



Shane Rattenbury MLA

Attorney-General

Minister for Consumer Affairs

Minister for Water, Energy and Emissions Reduction

Minister for Gaming

Member for Kurrajong

Dr Warren Mundy

submissions@nlapreview.com.au

Dear Dr ~~Mundy~~ *Warren*

I am writing on behalf of the ACT Government in relation to the Independent Review of the National Legal Assistance Partnership 2020-25 (the NLAP), which you are currently undertaking. I am pleased to provide you with ACT Government's submission to the NLAP review, which is enclosed with this letter.

I trust that the ACT's Government's submission to the Review will provide you with insights to assist you in evaluating the extent to which objectives of the NLAP have been met within the ACT. I am also hopeful that the Review's findings will inform an improved national integrated system of legal assistance in future years – one that is integrated, efficient, effective, and is focused on improving outcomes and keeping the justice system within reach for vulnerable people facing disadvantage.

I look forward to receiving the final report.

Yours sincerely

Shane Rattenbury MLA
Attorney-General

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ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601

 +61 2 6205 0005

 rattenbury@act.gov.au

 [@ShaneRattenbury](https://twitter.com/ShaneRattenbury)

 [shanerattenburymla](https://www.facebook.com/shanerattenburymla)

 [shanerattenbury](https://www.instagram.com/shanerattenbury)

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ACT
Government

ACT Government Submission:

Independent Review of the National
Legal Assistance Partnership
Agreement 2020-2025

October 2023

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Acknowledgement of Country

The ACT Government acknowledges the Ngunnawal people, the Traditional Custodians of the lands on which the ACT legal assistance sector operates and pay our respects to Elders past, present and emerging. We recognise the continuing culture and connection to the country of the Ngunnawal people, and of Aboriginal and Torres Strait Islander peoples across Australia, and the contribution they make to the life of this city and region.



Introduction

The ACT Government acknowledges the vital role legal assistance plays in ensuring equitable access to the justice system, which is fundamental to our democratic society and the rule of law. Not only does legal assistance facilitate improved outcomes for individuals, it also generates broader benefits to society. As a jurisdiction that prioritises access to justice, the ACT Government welcomes the opportunity to contribute to the independent review (the Review) of the National Legal Assistance Partnership 2020 – 2025 (the NLAP).

The NLAP is a key mechanism to assist vulnerable people facing disadvantage by keeping the justice system within their reach. In the ACT, these NLAP funded services are delivered through Legal Aid ACT, community legal centres (CLCs), which include Canberra Community Law, Women’s Legal Centre, CARE Inc and Aboriginal and Torres Strait Islander Legal Services which are provided by the Aboriginal Legal Service (NSW/ACT). This submission also recognises other justice partners providing legal assistance to the community, including the Environmental Defenders Office, the Animal Defenders Office and broader justice and community stakeholders, who all play a key role in delivering services to our community’s most vulnerable.

The Independent Review of the NLAP (the Review) will evaluate the extent to which the objective, outcomes, and outputs of the NLAP have been achieved, and will assess whether the NLAP has been efficient, effective, and appropriate in achieving its policy intent. As stipulated in clauses 81 and 82), the Review will have a particular focus on:

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

This submission acknowledges that the Commonwealth and all Australian jurisdictions have a mutual interest and responsibility for the provision of legal assistance services. In recognition of this, the ACT continues to foster a productive partnership between the Commonwealth, jurisdictions, and service providers to advance the legal, social and wellbeing outcomes for people in Australia.

The ACT Government Submission to the Review was prepared by the Justice and Community Safety Directorate and incorporates input from across Government and importantly, reflects feedback and insights from the ACT’s legal assistance sector and other broader community stakeholders.

ACT's Legal Assistance Sector Strategy 2023-2025

In 2022, the ACT Government produced the ACT's [Legal Assistance Sector Strategy 2023-2025](#) (the Strategy) in collaboration and co-design with the ACT legal assistance sector partners and Social Ventures Australia, an external consulting company engaged to steward the process. The Strategy outlines the overarching vision and strategic direction for the ACT's legal assistance sector and provided an opportunity to holistically review service delivery and legal need in the ACT.

