



Response to National Legal Assistance Partnership Review: Issues Paper

Aboriginal Family Legal Service
Western Australia

September 2023

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1 Introduction

Aboriginal Family Legal Service (AFLS) welcomes the opportunity to provide a submission to the Attorney General's Department Independent Review (the Independent Review) of the National Legal Assistance Partnership (NLAP) via the National Legal Assistance Partnership Review Issues Paper.

AFLS is a specialist Aboriginal Community Controlled Organisation (ACCO) operating under the Family Violence Prevention Legal Service (FVPLS) program, funded directly by the Commonwealth Government through the National Indigenous Australians Agency. AFLS does not receive any Commonwealth funding through the National Legal Assistance Partnership (NLAP). AFLS does receive additional funding from the Commonwealth Department of Social Services to deliver a Redress program, and minor funding from the Western Australian Department of Justice to deliver FVPLS activities.

AFLS provides specialist legal assistance and wrap around non-legal supports to Aboriginal and Torres Strait Islander people experiencing or at risk of family and domestic violence and sexual assault.

AFLS is the largest FVPLS operating in Western Australia, with services delivered to the East and West Kimberley, Gascoyne, Midwest, Goldfields, Pilbara and Perth metropolitan regions. AFLS offices are located in Broome, Kununurra, Carnarvon, Geraldton, Kalgoorlie, Port Hedland and Perth, from which outreach services extend to over 30 remote Aboriginal townships and communities. AFLS has a service delivery area of approximately 1,978,622 square kilometres, with an estimated Aboriginal and Torres Strait Islander population of 72,961 people.

AFLS's services directly contribute to achieving progress on Target 13 of the National Agreement on Closing the Gap:

By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%, as progress towards zero.

This submission to the Independent Review draws on AFLS's experience delivering its FVPLS program to Aboriginal communities across Western Australia for over a decade. AFLS was established in 2010, when the Commonwealth Attorney General sought to consolidate separate services being provided in six regional offices across Western Australia. The move aimed to find efficiency in economies of scale, pooling and codifying legal service delivery under a senior Principal Legal Officer, and the necessary administration, creating a head office in the Perth metropolitan area. During its 13 years of service delivery since inception, AFLS has been subject to numerous administrative changes as part of the FVPLS sector. This includes:

1. From 2010 the number of FVPLS units was reduced from 31 to 14, providing services in geographic areas of high need.
2. In 2012 early intervention funding was removed from the FVPLS program.
3. In 2014 the FVPLS program was transferred from the Attorney General's Department (AGD) to the Department of Prime Minister and Cabinet (PMC) together with more than 150 other programs into a new Indigenous Advancement Strategy.
4. FVPLS funding levels were frozen at 2013-14 levels until 2020, but the sector was required to deliver additional services to higher caseloads.
5. In 2019 the 14 units of the FVPLS program were transferred to the newly created National Indigenous Australians Agency (NIAA).
6. In 2021 NIAA announced two new FVPLS units, bringing the total to 16.

Administrative change has caused significant funding and service disruption, in what is a challenging service delivery context assisting vulnerable Aboriginal women, children and men affected by family and domestic violence and sexual assault. Our submission to this Review is informed by our experiences of funding and service disruption and uncertainty.

We consent to being identified in the report of the Review as having made a submission.

2 Legal assistance for Aboriginal and Torres Strait Islander Australians

Self determination

Q1: How can self-determination and cultural appropriateness be best supported through legal assistance arrangements?

We refer to the Productivity Commission's Draft Report – Review of the National Agreement on Closing the Gap from July 2023 and strongly support the conclusion of the report that the Priority Reforms of the National Agreement on Closing the Gap have not been prioritised by governments. In the specific context of providing government funded legal assistance services to Aboriginal people in Western Australia, it has been our experience that state agencies have pre-determined ideas about how best to service and meet the needs of Aboriginal communities, which they impose on legal assistance providers. Examples include:

1. Exclusion of FVPLS units from NLAP funding

The FVPLS units in Western Australian have been consistently excluded from any funding distributed by the Department of Justice through the NLAP, including the Vulnerable Women's funding stream of the NLAP, in the 2021-22 financial year. This is despite funding eligibility requirements including registration as a service provider through Community Legal Western Australia, which the three FVPLS units are members of. The restrictive approach to this funding stream in particular was in our understanding only taken in Western Australia, with advice from other states and territories being that Attorney's General in those jurisdictions made specific allowances for the FVPLS units in their states to attain funds allocated under the Vulnerable Women's stream of the NLAP through an exclusive tender process for money portioned off from the NLAP for the FVPLS units.

The Department of Justice additionally allocated funding to the Aboriginal Legal Service of Western Australia through the Workplace Sexual Harassment and Vulnerable Women funding streams of the NLAP, despite ALSWA advocating for AFLS to receive that funding instead.

