and appropriateness of current funding arrangements for ATSILS and the NATSILS in meeting the objectives and outcomes of the ILAP, including consideration of:

a. the drivers of demand for ATSILS
b. how and whether the funding supports the achievement of the objectives and outcomes of the ILAP
c. the interaction between the ILAP and other Commonwealth funding arrangements for legal assistance services.

Context

This section of the report includes discussion of ILAP funding allocation in the context of priority areas of need and drivers of demand. As discussed earlier in the report \(^{303}\) ILAP funding is administered to ATSILSs and the NATSILS through individual grant agreements, in accordance with the *National Strategic Framework for Legal Assistance Services 2015-2020* and the *Programme Guidelines: Indigenous Legal Assistance Program 2015-16*. ILAP funding grants are for a five-year period from 2015 to 2020.

Within the quantum of available ILAP funding, funding is allocated between service providers using a Funding Allocation Model (FAM). The FAM is comprised of four main components: \(^{304}\)

1. **Establishment cost:** Jurisdictions with a smaller Aboriginal and Torres Strait Islander population receive a larger portion of establishment cost funding relative to their Aboriginal and Torres Strait Islander population size.

2. **Population:** Funding is allocated using each jurisdiction’s share of the national Aboriginal and Torres Strait Islander population. ABS projections of Aboriginal and Torres Strait Islander population growth are used to estimate the population over the funding period.

3. **Legal need:** The legal need component allocates funding using the number of Aboriginal and Torres Strait Islander people in specific high disadvantaged groups. The disadvantage drivers used in the ILAP FAM are:
   - disability,
   - drug/alcohol use and mental illness,
   - Indigenous language speakers (English as second, third or fourth language or limited language skills),
   - low education levels,
   - low income,
   - members of the stolen generation,
   - number of overcrowded households,
   - prisoners, and
   - single parent families.

\(^{303}\) See ‘Review Findings and Insights - ToR 1 Delivery of Services’ and ‘ToR 4 Performance Monitoring, Reporting and Data Collection’.

\(^{304}\) AGD 2015a.
4. **Cost factors**: Accounts for differences between jurisdictions in the cost of delivering Indigenous legal assistance services. These factors are applied as ratios to all funding allocated by the FAM. Three factors have been used, which are sourced from the Commonwealth Grants Commission (CGC) as follows:

i. CGC wage cost factor: variations of wages paid due to labour markets,

ii. CGC regional factor: variation of costs of delivering services between regions and higher wages to entice remote workers, and

iii. CGC service delivery scale factor: Increased costs of goods and delivery of services to small isolated communities.\(^\text{305}\)

The interaction between the ILAP and other Commonwealth funding arrangements for legal assistance services is discussed later in the report.\(^\text{306}\)

<table>
<thead>
<tr>
<th>Headline Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>3</strong></td>
</tr>
<tr>
<td>ToR 1 – Including appropriateness of current funding arrangements to address priority needs</td>
</tr>
<tr>
<td>ToR 3 – Including effectiveness of funding arrangements in light of drivers of demand</td>
</tr>
</tbody>
</table>

| **5** | In recognition that a high level of legal need is present and that current funding arrangements deliver cost effective, high quality, culturally appropriate and accessible legal services consistent within the objectives of the Indigenous Legal Assistance Program, future arrangements under the Indigenous Legal Assistance Program should continue to provide **funding for Aboriginal and Torres Strait Islander Legal Services** to deliver legal assistance services to Aboriginal and Torres Strait Islander clients. |
| ToR 1 – Including the impact of the ILAP to promote services which are effective, efficient, high quality, culturally appropriate and represent value for money |
| ToR 3 – Including the effectiveness, efficiency and appropriateness of funding arrangements for ATSILSs and the NATSILS |

| **6** | In order to support an effective Indigenous legal assistance sector, the Indigenous Legal Assistance Program should continue **funding for the National Aboriginal and Torres Strait Islander Legal Services** to provide sector development and support, program support, and other activities which address Aboriginal and Torres Strait Islander disadvantage in the justice system, including law reform activities. |
| ToR 1 – Including the appropriateness of current funding arrangements in consideration of the current landscape of the legal assistance sector |
| ToR 3 – Including effectiveness, efficiency and appropriateness of funding arrangements for ATSILSs and the NATSILS |
| ToR 5 – Including the broader role of the NATSILS |

\(^{305}\) AGD 2018b.

\(^{306}\) See: ‘Review Findings and Insights – ToR 5 Governance, Roles and Responsibilities’ and ‘ToR 6 Other areas and opportunities for improvement.’
<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>7</strong></td>
<td>To ensure appropriate and effective oversight of the Indigenous Legal Assistance Program, future management and administration of the Indigenous Legal Assistance Program should be provided by a <strong>Commonwealth Department with specialised skills, expertise and cultural competency</strong>. Future changes to the management and administration of the Indigenous Legal Assistance Program should be considered following the completion of the national reviews and/or evaluations of current funding arrangements for Family Violence Prevention Legal Services, Legal Aid Commissions and Community Legal Centres.</td>
</tr>
</tbody>
</table>
|   | ToR 1 - Including appropriateness and utility of current funding arrangements
|   | ToR 3 – Including interaction of ILAP and other funding arrangements
|   | ToR 4 – Including utility of performance monitoring and reporting arrangements
|   | ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and the NATSILS |
i. Directing services to priority areas of demand

Key findings

- Aboriginal and Torres Strait Islander people remain significantly disadvantaged within the justice system compared to other Australians. Overrepresentation in the criminal justice system is a key driver of demand for legal assistance services. Overrepresentation is worsening, particularly in relation to women and young people. There are also significant unmet and growing needs in the areas of civil law, family law, and child care and protection.

- Key drivers of demand for legal assistance include but are not limited to: state and territory criminal justice practices and legislation, socio-economic inequality, and limited access to support services including services to prevent legal issues or address legal needs early before they escalate.

- The legal assistance services provided through the ILAP by ATSILSs play an important role in addressing the disadvantage experienced by Aboriginal and Torres Strait Islander communities in the justice system, with a focus on immediate needs. The significant majority of ILAP funding is used to provide advice and representation on criminal law matters. ATSILSs are limited in their capacity to address overrepresentation within the criminal justice system through early intervention and prevention initiatives within available resources.

- The flexibility provided through the ILAP for ATSILSs to determine service priorities and service locations within their jurisdiction remains appropriate.

- ATSILSs are uniquely placed to provide expanded services to meet unmet legal needs within Aboriginal and Torres Strait Islander communities.

Criminal justice is a priority area of need

An overview of key areas of legal assistance need and drivers of demand within the Aboriginal and Torres Strait Islander communities is discussed earlier in the report. Information provided to the review by frontline practitioners, court users, the legal assistance sector, other legal groups and community organisations was consistent with current literature about priority areas of legal assistance need within Aboriginal and Torres Strait Islander communities.

Overrepresentation in the criminal justice system remains a priority area driving demand for legal assistance services, with significant unmet need projected to grow, and particular growth in the overrepresentation of women and young people. Given the high level of criminal justice need, ATSILSs services delivered through the ILAP are appropriately prioritised in line with the ILAP aims and objectives to reduce disadvantage in the criminal justice system and improve access to justice, within available resources.

---

307 See ‘Background – 3. Aboriginal and Torres Strait Islander Legal Needs’.
There are also significant and growing levels of need in the areas of civil, family and child protection law

The review also found that there are large and increasing demands for legal assistance services in the areas of:

- victim’s support - particularly in relation to domestic violence,
- civil law - including housing and social security law,
- family law, and
- child care and protection – with very large growth in the numbers of child protection orders and child removals, and trends suggesting numbers will further increase in coming years.

Criminal, family and child protection legal assistance are often interrelated. For example, the rising need for child protection and family law matters may be influenced by increased incarceration rates of Aboriginal and Torres Strait Islander women as child protection orders frequently result from the imprisonment of a primary carer. The Victorian Equal Opportunities and Human Rights Commission highlight that socioeconomic factors can compound issues for Aboriginal and Torres Strait Islander women. For example, a chronic shortage of secure, safe and stable accommodation, exacerbated in regional areas, can result in women being denied bail.\(^{308}\)

ATSILSs reported to the review that high rates of Aboriginal and Torres Strait Islander child removals into institutionalised care by child welfare and protection services contributes to the cycle of demand for justice issues. ATSILSs also reported that a lack of cultural safety in child welfare services in some jurisdictions could lead to a disconnection of Aboriginal and Torres Strait Islander children from family and culture, especially if services do not facilitate kinship care or social supports arrangements that retain the child’s connection to their cultural identity.

Multiple Royal Commissions have highlighted an increased need for Aboriginal and Torres Strait Islander-specific legal assistance services and culturally safe community service providers to address child protection and family law matters. These include the Royal Commission into Family Violence in Victoria, Royal Commission into the Protection and Detention of Children in The Northern Territory, and the Royal Commission into Institutional Responses into Child Sexual Abuse. Findings from these Commissions include, for example, a recommendation for custody notification schemes to be introduced requiring policy to notify a lawyer from an appropriate legal service when a young person is brought into custody\(^{309}\). Another specific recommendation proposes involvement from NAAJA in developing and delivering a training program for Northern Territory Legal practitioners in youth justice and care and protection\(^{310}\). While such initiatives may play a role in enhancing assistance for youth in the justice system, they are also likely to contribute to demand for ATSILSs’ services.

Consultations with ATSILSs, LACs and court users revealed that the demand for civil, family and child protection legal services is increasing in regional, remote and very remote areas. Service data provided by the AGD (2018b) indicates increasing levels of service in these areas under the ILAP (refer to Figure 11).

\(^{310}\) The Royal Commission into the Detention and Protection of Children in the Northern Territory 2017, Recommendations 25.38 and 25.32.
Complex and intersecting legal problems

The review consistently heard that Aboriginal and Torres Strait Islander people have complex, intersecting legal problems that impacts on their demand for services. This is consistent with the literature. The NATSILS and ATSILSs reported that it was common for clients to present with multiple disadvantage drivers, as used in the ILAP FAM. The NATSILS provided case study examples in its submission to the review, including:

CASE STUDY: ALSWA YOUTH ENGAGEMENT PROGRAM

ALSWA assisted a 13-year-old female client who has Foetal Alcohol Spectrum Disorder (FASD) to hand herself into court on an arrest warrant after she had previously failed to attend court. ALSWA lawyers liaised with ALSWA Youth Engagement Program staff, who visited her at home, encouraged her to hand herself into the court and picked her up the next morning to take her to court. ALSWA staff stayed with her throughout the day before taking her home. The client remained in the physical proximity of her Youth Engagement Program diversion officer for the entire day, often holding onto her arm for support. The client was subsequently sentenced to a four-month Conditional Release Order (suspended sentenced of detention). ALSWA also provided further support to complete this order through ALSWA’s Youth Engagement Program (including transport and support for reporting to youth justice, constant reminders and ongoing mentoring).

ALSWA’s assistance avoided the client being arrested on a warrant and increased her chances of receiving a Conditional Release Order. ALSWA’s Youth Engagement Program support for the client’s completion of the order meant that the client avoided sentenced detention for breach (likely four months detention at an approximate cost to the state of $58,620).

This young girl told her ALSWA diversion officer lawyer that she was the first person who had ever helped her.
ILAP Contribution: ILAP allows Aboriginal young people to have access to culturally safe legal services. The Youth Engagement Program is not funded by ILAP.311

CASE STUDY: TACLS CRIMINAL LAW

A magistrate referred a duty lawyer matter to TACLS in the Devonport Magistrates Court. The client is a single mother with four children who has had a difficult life. The client had been charged with numerous charges of driving unlicensed and under the influence of illicit substances, and drug offences. The client had prior convictions for similar offences. The client disputed one of the charges but had already pleaded guilty. The TACLS lawyer negotiated with prosecution for a resolution which they accepted. They agreed to reduce the allegation of cannabis sold down from $3,9000 to $300 and the facts for the prosecutor to be amended accordingly.

The court allowed an amendment to the particulars of the selling charge. As the amount of cannabis alleged to have trafficked now significantly lower than that originally put, the client was no longer at risk of a term of imprisonment in custody. TACLS requested the client be placed with a residential treatment facility to address the client’s drug use. The court deferred the sentence to allow for her participation in this program. This increases the chances of a non-custodial sentence and for healing of the client’s substance abuse issues.312

Operational flexibility
The review concludes that it is appropriate and effective for the ILAP to continue to provide ATSILSs with flexibility in determining how they prioritise and locate services within their jurisdiction, within their allocation of funding. With the agreed framework, this approach acknowledges that ATSILSs are best placed to identify local communities’ needs, and would support the current service model. It is also an appropriate approach in light of the small number of grant recipients.313

ATSILSs are well positioned in the sector to provide expanded services
As discussed earlier in this report,314 ATSILSs are not the sole providers of legal assistance services to Aboriginal and Torres Strait Islander people. LACs, CLCs and FVPLSSs provide significant legal assistance services to Aboriginal and Torres Strait Islander people, though ATSILSs remain the primary providers of criminal legal assistance.315

ATSILSs were acknowledged as a preferred provider for legal assistance services by Aboriginal and Torres Strait Islander people themselves,316 with FVPLSSs playing a complementary but not competing role as preferred providers for Aboriginal and Torres Strait Islander communities who had experienced family violence. The NATSILS, ATSILSs, other legal assistance providers and community services providers consistently recommended to the review that ATSILSs were well positioned to provide expanded legal assistance services to address unmet needs.317

311 Edited version of case study included in the NATSILS 2018b, at page 20, referencing ALSWA, Performance Report Jan to June 2018 (2018).
313 ANAO 2015.
314 See ‘Background - 2. Legal Assistance in Australia’.
315 Law Council of Australia 2018b and AGD 2018b.
316 AGD 2018b, at page 23.
317 For example, the NATSILS Submission 2018, p59; NACLC Submission 2018, page 16.
ii. Funding allocation model

Key findings

- The allocation of funding between ATSILSs is broadly consistent with the objectives of the ILAP to reduce disadvantage in the criminal justice system and improve access to justice. It was not possible within the scope of the review to evaluate the appropriateness of ILAP funding allocations between ATSILSs, within the available quantum of funding.

- The Funding Allocation Model for the ILAP used to determine funding between ATSILSs, within the overall available funding, does not take sufficient account of:
  - the complexity and diversity of legal assistance needs for individual clients
  - the full costs of providing services to regional and remote areas and wage and other service cost increases.

- Current approaches to mapping and weighting legal need could be improved in the longer term through the development of data sets and analytical approaches that better capture the complexity of individual client needs, and service models which aim to deliver holistic services.

- There is a perception amongst ILAP grant recipients that ILAP funding allocation criteria and decisions are not transparent.

Funding allocation generally to ATSILSs is in line with the objectives of the ILAP

The high-level outcomes of the ILAP program are to improve access to justice for Aboriginal and Torres Strait Islander Australians and to reduce their disproportionate disadvantage in the justice system. The allocation of funding to ATSILSs to provide accessible legal assistance specifically to Aboriginal and Torres Strait Islander people is consistent with these aims.

ILAP funding provides ATSILSs with a relatively stable platform for the provision of quality legal assistance services in their communities. The review found considerable evidence that ATSILSs are delivering services that facilitate the achievement of the intended outcomes of the ILAP, in particular:

- legal assistance services are focused on and accessible by Aboriginal and Torres Strait Islander people,
- ATSILSs deliver quality legal assistance services that are appropriate and tailored to people’s legal needs and levels of capability,
- service providers collaborate to provide joined-up services to address people’s legal and other problems,
- legal problems are identified and resolved at the earliest opportunity before they escalate, within available resources, and
- Aboriginal and Torres Strait Islander Australians are empowered to understand and protect their legal rights and responsibilities and to address, or prevent, legal problems.

The review found that the current ILAP funding model, where one locally-run service per jurisdiction is funded to deliver services across a state or jurisdiction, was broadly supported by stakeholders, though some concerns were expressed about the lack of offices in regional and remote areas, as previously discussed in the report.
There are opportunities to improve the Funding Allocation Model

The review heard from the NATSILS, ATSILSs and other legal assistance providers that the ILAP funding allocation model could be improved to better take account of:

- the complexity and diversity of legal assistance needs for individual clients,
- the full costs of providing services to regional and remote areas, and
- wage and other service cost increases.

In relation to disadvantage drivers, the previous ANAO review of the ILAP suggested the inclusion of additional social and economic indicators of disadvantage may also enhance the capacity of the FAM to target available resources.\(^{318}\) The 2014 review of the NPA by the Allen Consulting Group also included recommendations that robust and consistent data be used as an evidence base to inform state-wide planning of service priorities and that funding be directly linked accordingly.\(^{319}\)

Additional indicators that could better capture contemporary measures of legal need; child protection or children at risk of removal, Foetal Alcohol Spectrum Disorder (FASD), hearing impairment, illiteracy, remoteness and/or transportation issues, trauma, youth in detention, and youth under twelve. However, some ATSILSs representatives expressed concern that expanding disadvantage driver categories may increase administration loads but have limited impact on service delivery. This is due to the nature of client legal needs being complex and multidimensional, overlapping and interconnected with the various priority client categories.

The NATSILS recommended to the review that service use/demand data collected by ATSILSs and the broader legal assistance sector could be useful additional data sources to target ILAP funding appropriately. It also stresses that the transparency and equitability of the FAM could be enhanced by the comprehensive mapping of (unmet) legal need in partnership with ATSILSs and the NATSILS\(^{320}\). Data collection issues are discussed in more detail in later sections of the report.\(^{321}\)

The review found that the ILAP funding allocation model may not take sufficient account of the increasing costs of wages and other rising costs from servicing regional areas. Although outside the scope of the review, the NATSILS, ATSILSs, other legal assistance providers and selected court users suggested to the CIR review team that the quantum of total ILAP funding was not keeping pace with demand, including not keeping up with real wage and regional service costs. Wage cost issues are discussed in more detail in later sections of the report.\(^{322}\) Concerns were also expressed by the NATSILS, ALRM, ALSWA, ATSILS Qld and others about a lack of transparency in how the FAM is applied, and in determining levels of funding generally.\(^{323}\)

\(^{318}\) ANAO 2015.
\(^{319}\) AGD 2018b, at page 16.
\(^{320}\) NATSILS 2018b, at page 59.
\(^{321}\) See ‘Review Findings and Insights - ToR 4 Performance Monitoring, Reporting and Data Collection’.
\(^{322}\) See ‘Review Findings and Insights - ToR 6 Other opportunities for reform’.
\(^{323}\) Consultation with stakeholders R1, R62, R63, R68, R69, R127.
iii. Certainty in funding

Key findings

- ILAP provides the primary funding for ATSILSs and the NATSILS.
- The transition to five-year funding agreements through the ILAP has provided increased certainty for ATSILSs.
- The beneficial impacts of funding certainty have been partly offset by the impacts of the expected funding reductions in 2017 (ultimately reversed) and forecast reductions in funding from 2020-2021.