In preparing this submission, the ACT has drawn on data and insights collected as part of the development of the Strategy. Development of the strategy included one-on-one interviews with ACT legal assistance sector stakeholders, two half-day co-design workshops, analysis of quantitative data reports and a 'pulse-check' survey of agencies which interact with the legal assistance sector that was sent to 113 organisations across the ACT.

The ACT Government thanks each contribution made towards this submission and the collaborative effort in its preparation.

Legal assistance for Aboriginal and Torres Strait Islander Australians

The ACT commends the Review specifically examining issues related to Aboriginal and Torres Strait Islander peoples in response to the over-representation of Aboriginal and Torres Strait Islander peoples in all parts of the legal system.

The ACT Government is working to build a strong foundation of partnerships, collaboration, and self-determination to deliver our commitments under the National Agreement on Closing the Gap (Closing the Gap). The ACT participates in the Justice Policy Partnership established under Priority Reform One of Closing the Gap and the [ACT Aboriginal and Torres Strait Islander Agreement 2019-2028](#) (the ACT Agreement) aligns closely with the four Priority Reform Areas and 17 social-economic targets in the National Agreement. Justice is a significant area of focus under the ACT Agreement with the quality life outcome: Aboriginal and Torres Strait Islander peoples, their families and communities thrive in a safe environment and have equitable access to justice and culturally safe restorative justice, prevention, and diversion programs.

The ACT supports the Review examining how Aboriginal Controlled Community Organisations (ACCOS) can be further strengthened through sustained capacity building and investment, in line with Priority Reform 2, to deliver culturally appropriate legal assistance services and notes that the Justice Policy Partnership is commencing work on the Law and Justice Sector Strengthening Plan in line with the [Strategic Plan for funding the development of Aboriginal and Torres Strait Islander Community Controlled Sector](#). The Strategic Plan was developed to guide investment decisions and ensure maximum impact of funding provided by Australian Governments to support the development of the Aboriginal and Torres Strait Islander community-controlled sector. The Law and Justice Strengthening Plan will consider workforce, capital infrastructure, service provision, and governance. While this work is not likely to be finalised to inform this Review, it is important to acknowledge that this will provide guidance on capacity building and investment decisions for ATSILs and justice ACCOs more broadly.

The ACT is actively participating in these important national initiatives, however, also advocates for self-determination at a local level wherever possible to provide the opportunity for the ACT to work with the local First Nations community to share decision making on legal assistance arrangements that reflect experiences and priorities of the local community.

The ACT has mechanisms in place to support self-determination and collaboration with the local First Nations community including the [Aboriginal and Torres Strait Islander Elected Body](#), the Aboriginal and Torres Strait Islander Justice Caucus, and has a long history of working with First Nations people to identify needs and co-designing justice initiatives.

A recent example of the ACT working in partnership with First Nations stakeholders is through funding the Aboriginal Legal Service (NSW/ACT) (ALS) to deliver legal services in child protection matters for First Nations families. This service was established following a recommendation of *Our*

Booris Our Way, which was a wholly Aboriginal and Torres Strait Islander co-designed and led review. The review identified limitations with formal legal services and representation available in the ACT in child protection matters. In response to this recommendation, the ACT Government provided funding to establish the service as a trial over two years. The ACT Government worked with the *Our Booris Our Way* Implementation Oversight Committee to understand what the service needed to deliver to guide its negotiations with the ALS in setting up the service. While the service has only been in operation for a few months, feedback from community stakeholders has been positive and recognised that the service is working to fill the previously unmet need.

The partnership between the ALS and ACT Government is well established under the NLAP, and the ACT considers that the States and Territories should continue to have responsibility to distribute and manage Commonwealth funding for legal assistance for Aboriginal and Torres Strait Islander communities that reflect the local context. The ACT acknowledges the role it plays in funding services for its Aboriginal and Torres Strait community and has worked in partnership with the ALS to identify gaps resulting in funding for additional legal support and justice support services within the ALS in areas such as criminal law, family law and care and protection. The ACT currently provides commensurate budget funding to the sector and in 2022-23 provided \$989,484 to the Aboriginal Legal Service, which slightly exceeds the NLAP funding of \$936,000.