2. State agencies pushing the FVPLS units into consultation, despite service providers not having sufficient time or resources to engage

The Department of Justice has strongly advised the FVPLS units that it is 'in our best interests' to participate in the Department's development of such pieces of work as the Legal Assistance Strategy and Action Plan 2022-2025 and the Legal Assistance Sector Workforce Planning and Development Strategy, despite the FVPLS units not being under the NLAP and ineligible for any funding allocated through the scheme until at least 2025. Resistance against participation is met with opposition from the Department, regardless of the fact that FVPLS participation requires the dedication of significant time and effort from our already stretched and limited resources. With respect to the development of the Workforce Planning Strategy, we note that an external consulting agency has been commissioned by the Department to develop such a strategy at what we presume to be a significant cost, meanwhile the legal assistance service providers have raised

consistent, unchanged concerns about what we know to be workforce planning and development issues over the last decade, with little State Government action.

3. Competitive tendering and short-term contracts

We welcomed the transfer of responsibility for the FVPLS delivered to Aboriginal victims of family violence in the Perth metropolitan area from mainstream service providers to two ACCO FVPLS units, AFLS and Southern Aboriginal Corporation (SAC) in 2022. This transfer of responsibility demonstrated a positive shift in government thinking about best practice service delivery for Aboriginal people, and we have seen the benefits of our Aboriginal controlled service delivery in the outcomes achieved by and for our clients. Nevertheless, AFLS and SAC were still required to competitively tender against non-Aboriginal organisations for the service, and the contract for the service is only for 3 years. This creates a lack of assurance around the ongoing sustainability of the service as it is currently delivered. We additionally note that the performance data and reporting requirements for the service are onerous and inconsistent with data and reporting requirements across our other service agreements.

We were additionally recently disappointed by the Department of Justice's decision to fund three non-Aboriginal organisations to deliver a 'Leave Safe Stay Safe' program to help female prisoners nearing the end of their sentences who have identified as FDV victim survivors. The \$2 million initiative gives prisoners one-on-one social support and legal advice to support them and their families before and after their release from Bandyup Women's Prison and Greenough Regional Prison. The Department of Justice initially consulted on the parameters of the tender, during which AFLS provided substantial information to inform the suitability of the tender request according to the funding available from the Department and our experiences of providing regional and prison services to victims of family and domestic violence. AFLS then responded and was unsuccessful in our application to deliver the prison program, with the Department advising that our response did not provide sufficient detail on how our expertise in working with Aboriginal women would be adapted to meet the needs of non-Aboriginal women. We note that it was recognised that the bulk of women receiving services from the Leave Safe Stay Safe program would be Aboriginal, given the overrepresentation of Aboriginal women as victims of family and domestic violence and the disproportionate representation of Aboriginal people in the criminal justice system. This is another example of government's advertising their commitments to systemic reform but failing to see this through in practice.

4. Bureaucratisation of local service provider work in the aftermath of natural disasters

Western Australia recently experienced a natural disaster with the flooding events in the Kimberley at the beginning of 2023. In the post disaster relief and recovery response, the Department of Justice dedicated a substantial portion of time and resources to identifying a local agency on the ground to coordinate what they thought the response required. In practice, the local service providers, including two FVPLS units – AFLS and Marninwarntikura Women's Resource Centre – preferred to deliver services as usual and based on the needs that our local offices identified with and for our local communities. We preferred to do this without interference from the Department of Justice and the bureaucratisation of processes and services that were already being delivered. The Department then sought budget requests from service providers to support the legal assistance recovery response in the Kimberley over the next four years. Those figures were provided to the Department in April, and we finally received advice on the outcome of our budget requests in September. We were disappointed to have been allocated only 10% (roughly \$400,000

over 2 years) of the total funding allocated to the legal assistance sector to support the recovery from the flooding, which is far from our request of approximately \$2 million over 4 years.

As part of the same post disaster relief and recovery response in the aftermath of the flooding events in the Kimberly, the Department of Communities led a Hub in Broome which was culturally unsafe and ill equipped to meet the needs of the local community. There was a futile lack of Aboriginal representation in the emergency supports being administered by the State Government through the Hub, including staff members of the Hub not knowing the names of local Aboriginal communities, not knowing where those communities are, and not knowing how to properly communicate with community members seeking assistance due to the absence of trained interpreters to support the response. This is despite feedback from Kimberley based service providers such as AFLS, ALSWA, Legal Aid, Kimberley Community Legal Service and Marninwarntikura on the immediate support and recovery needs of the affected communities.