**ILAP provides the primary funding for ATSILSs and the NATSILS**
An internal analysis by CIR of ATSILSs’ funding found that approximately 70-90% of ATSILSs’ income was derived from ILAP grants, making ATSILSs heavily dependent on Commonwealth funding. In consultations and submissions, ATSILSs and the NATSILS expressed a desire to reduce dependency on Commonwealth funding through diversification of income streams.

**Five-year funding arrangements have supported service delivery**
The ILAP provides ATSILSs that it defines as ‘low risk’ with five-year fixed funding agreements, providing ATSILSs increased certainty and ability to plan ahead. The NATSILS and ATSILSs reported that they welcomed this provision. The NATSILS recommended a future ILAP consider extending arrangements to ten years, to future support long-term funding, and the consideration of earlier releases of grant funding.

**Future funding uncertainty has a service impact**
Some ATSILS reported uncertainty with the timing of ILAP funding releases, with some examples of late funding transfers. Funding release within current five-year grant agreements is discussed in the following section of this report.

In terms of certainty of funding in relation to the overall ILAP program, the beneficial impacts of relative funding certainty brought by five-year ILAP agreements have been partly offset by the impacts of ongoing expectations of funding reductions.

As the Productivity Commission has noted, the lack of predictability of funding arrangements for legal assistance providers can constrain their capacity to achieve the intended outcomes of the ILAP program to direct services to the areas of the greatest benefit. The NATSILS noted that funding uncertainty could represent an inefficient use of ILAP funds due to the significant time and resources that ATSILSs must dedicate to advocating against proposed funding reductions and planning for the potential outcomes.

---

324 Figures were sourced from public ATSILSs’ reports, internal ILAP reporting, and the AGD’s and the NATSILS’s submissions in the review. The various sources reported inconsistent figures, thus an approximation could only be provided.
325 AGD 2018b, at page 46.
326 NATSILS 2018b, at page 62.
327 See ‘Review Findings and Insights - ToR 4 Performance Monitoring, Reporting and Compliance’.
328 Productivity Commission 2014, at page 2.
329 NATSILS 2018b, at page 54.
Funding uncertainty can impact on workforce morale and retention, in addition to difficulties in establishing long-term strategic plans.

The impact on service levels from funding uncertainty in relation to the current ILAP was evidenced in 2015 following an announcement of ILAP funding reductions, that were ultimately reversed. The AGD observed a decline in ATSILSs service delivery levels likely linked to the expected reduction in funding, and services making decisions to reduce staff, close offices, discontinue programs or other resources. Despite the funding reductions not eventuating, there was a lag of almost a year before services returned to previous levels.

Consultations with ATSILSs through this review indicates that forecast reductions in funding from 2020-2021 are highly likely to produce similar outcomes. Half (50%) of the submissions received by the review expressed concerns regarding the potential ATSILSs may be provided reduced levels of funding in the future.

---

330 AGD 2018b, at page 46.
331 See for example NLA 2018b, page 7; NATSILS 2018b, page 53; NACLC 2018b.
Future directions and opportunities for reform ToR 3

16. The FAM under the future ILAP should be co-designed with ATSILSs and the NATSILS, and should aim to ensure a balance between operational flexibility and funding stability.

17. A future ILAP should strengthen the evidence base for funding allocation using contemporary indicators of disadvantage and legal need.

18. The FAM under the future ILAP should take a more accurate account of the costs of providing services to regional and remote areas, and rising wage and service delivery costs more generally.

19. The FAM under the future ILAP consider appropriate, current costings for the provision of legal assistance services to clients with high needs. This includes updated costings for complex case management that may include specialist assessments and reports.

20. Future ILAP grant funding guidelines, grant allocation processes and funding decisions should be made readily available to the legal assistance sector and the public.
ToR 4 – Performance Monitoring, Reporting and Data Collection

Term of Reference 4 of the ILAP Review is to assess the effectiveness, efficiency and appropriateness of the ILAP and its progress towards meeting its objectives and outcomes, with regard to the utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data in measuring the progress towards achieving the objectives and outcomes of the ILAP.

Context

The role of the AGD under the ILAP includes setting policy direction, ensuring compliance through performance monitoring and reporting, and approving the release of funding. ATSILSs and the NATSILS report to the AGD on the delivery of agreed activities under their individual ILAP agreements, and provide related documents such as agreed budgets and operational plans.

A number of reforms to ILAP performance monitoring, reporting and data collection were introduced from 2015 including: providing flexibility in how ATSILSs deliver services through individual grant agreements, reports directly linked to new performance and reporting requirements, and the requirement to use national data standards.332

The AGD adopts a risk assessment approach to monitoring performance of service providers (ATSILSs) under the ILAP – low, medium and high. Low risk ATSILSs can receive payments six monthly, medium risk ATSILSs can receive payments every three months, and high risk ATSILSs can receive payments every month. Funding release is tied to the acceptance by the AGD of a Performance Report.

The AGD advised the review that the reporting requirements for a ‘low risk’ ATSILSs include:

- Operational Plan – Annually,
- Participation in Service Planning meetings – Bi-Annually,
- Budget – Annually,
- Income and Expenditure Report – Annually,
- Financial Acquittal Report – Annually,
- Data Report – Bi-Annually,
- Performance Reports - Bi-Annually,
- Performance Meetings - Bi-Annually, and
- Client Satisfaction Surveys – Twice over the life of the 5-year agreement.333

An Indigenous Justice Quality Practice Portal was established to which ATSILSs upload current policies, reports, and additional documents including ATSILSs’ Constitutional and Board Charters, Fraud Control Plans, Complaints Policies and Asset Registers. The ILAP required ATSILSs from July 2017 to collect data under the National Data Standards Manual (or DSM). The DSM aimed to facilitate the collection of consistent and comparable data across the legal assistance sector.

332 AGD 2018b.
333 AGD 2018b, at pages 23-24
## Headline Recommendations

| 7 | To ensure appropriate and effective oversight of the Indigenous Legal Assistance Program, future management and administration of the Indigenous Legal Assistance Program should be provided by a **Commonwealth Department with specialised skills, expertise and cultural competency**. Future changes to the management and administration of the Indigenous Legal Assistance Program should be considered following the completion of the national reviews and/or evaluations of current funding arrangements for Family Violence Prevention Legal Services, Legal Aid Commissions and Community Legal Centres. | ToR 1 – Including appropriateness and utility of current funding arrangements  
ToR 3 – Including interaction of ILAP and other funding arrangements  
ToR 4 – Including utility of performance monitoring and reporting arrangements  
ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and NATSILS |
| 8 | To strengthen and streamline the future Indigenous Legal Assistance Program, the Commonwealth Government, Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services should work in **partnership to co-design aspects of the future funding model**, including but not limited to the program logic, program benchmarks, program objectives and outcomes. | ToR 4 – Including utility of performance monitoring and reporting arrangements, including collection of service data  
ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and NATSILS |
| 9 | In order to further enhance **performance monitoring and reporting**, the Commonwealth Government, Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services should work collaboratively to identify ways to streamline reporting and increase funding transparency and certainty. | ToR 4 – Including utility of performance monitoring and reporting arrangements |
| 10 | The Commonwealth Government, Aboriginal and Torres Strait Islander Legal Service and the National Aboriginal and Torres Strait Islander Legal Services should work in partnership to **strengthen and enhance data collection** and data collection processes, in order to improve the focus and use of data to capture and inform outcomes, and to better identify and respond to priority areas of need. | ToR 4 – Including utility of performance monitoring and reporting arrangements |
i. Utility of performance monitoring and reporting

Key findings

- There are mixed views from ILAP funding recipients of the reforms introduced in 2015 to ILAP reporting, monitoring and compliance systems.

- Reporting requirements under ILAP are primarily focused on capturing outputs and supporting contractual compliance. The current reporting processes in place under the ILAP do not capture the complexity or range of service delivery under the ILAP.

- There is uncertainty amongst ATSILSs, NATSILS and other legal assistance providers about how ILAP data is used, and therefore the value of performance monitoring and reporting.

- ATSILSs across most jurisdictions and NATSILS perceive ILAP performance, monitoring and data reporting requirements to consume significant time and resources.

Purpose of reporting

While ILAP performance reporting includes both qualitative and quantitative measures, there was a diversity of views expressed through the review about how adequate current ILAP reporting measures and templates are to either:

- adequately capture service provision delivered through the ILAP including the quantum and diversity of services provided, and/or
- capture outcomes, including whether service delivery is effective at delivering outcomes for clients and meeting client needs.\(^{334}\)

The AGD’s previous funding arrangements with ATSILSs were identified by the ANAO as being overly compliance focused.\(^{335}\) In response, the AGD agreed that ILAP program objectives would move from an output to an outcome focus, with improved processes both internally for programme managers and externally for service providers.\(^{336}\) The AGD reports that the *Commonwealth Grants Rules and Guidelines* also require an ‘outcomes orientation’.\(^{337}\)

Conversely, the recommendations of the previous Review of the National Partnership Agreement undertaken by the Allen Consulting Group (2014) including that funding of ATSILSs and FVPLSs move towards output or activity based targets.\(^{338}\) The previous NPA Review recommended:

*Potential improvements include moving towards specific output targets that are closely tied to policy objectives to ensure services delivered are focused on meeting the legal needs of the most disadvantaged, or introducing activity based funding in conjunction with a funding cap. Activities might be made up of a mix of services and weighted allowing activity targets to be nominated with a view to contributing to national priorities and meeting local needs. This approach could be*

\(^{334}\) See for example AGD 2018b, NATSILS 2018b, NACLC 2018b.

\(^{335}\) AGD 2018b, at page 21.

\(^{336}\) See 4.40, ANAO 2015.

\(^{337}\) AGD 2018b.

\(^{338}\) Allen Consulting Group 2014.
supplemented with periodic outcome-based evaluation to confirm quality and effective servicing of the target populations.339

Views from the AGD, ATSILSs, the NATSILS and the legal assistance sector about the appropriateness of ILAP performance reporting measures during the review included:

- Current reporting templates, including the DSM, underrepresent the scope of ATSILSs work and do not capture the complexity of clients who may have multiple matters, which require extended ongoing support.340

- Performance measures should better acknowledge and capture the breadth of ATSILSs’ culturally safe and holistic service provision, including the range of supports provided to clients beyond direct legal advice, representation in court and case length.341

- Case study templates were introduced to help better capture qualitative outcomes342 but were perceived by some stakeholders as too inflexible to reflect the complexity of work performed by ATSILSs.343

- Changes made to data systems through the DSM removed the capture of outcomes of matters which diminishes data collection.344

- Some individual ATSILSs staff reported that new systems had helped create clarity and consistency standardisation in data collection across the sector. However, inconsistencies with implementation have affected data comparability. The DSM is discussed in more detail in the following sections of the report.

- Greater outcomes reporting is difficult and could lead to an increased reporting burden. No changes should be made to reporting unless it is certain that the additional information will be used, for example to better map areas of need and inform funding allocation.

- Some stakeholders from ATSILSs, LACs, CLCs and FVPLSs consider the services provided by each of these organisations as distinct from each other, thus making comparability of services difficult.345

The NLA’s submission stated that “comparability of data, particularly at a high level and for representation services, is unlikely ever to be achieved because of the varied nature of the work undertaken”.346 It was suggested by stakeholders including the Law and Justice Foundation representatives during the consultations that establishing benchmarks could assist with reporting, and create a clearer picture of services being provided through the ILAP, including the scale and cost of services provided by ATSILSs compared to other providers.
The introduction of reporting benchmarks had been suggested by the Australian National Audit Office’s review of the ILAP:

Recommendation 1: To support a stronger performance focus in the No.1 development of future funding arrangements, ANAO recommends AGD further develops its performance measurement and reporting framework by:

(a) developing and incorporating baseline data, against which service targets could be assessed and changes measured; and

(b) strengthening systems and processes to capture, monitor and report data, including conducting periodic data integrity checks to assess the accuracy and reliability of the data collected.

The NATSILS submitted that the AGD should work with ATSILSs and the NATSILS to determine if the right questions are being asked in performance reporting templates; and whilst the ATSILS do not wish to initiate additional reporting requirements or database changes, there may be an opportunity for the AGD to rationalise some of the detailed activity and output reporting to allow for a small number of outcomes-based measures to be tested (linked to a program logic or theory of change).

**Reporting burden**

ATSILSs and the NATSILS collectively value the importance of capturing data, but also advised that the resources of time, money and staff used for data reporting should not take precedence over their core business of delivering legal services. Administrative burdens were also raised by some ATSILSs staff as a contributor to staff “burn-out”, with pressure to complete reporting seen as an additional activity on top of demands for frontline service delivery.

ATSILSs across the majority of jurisdictions and the NATSILS reported to the review that they considered the ILAP performance, monitoring and data reporting requirements are burdensome and consume a significant amount of time and resources. The overlap of completing components in the Operational Plan and Performance Reporting and six-monthly reporting requirements were considered to duplicate information and administrative efforts, and to be overly onerous for ATSILSs with a low risk profile.

Alternatively, some ATSILSs reported that the burden was generally appropriate, but was being under-used. It was also suggested that reporting could be streamlined and made more efficient to capture the same level of information.
ii. Compliance and financial reporting

Key findings

- ATSILSs have largely fulfilled their responsibilities as funding recipients of the ILAP program in terms of performance and accountability requirements, as defined in ILAP Funding Agreements.

- In the reporting period, two ATSILSs were given increased risk ratings, with a change to service providers in one jurisdiction.

- Contract management by the AGD of financial compliance is experienced by some ATSILS to be ‘heavy handed’, including not giving due consideration to differing risk profiles.

- ATSILSs have indicated that delays in releasing ILAP funds has compromised funding certainty and organisation planning.

- The AGD and ILAP funding recipients raised concerns about the capacity of the AGD to manage ILAP compliance and financial reporting.

Compliance approach

The AGD advised the review that under the ILAP and its predecessor programs, the AGD has had concerns with the governance, performance and financial management practices of a small number of ATSILSs. The AGD advised that these concerns are not unique to ATSILSs and are known concerns in relation to Commonwealth funding for non-government organisations.  

The AGD advised its approach to risk management has demonstrated success. It described its practice in response to risk as to: provide ongoing support, advice and assistance to ATSILS to address governance and financial management issues and the meeting of obligations under ILAP funding agreements, including providing the ATSILS clear advice, allowing reasonable extensions to deadlines under funding agreements and providing direct assistance to key personnel.

The AGD’s submission to the review provided details of the one example of ILAP funding that was removed from an ATSILSs in the period, in relation to the former Central Australian Aboriginal Legal Service (CAALAS). CAALAS was provided with a medium to high risk rating as a result of financial management, governance and accountability concerns. On August 2017 the former Attorney-General decided to conduct a targeted grant round to determine the provider of Indigenous legal assistance services in the southern regional of the Northern Territory. NAAJA was successful in the grant round. The review did not collect information from stakeholders about perceptions of the 2017 targeted grant round.

ATSILSs generally reported satisfaction with the levels of practical support and direct assistance they received from AGD in the reporting period. However, some ATSILSs also raised some concerns with the compliance approach of the AGD generally, in relation to:

- Potential compliance risks amongst ATSILSs not being identified early or responded to consistently, and

351 AGD 2018b, at page 50.
352 AGD 2018b.
• Perceptions that the AGD did not take into appropriate account of different risk profiles of ATSILSs.

Both the AGD in its submission and ATSILSs identified concerns that the grant management team within the AGD is not appropriately resourced or does not include personnel with the range of skills to scrutinise aspects of ILAP reports, particularly financial reports. A number of ATSILSs’ staff during the consultations reported that a frequent turnover of AGD project management staff, and lack of appropriate expertise and resources in the AGD to audit or interpret financial and performance reports, was leading to a heavy-handed approach to compliance.353

Some uncertainty of funding release under existing grant agreements was reported

The AGD and ATSILSs confirmed that are regular delays in releasing funding, once performance reports are received. The AGD advised in its submission that:

The reporting schedule itself leads to delays and inefficiencies. Payment milestones are not made on the delivery of reports, but rather are only made once submitted reports have been assessed and agreed to by the appropriate delegate.354

ATSILSs reported regular delays with funding payments, leading to operational impacts including the inability to extend staff contracts or undertake medium to long-term planning. Delays in funding release also impact ATSILSs’ ability to implement annual plans for their casework, advocacy, legal education and other services. Some ATSILS indicated that their organisation had accessed reserves or surplus while waiting up to three months for ILAP funding. ATSILSs reported that there was a significant amount of time waiting for the AGD’s feedback on reports, and requirements to revise and amend reports before receiving approval for funding.355

353 Consultation with stakeholders R1 - R3, R31, R68, R69 and R127 and AGD 2018b, at page 50.
354 AGD 2018b, at page 22.
355 Consultation with stakeholders R1, R4, R31, R62, R63, R68 and R69.
iii. Implementation of the Data Standards Manual (DSM)

Key findings

- The transition and implementation of the National Data Standards Manual (DSM) is varied due to the individual Information Technology systems used across ATSILSs and differing staff capacity.
- There is support from ATSILSs and the legal assistance sector to increase or improve data collection.
- One-off grants provided by the AGD facilitated ATSILSs to establish new reporting systems.
- There have been inconsistent interpretations of the DSM which has affected the comparability of data.
- Data collected under the DSM does not provide a complete profile of ATSILSs’ service activity and performance. Complementary approaches are required to develop a full and nuanced picture.
- The unique service models of different ATSILSs, coupled with ongoing challenges with inconsistent interpretation of data definitions within ATSILSs and across the broader legal assistance sector, mean that further work is needed to develop comparable data between ATSILSs and with the sector.
- Ongoing data development work is likely to require further investment within the sector, both in terms of the maintenance of collection and reporting systems over time, and to better align interpretations of the DSM.

Transition to the Data Standards Manual across jurisdictions

The Data Standards Manual was developed by the AGD, ABS and a working group with representatives from the four Commonwealth funded legal assistance service providers. The intended benefits of collecting consistent data across the legal assistance sector were to provide an overview of the sector, improve business planning, inform future policy, program design and evaluation, identify emerging trends in needs and appropriately target services.\textsuperscript{356}

The review heard that the transition to and implementation of the DSM varied due to the different developers, platforms and systems used by each ATSILSs. NACL and NLA reported that the development of a National Legal Assistance Data Standards has not been consistently implemented across some parts of the broader legal assistance sector. The AGD in its submission noted that implementation of the DSM is still new, with ATSILSs only required to use the DSM since 2017. It is likely that more time is needed for the reforms to be fully implemented before their impact is assessed.