This submission acknowledges that the complexity of legal need faced by Aboriginal and Torres Strait Islander people and communities can sometimes result in a disengagement from using the law as a tool for resolving issues.¹ The *Overcoming Indigenous Disadvantage 2020* report notes that there is a lack of legal information and appropriate access to legal assistance.² This is consistent with sector stakeholders engaging with the ACT Government in 2023 that have identified a range of challenges affecting access to justice for Aboriginal and Torres Strait Islander people in the ACT. This includes a lack of knowledge about what legal help is available, paperwork requirements when accessing services being a barrier due to literacy issues and high levels of apprehension about Child and Youth Protection Services involvement and child removal fears. This suggests there may be opportunities for further supports that could be provided through NLAP arrangements to respond to the legal needs of Aboriginal and Torres Strait Islander persons.

In the ACT, providers of Aboriginal and Torres Strait Islander services have reflected that First Nations people with disability or mental illness, individuals experiencing family violence, children and young people are among the largest cohorts accessing legal assistance services. This submission encourages the Review to consider the complexity of legal need as it impacts Aboriginal and Torres Strait Islander peoples.

¹ Source: Law and Justice Foundation of New South Wales (2014), “Reshaping legal assistance services; Building on the evidence base – a discussion paper”, available here: [http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/$file/Reshaping_legal_assistance_services_web.pdf)

² Source: Productivity Commission (2020), “Overcoming Indigenous Disadvantage Key Indicators 2020 Report”, available here: <https://www.pc.gov.au/ongoing/overcoming-indigenous-disadvantage/2020/report-documents/oid-2020-overcoming-indigenous-disadvantage-key-indicators-2020-report.pdf>

ACT Government funded legal services for Aboriginal and Torres Strait Islander people

The ACT welcomes the Review considering how to ensure non-Indigenous legal assistance services are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people. In the ACT, it is important to acknowledge the crucial role non-Indigenous legal assistance services operating provide for First Nations people and the contribution they too make to Closing the Gap. It is a collective responsibility to ensure First Nations people can choose to access mainstream legal assistance with confidence that the services they access are culturally safe and responsive to their needs.

In addition to funding the ALS, the ACT Government funds a number of community legal centres for the provision of dedicated services for Aboriginal and Torres Strait Islander people. This includes funding to Legal Aid ACT, and Canberra Community Law which delivers the Dhurrawang Aboriginal Human Rights Program which provides specialist legal services and representation to Aboriginal and Torres Strait Islanders communities in the ACT. Funding is also provided to Women's Legal Centre to deliver the Mulleun Mura program, which is a First Nations program staffed by First Nations women dedicated to supporting and providing legal assistance services to Aboriginal and Torres Strait Islander women who are affected by domestic and family violence.

The experience of the ACT Government is that existing legal assistance arrangements could be improved to better support intersectional and holistic approaches to legal assistance for First Nations people. In particular, it encourages the Review to consider funding to be inclusive of community engagement, community legal education and networking activities to address a lack of legal knowledge and a lack of trust in communities which may be a barrier to accessing legal services.

Furthermore, funding arrangements are often fragmented, and a patchwork of agreements provide funding for particular services. Funding on a per-service basis limits flexibility in responding to complex legal needs as it forces resourcing into silos that are required to report on, and account for, the funding provided for delivery of the individual service. Where funding for these services is outside broader funding frameworks such as the NLAP, there is also an increased administrative and reporting burden for funding recipients. In order to deliver holistic and integrated services, it is important to acknowledge underlying socio-economic issues and the need to work with other human service sectors including Health, Disability, Mental Health Education and Housing. As such, the ACT Government strongly encourages the Review considering intersectional and holistic approaches to legal assistance for Aboriginal and Torres Strait Islander people.

Further, systemic, and structural factors should be considered through culturally appropriate legal assistance services, in order to meet the complex legal, cultural and language needs of Aboriginal

and Torres Strait Islander people.³ For example, a limitation of ATSILS funding is that Commonwealth funds for these services is predominantly to undertake criminal work. At state-level, ATSILS funding should be able to respond to state-level reforms, and even local and regional policing services, to ensure that the funding remains connected with community needs.⁴ In order to maximise efficiency and effectiveness of legal assistance services, these factors should be considered and discussed and agreed between federal, state, and territory governments and NATSILS to ensure alignment with the Priority Reforms and that adequate funding is provided to priorities.⁵

³ Source: Productivity Commission (2020), “Overcoming Indigenous Disadvantage Key Indicators 2020 Report”, available here: <https://www.pc.gov.au/ongoing/overcoming-indigenous-disadvantage/2020/report-documents/oid-2020-overcoming-indigenous-disadvantage-key-indicators-2020-report.pdf>