5. Complex stakeholder consultation processes on service provider operational issues

In 2021 the Department of Premier and Cabinet commenced a long consultation process on AFLS's intention to appoint Court Advocates (Court Officers) in civil matters in regional and remote communities where staffing recruitment and retention issues have resulted in long term absences of legal staff, despite there being a statutory entitlement for AFLS to do so under Section 48 of the *Aboriginal Affairs Planning Authority Act 1972*. This is despite the Aboriginal Legal Service of Western Australia already delivering Court Officer services in their jurisdiction of law, which the AFLS model will be based on.

6. Unwillingness from State Government agencies to transform their ways of working

We note that in Western Australia, we continue to see what we consider to be half hearted efforts by government to genuinely transform their ways of working in respect of service delivery for Aboriginal people, including legal assistance programs. For example, AFLS entered a partnership arrangement with the Department of Justice in 2022 under which AFLS released a senior policy officer 4 days per week for 6 months to develop the Department's Aboriginal Family Safety Strategy. The Department and AFLS, as part of this arrangement, co-convened an Aboriginal Family Safety Strategy Stakeholder Reference Group (SRG) to inform the foundational documents that underlay the development of the Strategy so that it is responsive to the needs of Aboriginal people and communities. The SRG is an advisory body to the Department, co-chaired by the Department and AFLS. While this presents a suitable opportunity for government to transform their ways of working and shift decision making responsibility equally to AFLS as a co-chair of the SRG, the Department remains solely responsible for decisions about the Strategy. Shared decision making is therefore limited to the way in which the SRG operates and the work of the SRG is dictated by the Department.

This is a pertinent example of government failing to implement the systemic and structural changes in their work that are critical to improving accountability and responsiveness of the Department to the needs of Aboriginal communities across Western Australia. We see an unwillingness from government to relinquish control over policy decisions and an entrenched commitment to continuing their operations according to their existing structures and decision making processes. Because of this, we have been hesitant to support transition of the FVPLS sector to funding arrangements under the NLAP, with majority funding administered through the State Government.

At a Federal level, FVPLS agencies across Australia have called for an approximate \$40 million in additional annual funding to provide essential legal and non-legal frontline family violence services, programs and supports to Aboriginal people affected by family violence; however, the 2023-24 Commonwealth Budget continued the chronic underfunding of FVPLS units across the country. While the Budget confirmed the current funding levels for FVPLS frontline service delivery for an additional two years, it failed to meet the funding increases required by the 16 units. This included failure to make allowances for CPI and superannuation increases over funding years, as occurs for Community Legal Centres.

It is our conclusion that while services in the legal assistance sector can and do contribute to achieving progress against the targets and outcomes of the National Agreement on Closing the Gap, we fail to see how the elements of shared decision making, strengthening the ACCO sector, transforming government operations and shared access to data articulated in the National Agreement on Closing the Gap have been put into practice in Western Australia. Our absence from the NLAP means that we cannot provide firsthand insights into whether the NLAP has addressed the need for the ACCO sector to be actively and meaningfully involved in the development and implementation of legal assistance policies and programs.

Encouragement of self-determination and cultural appropriateness through legal assistance arrangements requires substantial increases to the core recurrent funding of the FVPLS sector, in addition to the guarantee of quarantined funding for the sector if the units transition to funding arrangements under the next NLAP in 2025. Key actions in this respect include:

1. At a minimum, preservation of current funding levels to ensure the FVPLS units are not financially disadvantaged in the transfer.
2. As a best practice, increases to the core recurrent funding of each of the FVPLS units based on needs analysis and research, to ensure the sustainability of service delivery at required capacity levels.
3. Imposition of a requirement that in the event the FVPLS units transition to new funding arrangements under the NLAP, funding administered to the units in Western Australia by the WA Department of Justice is quarantined either through a new Indigenous Legal Assistance Partnership (ILAP) or alternative means.
4. Assurance that the FVPLS sector does not need to compete with mainstream domestic violence legal services for additional funding (outside of core program funding) to provide services to Aboriginal people, and that Aboriginal and Torres Strait Islander program funds will not be redistributed to mainstream organisations.

For context on this point, funding has historically been allocated to mainstream service providers instead of FVPLS units to provide domestic violence services to Aboriginal communities. Pertinent examples from other jurisdictions include:

- a. A mainstream women's legal service (which receives funding from NIAA) received additional funding to expand into remote Aboriginal communities, duplicating services the local FVPLS unit had provided for years.
- b. A mainstream women's legal service has a Memorandum of Understanding (MOU) with the local hospital to only refer to their service. The mainstream service had no capacity due to several vacant lawyer positions, and as a result Aboriginal women who needed legal assistance for domestic violence matters fell through the gaps. Those women could have been referred to the local FVPLS unit if the MOU had not been in place.