Transitional and ongoing costs

One-off $100,000 grants were provided to ATSILSs to upgrade systems. The NATSILS and some ATSILSs raised concerns about their capacity to resource ongoing maintenance of implementing new systems and data platforms, within existing resources. Variations in implementation, interpretation and lack of resources to train staff in using the DSM has caused inconsistency of data collection. Resources available to invest in back

\textsuperscript{356} AGD 2018b, at pages 25-27.
end systems for data collection differ widely between LACs and ATSILSs and between ATSILSs themselves, which affects comparability and consistency of data across the legal assistance sector.\textsuperscript{357}

Moving toward consistent and comparable service data

The review heard a diverse range of views about service data including:

- Comparability of data between ATSILSs and the legal assistance sector is considered difficult across various platforms which may not be compatible.

- The limits to capturing qualitative data and outcomes inhibit the ability of the ILAP to capture a clear picture ATSILSs’ and the NATSILS’s services for clients with complex issues, multiple matters and may require prolonged, ongoing support.\textsuperscript{358}

- It was suggested that intensive casework requiring ongoing advocacy and wrap around support had been provided throughout this ILAP funding agreement, and that the complexities of casework are not captured within ILAP reporting beyond the number of casework matters. Increases in casework matters are discussed earlier in the report.\textsuperscript{359}

- Capturing data for discrete services is considered more complicated and onerous by some ATSILSs staff under. Some ATSILSs’ staff responsible for completing reports advised the review that due to the volume of frontline work there was a likelihood of underreporting the full number of advices or short services provided for complex and prolonged cases.\textsuperscript{360} As a result, discrete and short advice work may be underreported. Underreporting may contribute to records of a decline in the number of ATSILSs advice services delivered since the introduction of the Data Standards Manual in 2015, as discussed earlier in the report.\textsuperscript{361}

- Comparability of data between ATSILSs and the legal assistance sector is considered difficult across various platforms which may not be compatible.

The NATSILS, ATSILSs and other legal assistance providers emphasised the need for enhanced data to inform evidence based decisions about funding for legal assistance.\textsuperscript{362} Suggestions for future directions included: that the Commonwealth reconvene the DSM Working Group\textsuperscript{363} and that the NATSILS be specifically resourced to support the implementation of the Data Standards Manual and future data reforms.\textsuperscript{364}

There was consistent support expressed by the sector for Commonwealth leadership to continue efforts to improve justice sector data consistency and reliability.\textsuperscript{365}

\textsuperscript{357} Consultation with stakeholders R1, R2, R4, R31, R44, R62, R63, R68, R69, R160, and submissions from ALAF, NACLC and the NATSILS.

\textsuperscript{358} Consultation with stakeholders R1- R2, R4, R31, R45, R52, R53, R68, R69, R127, and NATSILS 2018b.

\textsuperscript{359} See ‘Review Findings and Insights - ToR 1 Delivery of Services’.

\textsuperscript{360} Responses from stakeholders: R1, R2, R31, R62, R63.

\textsuperscript{361} See ‘Review Findings and Insights - ToR 1 Delivery of Services’ at Figure 9.

\textsuperscript{362} See for example NACLC 2018b, Law Council of Australia 2018a and NLA 2018a.

\textsuperscript{363} See for example submissions by ALRM and NACLC to the review.

\textsuperscript{364} ALRM 2018, NATSILS 2018b, NLA 2018a.

\textsuperscript{365} NATSILS 201b, Law and Justice Foundation of NSW 2018, NLA 2018a, NACLC 2018b.
Future directions and opportunities for reform ToR 4

21. The Commonwealth, the NATSILS and ATSILSs should work in partnership to co-design amendments to performance monitoring and reporting templates, systems and frameworks, including the ILAP Program Logic.

22. Any future amendments to ILAP reporting templates and processes should aim to appropriately balance accurately capturing the diversity and range of services delivered and the administrative reporting burden. Consideration should be given to the best way to capture short or discrete services, and prevent under-reporting.

23. Any processes to implement changes to reporting frameworks and systems should consider the resources required and transitional costs, for both development and implementation of new systems. Specific resourcing to cover the cost of developing new reporting systems should be considered.

24. Consideration should be given to streamlining reporting requirements by moving to annual performance and data reporting.

25. Consideration should be given to earlier release of annual funding, or the release of 50% of funding on receipt of reports, and the remaining 50% once reports are accepted by the AGD, to assist ATSILSs and the NATSILS to maintain uninterrupted business operations.

26. Consistent with the principle of self-determination, the future ILAP should establish clear agreements about the use and control of data provided by ATSILSs and the NATSILS.

27. Greater information should be made available to ATSILSs and the legal assistance sector about the measures and use of data collected through the ILAP.

28. The Commonwealth, the NATSILS and ATSILSs should work collaboratively with other legal assistance providers and state and territory governments to build on existing data reforms which aim to increase the collection and availability of comparable data across the legal assistance sector.
ToR 5 - Governance, Roles and Responsibilities

Term of Reference 5 of the ILAP Review is to assess the effectiveness, efficiency and appropriateness of the ILAP and its progress towards meeting its objectives and outcomes, with regard to the extent of engagement between the Commonwealth, state and territory governments, ATSILS, NATSILS and the legal assistance sector in supporting a joined up approach to addressing Indigenous legal need, including consideration of:

a. the roles and responsibilities of the Commonwealth, ATSILS and the NATSILS in supporting the objectives and outcomes of the ILAP
b. the broader role of NATSILS with community controlled organisations and non-Indigenous communities
c. the extent of collaboration and coordination between the Commonwealth, the states and territories, ATSILS, NATSILS, the broader legal assistance sector and the non-legal sector, and
d. the extent to which current arrangements enable NATSILS to support the ongoing development and continuous improvement of the ILAP and the delivery of services by ATSILS, particularly through coordination, collaboration and policy input within available resources.

Context

As discussed earlier in the report, it is the responsibility of the Commonwealth to administer grant funding and measure the performance of the service providers under the ILAP against the requirements established by individual funding agreements. The AGD administers the ILAP program and grant funding.

State and territory departments also play a role in the provision of Aboriginal and Torres Strait Islander legal assistance. However, there is limited interaction between the Commonwealth and the states and territories regarding the ILAP. ATSILSs have varying levels of engagement with state and territory departments; some ATSILSs receive funding from state and territory governments while others do not.

As ILAP funding recipients, ATSILSs are responsible for meeting service delivery, performance, and accountability requirements as outlined in individual ILAP funding agreements. Service delivery and reporting requirements are discussed in earlier sections of this report.

The NATSILS was established as the peak body for ATSILSs in 2007 to share best practice and support the ongoing development of ILAP and continuous improvement of service delivery by ATSILS. The NATSILS is funded by ILAP to identify emerging issues and provide opportunities to investigate options/solutions, provide constructive policy input, and represent the voices of ATSILSs in a coordinated way. Through an ILAP grant agreement and related operational plans, the NATSILS is required to undertake a range of activities to facilitate information sharing between the AGD and ATSILSs and provide strategic support for the delivery of services by ATSILSs, including encouraging compliance, support for the legal assistance sector and the promotion of efficient and best practice services. The NATSILS is not funded for the direct provision of legal services to clients.

---

366 See ‘Review Findings and Insights - ToR 4 Performance Monitoring, Reporting and Compliance’.
367 AGD 2014b.
368 NATSILS 2018b.
369 See ‘Review Findings and Insights - ToR 1 Service Delivery’ and ‘ToR 4 Performance Monitoring, Reporting and Compliance’.
370 NATSILS 2018b.
371 See Commonwealth Grant Agreement between the Commonwealth represented by the Attorney-General’s Department and the NATSILS dated June 2017, and related operational plans.
Joined-up service provision and collaboration between the Commonwealth, the states and territories, ATSILSs, the NATSILS, the legal assistance sector and other stakeholders are also discussed earlier in this report. 372

<table>
<thead>
<tr>
<th>Headline Recommendations</th>
</tr>
</thead>
</table>
| 1 | To facilitate a sustainable, community-controlled Indigenous legal assistance sector, Commonwealth Government funding should continue to be delivered through a **standalone, specific purpose funding program** with minimum five-year funding terms.  
ToR 1 – Including appropriateness and utility of current funding arrangements  
ToR 5 – Including the roles and responsibilities of the Commonwealth and others in addressing Indigenous legal need |
| 6 | In order to support an effective Indigenous legal assistance sector, the Indigenous Legal Assistance Program should continue **funding for the National Aboriginal and Torres Strait Islander Legal Services** to provide sector development and support, program support, and other activities which address Aboriginal and Torres Strait Islander disadvantage in the justice system, including law reform activities.  
ToR 1 – Including the appropriateness of current funding arrangements in consideration of the current landscape of the legal assistance sector  
ToR 3 – Including effectiveness, efficiency and appropriateness of funding arrangements for ATSILSs and the NATSILS  
ToR 5 – Including the broader role of the NATSILS |
| 7 | To ensure appropriate and effective oversight of the Indigenous Legal Assistance Program, future management and administration of the Indigenous Legal Assistance Program should be provided by a **Commonwealth Department with specialised skills, expertise and cultural competency**. Future changes to the management and administration of the Indigenous Legal Assistance Program should be considered following the completion of the national reviews and/or evaluations of current funding arrangements for Family Violence Prevention Legal Services, Legal Aid Commissions and Community Legal Centres.  
ToR 1 - Including appropriateness and utility of current funding arrangements  
ToR 3 – Including interaction of ILAP and other funding arrangements  
ToR 4 – Including utility of performance monitoring and reporting arrangements  
ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and the NATSILS |
| 8 | To strengthen and streamline the future Indigenous Legal Assistance Program, the Commonwealth Government, Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services should work in **partnership to co-design aspects of the future funding model**, including but not limited to the program logic, program benchmarks, program objectives and outcomes.  
ToR 4 – Including utility of performance monitoring and reporting arrangements, including collection of service data  
ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and the NATSILS |

372 See ‘Review Findings and Insights - ToR 2 Collaborative Service Provision’. 
i. Role of Commonwealth, State and Territory Governments

Key findings

- There was broad support amongst the stakeholders consulted for the review for the Commonwealth to continue as the primary funder of Indigenous legal assistance services, through a stand-alone specific purpose fund such as the ILAP.

- There was broad support amongst the stakeholders consulted for the review that future Indigenous legal assistance services receive increased support from state and territory governments. The review did not have an opportunity to consult with a wide range of state and territory government stakeholders to determine their view.

Responsibilities under the ILAP have been met
The Commonwealth Government has fulfilled its responsibilities under the ILAP in terms of provision of funding to ATSILSs and the NATSILS, performance monitoring, support for data collection, and other program administration and support during the period. Discussion of the AGD’s role as administrator of the ILAP is included earlier in the report.373

Consistent support was expressed for maintaining the ILAP administered directly by the Commonwealth
The consultation process for the review found a very high level of interest for the continuation of the provision of ILAP funding directly from the Commonwealth to ATSILSs. Of the total 99 individuals who provided comment on future funding mechanisms, 72% prioritised a continuation of the current ILAP model with enhancements or improvements. Submissions from the Law Council of Australia, NACLC, the NATSILS, the Australian Legal Assistance Forum and NLA indicated their support for ATSILS and the NATSILS to be maintained as a separately funded national program.

ATSILSs, magistrates, Aboriginal and Torres Strait Islander community sector representatives and several other legal sector stakeholders374 highlighted the importance of maintaining a separate culturally-specialised funding program distinct from other legal assistance services.

Reasons given included that the services provided by ATSILSs under the ILAP are not legal assistance services like any other. The nature of ATSILSs as independent community controlled organisations was seen to underpin the effectiveness and appropriateness of the services delivered, with ATSILSs acknowledged as preferred service providers by Aboriginal and Torres Strait Islander people.375

Alternatively, the AGD suggested that a move to a state-based or alternative funding model should be considered, potentially bringing the ILAP under the NPA. Reasons given included that states and territories are responsible for key drivers of legal assistance need, having primary responsibility for policing, criminal courts and correctional systems, and that bringing together legal assistance funding programs could increase coordination in service delivery. The AGD in its submission suggested four main options which could be

---

373 See ‘Review Findings and Insights - ToR 4 Performance Monitoring, Reporting and Data Collection’.
374 Consultation with stakeholders R35, R161, R177 and submissions from FVPLS, TRACA, Law and Justice Foundation.
375 See for example, Law Council of Australia 2018b, NATSILS 2018b, AGD 2018b. The role of FVPLSs as preferred providers, playing a complementary but not competing role as preferred providers for Aboriginal and Torres Strait Islander communities who had experienced family violence, as also emphasised by the NATSILS and other legal assistance providers to the review.
considered in relation to the future of the program, as discussed later in the following section of the report.  

**There was support for a greater role for the states and territories supporting Indigenous legal assistance**

ATSILSs, the NATSILS and other legal assistance sector stakeholders presented a common view that state and territory governments should play a greater role in supporting Indigenous legal assistance funding, jointly with the Commonwealth.  

The primary reason given by stakeholders was the scale of unmet need. The AGD advised that overall, state and territory governments currently contribute to less than 10% of funding to ATSILSs and that there is considerable variation in funding support across jurisdictions.  

For example, ATSILS Qld advised the review that ILAP funding alone is not sufficient to provide high quality services without additional state support. ATSILS Qld advised the review that its ability to retain staff, deliver outreach support and address higher court matters relies on the receipt of supplementary funds from other agencies including Legal Aid Qld, the Department of the Prime Minister and Cabinet, and the Torres Strait Regional Authority.

The Council of Australian Governments acknowledged that there is a need for greater collaboration between the Commonwealth and the states and territories to address factors of Indigenous disadvantage.

NACLC submitted to the review that a funding mechanism such as the NPA through which funds are administered via state and territory governments rather than the Commonwealth has achieved limited success in securing sufficient and stable funding for the legal assistance sector.

NACLC and other legal assistance providers recommended to the review that state and territory contributions to Indigenous legal assistance funding should be considered in addition to, rather than in replacement of, Commonwealth funding. The Law Council of Australia reached a similar conclusion, recommending: “7.2 State and territory governments should provide substantial additional funding to Aboriginal and Torres Strait Islander community-controlled legal services, over and above Commonwealth funding levels, in line with the Productivity Commission’s 2014 [Access to Justice Inquiry] recommendation.”

The review did not have an opportunity to consult with a wide range of state and territory government stakeholders to determine their view. Further consultation and consideration are needed to assess the benefits of significant changes to a future ILAP model.

**The Commonwealth is well positioned to provide an enhanced leadership role in funding**

There was a common view expressed by stakeholders that the Commonwealth Government plays a key role in enabling an integrated and collaborative legal service sector, but that this national leadership role could be enhanced.

---

376 See ‘Review Findings and Insights - ToR 6 Other areas and opportunities for reform, iii Alternative funding models’.
377 NATSILS 2018b.
378 AGD 2018b. This is broadly consistent with an internal analysis by CIR of ATSILSs’ funding, which found that approximately 70-90% of ATSILSs’ income was derived from ILAP grants.
379 Consultation with stakeholder R1.
380 Commonwealth Department of the Prime Minister and Cabinet 2018.
381 NACLC 2018b.
382 Law Council of Australia 2018a.
For example:

- The AGD submitted to the review that there might be further opportunities to expand the Commonwealth’s strategic role in relation to the development of legal assistance policy and the provision of greater leadership and support through CSP arrangements.\(^{383}\)

- ATSILSs suggested there could be increased Commonwealth support in the development of national structures, forums and processes, to enhance collaboration in the legal assistance sector.\(^{384}\)

- NACLC suggested the need for an enhanced role for the Commonwealth in sharing information of good practice across the legal assistance sector.\(^{385}\)

- The NATSILS recommended that the Commonwealth, the NATSILS and ATSILS work in partnership to build the NATSILS’s and ATSILSs’ capacity to collect, define, control and analyse their own data so that they may have greater oversight of their impact and effectiveness.\(^{386}\)

Other recommendations to the review included that the Commonwealth promote linkages between agencies to facilitate a more holistic approach to addressing Aboriginal and Torres Strait Islander legal need and connected issues such as housing and health.\(^{387}\) Commonwealth leadership in providing ongoing funding for Indigenous legal assistance is consistent with the national agenda to address Aboriginal and Torres Strait Islander disadvantage.\(^{388}\) It is also consistent with Australia’s international obligations to promote self-determination for Aboriginal and Torres Strait Islander peoples.\(^{389}\)

---

\(^{383}\) AGD 2018b.

\(^{384}\) ALRM Submission 2018b.

\(^{385}\) NACLC 2018b.

\(^{386}\) NATSILS 2018b.

\(^{387}\) AGD 2018b, at page 53.

\(^{388}\) Dennette 2014; Commonwealth Department of the Prime Minister and Cabinet 2018.

\(^{389}\) See discussion of Australia’s obligations under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR), in Australian Human Rights Commission Undated.
ii. Role of ATSILSs

Key findings

- ATSILSs play a significant role in the community beyond the delivery of legal assistance services. ATSILSs are recognised as trusted Aboriginal and Torres Strait community controlled organisations and peak bodies who advocate for Aboriginal and Torres Strait Islander justice issues and the Aboriginal and Torres Strait Islander community generally.

As discussed in earlier sections of this report, ATSILSs play a key role as service providers under the ILAP supporting the achievement of the ILAP’s objectives. In delivering services, ATSILSs reported a clear sense of responsibility and accountability to the Aboriginal and Torres Strait Islander community that extends beyond service provision.

As long running Aboriginal and Torres Strait Islander community controlled organisations, ATSILSs’ reported that their role as advocates for Aboriginal and Torres Strait Islander rights was central to their activities. The sense of strong responsibility to the community was reported as a key reason that ATSILSs stretch resources thinly to provide the greatest possible level of support to the community, and that staff and volunteers go ‘above and beyond’ to service clients.

With few exceptions, all stakeholders consulted for the review identified ATSILSs as trusted Aboriginal and Torres Strait community controlled organisations and key advocates for Aboriginal and Torres Strait Islander justice issues and the Aboriginal and Torres Strait Islander community generally, who play an important role in the community beyond direct service provision.

390 AGD 2018b.
iii. Role of the NATSILS

Key findings

- The NATSILS supports coordination and collaboration between ATSILSs, government, the legal sector, other community-controlled services and non-indigenous services, consistent with the objectives of the ILAP, within available resources.
- There has been variation in member engagement and capacity issues reported by the NATSILS.
- An expanded role for the NATSILS in supporting best practice and effective governance across ATSILSs could strengthen the delivery of ILAP objectives and outcomes.

The NATSILS actively facilitates collaboration and coordination across the sector

The NATSILS supports the ILAP by providing strategic support for the program and the sector. This includes support for the ongoing development of ATSILSs by facilitating coordination, collaboration and policy input. The AGD reported that the NATSILS assists with sharing information and data to help inform future policy development.391

The review generally heard that the NATSILS play an effective role as a peak body with which government and other legal assistance sector representatives can engage.392 Comments received by the review included:

NATSILS provide a united national voice for Aboriginal and Torres Strait Islander people within the justice system. And trying to end that overrepresentation in all areas of the justice system. And we’re there as a representative body to support our members, the now seven Aboriginal and Torres Strait Islander legal services, to provide high quality and culturally safe legal and support services to Aboriginal and Torres Strait Islander people all across the country.