⁴ Source: Law and Justice Foundation of New South Wales (2014), “Reshaping legal assistance services; Building on the evidence base – a discussion paper”, available here: [http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/$file/Reshaping_legal_assistance_services_web.pdf)

⁵ Source: Productivity Commission (2014), “Access to Justice Arrangements, Inquiry Report Volume 1” available here: <https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume1.pdf>

Issues *(in response to Issues Paper questions)*

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

The ACT Government welcomes the more than \$40 million of Commonwealth funding committed to the Territory's legal assistance sector under the current NLAP. NLAP funding provided to the ACT has facilitated the overall objective of the NLAP agreement of integrated, efficient, effective, and appropriate legal assistance services that are focused on improving outcomes and keeping the justice system within reach for vulnerable people facing disadvantage.

Notwithstanding the views put forward within this Submission, the NLAP funding provided to the ACT has, and continues to strengthen:

- access to justice for the Territory's most vulnerable- through the delivery of core legal assistance to the people and communities, targeted towards those experiencing disadvantage;
- access to justice for Aboriginal and Torres Strait Islander peoples by ensuring the Aboriginal Legal Service can continue to deliver culturally appropriate information, legal support, and services to Canberra's Aboriginal and Torres Strait Islander citizens; and
- reducing the burden on the ACT's courts by ensuring people are represented and legal issues are less likely to escalate.

As noted throughout this Submission, the ACT Government notes that service demands in the ACT are increasing in volume and complexity across the sector. The ACT's legal assistance sector is resource-restrained, under-invested in systems and capability building, and faces the challenge of short-term funding cycles.

The ACT Government commends the Review on exploring opportunities for a more improved national integrated system of legal assistance that keeps sectors sustainable whilst is also focused on keeping the justice system within reach for those who need it.

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

While the ACT Government acknowledges that current legal assistance funding provided under the NLAP responds to the legal needs of disadvantaged Australia, it welcomes the Review considering the new and emerging cohorts identified as experiencing particularly high need in the ACT. Data collected as part of the development of the Strategy highlighted that domestic and family violence was one of the top legal problems faced by the ACT community, and highlighted a number of cohorts in the ACT who are experiencing particularly high need usually have a number of cross-cutting complex legal needs, including:

- people experiencing domestic and family violence

- people with disability or mental illness
- older people
- culturally and linguistically diverse people.⁶

In addition, the ACT Government notes that COVID-19 has had a significant impact on the Sector and its ability to meet increasing demand, particularly in the areas of top legal need, as observed by the Strategy, with the post-COVID impacts still being realised.

Data collected to inform the Strategy, found that COVID-19 had a significant impact on not only low-income households in the ACT, but additionally on demand and method of service provision. Further, climate change and its potential impact on clients experiencing vulnerability was highlighted by the sector as impacting the nature of work (natural disaster claims) and also a growing area of the unknown. These trends have continued to have had a significant impact on the demand and nature of service provision for the legal assistance sector in the Territory.

The ACT notes its observations of service demands across the CLCs in the sector:

- the number of clients being assisted by the CLCs increased by 19% between 2018-19 and 2020-21, and there was a 25% increase in service outputs by CLCs during this time.
- housing law matters were the most common civil law service type provided by CLCs in 2020-21, parenting arrangements the most common family law matters assisted and referrals on criminal law matters to other providers, the most common service types provided by CLCs during 2020-21.
- cohorts of clients using CLCs has grown since 2018-19, and there has been a 28% increase in CLC clients reporting experiences of disadvantage.
- there was a 42% increase in clients experiencing domestic and family violence between 2018-19 and 2020-21.

In addition, the ACT notes that there has also been significant growth in Legal Aid services, in particular:

- people experiencing family violence increased by 38%;
- people with a disability or mental illness increased by 37%;
- increase in legal advice services increased by 38%.

The ACT recognises that disadvantaged cohorts differ state-by-state, and that future consultation of the NLAP must account for the changing landscape of cohorts within the broader Australian community. The ACT welcomes collaboration between jurisdictions, and the ability for the NLAP to consider targeted, joined-up, timely and appropriate services to priority disadvantaged groups.