5. Assurance that in the event the FVPLS units transition to new funding arrangements under the NLAP, funding for non-legal services delivered by the units will be preserved. Transition to the NLAP must not negatively affect the terms of the FVPLS units' funding agreements, which at current ensure the accessibility of wrap-around supports as part of a holistic model of care.
6. Making an allowance within funding agreements for CPI increases over funding years, as occurs for Community Legal Centres.
7. Permitting the FVPLS units to be involved in negotiating program funding parameters, for example extending to other service needs in their respective communities.

Arrangements over time

Q2: How do legal assistance arrangements (that is funding provided to ATSILSs, FVPLS, LACs and CLCs and other organisations) support intersectional and holistic approaches to legal assistance for Aboriginal and Torres Strait Islander people?

By effect of funding the FVPLS sector which provides culturally safe, trauma informed and wraparound services to Aboriginal victims of family and domestic violence, State and Federal legal assistance arrangements support intersectional and holistic approaches to legal assistance for Aboriginal people. However, per the commentary above, there are a significant challenges experienced by the service providers associated with current legal assistance arrangements. The absence of long-term, predictable and sustainable funding for the FVPLS units, and the tendency for State and Federal Governments to impose what they consider to be best practices in service delivery for Aboriginal people experiencing family and domestic violence on those providers, creates significant risks to the effectiveness of those legal assistance arrangements.

Funding levels

Q3: How should the funding models consider what funding is required to enable delivery of legal assistance through Aboriginal and Torres Strait Islander organisations?

Sixteen FVPLS agencies currently operate across a vast geographical area in Australia where more than 50% of Aboriginal and Torres Strait Islander people live, including in areas of high need in rural, remote and very remote communities. Yet, Commonwealth funding for the FVPLS program is significantly lower than funding to the other legal assistance services, including Legal Aid Commissions, Community Legal Centres and the Aboriginal and Torres Strait Islander Legal Services. Increased FVPLS funding was recommended by the Productivity Commission in 2014¹, the Law Council in 2018² and government commissioned evaluations³, to no avail.

Funding for the FVPLS agencies is not based on legal need or the actual costs of providing services unlike other legal assistance providers, which was a criticism of the Productivity Commission in 2014 that recommended Commonwealth funding for FVPLS providers should "be allocated according to models that reflect the relative costs of service provision and indicators of need given their priority clients and areas of law."⁴ We have, however, seen no change to the FVPLS funding model since that time. Further, while FVPLS activities often relate to areas of state and territory law, funding is provided almost exclusively by the Commonwealth. The Productivity Commission concluded that "as a

¹ Productivity Commission, "Access to Justice Arrangements: Productivity Commission Inquiry Report", 2014, p 63, Rec. 21.4.

² Law Council of Australia, "The Justice Project Final Report: Recommendations and Group Priorities", August 2018, p 4.

³ Family Violence Prevention Legal Services – Research and Needs Analysis Report Commonwealth Attorney-General's Department, 16 July 2013, NOUS Group, page 49.

⁴ Productivity Commission, "Access to Justice Arrangements: Productivity Commission Inquiry Report", 2014, p 28.

consequence, state and territory governments have little incentive to consider how their policies impact on the demand for the services of these two legal assistance providers (FVPLS and ATSILS).”⁵

A historical lack of indexation for the FVPLS program has worsened the inadequate resourcing of many FVPLS agencies such as AFLS and caused significant funding reductions in real terms, and this loss is even greater in rural and remote regions. The October 2022 Federal Budget provided an indexation supplement to community organisations such as the FVPLS Program, but this has not yet been passed onto the FVPLS agencies by the National Indigenous Australians Agency and it will not meet the real reductions in funding consequent to the historical lack of indexation.

Further, significant data deficiencies regarding the prevalence of family violence affecting Aboriginal people have contributed to an historical under-investment in FVPLS agencies, by obscuring the true extent of the needs of Aboriginal people. There is a need to harmonise national data, and FVPLS agencies and the National FVPLS Forum should be funded to enhance data collection and analysis to inform funding allocations and increases to the sector, and to better measure the prevalence of family violence and the effectiveness of holistic legal and non-legal response services.

To effectively enable delivery of legal assistance through Aboriginal Community Controlled Organisations such as the FVPLS units, the several issues explored in this section must be addressed. In the case of legal assistance to Aboriginal victims of family and domestic violence, the FVPLS agencies around Australia must receive additional annual funding concurrent with legal need and the actual cost of providing services, to ensure the ongoing sustainability of essential legal and non-legal front line services to Aboriginal people. Per the Productivity Commission’s recommendations, assessments of localised legal need, along with comprehensive and comparable data on the costs and benefits of delivering legal services, should be collected to inform decisions about long-term resourcing requirements. We note and endorse commentary by the Commission regarding increasing legal assistance funding:

*Advocating for increases in funding (however modest) in a time of fiscal tightening is challenging. However, not providing legal assistance in these instances can be a false economy as the costs of unresolved problems are often shifted to other areas of government spending such as health care, housing and child protection. Numerous Australian and overseas studies show that there are net public benefits from legal assistance expenditure.*⁶

3 Issues to be explored

Effectiveness

Q4: To what extent has the NLAP achieved the overall objectives and intended outcomes?