NACLC, NLA, the National FVPLS Forum and the Law Council each reported having a strong and productive relationship with the NATSILS and consider that the NATSILS is fulfilling its function to facilitate information sharing and providing advice to governments, researchers and the legal assistance sector.393 Stakeholders from the Human Rights Law Centre and the Secretariat of National Aboriginal and Islander Child Care (SNAICC) also reported positive partnerships with the NATSILS and ATSILSs. National advocacy groups considered the ATSILS and the NATSILS as “pioneering” and “critically important” for their cultural and legal expertise on the impacts of the justice system on Aboriginal and Torres Strait Islander people and informing solutions to addressing Indigenous disadvantage in the justice system.394

391 AGD 2018b.
392 NLA 2018.
394 Consultation with stakeholders R70 and R167.
The NATSILS sits on various committees, participates in roundtables, makes submissions into parliamentary and international inquiries, supports policy input and supports sector development consistent with the aims and objectives of the ILAP\textsuperscript{395} including the:

- Australian Legal Assistance Forum,
- Change the Record Alliance,
- Law Council of Australia’s National Justice Project steering committee,
- The Redfern Statement Alliance,
- Family Matters, and
- Childs Rights Taskforce.

The NATSILS advised the review that it targets its efforts to coordinate the common interests and activities of its members. It creates “two-way” channels of information and experience between government, the legal sector, other community-controlled services and non-Indigenous services with ATSILSs and their communities.\textsuperscript{396} ATSILSs contributors to the review highlighted the value of the NATSILS forums in facilitating working relationships between ATSILSs, the AGD and other Commonwealth government representatives. Forums convened by the NATSILS includes the National Member Forums, Law Reform and Policy Officer Network, Community Legal Education Network and Data Officer Network.

**Opportunities exist to enhance the NATSILS effectiveness in providing support to its members:**

The AGD recommended to the review that the NATSILS could do more to support collaboration, best practice and effective governance across ATSILSs.\textsuperscript{397} The NATSILS Strategic Plan (2018) outlines priorities aligned with providing enhanced support for ATSILSs, and the ILAP objectives. This includes developing a monitoring and evaluation framework for ATSILSs and the NATSILS, and supporting ATSILSs to comply with the terms and conditions of their funding agreements.\textsuperscript{398}

The NATSILS identified that it experiences some challenges in its role as the peak body representing the ATSILS sector.\textsuperscript{399} The NATSILS executive currently has resources to employ two staff members. The NATSILS submitted to the review that the NATSILS’s capability to address ILAP objectives would be increased by building the number of its staff in order to provide adequate support to ATSILSs.\textsuperscript{400} This could include increased: research capacity to collect, analyse and communicate data for the benefit of ATSILSs and their communities; communications capacity to better promote the successes of the sector; and development and performance monitoring capabilities. The AGD advised the review that “NATSILS could do more to support collaboration, best practice and effective governance across ATSILSs” and that the establishment of an accreditation scheme similar to that developed by the National Association of Community Legal Centres (NACLC) may enhance its efficacy as a coordinating body.\textsuperscript{401}

\textsuperscript{395} NATSILS 2018b.
\textsuperscript{396} NATSILS 2018b, at page 95.
\textsuperscript{397} AGD 2018b.
\textsuperscript{398} NATSILS 2018b.
\textsuperscript{399} As above.
\textsuperscript{400} NATSILS 2018b, at page 29.
\textsuperscript{401} AGD 2018b.
Future directions and opportunities for reform ToR 5

29. The ILAP program should **acknowledge the role of ATSILS as peak bodies** representing the interests of Aboriginal and Torres Strait Islander peoples, and providing expert advice in relation to Aboriginal and Torres Strait Islander justice issues.

30. The future ILAP should **clarify the roles and responsibilities of the NATSILS**.

31. The future ILAP should consider strategies to support ATSILSs and the NATSILS to **increase their capacity**, including to reduce dependence on Commonwealth funding.
ToR 6 – Other areas and opportunities for improvement

Term of Reference 6 of the ILAP Review is to assess the effectiveness, efficiency and appropriateness of the ILAP and its progress towards meeting its objectives and outcomes, with regard to identification of areas for improvement and opportunities to enhance current and future arrangements.

Context

The review identified some other potential areas for improvement for the ILAP, including but not limited to: expanded support for strategic litigation and law reform activities; support for sector growth and investment; increased staff retention, and opportunities to move towards parity with non-Indigenous specific legal assistance.

Although it was outside the scope of the review to evaluate the viability of alternative funding arrangements for the administration of Indigenous legal assistance grant funding, a summary of stakeholder views about the future of the ILAP and alternative funding arrangements, including the NPA, is included earlier in this report and discussed further in brief below.

<table>
<thead>
<tr>
<th>#</th>
<th>Headline Recommendations</th>
<th>ToR 1 – Including appropriateness of current funding arrangements with regard to accessibility, effectiveness, cultural appropriateness, cultural expertise and models of service delivery</th>
<th>ToR 6 – Future opportunities for improvement of the program</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>In order to further strengthen the delivery of culturally appropriate legal assistance services to Aboriginal and Torres Strait Islander people, the aims and objectives of the Indigenous Legal Assistance Program should be amended to promote Aboriginal and Torres Strait Islander self-determination.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Consistent with the Indigenous Legal Assistance Program objective of reducing Aboriginal and Torres Strait Islander disadvantage in the justice system, the Indigenous Legal Assistance Program should support the direction of funding to strategic litigation.</td>
<td></td>
<td>ToR 6 – Including opportunities for enhancement of the program</td>
</tr>
</tbody>
</table>

402 See ‘Review Findings and Insights - ToR 5 Governance, Roles and Responsibilities, i Role of Commonwealth, State and Territory Governments’.
i. Strategic litigation and law reform

Key findings

- Pursuing strategic litigation, including test cases, is a valuable activity which contributes to the ILAP objective of reducing Aboriginal and Torres Strait Islander disadvantage in the legal system.

- There is a perception amongst ATSILSs, the NATSILS and the broader legal assistance sector that expensive cases, strategic litigation, including test cases, are not sufficiently supported by the current ILAP.

- ATSILSs and the NATSILS undertake law reform activities where possible within available resources.

- There are significant demands for expert advice for ATSILSs and the NATSILS in relation to policy and law reform from government agencies, justice agencies, other legal assistance providers and the community sector.

- There is a perception amongst ATSILSs, the NATSILS and the broader legal assistance sector that law reform and advocacy activities to address systemic change are not supported by the ILAP.

- ATSILSs are well positioned to undertake additional activities which are consistent with the objectives of the ILAP, including playing a greater role in providing expert law reform advice related to Aboriginal and Torres Strait Islander justice issues.

Strategic litigation was identified as a valuable activity

'Strategic' or expensive litigation includes test cases run to challenge systemic discrimination in the justice system or to challenge or impact the implementation of laws or policies which are contributing to Aboriginal and Torres Strait Islander overrepresentation in the justice system. Test cases run by ATSILSs have made a significant contribution to Australian jurisprudence in relation to Aboriginal and Torres Strait Islander disadvantage.\(^{403}\) The NATSILS's submission to the review identified examples of strategic litigation run by ATSILSs which has contributed to the aims of the ILAP.\(^{404}\)

The ILAP does not currently include provision for a special purpose or specific grant fund for expensive or strategic litigation. The ILAP Indigenous Test Cases fund was discontinued in 2012.\(^{405}\) Current ILAP grant agreements include some restrictions on the use of funds for litigation, particularly for civil and family law matters.\(^{406}\) In the absence of a specific purpose fund earmarked for test cases, the NATSILS and some individual ATSILSs consulted during the review identified that competing demands from frontline legal

---

403 See for example, Bugmy v The Queen (2013) 249 CLR 571, which established key principles in relation to the consideration of Aboriginality and disadvantage in relation to sentencing. The ALS NSW/ ACT represented William Bugmy, who was a criminal law client. The implications of the Bugmy decision are discussed in the NATSILS 2018b, and the ALRC 2018.

404 See for example discussion of strategic litigation in the NATSILS 2018b, including Arthur v Minister for Families and Children & Ors – Supreme Court Proceedings No S CI 2016 04811.

405 ANAO 2015 at 1.16, page 30.

406 ILAP Grant Agreement 2015 includes provisions for example that civil and family law disputes should be resolved through alternative dispute resolution services rather than through litigation, where appropriate.
services have acted as a barrier limiting ATSILSs’ ability to run strategic litigation or test cases in the funding period.

**Law reform was identified as a valuable activity**

The value of law reform advocacy and policy work undertaken by ATSILSs and the NATSILS in relation to Aboriginal and Torres Strait Islander justice was highlighted to the review by several stakeholders.\(^{407}\)

The contribution of law reform and policy advocacy by the legal assistance providers has been highlighted in recent national reviews including the ALRC Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (2018) and the Law Council of Australia’s Justice Project (2018a).\(^{408}\) The Productivity Commission’s Access to Justice Arrangements Inquiry (2014) noted 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.”\(^{409}\)

ATSILSs and the NATSILS currently undertake law reform and policy advocacy work with the support of the ILAP. This includes submission writing, government relations, coalition work and sitting on committees.\(^{410}\) NACLC reported that 10.9% of CLCs partner with ATSILS in policy, advocacy and law reform projects.\(^{411}\) The ALRM submitted to the review that “… law reform and systemic advocacy work is crucial in identifying and encouraging reform of laws, policies and practices that are not operating effectively”.\(^{412}\)

The NATSILS in its submission provided examples of law reform and advocacy work undertaken by ATSILSs including:

**CASE STUDY: ALSWA MS DHU AND IMPRISONMENT FOR UNPAID FINES**

Following the tragic death of Ms Dhu in police custody in August 2014, after she was arrested in relation to a warrant of commitment for unpaid fines, ALSWA has undertaken extensive work aimed at preventing the imprisonment of Aboriginal people for fine default. ALSWA represented Ms Dhu’s family during the coronial inquest. Ms Dhu’s Coroner recommended that the *Fines, Penalties and Infringement Notices Enforcement Act* (WA) (section 53) be amended so that a warrant of commitment authorising imprisonment is not an option for enforcing payment of fines.

In relation to reforming fine defaulting laws, ALSWA has:
- provided a lengthy written submission in response to a WA Labor Party Discussion Paper which highlighted that the current fine default laws were impacting disproportionately on Aboriginal women;
- met with State Government MP Paul Papalia (former Shadow Minister for Corrective Services) regarding progressing the recommendations in the ALSWA submission;
- investigated the NSW Work and Development Order Scheme and published a comprehensive briefing paper, *Addressing Fine Default by Vulnerable and Disadvantaged Persons* (2016);
- provided the briefing paper to members of Parliament;
- met with the Western Australia Attorney-General to progress the reform proposals; and

---


\(^{408}\) Law Council of Australia, Justice Project (2018), recs 2.12 and 2.13.


\(^{410}\) See the NATSILS’s Submission 2018.

\(^{411}\) NACLC 2018b, at page 8, quoting the NACLC 2018a, National Census of Community Legal Centres, 2017 National Report.

\(^{412}\) ALRM 2018, at page 22.
met with the new Registrar of the Fines Enforcement Registry, the WA Sheriff and a representative of the Department of Justice to discuss ways of working with ALSWA clients to enhance access to ‘time to pay’ and community work options for unpaid fines and to avoid imprisonment for unpaid fines. ALSWA understands that legal and process reforms are currently being undertaken by the WA Government.

The circumstances of the death of Ms Dhu also informed ongoing advocacy work in relation to the establishment of a Custody Notification Service (CNS) in WA. ALSWA prepared a briefing paper about the ALS (NSW/ACT) CNS and provided this to relevant government representatives. ALSWA has been working closely with the WA Attorney-General’s office, the WA Police and the Department of the Prime Minister and Cabinet to establish a CNS in WA. The WA Government has now committed to implementing a CNS in WA run by ATSILS and the funding negotiations are in process.\textsuperscript{413}

\textbf{There is a perception that law reform and policy advocacy work are not supported by the ILAP}

As discussed earlier in the report,\textsuperscript{414} ATSILSs and the NATSILS receive more requests for service, policy and law reform advice then they can manage. Although ILAP grant agreements do not restrict ATSILSs or the NATSILS from undertaking law reform activities, there was a consistent view reported to the ILAP review by ATSILSs and the NATSILS that law reform and policy advocacy work are not funded activities under the ILAP, because they are not separately and specifically funded.\textsuperscript{415} The NATSILS and other legal assistance providers including NACLC recommended in their submissions that the Commonwealth, state and territory governments should provide specific funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services.

The NATSILS submitted to the ILAP review that: “In order to achieve the ILAP objectives, ATSILS and the NATSILS must be supported to work across the legal and community services sector to create systemic change through community-informed strategic litigation, law and policy reform and advocacy.”\textsuperscript{416}

\textbf{Strengthening the voices of ATSILSs supports self-determination and access to justice}

A greater role for the NATSILS and ATSILSs in providing policy, law reform and service delivery is also consistent with the principle of self-determination. The NATSILS submitted that: “The ILAP gives effect to self-determination by funding ATSILS as the community-controlled preferred providers of legal services for Aboriginal and Torres Strait Islander people.”\textsuperscript{417}

The NATSILS, ATSILSs and several other legal assistance providers stressed to the ILAP review that Aboriginal and Torres Strait Islander community voices are often excluded from decision making in relation to justice issues in Australia. Recent research by the Law Council of Australia found that lack of respect for Aboriginal and Torres Strait Islander self-determination remains a barrier to access to justice in Australia. The Law Council of Australia (2018a) reported:

\begin{quote}
Stakeholders repeatedly raised government policy and laws that fail to respect the principle of self-determination and linked this to the perpetuation of destructive practices that intensify disadvantage. The right to self-determination includes the right to influence policy development and its implementation. [referencing Kingsford Legal Centre] ...
\end{quote}

\textsuperscript{413} NATSILS 2018b, at page 66.
\textsuperscript{414} See ‘Review Findings and Insights - ToR 2 Collaborative Service Planning’.
\textsuperscript{415} See for example NATSILS 2018b.
\textsuperscript{416} NATSILS 2018b at page 4.
\textsuperscript{417} NATSILS 2018, at page 5.
National Congress of Australia’s First Peoples similarly submitted: We stress that any successful reform to the criminal justice system must consider the views of Aboriginal and Torres Strait Islander communities, and involve active consultation and cooperation with our communities. The failure of policies such as the Intervention and Stronger Futures to achieve any meaningful change for our peoples demonstrates that the Australian Government must work with us, instead of merely doing things to us.

This review recommends that a future ILAP could be strengthened by adopting a more explicit partnership approach between the Commonwealth as grant funder and ATSILSs as service providers, and that the principle of self-determination is more explicitly embedded in future Indigenous legal assistance funding programs.
ii. Workforce challenges

Key findings

- ATSILSs experience significant challenges attracting and retaining staff, in part due to lower salaries offered compared to LACs.

- ATSILSs staff experience higher workloads than their counterparts in LACs. Several ATSILSs expressed concerns that the current approach, where services are ‘stretched’ to respond to increased demand, was not sustainable and was leading to staff burnout.

Several interrelated workforce challenges for ATSILSs were identified by the review

Workforce challenges reported to the review include:

- pay disparity between ATSILSs’ staff and other providers, particularly LACs and the private sector,
- the juniorisation of ATSILSs’ workforce, particularly in relation to lawyers,
- low retention rates, particularly in relation to lawyers and non-Indigenous staff,
- high workloads for ATSILSs’ staff,
- the regular ‘poaching’ of ATSILSs’ staff by other providers, particularly LACs,
- challenges attracting suitably qualified staff in regional and remote areas,
- Work Health and Safety issues for staff travelling long distances for regional and remote outreach work, and
- a failure of ATSILSs’ wages to keep up with the cost of living.

Although there is significant diversity within ATSILSs, these workforce challenges were raised consistently throughout the review. Some of these issues are experienced by the wider legal assistance sector. Some of these challenges are discussed in brief below, and earlier in this report.\(^{418}\)

Wage levels are set by individual ATSILSs consistent with the relevant national award and local staff agreements or contracts. Wage rates for LACs in different jurisdictions operate under different awards and agreements. It is outside the capacity of the review to assess national pay disparity between ATSILSs and other service providers. Some selected comparative wage data provided to the review for the Northern Territory and NSW provide a broad indication of wage disparities that may exist between ATSILSs and LACs:

- The NT LAC spent an average of $91,645 per employee in 2016-17, whereas an equivalent ATSILS spend an average of $76,241 per employee, representing a 20% difference in expenditure on staffing between organisations.\(^{419}\)

- The starting salary for a graduate legal office in NSW Legal Aid in 2017-8 was $64,583,\(^{420}\) and for ALS NSW/ ACT was $54,000,\(^{421}\) representing a 20% different in salaries. Further comparative wage analysis for NSW is below at Table 11.

---

\(^{418}\) See ‘Review Findings and Insights – ToR 1 Service Delivery’.

\(^{419}\) NAAJA 2018.

\(^{420}\) Salary for Legal Officer Grade 1, 1st Year, Level 1, as provided by Legal Aid NSW on email to the CIR review team, 19 December 2018.

\(^{421}\) Salary a Graduate Solicitor, ALS NSW/ACT, Level 1, as provided by ALS NSW/ ACT on email to the CIR review team, c19 December 2018.
Table 11: Salary Comparison Between LACs and ALS

<table>
<thead>
<tr>
<th>LAC Grading</th>
<th>LAC Annual Salary 2017-18</th>
<th>ALS Grading*</th>
<th>ALS Annual Salary 2017-18*</th>
<th>Discrepancy in salary</th>
<th>Salary discrepancy between LAC and ALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal Officer III, Grade III 3rd Year Lvl 3</td>
<td>$109,475</td>
<td>Grade 3, Level 4 Intermediate Solicitor</td>
<td>$86,920</td>
<td>$22,555</td>
<td>20.6%</td>
</tr>
<tr>
<td>Legal Officer IV, Grade IV 2nd Year Lvl 2</td>
<td>$119,548</td>
<td>Grade 4, Level 3 Senior Solicitor</td>
<td>$93,679</td>
<td>$25,869</td>
<td>21.6%</td>
</tr>
<tr>
<td>Legal Officer V, Grade V 2nd Year Lvl 2</td>
<td>$128,178</td>
<td>Grade 5, Level 4 Managing Solicitor</td>
<td>$97,511</td>
<td>$30,667</td>
<td>23.9%</td>
</tr>
<tr>
<td>Legal Officer VI, Grade V1 2nd Year Lvl 2</td>
<td>$137,891</td>
<td>Grade 6, Level 4 Trial Advocate</td>
<td>$109,666</td>
<td>$28,225</td>
<td>20.5%</td>
</tr>
</tbody>
</table>

Sources: Wage rates provide by Legal Aid NSW and ALS NSW/ ACT on email to the CIR review team, 19 December 2018.
*Note: The ALS provide the option to access salary sacrificing.