Missing middle

⁶ Source: Pulse-check Survey, October 2021 (conducted to support the development of the Strategy)

Feedback from the Strategy also highlighted the key challenges with meeting demand from the “missing middle” – those who are not eligible for Legal Aid or legal assistance services, however, cannot afford a private lawyer. While the ACT acknowledges that the Review may not wish to explore issues relating to the ‘missing middle’, it is important to highlight this cohort and the ways early intervention towards the missing middle may reduce future demand from funded legal assistance services.

Feedback has urged consideration of specific cohorts within this missing middle who may be at high risk – for example, ‘asset rich but cash poor’ individuals, particularly women, whose property or other assets make them ineligible for Legal Aid, but who are not in a position to sell their house or otherwise to afford legal services.

Additionally, feedback from the ACT legal assistance sector has consistently echoed the findings from the 2014 Productivity Commission Access to Justice Arrangements report that highlighted that only 8% of households would likely meet income and asset tests for legal aid.⁷ This leaves a majority of low- and middle-income earners with limited capacity for managing large and unexpected legal costs and further recommended that the means test limit for Legal Aid services be increased. Reflecting this, the 2023-24 ACT Budget provided funding to expand the Legal Aid means test to address the current gap in access to legal services for vulnerable members of the ACT community who are ‘too rich’ to qualify for legal aid but ‘too poor’ to afford private legal representation.

With this feedback in mind, the ACT welcomes the Review investigating the quantum of NLAP funding, as well as examining long-term, sustainable approaches to funding, as the Productivity Commission did in 2014, when it recommended a total annual increase in legal assistance funding of \$200m (for civil matters only).⁸

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

The ACT Government is of the view that decisions about jurisdictional-level funding allocations should remain within the remit of State and Territory Governments, who are, generally, better placed to understand their respective sector’s unmet legal needs. As such, the ACT does not support an increased role for the Commonwealth in determining or administering the distributional outcomes of CLC allocations of the states and territories.

Additionally, the ACT would welcome any increase in administration funding to the states and territories in any future NLAP agreement, noting the Strategy highlighted the need for improved program and contract management capacity⁹ to support the efficient and effective implementation of the NLAP.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ ACT Legal Assistance Sector Strategy 2023-2025 – pg 22

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

Feedback from the ACT legal assistance sector highlighted additional disadvantaged groups that may require expanded support in a future national partnership agreement. Some sector providers support further consideration being given to the following existing and emerging groups, as also identified in the Issues Paper.¹⁰

- Individuals affected by complex family and domestic violence legal needs,
- Victim-survivors of sexual assault,
- LGBTIQ+,
- Veterans; and
- Individuals impacted by natural disasters.

This submission recognises that cohorts may have complex and intersecting vulnerabilities, impacting on their legal needs and required legal responses (such as if the individual is homeless, speaks a language other than English at home, lives with disability or mental ill health).

The ACT Government also encourages the Review to consider acknowledging the increased legal need brought on by the current cost of living crisis occurring nationally. Feedback from the sector identified issues related to housing and Centrelink as growing areas of legal concern impacting the ACT community.

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

The ACT is uniquely placed in that it operates as both a city and regional hub in its delivery of legal assistance. ACT legal assistance providers play a critical role servicing clients from nearby regional areas in NSW who live much closer to the ACT than to their state's own capital, primarily people living in areas such as Queanbeyan and the south coast. Most ACT legal assistance providers have provided feedback that servicing NSW clients requires a significant redirection of resources away from ACT-based clients.

This is compounded by the following factors:

- The ACT's significant rate of population growth - the ACT Population Projections 2022-2060 report found that the ACT population is expected to increase from 453,558¹¹ persons in June 2021 to 784,043 persons in June 2060. This is an increase of over 330,000 persons. The ACT is set to experience an average annual growth rate of around 1.4% over the 39-year period.¹²

¹⁰ Source: NLAP Issues Paper – page 18, available here: <https://nlapreview.com.au/uploads/media/NLAPReview-IssuesPaper-Final10-1692253292.pdf>.

¹¹ Source: ABS Regional Population by age and sex, 2021 publication released on 30 August 2022.