Refer to commentary above.

⁵ Productivity Commission, “Access to Justice Arrangements: Productivity Commission Inquiry Report”, 2014, p 29.

⁶ Productivity Commission, “Access to Justice Arrangements: Productivity Commission Inquiry Report”, 2014, p 30.

Legal need

Q5: To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?

Inadequate, short-term and unsustainable funding makes it difficult for services to meet existing demand and respond to emerging need. In 2022, the WA Department of Justice engaged ACIL Allen to develop a WA Legal Needs Report and supporting data tool, to indicate the estimated level and nature of legal need in the state.

In the specific context of legal assistance services for Aboriginal people affected by family and domestic violence, the Report found that Aboriginal and Torres Strait Islander people are disproportionately impacted by key risk factors which contribute to higher levels of need for legal assistance services, and that they face a range of personal and systemic barriers that inhibit access to effective legal assistance.

The Report quotes lack of recognition, understanding and training across the legal system; legal assistance lawyers failing to have sufficient knowledge or training regarding family violence; conditions included in intervention orders that are not sufficient to prevent abuse; lack of timely, affordable and specialist legal advice and representation; prohibitive cost of legal representation; lack of offender accountability and inadequate response to breach of protection or restraining orders; limits of legal solutions for complex social problems; lack of access to ongoing support beyond the point at which violence occurs; and failure to understand legal rights and how to access them or even know that they have a right to seek redress, as key issues.⁷

On the topic of unmet legal need, which the Report refers to as the ‘statistical inference of need for legal assistance, which is not serviced according to observable provider data’, the Report concludes that for every person:

- With a potential need of legal assistance in civil law matters, there were approximately 0.43 weighted services delivered.⁸
- With a potential need of legal assistance in child protection matters, there were approximately 0.005 weighted services delivered.⁹
- With a potential need of legal assistance in restraining order matters, there were approximately 0.61 weighted services delivered.¹⁰
- With a potential need of legal assistance in family law matters, there were approximately 0.24 weighted services delivered.¹¹

The Report noted the distribution of service rates generally indicated differences between metropolitan and regional areas, with the Perth metropolitan and Peel regions reporting higher service-to-need ratios compared to regional Western Australia. This is consistent with our personal observation that there is insufficient investment in the legal assistance sector generally in Western Australia resulting in significant unmet legal need, and specifically in the provision of legal assistance

⁷ Acil Allen report to Government of Western Australia – Department of Justice, “*Assessment on the Current Legal Needs in Western Australia: Final Report*”, 2022.

⁸ Acil Allen report to Government of Western Australia – Department of Justice, “*Assessment on the Current Legal Needs in Western Australia: Final Report*”, 2022, p 202.

⁹ Acil Allen report to Government of Western Australia – Department of Justice, “*Assessment on the Current Legal Needs in Western Australia: Final Report*”, 2022, p 206.

¹⁰ Acil Allen report to Government of Western Australia – Department of Justice, “*Assessment on the Current Legal Needs in Western Australia: Final Report*”, 2022, p 213.

¹¹ Acil Allen report to Government of Western Australia – Department of Justice, “*Assessment on the Current Legal Needs in Western Australia: Final Report*”, 2022, p 219.

in regional and remote communities. The reality is that our legal service consistently operates at capacity and does not have the resources or capabilities to support every single person who needs our services.

Per previous responses to questions throughout this submission, current funding arrangements that are based on historical allocations to existing centres and which are inflexible to support service expansion into new regions or practice areas are insufficient. Additionally, legal needs analyses have a tendency to prioritise place based needs. It is important that future needs analysis projects also focus on specialist needs for priority cohorts.

Roles and responsibilities

Q6: What roles should the Commonwealth and the jurisdictions play in determining or administering funding distribution between legal assistance service providers?

If the FVPLS units transition to funding arrangements under the NLAP, there must be quarantined funding for the sector. This should help protect the sector in jurisdictions where the government prefers allocating NLAP funds to Legal Aid Commissions. There should also be a commitment from states and territories to greater jurisdictional investment in funding legal assistance, and a prohibition on states and territories delegating funding administration responsibilities under the NLAP to Legal Aid Commissions.

We have significant concerns about the degree of state control exercised over additional 'special purpose' funding for the sector, for example Vulnerable Women's and Disaster funding streams. We have a preference for greater Commonwealth control over additional funding allocations, driven by experiences of huge delays in state government allocations of additional Commonwealth funding in response to COVID-19 and disasters such as the Broome flooding.