The NSW Law Society reports that across NSW in 2014/5, which was the most recent data available, the estimated mean income for solicitors in the Community Legal Centres is $71,100, compared to $131,100 for solicitors in the government sector, $142,000 for the private sector and $198,000 for the corporate sector.  

The review heard that one ATSILS had lost seven staff in the last 18 months. Another ATSILS reported losing eleven staff over a similar period. The review heard mixed views as to the impact of pay disparity on attracting and retaining staff:

Salinity parity has been a reason why we’ve not – we sometimes have a very high turnover of legal staff. And we only attract sometimes new lawyers, very junior lawyers that come out of law school because of our wage...  

We’re concerned about disparities of wages and the effect of bleeding into Legal Aid. We [Legal Aid] are often the beneficiaries of that dynamic.  

I don’t think it (pay disparity) effects [staff] performance at all. What it does affect, is the length of time they stay, because if they do have an opportunity to go over to the Legal Aid Commission for more money, usually doing less work, then you would, I think... That’s a disadvantage for a couple of reasons, (1) you just get rid of all that corporate knowledge, if I can put it in those terms... The second way that it might have an adverse impact, is that relationship that an ALS solicitor builds with their client, is very important... Aboriginal clients take a while to build up some sort of rapport and relationship of trust...  

A number of submissions noted the challenges ATSILS face retaining staff, not only due to a lack of resources to offer higher wages but the high volume of work undertaken by ATSILS staff:

422 Urbis 2016.
423 Senior legal professional within ATSILS.
424 Senior LAC staff member.
425 Consultation with stakeholder R47.
Too little funding is provided and therefore for the demand, there is always — in terms of criminal law — too many files, too many defendants being handled by practitioners, and therefore there’s a limit to how much time you can give to each matter... 426

Some selected comparative workload data was provided to the review and is discussed earlier in the report. 427 The review heard concerns that, in the face of current workloads and further projected demand for criminal legal assistance services, the ATSILSs’ current service model of ‘stretching’ services to meet demand was not sustainable.

The role of ILAP funding
Wage levels are not set by ILAP grant agreements. ATSILSs are provided flexibility to determine the number of staff that can be employed, within available resources. ATSILSs reported to the review that there is a tension between providing staff wages and workloads to retain staff, and delivering services to the maximum number of clients possible in the context of high levels of community need.

As discussed earlier in the report 428 ILAP funding certainty assists with the ability to retain staff. Some ATSILSs reported that they lost staff leading up to the 2015 reforms in ILAP, because the continuation of funding at that time was uncertain, and they were unable to offer contract extensions. Some ATSILS staff reported that they have not had pay or grade rises for the last 4-5 years because “they need to wait to see if they have funding before any increase in wages occur.” 429

Within available funding, the ILAP FAM includes provision based on the Wage Cost Index. The NATSILS and other ATSILS stakeholders submitted to the review that the ILAP has not kept pace with the real cost of staffing.

It was suggested to the review that CPI increases would more accurately reflect the cost of living increases over time. The Allen Consulting Group previous review of the NPA (2014) found that the Wage Cost Index was not keeping pace with service cost for CLCs. 430 CLCs operate under the same national award as ATSILSs.

426 Consultation with stakeholder R147.
427 See ‘Review Findings and Insights – ToR 1 Service Delivery’.
428 See ‘Review Findings and Insights – ToR 3 Collaborative Service Planning, iii Certainty in funding’.
429 Consultation with stakeholder R53.
iii. Alternative funding models

The AGD in its submission to the review identified a range of options for possible future Commonwealth funding arrangements for Aboriginal and Torres Strait Islander legal assistance services from 1 July 2020. The four Options identified by the AGD in its submission were:

1. retaining the ILAP in its existing form including with current funding agreements,
2. retaining the ILAP as a Commonwealth grants program but with some amendments to the funding agreements,
3. providing quarantined funding for legal services for Aboriginal and Torres Strait Islander people under an NPA (or similar national mechanism) either with or without such quarantined funding being provided to ATSILS, and
4. providing funding for legal services for Aboriginal and Torres Strait Islander people under an NPA (or similar national mechanism) with no quarantined funding; that is, the distribution of funding for legal services for Aboriginal and Torres Strait Islander people would be a matter for state and territory governments.\(^{431}\)

If either Option 1 or 2 is selected by government, the AGD advised that:

> the ILAP will be subject to the whole of government initiative to streamline grants administration. Under this initiative, all community grants programs which provide funding to individuals and the community sector must be administered through the Community Grants Hub. The Community Grants Hub is operated by the Commonwealth Department of Social Services. The department will remain responsible and accountable for policy development and decisions, financial delegations and reporting to the relevant minister - in this case the Commonwealth Attorney-General.\(^{432}\)

The review did not have the opportunity to consider alternative models to the ILAP in detail, including administrative arrangements. In particular, the ILAP review did not have the opportunity to consult with a wide range of state and territory government stakeholders.

However, the review heard consistently that is a very high level of support for the continuation of the ILAP:

- as an Indigenous specific legal assistance program,
- that is administered directly by the Commonwealth, and
- that provides funding to ATSILSs as Aboriginal and Torres Islander community controlled organisations with relevant expertise to deliver services to Aboriginal and Torres Strait Islander people.

A summary of stakeholders’ views on potential grant changes is provided earlier in the report.\(^{433}\) It is recommended that any changes to the future ILAP model consider stakeholder views provided to this review, and the findings of the parallel reviews and evaluations for legal assistance services currently being conducted, to be published in 2019, particularly in respect of funding for FVPLSs.

---

\(^{431}\) AGD 2018b, at pages 8-10

\(^{432}\) AGD 2018b, at page 9.

\(^{433}\) See ‘Review Findings and Insights – ToR 5 Governance, Roles and Responsibilities | Role of Commonwealth, State and Territory Governments’.
Future directions and opportunities for reform ToR 6

32. Alternative models to deliver ILAP funding should be further considered following the conclusion and consideration of the findings of the reviews and/or evaluations of funding programs for the other main legal assistance providers: FVPLSs, LACs and CLCs. Decisions about changes to the ILAP in the future should consider:

a. the views of state and territory agencies
b. the leading role of the Commonwealth in relation to Aboriginal and Torres Strait Islander affairs
c. the responsibilities of the state and territories for justice systems and the role of states and territories in driving demand for criminal legal assistance
d. the strengths of existing arrangements
e. potential transitional costs from any change, including potential interruptions in services
f. the effectiveness of CSP processes to promote a coordinated, integrated legal assistance sector
g. the capacity of relevant government agencies to administer specialised, Aboriginal and Torres Strait Islander funding programs and
h. the appropriateness of providing separate and specialised funding for ATSILSs and FVPLSs in light of their wider roles in the community as Aboriginal and Torres Strait Islander community-controlled organisations.

33. Future directions to be further explored include:

a. transitioning the management and administration of ILAP and other specialist grant programs to the centralised Commonwealth Grants Hub
b. opportunities under Commonwealth Indigenous procurement policies to establish direct contracting or grant arrangements with individual ATSILSs to deliver services in each jurisdiction
c. noting the small number of ILAP funding recipients (8), adopting a contract management approach to grant funding individually tailored to each ATSILS’s risk profile, to minimise unnecessary compliance burdens.
d. the potential for ATSILSs to be preferred tenderers for future service grants or contracts
e. the development of integrated Commonwealth and state and territory government strategies or commitments to expand the legal assistance sector and
f. options to support ATSILSs to expand social entrepreneur activities or other business opportunities which are consistent with objectives of the ILAP and would reduce ATSILSs’ dependence on Commonwealth grant funding in the future.
## Recommendations, Future Directions and Opportunities for Reform

<table>
<thead>
<tr>
<th><strong>Headline Recommendations</strong></th>
<th><strong>Terms of Reference</strong></th>
</tr>
</thead>
</table>
| **1** To facilitate a sustainable, community-controlled Indigenous legal assistance sector, Commonwealth Government funding should continue to be delivered through a **standalone, specific purpose funding program** with minimum five-year funding terms. | ToR 1 – Including appropriateness and utility of current funding arrangements  
ToR 5 – Including the roles and responsibilities of the Commonwealth and others in addressing Indigenous legal need |
| **2** In order to further strengthen the delivery of culturally appropriate legal assistance services to Aboriginal and Torres Strait Islander people, the aims and objectives of the Indigenous Legal Assistance Program should be amended to promote Aboriginal and Torres Strait Islander self-determination. | ToR 1 – Including appropriateness of current funding arrangements with regard to accessibility, effectiveness, cultural appropriateness, cultural expertise and models of service delivery  
ToR 6 – Future opportunities for improvement of the program |
| **3** Overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system remains a priority area of need. The future Indigenous Legal Assistance Program should support the provision of **greater levels of legal assistance** in other areas where possible, but not where this leads to increased levels of unmet criminal law need. | ToR 1 – Including appropriateness of current funding arrangements to address priority needs  
ToR 3 – Including effectiveness of funding arrangements in light of drivers of demand |
| **4** The Commonwealth Government should work with Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services to develop and implement strategies to facilitate **greater consistency of Collaborative Service Planning** at the national and state/territory levels in the future. | ToR 2 – Including the implementation of collaborative service planning |
| **5** In recognition that a high level of legal need is present and that current funding arrangements deliver cost effective, high quality, culturally appropriate and accessible legal services consistent within the objectives of the Indigenous Legal Assistance Program, future arrangements under the Indigenous Legal Assistance Program should continue to provide **funding for Aboriginal and Torres Strait Islander Legal Services** to deliver legal assistance services to Aboriginal and Torres Strait Islander clients. | ToR 1 – Including the impact of the ILAP to promote services which are effective, efficient, high quality, culturally appropriate and represent value for money  
ToR 3 – Including the effectiveness, efficiency and appropriateness of funding arrangements for ATSILSs and the NATSILS |
| **6** In order to support an effective Indigenous legal assistance sector, the Indigenous Legal Assistance Program should continue **funding for the National Aboriginal and Torres Strait Islander Legal Services** to provide sector development and support, program support, and other activities which address Aboriginal and Torres Strait Islander disadvantage in the justice system, including law reform activities. | ToR 1 – Including the appropriateness of current funding arrangements in consideration of the current landscape of the legal assistance sector  
ToR 3 – Including effectiveness, efficiency and appropriateness of funding arrangements for ATSILSs and the NATSILS  
ToR 5 – Including the broader role of the NATSILS |
<table>
<thead>
<tr>
<th><strong>Headline Recommendations</strong></th>
<th><strong>Terms of Reference</strong></th>
</tr>
</thead>
</table>
| **7** To ensure appropriate and effective oversight of the Indigenous Legal Assistance Program, future management and administration of the Indigenous Legal Assistance Program should be provided by a **Commonwealth Department with specialised skills, expertise and cultural competency.** Future changes to the management and administration of the Indigenous Legal Assistance Program should be considered following the completion of the national reviews and/or evaluations of current funding arrangements for Family Violence Prevention Legal Services, Legal Aid Commissions and Community Legal Centres. | ToR 1 - Including appropriateness and utility of current funding arrangements  
ToR 3 – Including interaction of ILAP and other funding arrangements  
ToR 4 – Including utility of performance monitoring and reporting arrangements  
ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and the NATSILS |
| **8** To strengthen and streamline the future Indigenous Legal Assistance Program, the Commonwealth Government, Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services should work in **partnership to co-design aspects of the future funding model,** including but not limited to the program logic, program benchmarks, program objectives and outcomes. | ToR 4 – Including utility of performance monitoring and reporting arrangements, including collection of service data  
ToR 5 – Including the roles and responsibilities of the Commonwealth, ATSILSs and the NATSILS |
<p>| <strong>9</strong> In order to further enhance <strong>performance monitoring and reporting,</strong> the Commonwealth Government, Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services should work collaboratively to identify ways to streamline reporting and increase funding transparency and certainty. | ToR 4 – Including utility of performance monitoring and reporting arrangements |
| <strong>10</strong> The Commonwealth Government, Aboriginal and Torres Strait Islander Legal Service and the National Aboriginal and Torres Strait Islander Legal Services should work in partnership to <strong>strengthen and enhance data collection</strong> and data collection processes, in order to improve the focus and use of data to capture and inform outcomes, and to better identify and respond to priority areas of need. | ToR 4 – Including utility of performance monitoring and reporting arrangements |
| <strong>11</strong> Consistent with the Indigenous Legal Assistance Program objective of reducing Aboriginal and Torres Strait Islander disadvantage in the justice system, the Indigenous Legal Assistance Program should support the direction of funding to <strong>strategic litigation.</strong> | ToR 6 – Including opportunities for enhancement of the program |
| <strong>12</strong> Consistent with the Indigenous Legal Assistance Program objective of reducing Aboriginal and Torres Strait Islander disadvantage in the justice system, and to address persistent perceptions from Indigenous Legal Assistance Program grant recipients that the Indigenous Legal Assistance Program does not support <strong>law reform and advocacy work or research,</strong> the Indigenous Legal Assistance Program should incorporate a clear definition of activities that can be undertaken under the program. | ToR 6 – Including opportunities for enhancement of the program |</p>
<table>
<thead>
<tr>
<th>Future directions and opportunities for reform</th>
<th>Primary ToR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> In the context of significant and ongoing disadvantage faced by Aboriginal and Torres Strait Islander people in the justice system, a future ILAP should <strong>retain a focus on improving access to justice and reducing the disproportionate disadvantage</strong> experienced by Aboriginal and Torres Strait people.</td>
<td>ToR 1</td>
</tr>
<tr>
<td><strong>2</strong> Program guidelines for a future ILAP should continue to <strong>support Aboriginal and Torres Strait Islander legal assistance providers who have a proven ability</strong> to efficiently, effectively and equitably deliver Indigenous legal assistance (ATSILSs).</td>
<td>ToR 1</td>
</tr>
<tr>
<td><strong>3</strong> Future program guidelines and other program documents should explicitly <strong>acknowledge that Aboriginal and Torres Strait Islander community-controlled organisations</strong> are best placed to deliver culturally appropriate and culturally safe legal assistance services to Aboriginal and Torres Strait Islander communities.</td>
<td>ToR 1</td>
</tr>
<tr>
<td><strong>4</strong> The Commonwealth, the NATSILS and ATSILSs should work in partnership to <strong>more clearly articulate the meaning of ‘culturally appropriate’ legal assistance services</strong> under the ILAP. This work could also inform other grant programs providing legal service funding for Aboriginal and Torres Strait Islander people.</td>
<td>ToR 1</td>
</tr>
<tr>
<td><strong>5</strong> The Commonwealth, NATSILS and ATSILSs should work in partnership to develop future frameworks for ILAP service delivery, including the potential development of <strong>service benchmarks</strong> to allow comparable workload expectations across legal assistance grant programs.</td>
<td>ToR 1</td>
</tr>
<tr>
<td><strong>6</strong> While the <strong>priority disadvantage categories</strong> broadly capture key areas of disadvantage, they should be reassessed in light of current and projected overrepresentation trends. The use of priority disadvantage categories should also be re-assessed as to whether they are the most appropriate way to target and respond to the complex, multifaceted disadvantage commonly experienced by ATSILSs’ clients.</td>
<td>ToR 1</td>
</tr>
</tbody>
</table>
| **7** The Commonwealth, the NATSILS and ATSILSs should work with relevant state and territory agencies, FVPLSs, LACs and CLCs to develop strategies to **expand interpreter services**. This could include consideration of:  
   a. Increasing investment in remote, very remote and regional areas where there are linguistically diverse Aboriginal and Torres Strait Islanders communities, particularly where English is the second, third or fourth language spoken,  
   b. Expanding the availability of both female and male interpreters in courts, to support cultural and gender safety for clients to disclose matters related to family and domestic violence, and  
   c. Directing future ILAP grant funding towards expanding the pool of available interpreters or employing interpreters within ATSILSs, where this does not lead to a reduction in levels of other criminal legal assistance. | ToR 1       |
<p>| <strong>8</strong> Future funding arrangements should consider the important <strong>role that ATSILSs’ staff play in strengthening the cultural competency of the justice system</strong>, and consider what strategies could be put in place to support or enhance this work. | ToR 1       |
| <strong>9</strong> Future ILAP arrangements should consider how CSP for legal assistance service delivery to Aboriginal and Torres Strait Islander people can be supported at all levels: <strong>national, state/ territory and regional/ local.</strong> | ToR 2       |
| <strong>10</strong> Future ILAP arrangements should consider how ATSILSs can be supported to participate in CSP activities in a way that does <strong>not compete with frontline service delivery.</strong> | ToR 2       |</p>
<table>
<thead>
<tr>
<th><strong>Future directions and opportunities for reform</strong></th>
<th><strong>Primary ToR</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>11</strong> Future CSP processes should be governed by <strong>clear structures and timetables</strong>, which include appropriate processes for ATSILSs to be involved and sufficient time for community consultation where necessary.</td>
<td>ToR 2</td>
</tr>
</tbody>
</table>
| **12** Opportunities to enhance CSP across the legal assistance sector through **Commonwealth leadership** should be considered. These could include:  
  a. clear national standards for CSP which could be applied across legal assistance funding programs,  
  b. national inter-agency forums,  
  c. coordination across national peak legal assistance bodies,  
  d. facilitation of increased state and territory government participation,  
  e. facilitation of strategic information sharing, and  
  f. promoting best practice within the sector. | ToR 2 |
<p>| <strong>13</strong> Future ILAP arrangements should consider opportunities to provide <strong>greater support for the NATSILS</strong> to provide national strategic sector support for CSP. | ToR 2 |
| <strong>14</strong> Future ILAP arrangements should consider how CSP can be enhanced as both a <strong>tool for research and for mapping need</strong>. | ToR 2 |
| <strong>15</strong> Future ILAP arrangements should consider how CSP can be enhanced as a mechanism to facilitate or require legal assistance services to <strong>fill identified priority service gaps</strong>. | ToR 2 |
| <strong>16</strong> The FAM under the future ILAP should be co-designed with ATSILSs and the NATSILS, and should aim to ensure a balance between <strong>operational flexibility and funding stability</strong>. | ToR 3 |
| <strong>17</strong> A future ILAP should strengthen the evidence base for funding allocation using <strong>contemporary indicators of disadvantage and legal need</strong>. | ToR 3 |
| <strong>18</strong> The FAM under the future ILAP should take a <strong>more accurate account of the costs</strong> of providing services to regional and remote areas, and rising wage and service delivery costs more generally. | ToR 3 |
| <strong>19</strong> The FAM under the future ILAP consider appropriate, current costings for the provision of legal assistance services to <strong>clients with high needs</strong>. This includes updated costings for complex case management that may include specialist assessments and reports. | ToR 3 |
| <strong>20</strong> Future ILAP grant funding guidelines, grant allocation processes and funding decisions should be made <strong>readily available</strong> to the legal assistance sector and the public. | ToR 3 |
| <strong>21</strong> The Commonwealth, the NATSILS and ATSILSs should work in partnership to <strong>co-design</strong> amendments to performance monitoring and reporting templates, systems and frameworks, including the ILAP Program Logic. | ToR 4 |
| <strong>22</strong> Any future amendments to ILAP reporting templates and processes should aim to <strong>appropriately balance</strong> accurately capturing the diversity and range of services delivered and the administrative reporting burden. Consideration should be given to the best way to capture short or discrete services, and prevent under-reporting. | ToR 4 |</p>
<table>
<thead>
<tr>
<th>Future directions and opportunities for reform</th>
<th>Primary ToR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>23</strong> Any processes to implement changes to reporting frameworks and systems should consider the resources required and <strong>transitional costs</strong>, for both the development and implementation of new systems. Specific resourcing to cover the cost of developing new reporting systems should be considered.</td>
<td>ToR 4</td>
</tr>
<tr>
<td><strong>24</strong> Consideration should be given to streamlining reporting requirements by moving to <strong>annual performance</strong> and data reporting.</td>
<td>ToR 4</td>
</tr>
<tr>
<td><strong>25</strong> Consideration should be given to the earlier release of annual funding, or the release of 50% of funding on receipt of reports, and the remaining 50% once reports are accepted by the AGD, to assist ATSILSs and the NATSILS to maintain uninterrupted business operations.</td>
<td>ToR 4</td>
</tr>
<tr>
<td><strong>26</strong> Consistent with the principle of self-determination, the future ILAP should establish clear agreements about the <strong>use and control of data</strong> provided by ATSILSs and the NATSILS.</td>
<td>ToR 4</td>
</tr>
<tr>
<td><strong>27</strong> Greater <strong>information should be made available</strong> to ATSILSs and the legal assistance sector about the measures and use of data collected through the ILAP.</td>
<td>ToR 4</td>
</tr>
<tr>
<td><strong>28</strong> The Commonwealth, the NATSILS and ATSILSs should <strong>work collaboratively with other legal assistance providers</strong> and state and territory governments to build on existing data reforms which aim to increase the collection and availability of comparable data across the legal assistance sector.</td>
<td>ToR 4</td>
</tr>
<tr>
<td><strong>29</strong> The ILAP program should <strong>acknowledge the role of ATSILS as peak bodies</strong> representing the interests of Aboriginal and Torres Strait Islander peoples, and providing expert advice in relation to Aboriginal and Torres Strait Islander justice issues.</td>
<td>ToR 5</td>
</tr>
<tr>
<td><strong>30</strong> The future ILAP should <strong>clarify the roles and responsibilities of the NATSILS</strong>.</td>
<td>ToR 5</td>
</tr>
<tr>
<td><strong>31</strong> The future ILAP should consider strategies to support ATSILSs and the NATSILS to <strong>increase their capacity</strong>, including to reduce dependence on Commonwealth funding.</td>
<td>ToR 5</td>
</tr>
<tr>
<td><strong>32</strong> Alternative models to deliver ILAP funding should be <strong>further considered</strong> following the conclusion and consideration of the findings of the reviews and/or evaluations of funding programs for the other main legal assistance providers: FVPLSs, LACs and CLCs. Decisions about changes to the ILAP in the future should consider:</td>
<td>ToR 6</td>
</tr>
<tr>
<td>a. the views of state and territory agencies</td>
<td></td>
</tr>
<tr>
<td>b. the leading role of the Commonwealth in relation to Aboriginal and Torres Strait Islander affairs</td>
<td></td>
</tr>
<tr>
<td>c. the responsibilities of the state and territories for justice systems and the role of states and territories in driving demand for criminal legal assistance</td>
<td></td>
</tr>
<tr>
<td>d. the strengths of existing arrangements</td>
<td></td>
</tr>
<tr>
<td>e. potential transitional costs from any change, including potential interruptions in services</td>
<td></td>
</tr>
<tr>
<td>f. the effectiveness of CSP processes to promote a coordinated, integrated legal assistance sector</td>
<td></td>
</tr>
<tr>
<td>g. the capacity of relevant government agencies to administer specialised, Aboriginal and Torres Strait Islander funding programs and</td>
<td></td>
</tr>
<tr>
<td>h. the appropriateness of providing separate and specialised funding for ATSILSs and FVPLSs in light of their wider roles in the community as Aboriginal and Torres Strait Islander community-controlled organisations.</td>
<td></td>
</tr>
</tbody>
</table>
Future directions and opportunities for reform