¹² Source: ACT Government (2022), "ACT Population Projections 2022-2060", available here: https://www.treasury.act.gov.au/data/assets/pdf_file/0007/2181985/ACT-Government-population-projections-2022-2060.pdf

- Growth in ‘peri-urban’ around Canberra such as Queanbeyan has increased border service delivery. For example, Queanbeyan has seen a 5.4% increase in population since 2018. Population of people over the age has risen by 1.4% by 2018, as well as unemployment rates reaching 2.8% as at June 2022.¹³

Noting the cross-border service delivery by ACT legal assistance providers, the ACT would welcome further clarification of the formulas used for this ‘cross border factor’, and whether this amount is sufficient to cover the significant amount of cross border work performed by ACT providers. Additionally, the ACT Government notes that legal assistance provided by CLCs are not funded under the current NLAP. The ACT would also welcome further consideration of extending the cross border to all service providers in a future NLAP agreement, noting that currently the factor is applied to Legal Aid Commissions only.

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

The ACT Government continues to advocate for funding models that addresses the needs of small jurisdictions, to ensure that funding can effectively meet the immediate needs of the most vulnerable. The ACT has long advocated for increase transparency regarding Commonwealth decision-making around the NLAP funding distribution models and clarity around the principles that underpin same.

The ACT consistently receives feedback from legal assistance service providers expressing concerns that the ACT misses out on funding due to our status not only as a small jurisdiction, but a jurisdiction with unique population dynamic, noting it operates as both a city and regional hub.

The ACT welcomed the recent publishing of the *Issues Paper Addendum – Funding Distribution Models* that clarified the funding formula used for smaller jurisdictions, including adjustments for ‘economies of scale’. Building on this transparency of funding formulas demonstrated by the Commonwealth, the ACT would welcome any further information or consideration of measures that would support funding adequacy for smaller jurisdictions.

With respect to specific funding models under the NLAP, the ACT Government recommends the consideration of whether the NLAP funding models could support funding being provided to jurisdictions for both Domestic Violence Units and Health Justice Partnerships (HJP). This would require additional funding to be provided to jurisdictions to facilitate the funding of a service not previously funded under the existing NLAP. This additional funding could have a significant impact on access to justice for people impacted by domestic and family violence and diverse communities. The ACT Government encourages the Review to consider the Commonwealth matching jurisdictional contributions to HJPs, in any future NLAP.

¹³ Source: NSW Government (2023), “Queanbeyan-Palerang Regional Economic Development Strategy – 2023 Update”, available here: <https://nla.gov.au/nla.obj-3199687035/view>

The ACT welcomes suggestions in regard to funding models to support appropriate distribution and quantum of Commonwealth resources to meet current and future needs. The ACT encourages the Review to consider how current and future needs have altered since 2020 (the establishment of the 2020-25 NLAP) and further seek input and data driven models to encourage an evidence-based approach to funding.

6.1 Alternative funding approaches

The ACT Government welcomes the Review exploring alternative funding approaches for any future national agreement that better considers what level of funding is required to address a specified level of legal need or position or program, rather than “simply distributing a largely arbitrary level of baseline funding”¹⁴

The ACT continues to receive feedback from legal assistance providers in the ACT that funding amounts provided under specific funding streams often seem arbitrary and do not reflect the true program costs needed to meet legal needs. This includes, for example, consistent feedback from the sector that on-costs should be factored into funding provided under the NLAP.

The ACT Government strongly encourages a review of the application of community sector indexation (CSI) or equivalent, to the NLAP funding distribution model, to ensure funding accurately reflects Fair Work Commission recommendations, meets wage disparities and sector expectations. In October 2022, the ACT Government committed to increase CSI for the 2023-24 Financial Year in its own funding agreements with the ACT’s community sector, including with ACT Government funded programs with the ACT’s legal assistance sector. The ACT submits that in the absence of CSI indexation, the NLAP has had a detrimental impact on recruitment and wellbeing on sector staff, and the sustainability and viability of the sector.

Funding certainty and predictability is also vital to support the sustainability of services, including avenues for continuing successful pilots into the future. It is noted, for example, that ‘top-up’ funding was provided under the NLAP from 2021-22 for family violence services and legal assistance for those with mental health conditions. In the ACT, this additional funding has supported several programs, including the creation of a specialised Mental Health Justice Clinic at Canberra Community Law and the expansion of legal services at CARE Inc. to support people experiencing mental health related financial matters. These programs have been valuable in bridging significant unmet legal need for people with mental ill health in the ACT. However, this funding is not permanent and will end at the expiry of the NLAP, on 30 June 2025, thereby creating a ‘funding cliff.’