We generally support greater transparency around government funding decisions and allocations. This includes:

- Real-time reporting on any allocation decision made by state and territory governments and a published comparison of approaches across jurisdictions.
- Public reporting on the time it takes states and territories to distribute funding.
- A clearer guide to, and timetable for, the shift to impact evaluation. Commitment to ensuring this work does not undermine the impact work done already by centres in several states.
- An improved approach to data collection that is clear about purpose, considers burdens on data collectors and funds sector to do this work.

Disadvantaged groups

Q7: Are there other systematically disadvantaged groups, either existing or emerging, who are not supported adequately?

The Issues Paper notes the unique challenges experienced by legal assistance providers in relation to service delivery for cohorts in rural, regional, remote and very remote locations. We would like to reiterate the severe disadvantage of really remote communities where there is a lack of infrastructure, let alone lack of services. In Western Australia, this includes communities such as Tjuntjuntjara out of Kalgoorlie and Warburton in the Ngaanyatjarra Lands. These are communities that AFLS would like to have the resources and capacity to serve, but unfortunately do not have the funding to do so.

Regional, rural and remote contexts

Q8: How should the challenges of service delivery in regional, rural and remote locations be addressed through future agreements?

We support a legal assistance funding model that prioritises client need, noting the particular overrepresentation of Aboriginal people as a vulnerable and priority client cohort for legal assistance in regional, rural and remote areas. The shift to online and remote service delivery in recent years has flown in the face of what we know to be best practice, culturally safe and trauma informed service delivery, which is the provision of face-to-face legal assistance services. For Aboriginal victims of family and domestic violence in particular, the importance of knowing and seeing exactly who is in the room with them and who they are talking to is elevated.

We note the diversity of regional and remote communities, and that the requirements of service delivery across those communities will vary significantly. Future agreements must respond to the nuances of service delivery in regional, rural and remote locations, which requires targeted, tangible investments in local service providers with the experience and expertise to best respond to the legal needs of their local communities.

Funding models

Q9: To what extent does the funding model support appropriate distribution and quantum of Commonwealth resources to meet current and future needs?

We strongly support a significant increase to the overall funding for legal assistance services, including FVPLS units, ATSILS and Community Legal Centres.

Recently, the FVPLS sector called for an additional \$40 million in annual funding to enable the FVPLS units to provide essential frontline family violence services, programs and supports to Aboriginal people affected by family violence. This funding is needed to expand the services and programs the FVPLS units provide within current service areas, and to allow agencies to provide new services and programs to Aboriginal people who do not currently have access to specialised community controlled FVPLS delivered family violence prevention services. This funding would provide approximately 300 additional FVPLS staff across Australia, including solicitors, case managers, social workers, mental health officers, client support officers, intake and assessment officer, program officers, community educators and community development officers. The funding would also allow FVPLS agencies to employ legal personnel, to support a central function of the FVPLS sector as one of Australia's four legal service sectors, while additional corporate positions would assist FVPLS agencies in data management, HR, compliance and organisational governance and performance.

Community Legal Centres Australia similarly noted in their 2022-23 Pre-Budget Submission that across the legal assistance sector, an increase in baseline investment funding would enable services to:

- Provide more extensive support to clients, including ongoing case work and assistance on a broader range of legal issues;
- Identify systemic issues and bring them to the attention of government;
- Expand services in regional, rural and remote areas across Australia to improve access to justice, and help alleviate accessibility issues experienced by the elderly, women experiencing family violence, and First Nations people; and

- Increase community legal education to improve people’s capacity to solve their own legal problems, enhance community resilience and reduce disadvantage, thus alleviating the strain on other government services.¹²

We have a strong opposition to a centre-viability model for funding allocations, and a preference for client centred, needs based funding.

Managing demand over time

Q10: What timeframe is most appropriate for the next national legal assistance partnership agreement, and how can flexibility be embedded to accommodate changing needs?

We strongly support guaranteed longer-term contracts for all Commonwealth funding, with increased baseline funding for service providers rather than restricted baseline funding with supplementary funding when crises arise. Contracts should be for at least 5-years, with an intention to transition them to longer-term agreements. We additionally support greater State Government investment in the legal assistance sector.

To embed flexibility, we support a requirement of at least 6 months’ notice of any change of funding, and a better indexation clause. We endorse the position of Community Legal Centres Australia in its 2023 pre-budget submission, which called for indexation on funding agreements to rise to a minimum of 4.6% per annum, based on recommendations by the Australian Council of Social Services and the Australian Services Union, and which noted that New South Wales has set indexation for social services contracts at 5.5%.