<table>
<thead>
<tr>
<th>33</th>
<th>Future directions to be further explored include:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>a. transitioning the management and administration of ILAP and other specialist grant programs to the centralised Commonwealth Grants Hub</td>
</tr>
<tr>
<td></td>
<td>b. opportunities under Commonwealth Indigenous procurement policies to establish direct contracting or grant arrangements with individual ATSILSs to deliver services in each jurisdiction</td>
</tr>
<tr>
<td></td>
<td>c. noting the small number of ILAP funding recipients (8), adopting a contract management approach to grant funding individually tailored to each ATSILS’s risk profile, to minimise unnecessary compliance burdens.</td>
</tr>
<tr>
<td></td>
<td>d. the potential for ATSILSs to be preferred tenderers for future service grants or contracts</td>
</tr>
<tr>
<td></td>
<td>e. the development of integrated Commonwealth and state and territory Government strategies or commitments to expand the legal assistance sector and</td>
</tr>
<tr>
<td></td>
<td>f. options to support ATSILSs to expand social entrepreneur activities or other business opportunities which are consistent with objectives of the ILAP and would reduce ATSILSs’ dependence on Commonwealth grant funding in the future.</td>
</tr>
</tbody>
</table>

Primary ToR

ToR 6
Bibliography


AIHW. 2017b. *Young people in child protection and under youth justice supervision 2015–16.*  


AIHW. 2018c. *Youth justice in Australia 2016–17.* AIHW.  


ALS NSW/ACT. 2018. *Performance Report, July-December 2017.* Submitted to the Attorney-General’s Department, 2 February 2018


Commonwealth Attorney-General's Department – Refer to AGD (above)


[Accessed 30 November 2018]

Fogarty, W., Lovell, M., Langenberg, J. and Heron, M-J. 2018. *Deficit Discourse and Strengths-based Approaches: Changing the Narrative of Aboriginal and Torres Strait Islander Health and Wellbeing*. The Lowitja Institute.  
[Accessed 28 November 2018]

[Accessed 4 January 2019]

[Accessed 14 October 2018]

[Accessed 23 November 2018]

[Accessed July 2018]

Human Rights Law Centre & Change the Record Coalition. 2017. *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women’s growing over-incarceration*. Human Rights Law Centre.  
[Accessed 15 November 2018]

Hunt, J. 2013. *Engaging with Indigenous Australia-exploring the conditions for effective relationships with Aboriginal and Torres Strait Islander communities*. Issues Paper no. 5 produced for the Closing the Gap Clearinghouse. Australian National University.  
[Accessed 23 November 2018]

[Accessed 28 Nov 2018]

[Accessed 28 November 2018]

[Accessed 28 November 2018]


Public Interest Advocacy Centre. 2018. *NSW Government to rush through adoption reforms today: Media Releases*. Public Interest Advocacy Centre Ltd.


Appendix A – Review of ILAP Terms of Reference

Review of the Indigenous Legal Assistance Program

TERMS OF REFERENCE

I, the Hon Christian Porter MP, Attorney-General of Australia, hereby announce the following Terms of Reference for the Review of the Indigenous Legal Assistance Program.

Background
Aboriginal and Torres Strait Islander Legal Services (ATSILS) are community based organisations that have operated across Australia for over 40 years. The creation of ATSILS was part of a broader national movement to enhance the legal and civil rights of Aboriginal and Torres Strait Islander Australians. ATSILS provide a range of legal services, including: legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. Not all these services are funded through the Indigenous Legal Assistance Program (ILAP).

As of 2015, ATSILS are primarily funded through the ILAP. The ILAP is an ongoing grant program which funds ATSILS, to deliver culturally appropriate, accessible legal assistance services to Aboriginal and Torres Strait Islander people. The Commonwealth provides funding to ATSILS through direct grant agreements to deliver legal assistance services from 70 permanent locations nationally, with additional attendance at circuit courts, bush courts and outreach legal support to metropolitan, regional and remote areas. These legal assistance services include:

- discrete assistance such as information, referral, legal advice, non-legal support and task assistance
- community legal education and early intervention and prevention activities
- facilitated resolution processes
- duty lawyer assistance, and
- representation services for criminal, civil and family law matters.

The ILAP also provides funding to the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) to support the ongoing development and continuous improvement of the ILAP and delivery of services by ATSILS, particularly through coordination and constructive policy input.

The objectives of the ILAP are:
- improving access to justice for Indigenous Australians
- reducing the disproportionate disadvantage experienced by Indigenous Australians in the justice system, and
- providing cost effective legal assistance.
The ILAP will facilitate the achievement of the following outcomes:

a) legal assistance services are focused on and accessible by Indigenous people, particularly priority clients, nation-wide
b) quality legal assistance services are appropriate, proportionate and tailored to people's legal needs and levels of capability
c) legal assistance providers, governments and other service providers collaborate to provide joined-up services to address people's legal and other problems
d) legal problems are identified and resolved at the earliest opportunity before they escalate
e) Indigenous Australians are empowered to understand and protect their legal rights and responsibilities and to address, or prevent, legal problems.

The objectives and outcomes of the ILAP align with and support the objective of the National Strategic Framework for Legal Assistance 2015-2020, which is:

'a national, integrated system of legal assistance that is focused on improving access to justice and maximising service delivery within available resources'.

Current funding arrangements under the ILAP are due to expire on 30 June 2020. In accordance with proper grant administration practices outlined in the Public Governance, Performance and Accountability Act 2013 and the Commonwealth Grant Rules and Guidelines 2017, it is an appropriate time to review the progress towards the objectives and outcomes of the ILAP.

The Review of the ILAP will be an independent assessment conducted in parallel to a number of other reviews and evaluations being conducted by the Commonwealth between 2017 and 2019, including:

- the Review of the National Partnership Agreement on Legal Assistance Services 2015-2020
- the Evaluation of the pilot program of specialist domestic violence units and health justice partnerships
- the Evaluation of the Family Advocacy and Support Services, and
- the Evaluation of the Family Violence Prevention Legal Services Programme.

The programs and policy initiatives which are the subjects of these reviews were developed to complement and support the aspirational principles of the Strategic Framework. As far as possible, the Review of the ILAP will align its consultation processes, data collection and analysis with these other reviews. Collectively these reviews will inform advice to government on the future arrangements for legal assistance services from 1 July 2020.

Scope of the Review of the ILAP
The purpose of the Review of the ILAP is to assess the effectiveness, efficiency and appropriateness of the ILAP as a mechanism for achieving its objectives and outcomes within available resources, and identify best practice and opportunities for improvement. The Review of the ILAP will focus on how the operation of the ILAP has affected progress towards meeting its objective and outcomes. The outcomes of the Review of the ILAP will help inform future funding arrangements for Indigenous legal assistance services from 1 July 2020. The Review of the ILAP will not conduct new research or in-depth analysis of the broader issues, including the level of Indigenous legal need in Australia and/or whether existing funding is sufficient to meet that need.

Terms of Reference
To assess the effectiveness, efficiency and appropriateness of the ILAP and its progress towards meeting its objectives and outcomes, the Review of the ILAP will have regard to:
1. the impact that the ILAP has had on the delivery of cost effective, high quality, culturally appropriate and accessible Indigenous legal assistance services, including consideration of:

   a. the appropriateness and utility of the objectives and outcomes in supporting the delivery of legal assistance services, including consideration of:
      i. relevance of the current landscape of the legal assistance sector, and
      ii. existing research about Indigenous legal need and service delivery

   b. whether the ILAP promotes Indigenous legal assistance services that are effective, efficient, accessible and appropriate, including cultural appropriateness, and represent value for money, including consideration of:
      i. integrated legal and non-legal services
      ii. the cultural expertise and broader role that ATSILS provide within Indigenous and non-Indigenous communities
      iii. the use of different modes of service delivery, and
      iv. value for money* as consisting of a range of factors, including cost of service delivery, and qualitative factors relating to services, service location, client complexity, among others

   c. whether the ILAP has improved the targeting of legal assistance services and the early identification and resolution of legal problems for Aboriginal and Torres Strait Islander people with the greatest legal need, particularly priority clients, using available analysis and bodies of research.

2. the implementation of collaborative service planning, and the extent to which it is contributing to the objectives and outcomes of the ILAP.

3. the effectiveness, efficiency and appropriateness of current funding arrangements for ATSILS and NATSILS in meeting the objectives and outcomes of the ILAP, including consideration of:

   a. the drivers of demand for ATSILS
   b. how and whether the funding supports the achievement of the objectives and outcomes of the ILAP
   c. the interaction between the ILAP and other Commonwealth funding arrangements for legal assistance services.

4. the utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data in measuring the progress towards achieving the objective and outcomes of the ILAP.

5. the extent of engagement between the Commonwealth, state and territory governments, ATSILS, NATSILS and the legal assistance sector in supporting a joined up approach to addressing Indigenous legal need, including consideration of:

   a. the roles and responsibilities of the Commonwealth, ATSILS and the NATSILS in supporting the objectives and outcomes of the ILAP
   b. the broader role of NATSILS with community controlled organisations and non-Indigenous communities
   c. the extent of collaboration and coordination between the Commonwealth, the states and territories, ATSILS, NATSILS, the broader legal assistance sector and the non-legal sector, and
d. the extent to which current arrangements enable NATSILS to support the ongoing development and continuous improvement of the ILAP and the delivery of services by ATSI, particularly through coordination, collaboration and policy input within available resources.

6. identify areas for improvement and opportunities to enhance current and future arrangements.

Consultation
The Review of the ILAP should consult with relevant stakeholders, including but not limited to: the Commonwealth; state and territory governments; Aboriginal and Torres Strait Islander Legal Services and other legal assistance providers, including legal aid commissions and community legal centres; peak legal assistance sector bodies; and relevant legal assistance research/industry bodies.

Other considerations
The Review of the ILAP should consider existing research and analysis on legal assistance services, service delivery and legal need.

The Hon Christian Porter MP
Attorney-General of Australia
0 2 APR 2018

* Value for money will not involve service delivery comparisons between legal assistance providers.

Appendix B – Terms of Reference Focus Questions

<table>
<thead>
<tr>
<th>Focus Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ToR 1: Impact that the ILAP has had on the delivery of cost effective, high quality, culturally appropriate and accessible Indigenous legal assistance services</strong></td>
</tr>
<tr>
<td>FA1.1: the impact of 2015 reforms on achieving the ILAP’s objectives and outcomes</td>
</tr>
<tr>
<td>FA1.2: the performance of ATSILS against the performance indicators and reporting</td>
</tr>
<tr>
<td>FA1.3: the extent to which the ILAP has encouraged more effective and efficient service delivery practices</td>
</tr>
<tr>
<td>FA1.4: delivery of Indigenous legal assistance services in accordance with the aspirational principles of the Strategic Framework</td>
</tr>
<tr>
<td>FA1.5: the ongoing appropriateness of the aspirational principles in the Strategic Framework, as the basis for the content of individual funding agreements</td>
</tr>
<tr>
<td>FA1.6: the appropriateness and utility of the Commonwealth priorities and eligibility principles, in supporting the delivery of targeted legal assistance services</td>
</tr>
<tr>
<td>FA1.7: whether the objectives and outcomes of the ILAP support the delivery of Indigenous legal assistance services and are relevant to the current landscape of the legal assistance sector and existing research about legal need and service delivery</td>
</tr>
<tr>
<td>FA1.8: alignment with and contribution to, other government Indigenous-specific policies and programs</td>
</tr>
<tr>
<td>FA1.9: the impact of the ILAP in supporting innovation in the delivery of legal assistance services</td>
</tr>
<tr>
<td><strong>ToR 2: Implementation of collaborative service planning and the extent to which it is contributing to the outcomes and objectives of the ILAP</strong></td>
</tr>
<tr>
<td>FA2.1: the effectiveness of collaborative service planning as a mechanism to facilitate progress towards achieving the ILAP objectives and outcomes</td>
</tr>
<tr>
<td>FA2.2: examining how collaborative service planning has been implemented in each state and territory, including consideration of the two elements of collaborative service planning (the use of an evidence-base in allocating funding and collaborative service planning meetings), and a joined-up approach to addressing legal need through collaboration and coordination</td>
</tr>
<tr>
<td>FA2.3: the extent of participation and engagement in collaborative service planning by ATSILS along with the Commonwealth, states and territories and the legal assistance sector</td>
</tr>
<tr>
<td>FA2.4: the respective roles of the Commonwealth and the states and territories in collaborative service planning</td>
</tr>
<tr>
<td>FA2.5: the outcomes of the collaborative service planning processes</td>
</tr>
<tr>
<td>FA2.6: whether any barriers have affected ATSILS participation and engagement in collaborative service planning</td>
</tr>
<tr>
<td><strong>ToR 3: Effectiveness, efficiency and appropriateness of current funding arrangements for ATSILS and NATSILS in meeting the objectives and outcomes of the ILAP</strong></td>
</tr>
<tr>
<td>FA3.1: whether the ILAP has increased funding certainty to ATSILS</td>
</tr>
<tr>
<td>FA3.2: the appropriateness and utility of the model used to distribute ATSILS’ funding in order to achieve the objectives and outcomes of the ILAP</td>
</tr>
<tr>
<td>FA3.3: whether the ILAP facilitates an appropriate response to the legal need of priority client groups, for example, people experiencing or at risk of family violence and people living in rural or remote areas</td>
</tr>
<tr>
<td>FA3.4: the appropriateness and utility of the current structure of the ILAP funding arrangements</td>
</tr>
<tr>
<td>FA3.5: Whether the amount of funding under the ILAP supports the achievement of its objectives and outcomes</td>
</tr>
<tr>
<td><strong>ToR 4: Utility of the performance monitoring and reporting arrangements, including the collection of consistent and comparable service data in measuring progress towards the ILAP in objectives and outcomes</strong></td>
</tr>
<tr>
<td>FA4.1: whether the performance monitoring and reporting requirements appropriately balance the need for accountability versus the need to minimise the administrative burden on ATSILS</td>
</tr>
<tr>
<td>FA4.2</td>
</tr>
<tr>
<td>------</td>
</tr>
<tr>
<td>FA4.3</td>
</tr>
<tr>
<td>FA4.4</td>
</tr>
<tr>
<td>FA4.5</td>
</tr>
<tr>
<td>FA4.6</td>
</tr>
<tr>
<td>FA4.7</td>
</tr>
<tr>
<td>FA4.7</td>
</tr>
</tbody>
</table>