¹⁴ NLAP Review: Issues Paper, pg. 22

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

The ACT Government acknowledges that national partnership agreements for legal assistance have generally spanned 5 years, with the current NLAP time limited from 2020-21 to 2024-25.

The ACT notes the benefits of longer-term agreements enabling legal assistance providers undertake efficient investment and planning that is not possible in the environment of uncertainty and risk generated by short-term funding. This is particularly the case in the development of partnerships with non-legal service providers, legal and non-legal staff and systems for compliance, analysis and service delivery. However, the ACT notes that any future national agreement needs to have the flexibility to meet changing legal need and cost conditions.

As outlined in the NLAP Issues Paper, the current NLAP has observed shifts in socio-demographic and economic factors, policy reforms, the introduction of new legislation and exogenous events such as COVID and natural disasters. As noted in this submission, COVID in particular, has nationally driven increases in demand for legal assistance services – some of which may be short-term in nature, and others which contribute to longer-term increases in need.

The ACT welcomes any suggestions for the NLAP to allow for growth in areas that are unprecedented, and further any measures to ensure that flexibility can be embedded to accommodate national and local changing legal needs.

8. Wrap around services: How should holistic service provision improve outcomes and reduce the demand for legal assistance services?

The ACT Government welcomes any increased focus on wrap-around, early intervention and advocacy services in any future national agreement, noting the ways these services can improve outcomes and reduce the demand for legal assistance services.

This view is informed by consistent feedback from the ACT legal assistance sector that current NLAP funding levels are inadequate on their own to meet the sector's demands for funding for wrap-around, early intervention and advocacy services, and would welcome future expanded funding commitments for these services. Consideration should also be given to funding models that are inclusive of community engagement, community legal education and networking activities, which may present as a barrier to accessing legal services in the ACT.

In recognition of the many 'access to justice' benefits of wrap-around service model, the ACT Government recently committed budget funding to Legal Aid ACT to engage Client Liaison Officer for Aboriginal and Torres Strait Islander clients as well as Culturally and Linguistically Diverse clients. These services provide a vital connection between legal staff and clients, to better allow providers to meet the needs of their clients.

The ACT additionally notes the centrality of wrap-around services, particularly for Aboriginal and Torres Strait Islander people to ensure that when seeking legal assistance and support, they are

valued, respected, able to engage with the system, and that Closing the Gap principles of self-determination are upheld.

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

The ACT Government appreciates that the current NLAP includes key outcomes that focus on prevention and acknowledges that Commonwealth investment in this area is already having a positive outcome on justice outcomes and on reducing burdens on the ACT's Courts and the Tribunal.

Clauses 14(d) and 14(e) of the NLAP stipulate outcomes that include 'preventative action when appropriate' as well as 'empowering people and communities to assert their legal rights and responsibilities and to address, or prevent, legal problems'.

The ACT Government encourages the Review to consider funding models that have a focus on early intervention which may assist in a reduction of justice system costs and lowering other services costs such as housing, health, mental health, and child protection.

The ACT Government believes such cross-sector approaches and wrap-around supports are extremely valuable, particularly for those with complex needs and intersectional disadvantages. This includes community legal education, stakeholder engagement, legal advice, referrals, non-legal services and systemic reform.

In the ACT, prevention and early intervention has also taken the form of strengthening collaboration, coordination and/or partnerships with non-legal services, such as financial counselling, health, mental health, family support and AOD services. However, such cross-sector collaboration and engagement is usually resource intensive and difficult to maintain in the context of limited (and often time-limited) funding for the legal assistance sector.

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

The ACT Government welcomes the Review examining the issue of advocacy, noting that pressures on service delivery are presenting challenges for service providers to engage in activities, such as advocacy and legislative/policy reform. The ACT commends the Commonwealth for recently removing clauses from the NLAP that restricted legal assistance services from engaging in lobbying activities or systemic advocacy.

It is acknowledged that service providers already commit significant resources to advocacy and law reform activities on an unfunded basis – if these activities are not funded, resources will continue to be redirected from front line service delivery.

The ACT Government believes systemic advocacy by legal assistance providers is vital and can help contribute to legislative and policy changes that prevent legal problems and reduce their severity.