Wrap around services

Q11: How should holistic service provision improve outcomes and reduce the demand for legal assistance services?

In the context of delivering services to victim survivors of family and domestic violence and sexual assault, clients need a legal service that is culturally safe, trauma informed and client centred. This requires a trauma informed approach to service delivery which must include access to integrated, wraparound social and cultural supports, as well as assistance to navigate the legal system.

FVPLS units across Australia provide best practice examples of facilitated access to legal as well as non-legal supports to overcome the many barriers to accessing justice. The units prioritise frontline holistic legal representation and services, where clients and their families can receive legal advice and representation while being assisted with court support, child protection advice and advocacy, counselling, service referrals, case management, and kinship liaison. A combined model of legal and non-legal programs and services assists Aboriginal people to seek help earlier and allows FVPLS agencies to:

- Respond to the trauma and vulnerability of clients and communities affected by family violence.
- Optimise the effectiveness of the legal assistance provided to clients.
- Prevent intergenerational cycles of abuse and the normalisation of violence.
- Reduce the harm caused by prolonged family violence by providing assistance sooner.

¹² Community Legal Centres Australia, “Federal Budget Submission 2022 to 2023”, 2022, p 6.

This model is consistent with the four National Pillars of Prevention, Early Intervention, Response and Recovery in the *National Plan to End Violence Against Women and Children 2022-2032*.¹³

In addition to legal assistance and casework, FVPLS agencies also provide important intervention and prevention programs and services, such as women's support groups and community safety services, counselling services, support for children in family violence situations, community education programs that build stronger and resilient families, promote healthy relationships, and break intergenerational cycles of violence. These vital supports and services build the strength of Aboriginal women and reduce their vulnerability to violence and contact with the criminal justice system.

In Western Australia, we have only recently received advice from the Department of Justice that should the FVPLS units transition to funding arrangements under the NLAP, this will include funding for the non-legal services that are delivered as part of our service model. We are hesitant to trust in this advice, given that for the last two years the Department of Justice has maintained that funding distributed through the NLAP would be for legal assistance only.

If the FVPLS units do transition to funding arrangements under the next NLAP, we will only do so with an assurance that where FVPLS services deliver non-legal services our funding will be preserved, to ensure the accessibility of holistic assistance as part of the FVPLS model. Transition to the NLAP must not negatively affect the terms of the FVPLS units' funding agreements. The NLAP could, therefore, better support integrated services by permitting NLAP funds to be allocated by service providers as their services require, including to facilitate non-legal support programs.

Early Intervention

Q12: 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?

Core to the FVPLS model is recognition of the power of prevention and early intervention initiatives as a mechanism for supporting clients to avoid the justice system or to exit from it as soon as possible. Many FVPLS service providers have achieved successful outcomes for clients through these service delivery models. In Western Australia, AFLS delivers programs such as Sparkle and Grow, Strong Girls Stronger Women, Healing Hands and the Ochre Ribbon Campaign, which include personal development and community awareness elements to enable Aboriginal people to develop respectful relationships and build strong, positive networks.

In this context, we support greater Commonwealth (and State) investment in legal assistance service providers allocated to prevention and early intervention programs. Funding will be required for legal and non-legal positions that support clients to prevent harmful contact with justice systems.

Advocacy

Q13: How should legal assistance funding be provided to legal assistance providers for advocacy and law reform activities?

Properly funded law reform and advocacy address systemic injustices and reduce legal need. The work improves the lives of the people and communities served by legal assistance providers by advocating changes to unjust and harmful laws and policies. We note and endorse the comments of the Productivity Commission in their Access to Justice Arrangements Report from 2014, in which they

¹³ Department of Social Services, Commonwealth of Australia, *"National Plan to End Violence against Women and Children 2022-2032"*, 2022, p 55.

stated that legal assistance providers play a key role in law reform, policy and advocacy, that it should be a core activity of CLCs and that in many cases, strategic advocacy and law reform can reduce demand for legal assistance services. The Commission also expressed the view that such activities can benefit people directly affected by particular issues, and, by clarifying or improving the law, can also benefit the community more broadly and improve access to justice through positive spillovers. It recommended that Commonwealth, State and Territory Governments should provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services.¹⁴

We strongly support dedicated funding for law reform and advocacy by the Commonwealth Government, in addition to an affirmative statement about funded centres' entitlement to advocate. Funding for advocacy must include centres' strategic and proactive advocacy on issues directly related to their clients and their work, and not simply participation in government consultation processes. Legal assistance services understand better than most the challenges of our sector and the impacts of unmet need on vulnerable Australians.

Efficiency

Q14: To what extent are administrative processes of funders placing unnecessary regulatory burdens on legal assistance providers?