**ToR 5: Extent of engagement between the Commonwealth, state and territory governments, ATSILS and NATSILS and the legal assistance sector in supporting a joined up approach to addressing Indigenous legal need**

<table>
<thead>
<tr>
<th>FA5.1</th>
<th>how the Commonwealth, states and territories, ATSILS, NATSILS and the broader legal assistance sector have coordinated and collaborated with non-legal services to address Indigenous legal need</th>
</tr>
</thead>
<tbody>
<tr>
<td>FA5.2</td>
<td>the level of support provided between the Commonwealth to ATSILS and NATSILS in meeting the objectives and outcomes of the ILAP</td>
</tr>
<tr>
<td>FA5.3</td>
<td>the extent of mutual engagement between the Commonwealth and states and territories and ATSILS and NATSILS</td>
</tr>
<tr>
<td>FA5.4</td>
<td>whether the implementation of the reforms in the ILAP has been effective</td>
</tr>
<tr>
<td>FA5.6</td>
<td>the extent to which the Commonwealth, ATSILS and NATSILS have fulfilled their respective roles and responsibilities under the ILAP</td>
</tr>
</tbody>
</table>

**ToR 6: Areas for improvement and opportunities to enhance current and future arrangements**

<table>
<thead>
<tr>
<th>FA6.1</th>
<th>elements of the ILAP which hinder or assist in the achievement of the agreed objectives and outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>FA6.2</td>
<td>the extent to which current arrangements under the ILAP require further reform to improve service delivery of culturally appropriate legal assistance services within available resources</td>
</tr>
<tr>
<td>FA6.3</td>
<td>consider areas of improvement or opportunities to improve access to justice, with respect to the provision of Indigenous legal assistance services</td>
</tr>
<tr>
<td>FA6.4</td>
<td>consider innovative service delivery models and best practice</td>
</tr>
<tr>
<td>FA6.5</td>
<td>whether the requirements under the ILAP can be enhanced to better support the objective and outcomes of the ILAP</td>
</tr>
<tr>
<td>FA6.6</td>
<td>any relevant recommendations of other reviews of legal assistance arrangements that relate to the ILAP, including alternative funding and administrative arrangements and whether other legal assistance funding arrangements should and/or could be better aligned to, or otherwise support, the objectives and outcomes of the ILAP</td>
</tr>
</tbody>
</table>
Appendix C – ILAP Draft Program Logic Model

National Strategic Framework for Legal Assistance 2015-20

To achieve a national, integrated system of legal assistance that is focused on improving access to justice and maximising service delivery within available resources

- Legal assistance services, government services and other services collaborate to provide joined-up services to address people’s legal and other problems
- People are empowered to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems
- Legal assistance services focus on, and are accessible to, people facing disadvantage
- Legal assistance services are appropriate, proportionate and tailored to people’s legal needs and capabilities
- Legal problems are identified and resolved in a timely manner before they escalate

Objectives
- Reducing the disproportionate disadvantage experienced by Indigenous Australians in the justice system
- Improving access to justice for Indigenous Australians
- Cost effective legal assistance

Outcomes
- Legal assistance services are cost effective and focused on and accessible by Indigenous Australians, particularly priority clients, nation-wide
- Legal assistance service providers, governments and other service providers collaborate to provide joined-up services to address client’s legal and other problems
- Quality legal assistance services are appropriate, proportionate and tailored to people’s legal needs and levels of capability
- Legal problems are identified and resolved at the earliest opportunity before they escalate
- Indigenous Australians are empowered to understand and protect their legal rights and responsibilities and to address, or prevent, legal problems

Activities
- Delivery of cost effective, culturally appropriate and accessible legal assistance services to Indigenous Australians, nation-wide
- Increased cooperation and coordination between legal assistance service providers, governments and other service providers
- Legal assistance services are directed to areas of greatest need, without duplication
- Unrepresented Indigenous Australians receive help at court
- Indigenous communities receive information about their legal rights and early assistance to resolve their legal problems

Outputs
- Delivery of cost effective, culturally appropriate and accessible legal assistance services
- Increased cooperation and coordination between legal assistance service providers, governments and other service providers
- Legal assistance services are directed to areas of greatest need, without duplication
- Unrepresented Indigenous Australians receive help at court
- Indigenous communities receive information about their legal rights and early assistance to resolve their legal problems

Key assumptions
- Access to legal assistance helps Indigenous Australians to resolve their legal problems and reduces the likelihood of them experiencing further legal issues, particularly when legal assistance is available early in the legal process
- People’s capability to resolve legal problems may be compromised by circumstances of vulnerability and/or disadvantage and are more likely to experience legal problems
## Appendix D – Stakeholder Consultation List

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Stakeholder group</th>
<th>Organisation Name</th>
<th>Stakeholder position descriptor</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Ngurrambai Bail Support Officer</td>
</tr>
<tr>
<td>ACT</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Ngurrambai Bail Support Officer</td>
</tr>
<tr>
<td>ACT</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Solicitor, Yarrabi Bamirr Program</td>
</tr>
<tr>
<td>ACT/NSW – (Queanbeyan)</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td></td>
</tr>
<tr>
<td>National</td>
<td>Other legal sector</td>
<td>Human Rights Law Centre</td>
<td>Director, Legal Advocacy</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Attorney-General’s Department</td>
<td>Assistant Director, Legal Assistance Review Section, Legal Assistance Branch</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Attorney-General’s Department</td>
<td>Assistant Director, Indigenous Legal Services Section, Legal Assistance Branch</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Attorney-General’s Department</td>
<td>Deputy Secretary, Legal Services and Families Group</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Attorney-General’s Department</td>
<td>Director, Indigenous Legal Services Section, Legal Assistance Branch</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Attorney-General’s Department</td>
<td>Director, Legal Assistance Policy and Programs Section, Legal Assistance Branch</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Attorney-General’s Department</td>
<td></td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Attorney-General’s Department</td>
<td></td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Attorney-General’s Department</td>
<td>Legal Assistance Review Section, Legal Assistance Branch</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Attorney-General’s Department</td>
<td>Policy Officer, Legal Assistance Review Section, Legal Assistance Branch</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Department of the Prime Minister and Cabinet</td>
<td>Assistant Secretary, Community Safety Branch, Education, Community Safety and Health Division</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Department of the Prime Minister and Cabinet</td>
<td>Senior Adviser, Family Violence Policy, Community Safety Branch, Education, Community Safety and Health Division</td>
</tr>
<tr>
<td>National</td>
<td>Government</td>
<td>Department of the Prime Minister and Cabinet</td>
<td>Director, Aboriginal Affairs and Reconciliation</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Aboriginal Field Officer</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Administration Assistant</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Stakeholder group</td>
<td>Organisation Name</td>
<td>Stakeholder position descriptor</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------</td>
<td>------------------------------</td>
<td>-----------------------------------------------</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Deputy Principal Solicitor</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Regional Admin Coordinator</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Trial Advocate</td>
</tr>
<tr>
<td>NSW</td>
<td>Court users including court officials</td>
<td>District Court</td>
<td>Judge</td>
</tr>
<tr>
<td>NSW</td>
<td>FVPLSs, LACs and CLCs</td>
<td>Legal Aid NSW</td>
<td>Solicitor in Charge, Dubbo Regional Office</td>
</tr>
<tr>
<td>NSW</td>
<td>Other legal sector</td>
<td>ACCO</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Administration Officer</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Administration Officer</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>Community sector</td>
<td>Mission Australia</td>
<td>Case Manager</td>
</tr>
<tr>
<td>NSW</td>
<td>Community sector</td>
<td>Namatjira Haven</td>
<td>Manager</td>
</tr>
<tr>
<td>NSW</td>
<td>Community sector</td>
<td>Rekindling the Spirit</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>Community sector</td>
<td>Youth Empowerment Program</td>
<td>Youth Worker</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>Other legal sector</td>
<td>Public Interest Advocacy Agency (PIAC)</td>
<td>CEO</td>
</tr>
<tr>
<td>NSW</td>
<td>Court users including court officials</td>
<td>Parramatta Koori Children’s Court</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>Court users including court officials</td>
<td>Parramatta Koori Children’s Court</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Principal Solicitor</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Secondee Solicitor</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Solicitor</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Assistant CEO</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Managing Advocate</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Principal Legal Officer</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>Principal Solicitor</td>
</tr>
<tr>
<td>NSW</td>
<td>Government</td>
<td>Aboriginal Affairs NSW</td>
<td>Principal Policy Officer</td>
</tr>
<tr>
<td>NSW</td>
<td>Government</td>
<td>Corrective Services NSW</td>
<td>Assistant Commissioner</td>
</tr>
<tr>
<td>NSW</td>
<td>Government</td>
<td>Corrective Services NSW</td>
<td>Director, Corrections Strategy</td>
</tr>
<tr>
<td>NSW</td>
<td>Government</td>
<td>NSW Department of Justice</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>Government</td>
<td>NSW Department of Justice</td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Stakeholder group</td>
<td>Organisation Name</td>
<td>Stakeholder position descriptor</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>NSW</td>
<td>Government</td>
<td>NSW Department of Justice</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>Government</td>
<td>NSW Department of Justice</td>
<td>Policy Manager</td>
</tr>
<tr>
<td>NSW</td>
<td>Other legal sector</td>
<td>Office of the Legal Services Commissioner</td>
<td>Commissioner</td>
</tr>
<tr>
<td>NSW</td>
<td>Other legal sector</td>
<td>Law Access NSW</td>
<td>Director</td>
</tr>
<tr>
<td>NSW</td>
<td>FVPLSs, LACs and CLCs</td>
<td>Legal Aid Commission</td>
<td>CEO</td>
</tr>
<tr>
<td>NSW</td>
<td>Government</td>
<td>NSW Department of Justice</td>
<td></td>
</tr>
<tr>
<td>NSW</td>
<td>Other legal sector</td>
<td>The Public Defenders Chambers</td>
<td>Senior Public Defender</td>
</tr>
<tr>
<td>NSW</td>
<td>Court users including court officials</td>
<td>Local Court</td>
<td>Magistrate</td>
</tr>
<tr>
<td>NSW</td>
<td>ILAP funding recipient</td>
<td>ALS (NSW/ ACT)</td>
<td>ATSILS stakeholder</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Client Support Officer</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Client Support Officer</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Office Manager</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Regional Managing Solicitor</td>
</tr>
<tr>
<td>NT</td>
<td>Community sector</td>
<td>Bushmob Aboriginal Corporation</td>
<td>CEO</td>
</tr>
<tr>
<td>NT</td>
<td>Court users including court officials</td>
<td>Supreme Court</td>
<td>Chief Judge</td>
</tr>
<tr>
<td>NT</td>
<td>Court users including court officials</td>
<td></td>
<td>Judge</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Deputy Managing Civil Solicitor</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Kunga Program Manager</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Law and Justice NAAJA</td>
</tr>
<tr>
<td>NT</td>
<td>FVPLSs, LACs and CLCs</td>
<td>NT Legal Aid Commission</td>
<td>Managing Solicitor</td>
</tr>
<tr>
<td>NT</td>
<td>Other legal sector</td>
<td>Law Society NT</td>
<td>CEO</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Chief Finance Manager</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Manager – Law and Justice Projects</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Managing Solicitor – Civil</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Principle Legal Officer</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td></td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td></td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Manager of the Criminal Team</td>
</tr>
<tr>
<td>NT</td>
<td>ILAP funding recipient</td>
<td>NAAJA</td>
<td>Practice Manager - Civil</td>
</tr>
<tr>
<td>NT</td>
<td>FVPLSs, LACs and CLCs</td>
<td>NT Legal Aid Commission</td>
<td>Director</td>
</tr>
<tr>
<td>NT</td>
<td>Court users including court officials</td>
<td>Supreme Court of NT</td>
<td></td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Stakeholder group</td>
<td>Organisation Name</td>
<td>Stakeholder position descriptor</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td>Peak Body</td>
<td>FVPLSs, LACs and CLCs</td>
<td>NLA</td>
<td>Chair of NLA and Director of ACT Legal Aid</td>
</tr>
<tr>
<td>Peak Body</td>
<td>FVPLSs, LACs and CLCs</td>
<td>NLA</td>
<td>Executive Officer and Director of Legal Aid Nationally</td>
</tr>
<tr>
<td>Peak Body</td>
<td>ILAP funding recipient</td>
<td>NATSILS</td>
<td>Executive Officer</td>
</tr>
<tr>
<td>Peak Body</td>
<td>ILAP funding recipient</td>
<td>NATSILS</td>
<td>Legal Secretariat Officer</td>
</tr>
<tr>
<td>Peak Body</td>
<td>Community sector</td>
<td>SNAICC</td>
<td>Manager, Social Policy and Research</td>
</tr>
<tr>
<td>Peak Body</td>
<td>FVPLSs, LACs and CLCs</td>
<td>NFVPLS</td>
<td></td>
</tr>
<tr>
<td>Peak Body</td>
<td>ILAP funding recipient</td>
<td>NATSILS; ALRM</td>
<td>National Co-Chair; CEO</td>
</tr>
<tr>
<td>Peak Body</td>
<td>FVPLSs, LACs and CLCs</td>
<td>Federation of Community Legal Centres (FCLC)</td>
<td>Committee Chair</td>
</tr>
<tr>
<td>QLD</td>
<td>ILAP funding recipient</td>
<td>ATSILS Qld</td>
<td></td>
</tr>
<tr>
<td>QLD</td>
<td>ILAP funding recipient</td>
<td>ATSILS Qld</td>
<td>CEO</td>
</tr>
<tr>
<td>QLD</td>
<td>ILAP funding recipient</td>
<td>ATSILS Qld</td>
<td>Client Services Coordinator</td>
</tr>
<tr>
<td>QLD</td>
<td>ILAP funding recipient</td>
<td>ATSILS Qld</td>
<td>Court Support Officers</td>
</tr>
<tr>
<td>QLD</td>
<td>ILAP funding recipient</td>
<td>ATSILS Qld</td>
<td>Court Support Officers</td>
</tr>
<tr>
<td>QLD</td>
<td>ILAP funding recipient</td>
<td>ATSILS Qld</td>
<td>Legal Secretary</td>
</tr>
<tr>
<td>QLD</td>
<td>ILAP funding recipient</td>
<td>ATSILS Qld</td>
<td>Principal Solicitor</td>
</tr>
<tr>
<td>QLD</td>
<td>Court users including court officials</td>
<td>Magistrates Court</td>
<td>Magistrate</td>
</tr>
<tr>
<td>QLD</td>
<td>Government</td>
<td>Department Justice and Attorney-General</td>
<td>Indigenous Justice Officer</td>
</tr>
<tr>
<td>QLD</td>
<td>FVPLSs, LACs and CLCs</td>
<td>Legal Aid QLD</td>
<td>Principal Lawyer</td>
</tr>
<tr>
<td>QLD</td>
<td>FVPLSs, LACs and CLCs</td>
<td>Legal Aid QLD</td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>ILAP funding recipient</td>
<td>ALRM</td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>ILAP funding recipient</td>
<td>ALRM</td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>ILAP funding recipient</td>
<td>ALRM</td>
<td>Civil Practice Manager</td>
</tr>
<tr>
<td>SA</td>
<td>ILAP funding recipient</td>
<td>ALRM</td>
<td>Community Legal Education Officer</td>
</tr>
<tr>
<td>SA</td>
<td>ILAP funding recipient</td>
<td>ALRM</td>
<td>Executive Assistant</td>
</tr>
<tr>
<td>SA</td>
<td>ILAP funding recipient</td>
<td>ALRM</td>
<td>Senior Solicitor - Civil Section</td>
</tr>
<tr>
<td>SA</td>
<td>Court users including court officials</td>
<td>SA Police</td>
<td>Inspector</td>
</tr>
<tr>
<td>SA</td>
<td>Government</td>
<td>Youth Justice</td>
<td>Senior Aboriginal Advisor</td>
</tr>
<tr>
<td>SA</td>
<td>Community Sector</td>
<td>Cross Borders</td>
<td>Director</td>
</tr>
<tr>
<td>SA</td>
<td>Community Sector</td>
<td>Ngaanyatjarra</td>
<td>Legal Support and Educational Officer</td>
</tr>
<tr>
<td>SA</td>
<td>Community Sector</td>
<td>Pitjantjatjara</td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>Community Sector</td>
<td>Yankunytjatjara (NPY) Women’s Council</td>
<td></td>
</tr>
<tr>
<td>SA</td>
<td>Government</td>
<td>Department for Corrections</td>
<td>Senior Case Officer</td>
</tr>
<tr>
<td>SA</td>
<td>ILAP funding recipient</td>
<td>ALRM</td>
<td>Junior Lawyer</td>
</tr>
<tr>
<td>SA</td>
<td>ILAP funding recipient</td>
<td>ALRM</td>
<td>Aboriginal Justice Officer</td>
</tr>
<tr>
<td>SA</td>
<td>Court users including court officials</td>
<td>Courts Administration Authority SA</td>
<td>Resident Magistrates in Port Augusta, Cooper Pedy, Whyalla, and APY Lands. Regional Manager of Port Augusta</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Stakeholder group</td>
<td>Organisation Name</td>
<td>Stakeholder position descriptor</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>---------------------------------</td>
</tr>
<tr>
<td>SA</td>
<td>Court users including court officials</td>
<td>Courts Administration Authority SA</td>
<td>Senior Aboriginal Justice Officer</td>
</tr>
<tr>
<td>SA</td>
<td>Court users including court officials</td>
<td>Courts Administration Authority SA</td>
<td>Aboriginal Justice Officer</td>
</tr>
<tr>
<td>SA</td>
<td>Court users including court officials</td>
<td>Courts Administration Authority SA</td>
<td>Aboriginal Justice Officer</td>
</tr>
<tr>
<td>SA</td>
<td>Court users including court officials</td>
<td>Courts Administration Authority SA</td>
<td>Magistrate</td>
</tr>
<tr>
<td>SA</td>
<td>Government</td>
<td>Department of Correctional Services</td>
<td>Executive Director - Offender Development</td>
</tr>
<tr>
<td>SA</td>
<td>ILAP funding recipient</td>
<td>ALRM</td>
<td>Head Criminal Lawyer</td>
</tr>
<tr>
<td>SA</td>
<td>Government</td>
<td>Dept. of Correctional Services</td>
<td>Director Aboriginal Services</td>
</tr>
<tr>
<td>SA</td>
<td>Community sector</td>
<td>South Australian Council of Social Services</td>
<td>CEO</td>
</tr>
<tr>
<td>TAS</td>
<td>ILAP funding recipient</td>
<td>TACLS</td>
<td></td>
</tr>
<tr>
<td>TAS</td>
<td>Community sector</td>
<td>Circular Head Aboriginal Corporation</td>
<td>CEO</td>
</tr>
<tr>
<td>TAS</td>
<td>Community sector</td>
<td>Circular Head Aboriginal Corporation</td>
<td>Executive Manager</td>
</tr>
<tr>
<td>TAS</td>
<td>ILAP funding recipient</td>
<td>TACLS</td>
<td>Criminal Lawyer</td>
</tr>
<tr>
<td>TAS</td>
<td>Community sector</td>
<td>Tasmanian Flinders Island Association Inc</td>
<td>Chairperson</td>
</tr>
<tr>
<td>TAS</td>
<td>Community sector</td>
<td>TAC</td>
<td></td>
</tr>
<tr>
<td>TAS</td>
<td>Community sector</td>
<td>TAC</td>
<td></td>
</tr>
<tr>
<td>TAS</td>
<td>ILAP funding recipient</td>
<td>TACLS</td>
<td>Client Service Officer</td>
</tr>
<tr>
<td>TAS</td>
<td>ILAP funding recipient</td>
<td>TACLS</td>
<td>Criminal Lawyer</td>
</tr>
<tr>
<td>TAS</td>
<td>Community sector</td>
<td>TAC</td>
<td>Aboriginal Legal Field officer</td>
</tr>
<tr>
<td>TAS</td>
<td>Community sector</td>
<td>TAC</td>
<td>Northern Regional Manager</td>
</tr>
<tr>
<td>TAS</td>
<td>Community sector</td>
<td>TAC</td>
<td>Youth Worker/Education Worker</td>
</tr>
<tr>
<td>TAS</td>
<td>ILAP funding recipient</td>
<td>TACLS</td>
<td>Client Service Officer</td>
</tr>
<tr>
<td>TAS</td>
<td>ILAP funding recipient</td>
<td>TACLS</td>
<td>Family and Criminal Lawyer</td>
</tr>
<tr>
<td>VIC</td>
<td>Court users including court officials</td>
<td>Children’s Court - Court Service Victoria</td>
<td>Koori Family Service Officer</td>
</tr>
<tr>
<td>VIC</td>
<td>Court users including court officials</td>
<td>Children’s Court - Court Service Victoria</td>
<td>Koori Services Coordinator</td>
</tr>
<tr>
<td>VIC</td>
<td>ILAP funding recipient</td>
<td>VALS</td>
<td>Acting CEO and Director Executive and Corporate Services</td>
</tr>
<tr>
<td>VIC</td>
<td>ILAP funding recipient</td>
<td>VALS</td>
<td>Family Violence CSO</td>
</tr>
<tr>
<td>VIC</td>
<td>ILAP funding recipient</td>
<td>VALS</td>
<td>Family Violence CSO</td>
</tr>
<tr>
<td>VIC</td>
<td>ILAP funding recipient</td>
<td>VALS</td>
<td>Family Violence CSO - Team Leader</td>
</tr>
<tr>
<td>VIC</td>
<td>ILAP funding recipient</td>
<td>VALS</td>
<td>Principal Solicitor - Civil Law</td>
</tr>
<tr>
<td>VIC</td>
<td>Community sector</td>
<td>Victorian Aboriginal Education Association Incorporated (VAEAI)</td>
<td>General Manager</td>
</tr>
<tr>
<td>VIC</td>
<td>FVPLSs, LACs and CLCs</td>
<td>VLA</td>
<td>Acting Managing Director</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Stakeholder group</td>
<td>Organisation Name</td>
<td>Stakeholder position descriptor</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------------------------------</td>
<td>-------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>VIC</td>
<td>FVPLSs, LACs and CLCs</td>
<td>VLA</td>
<td>Associate Director, Child Protection Transformation</td>
</tr>
<tr>
<td>VIC</td>
<td>FVPLSs, LACs and CLCs</td>
<td>VLA</td>
<td>CLC Funding and Development Program Manager</td>
</tr>
<tr>
<td>VIC</td>
<td>FVPLSs, LACs and CLCs</td>
<td>VLA</td>
<td>Program Manager</td>
</tr>
<tr>
<td>VIC</td>
<td>FVPLSs, LACs and CLCs</td>
<td>VLA</td>
<td>Senior Strategic Advisor</td>
</tr>
<tr>
<td>VIC</td>
<td>ILAP funding recipient</td>
<td>VALS</td>
<td>Director, Legal and Client Services</td>
</tr>
<tr>
<td>VIC</td>
<td>ILAP funding recipient</td>
<td>VALS</td>
<td>Manager - Community Justice Programs</td>
</tr>
<tr>
<td>VIC</td>
<td>ILAP funding recipient</td>
<td>VALS</td>
<td>Solicitor</td>
</tr>
<tr>
<td>VIC</td>
<td>ILAP funding recipient</td>
<td>VALS</td>
<td>Team Leader - Metro Community Justice Programs</td>
</tr>
<tr>
<td>VIC</td>
<td>Community sector</td>
<td>Murray Valley Aborigin Co-op (MVAC)</td>
<td></td>
</tr>
<tr>
<td>VIC</td>
<td>Court users including court officials</td>
<td>Magistrates Court</td>
<td>Supervisory Magistrate for Sexual Offences</td>
</tr>
<tr>
<td>International</td>
<td>Other legal sector</td>
<td>King and Wood Mallesons</td>
<td>Head of Pro Bono and Community Impact</td>
</tr>
<tr>
<td>VIC</td>
<td>FVPLSs, LACs and CLCs</td>
<td>Federation of Community Legal Centres (FCLC)</td>
<td>Quality Improvement Officer</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Court Officer</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Court Officer</td>
</tr>
<tr>
<td>WA</td>
<td>Government</td>
<td>ALSWA</td>
<td>Youth Justice Support Officer</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Court Officer</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Director Legal Services</td>
</tr>
<tr>
<td>WA</td>
<td>Court users including court officials</td>
<td>ALSWA</td>
<td>Chief Magistrate</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Managing lawyer of Criminal Law Unit, Manager of Court Officer Unit and Solicitor in the Children's Court</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Lawyer, Civil and Human Rights Unit</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Manager Family Law Unit</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Senior Lawyer Civil and Human Rights Unit and Acting Director</td>
</tr>
<tr>
<td>WA</td>
<td>FVPLSs, LACs and CLCs</td>
<td>Aboriginal Family Law Service (AFLS)</td>
<td>CEO</td>
</tr>
<tr>
<td>WA</td>
<td>Court users including court officials</td>
<td>ALSWA</td>
<td>Magistrate</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Senior Aboriginal Court Officer</td>
</tr>
<tr>
<td>WA</td>
<td>ILAP funding recipient</td>
<td>ALSWA</td>
<td>Administration Support</td>
</tr>
</tbody>
</table>
Appendix E – ILAP Review Discussion Paper Questions