Legal assistance providers are in an ideal position to identify recurring causes of legal problems, such as unclear laws, or unlawful or unfair practices. Assisting individual clients through advice and casework enables legal assistance providers to not only assist the individual, but also to identify laws, policies and practices that adversely impact upon disadvantaged people or vulnerable groups in the community.

In addition to removing any barriers to systemic advocacy, the ACT Government considers that any future national agreement should recognise law reform, policy, and systemic advocacy as core activities of the legal assistance sector. This should include dedicated funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues.

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

The ACT Government has been advised that the reporting obligations required by the NLAP have resulted in service providers redirecting resources and personnel from frontline critical service delivery to collecting data and reporting requirements.

Although the ACT's legal assistance sector welcomed the removal of the 'Estimated Time Spent' reporting requirements from the NLAP, the ACT encourages a specific evaluation focus on the utility of the current data being collected in assessing the outcomes of the NLAP.

Further, several ACT legal assistance providers have raised concerns about the aging CLASS data management system and have urged Commonwealth to consider support that could be provided to the sector to make migrating to new systems less onerous from a financial and time perspective.

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

The ACT Government welcomes the Review considering how existing Commonwealth administrative processes may be reformed to reduce demand for legal assistance services and improve outcomes.

The ACT is particularly interested in the Review closely examining whether Aboriginal and Torres Strait Islander Australians are being afforded appropriate access to justice in Commonwealth administrative proceedings and how might legal assistance services address this, given the under-representation of ATSI Australians accessing AAT review.

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

The ACT Government welcomes the Review evaluating the legal assistance labour market, noting the systemic sector-wide issues affecting recruitment and retention of staff in the ACT context.

In particular, the ACT notes the current challenges in recruiting staff given the discrepancies in remuneration between community sector funding and private practitioners.

As the Issues Paper has highlighted, legal assistance lawyers are among the lowest paid in the profession and grants of legal aid for private practitioners are in many cases inadequate. In addition, this is made more challenging by the disparity in salaries offered by different legal assistance sector providers- leading to suppressed supply of legal services, which is particularly acute in regional, rural, and remote areas, which in turn aggravates unmet legal need. If remuneration, and other terms and conditions of employment, are to be improved then it is necessary to demonstrate that there will be a supply response and how that additional supply of legal professionals will address unmet legal need.

Noting the challenges experienced nationally in respect of the recruitment and retention of legal assistance lawyers, the ACT Government strongly urges the Review to consider closely examining the salaries and other remuneration costs for the provision of NLAP funded services.

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

The ACT Government welcomes the Review's exploring how existing administrative processes may be reformed and simplified to deliver a more efficient system and, ultimately, direct a higher proportion of funding to service delivery.

This submission recognises Clause 30(c) of the NLAP, whereby the Commonwealth and States agree to be jointly responsible for ensuring the ongoing collection and transparent reporting of agreed nationally consistent data, and working collaboratively to improve the collection of Legal Assistance Service Data and the National Legal Assistance Data Standards Manual.

In particular, the ACT recommends the Review evaluate whether existing reporting requirements appropriately balances the need for outputs-focused decision-making against reporting burdens, noting consistent feedback from the ACT legal assistance sector that onerous reporting requirements have resulted in service providers re-directing resources/personnel from frontline critical service delivery to prepare reporting data.

The ACT Government remains committed to working collaboratively with the Commonwealth and the sector to improve available data on legal assistance services for the remainder of the NLAP and any future agreement.

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

The ACT Government reflects on the feedback shared within this Submission and encourages the review to consider the issues raised for the purposes of improving legal assistance service delivery outcomes for any future national partnership agreements.

The ACT Government recognises that under Clause 30(e) of the NLAP, the Commonwealth and the States agree to be jointly responsible for developing an outcomes-based framework for legal assistance services for potential implementation from 1 July 2025. The ACT commends the Commonwealth for its work in leading the Outcomes Framework and is committed to continuing to work closely with the Commonwealth and jurisdictions as this is further developed.

Conclusion

The ACT Government would like to thank Dr Mundy for the opportunity to provide input and feedback in relation to the NLAP Review.

The ACT would also like to thank the Commonwealth for the ongoing support in the legal assistance sector and looks forward to continuing working across government to enrich the legal assistance sector in future years.