ToR 1 – Impact of ILAP on Delivering Cost Effective, High Quality, Culturally Appropriate and Accessible Indigenous Legal Assistance Services

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

ToR 2 – Implementation of Collaborative Service Planning

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

ToR 3 – Effectiveness, Efficiency and Appropriateness of the ILAP Funding Arrangements

ToR 3 Questions:
1. Explain how the current ILAP funding arrangements facilitated Indigenous people in obtaining access to justice and exercising their rights?
2. How has the current ILAP funding arrangements enabled ATSILS to reduce the disproportionate disadvantage experienced by Indigenous people in the justice system and achieve the ILAP objectives and outcomes?
a) What were the external factors (if any) that affected the achievement of the ILAP outcomes and objectives?

3. To what extent is the ILAP allocation of funds based on the Indigenous population, service drivers, priority client categories and disadvantage drivers suitable for Indigenous communities accessing services in your area?

4. How have the ILAP funding arrangements and allocation of funds ensured continual service provision to meet client demands and needs for casework, advocacy, community legal education and/or provision of advice?

5. Do the priority client categories reflect the needs of ATSILS clients and communities and improve access to justice?

6. What other priority categories or disadvantage drivers should be added to the funding arrangements?

7. How could the funding arrangement and funding certainty be improved to support ATSILS service expansion, planning, staff retention, skills development and impact?

8. What other funding terms and conditions would your organisation recommend in helping to achieve the ILAP objectives and outcomes?

ToR 4 – Utility of Performance Monitoring and Reporting Arrangements and collection of consistent and comparable service data

ToR 4 Questions:

1. What is your amount of experience in reporting and monitoring under ILAP?

2. To what extent do the current ILAP performance monitoring and reporting requirements appropriately balance the need for accountability with the need to minimise the administrative burden on ATSILS?

3. To what extent does the National Legal Assistance Data Standards Manual and ILAP standards for reporting data support collection of consistent and comparable data?

4. What barriers or challenges have impacted the implementation of performance monitoring and reporting arrangements?

5. Do you perceive the current performance and reporting arrangements as effective for showcasing successful outcomes, delivery of culturally safe services and innovation in ATSILS service delivery?

6. How do you think ATSILS should capture and report on strengths-based data to share best practice in delivering services to Indigenous communities and the legal sector?

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

---

434 According to Fogarty et al. (2018) argues that a deficit-based discourse reinforces negative racial stereotypes and reinforces undesired results. On the contrary, strengths-based approaches can be defined as building on the “inherent strengths of Aboriginal and Torres Strait Islander people and communities, and to listen to and trust in their decisions.” Strengths-based approaches in ILAPs context can be applied as sourcing examples of resilience, service solutions and achievements of ATSILS delivering successful outcomes tailored for Indigenous clients in each local context. (Fogarty et al. 2018, page 4) Fogarty, William, Melissa Lovell, Juleigh Langenberg, and Mary-Jane Heron. 2018. Deficit Discourse and Strengths-based Approaches: Changing the narrative of Aboriginal and Torres Strait Islander health and wellbeing. Melbourne: The Lowitja Institute & National Centre for Indigenous Studies.
ToR 5 - Extent of engagement between the Commonwealth, state and territory governments, ATSILS and NATSILS and the legal assistance sector in supporting a joined-up approach to addressing Indigenous legal need

ToR 5 Questions:
1. What does a whole-of-government and collaborative approach to collectively achieving ILAP objectives look like between Commonwealth, states and territories, ATSILS, NATSILS, legal and non-legal sector?
2. Has the level of collaboration and sharing of information between the Commonwealth, states and territories, ATSILS, NATSILS, legal and non-legal sector impacted the quality of services and outcomes for Indigenous clients?
3. What is the level of support provided to ATSILS and NATSILS by the Commonwealth to deliver the ILAP objectives and outcomes?
   a) How could that support improve or change?
4. What is the extent to which the Commonwealth, ATSILS and NATSILS have fulfilled their respective roles and responsibilities under the ILAP?
5. What other stakeholders should be included in the policy, program development, evaluation and monitoring of ILAP funding arrangements?
6. What services, organisations and departments would you like to have better partnerships with to achieve the ILAP objectives and outcomes?
   a) Why are these stakeholders important?
   b) What is the best approach to have these stakeholders engage with ATSILS?

ToR 6 - Areas for improvement and opportunities to enhance the ILAP program and future funding arrangements

ToR 6 Questions:
1. What best service delivery models or approaches could ILAP use to address the disproportionate disadvantage experienced by Indigenous people in the justice system?
2. How could ILAP improve its funding arrangements, reporting and monitoring requirements to respond to current demands and unmet needs of Indigenous clients?
3. Can you provide strengths-based examples of your service or organisation delivering successful outcomes for Indigenous clients?
   a) What contributed to this success?
   b) If applicable, how did ILAP contribute to success?
4. Do you have other recommendations on how the ILAP can improve in the future?
5. How could ILAP be improved if it were to achieve a holistic response to the social determinants of Indigenous disadvantage in the justice system and improve social and emotional wellbeing outcomes for clients?

435 As above
Appendix F – ILAP Advisory Group Membership

CHAIR
Advisory Group meetings will be chaired by a representative from the Commonwealth Attorney-General’s Department.

NATIONAL LEGAL ASSISTANCE SECTOR PEAK BODIES

National Aboriginal and Torres Strait Islander Legal Services
Ms Karly Warner
Executive Officer

National Association of Community Legal Centres
Mr Nassim Arrange
Chief Executive Officer

National Legal Aid
Mr Brendan Thomas
Chief Executive Officer – Legal Aid NSW

NATIONAL LEGAL ASSISTANCE SECTOR PEAK BODIES

National Family Violence Prevention Legal Services Forum
Ms Antoinette Braybrook
National Convenor

ABORIGINAL AND TORRES STRAIT ISLANDER LEGAL SERVICES

Aboriginal Legal Service NSW/ACT
Ms Nadine Miles
Principal Legal Officer

Aboriginal and Torres Strait Islander Legal Service QLD
Mr Shane Duffy
Chief Executive Officer

Aboriginal Legal Rights Movement
Ms Cheryl Axelby
Chief Executive Officer

Ms Nerita Waight
Director of Executive and Corporate Services

North Australian Aboriginal Justice Agency
Mrs Priscilla Atkins
Chief Executive Officer

Tasmanian Aboriginal Community Legal Service
Mr Hamish Locke
State Manager

OTHER REPRESENTATIVES

Law and Justice Foundation of NSW
Mr Geoff Mulherin
Director

Commonwealth Attorney-General’s Department
Ms Esther Bogaart
Assistant Secretary

Law Council of Australia
Mr Mark Woods
Chair of the Law Council’s Access to Justice Committee

Ms Kirsti van der Steen
Director

Department of the Prime Minister and Cabinet
Community Safety Branch
# Appendix G – Legal Service Forum Participants by Jurisdiction

*List provided the NATSILS in its submission to the ILAP Review*

<table>
<thead>
<tr>
<th>ATSILS</th>
<th>Legal Services Forum</th>
<th>Jurisdictional forums</th>
</tr>
</thead>
</table>
| NAAJA  | • NAAJA  
        | • Darwin Community Legal Service  
        | • Northern Territory Legal Aid Commission  
        | • Northern Territory Law Society  
        | • Central Australian Women’s Legal Service  
        | • Domestic Violence Legal Service  
        | • Top End Women’s Legal Service  
        | • Northern Territory Council of Social Service  
        | • Northern Territory Regional, Rural and Remote Lawyers Project | • Commonwealth Attorney-General’s Department  
        | | • NT Department of Justice  
        | | • NT Government agencies including Remote Housing and Centrelink  
        | | • NAAJA  
        | | • Darwin Community Legal Service  
        | | • Northern Territory Legal Aid Commission  
        | | • Law Society  
        | | • Central Australian Women’s Legal Service  
        | | • Domestic Violence Legal Service  
        | | • Top End Women’s Legal Service |
| ATSILS Qld | Queensland Legal Assistance Forum | Regional Legal Assistance Forums |
| | • Legal Aid Queensland  
        | • Bar Association of Queensland  
        | • Queensland Law Society  
        | • Aboriginal & Torres Strait Islander Legal Service  
        | • Community Legal Centres Queensland  
        | • LawRight  
        | • Queensland Indigenous Family Violence Legal Service  
        | • Department of Justice & Attorney-General  
        | • Department of Human Services | • State Justice Attorney-General  
        | | • Legal Aid  
        | | • Community Legal Centres  
        | | • Queensland Law Society  
        | | Queensland Bar Association  
        | | • Police  
        | | • Corrections  
        | | • Lead Aboriginal and Torres Strait Islander government agency |

Aside from the deliberations at QLAF itself, organisational staff currently sit on four subcommittees of QLAF:  
• Aboriginal and Torres Strait Islander Working Group  
• Mental Health Working Group  
• Best Practice and Evidence Base Working Group  
• CLE Assistance Forum

| ALS NSW/ACT | New South Wales Legal Assistance Forum:  
          | • ALS NSW/ACT  
          | • CLC NSW  
          | • Department of Justice NSW  
          | • Law Access NSW  
          | • Law and Justice Foundation of NSW  
          | • Law Society of NSW | Community Legal Service Delivery (CLSD) - 13 regions |

168
<table>
<thead>
<tr>
<th>Jurisdictional Forum</th>
<th>Jurisdictional Forum</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Law Society WA</td>
<td>• Law Society WA</td>
</tr>
<tr>
<td>• WA Bar Association</td>
<td>• WA Bar Association</td>
</tr>
<tr>
<td>• Department of Justice</td>
<td>• Department of Justice</td>
</tr>
<tr>
<td>• Department of Communities</td>
<td>• Department of Communities</td>
</tr>
</tbody>
</table>

**ALSWA**  
**WA Collaborative Services Planning Group**  
- Albany Community Legal Centre  
- Aboriginal Family Law Services WA  
- Citizens Advice Bureau  
- Consumer Credit Legal Service WA  
- Employment Law Centre WA  
- Fremantle Community Legal Centre  
- Goldfields Community Legal Centre  
- Gosnells Community Legal Centre  
- Geraldton Resource Centre  
- Kimberley Community Legal Service  
- Law Access  
- Legal Aid WA  
- Mental Health Law Centre  
- Midland Information Debt and Legal Advocacy Service  
- Northern Suburbs Community Legal Centre  
- Peel Community Legal Service  
- Pilbara Community Legal Service  
- Relationships Australia WA (Djinda)  
- Southern Corridors Advocacy and Legal Education Service  
- Southern Aboriginal Corporation FVPLS  
- South West Community Legal Centre  
- Street Law Centre WA  
- Sussex Street Community Legal Service  
- The Humanitarian Group  
- Tenancy WA  
- Wheatbelt Community Legal Centre

**ALRM**  
**South Australian Legal Assistance Forum**  
- All Community Legal Centres  
- Legal Services Commission  
- ALRM  
- JusticeNet  
- Universities

**TACLS**  
**Legal Services Forum**  
- TACLS  
- Legal Aid Commission  
- CLC Tasmania  

**Jurisdictional Forum**  
- Department of Human Services  
- Justice Department  
- CLC Tasmania  
- Law Society  
- TACLS  
- Legal Aid Commission
<table>
<thead>
<tr>
<th>VALS</th>
<th>Legal Services Forum</th>
<th>Jurisdictional forum</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Aboriginal Justice Agreement and Forum</td>
<td>• Victoria Legal Aid Collaborative</td>
</tr>
<tr>
<td></td>
<td>• Indigenous Family Violence Forum</td>
<td>• Legal Assistance Planning</td>
</tr>
<tr>
<td></td>
<td>• Victorian Legal Assistance Forum</td>
<td>• Law Institute of Victoria</td>
</tr>
<tr>
<td></td>
<td>• Federation of Community Legal Centres (accredited member)</td>
<td></td>
</tr>
</tbody>
</table>