We strongly support streamlined reporting processes for legal assistance service providers. This includes guaranteed 5-year contracts for Commonwealth funding allocated in one go, including state money if possible, with no split between baseline and supplementary funding, and with a single reporting process for all funds.

Commonwealth administrative review

Q15: 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?

No comment.

Labour market

Q16: How does workforce supply and remuneration impact on the provision of legal assistance services?

Poor employment conditions, including low remuneration, limited career pathways and the high risk of vicarious trauma and burnout negatively impacts service providers' ability to attract and retain expert staff, which impacts our ability to meet community needs for legal assistance. These issues are felt particularly harshly in regional, rural and remote areas, like those regions serviced by AFLS. We regularly have vacancies for 3-12 months at a time, driven by the higher cost of living in regional and remote communities and our inability to pay competitive salaries or provide housing assistance to staff. In the Kimberley, weekly rents have risen to between \$800 and \$900, which is unaffordable for staff on the wages we are able to pay. We are also impacted by competition with industry and the mining sector, and regularly experience staff leaving to enter mining or government jobs where salaries are higher and the work is less intense. For those staff who remain with our organisation, there are limited opportunities for career progression.

¹⁴ Productivity Commission, "Access to Justice Arrangements: Productivity Commission Inquiry Report", 2014, p 62.

We strongly support increased funding to enable services in the legal assistance sector to offer pay parity with Legal Aid Commissions at a minimum. Investment of additional funding by State and Commonwealth Governments to improve workers conditions, including their ability to manage the ever increasing cost of living, is critical to supporting better access to justice for the highly vulnerable and at risk communities we serve. It will do this by enabling our services to recruit and retain senior staff with extensive expertise in delivering the types of legal and non-legal support we provide for clients, at wages that are suitable to keep them in the job. Additional funding dedicated to workforce development would also enable services like AFLS to support the professional development and upskilling of staff, in the absence of hierarchical career progression opportunities given the operational structure of our organisation.

For ACCOs like AFLS, we additionally manage the complexities of attracting and retaining Aboriginal staff to our organisation. We strongly support increased funding to enable ACCOs in the legal assistance sector to invest in attraction and retention strategies for Aboriginal staff. This would support us to:

- A. Review our advertisement, application and interview processes for Aboriginal staff, and change how we do this.
- B. Provide intensive supports to assist Aboriginal staff to work in an environment with more non-Aboriginal people.
- C. Invest in the cultural and community connections of Aboriginal staff and leverage those connections. Community engagement should be an essential part of Aboriginal staff members roles, and pay parity needs to reflect that.
- D. At our core, prioritise being an Aboriginal employer and implement more sustainable Aboriginal employment programs for Aboriginal employees.

Data collection

Q17: To what extent are the current reporting processes sufficient to support monitoring, continuous improvement and achievement of objectives?

We are committed to collecting quality data that can inform our practice and support us to deliver the best, most impactful services for our communities. We also understand that governments are accountable for the taxpayer funds they provide to services and that we must demonstrate our value.

However, our experience has been that Commonwealth and State agencies demand data when the need for this data is not demonstrated and where it cannot be meaningfully used. Data collection is burdensome, and the legal assistance sector has been underfunded to meet demands. In Western Australia, the Department of Justice regularly requests AFLS provide our data to the Department to inform legal assistance sector planning, despite AFLS not being eligible for any funding administered by the Department through the NLAP.

We welcome the opportunity to work in partnership with relevant governments to collect the right data and analyse it in ways that continually improve our practice, but we need to be funded to do this work.

Further, for services like the FVPLS units, we need to see the principles of Indigenous data sovereignty and data governance genuinely applied in data collection and reporting processes. We refer to the NSW Government's Communities and Justice presentation on Ngaramanala: Aboriginal Knowledge Program, which identified that non-Indigenous data governance has led to the 5D (difference,

disparity, disadvantage, dysfunction, deprivation) deficit narrative which has harmed Aboriginal people for generations.¹⁵ Examples include governments concluding that:

- ‘Educational outcomes for Aboriginal students are significantly lower than for their non-Aboriginal counterparts’ rather than ‘Australian past policies of excluding Aboriginal people from education has caused harm, which still impacts Aboriginal students today’.
- ‘Aboriginal people are more likely to offend and end up in prison than non-Aboriginal people’, rather than ‘The over surveillance of Aboriginal people leads to higher likelihood of involvement in the criminal justice system’.
- ‘Being Aboriginal is a risk factor’ rather than ‘Protective abilities and strengths are embedded in Aboriginal culture. Belonging to culture creates resilience leading to better social, emotional and physical health outcomes’.
- ‘Aboriginal children are better off with non-Aboriginal families’ rather than ‘Aboriginal children need to be raised with cultural permanency. Wellbeing for Aboriginal children is correlated with cultural connection’.¹⁶

We therefore argue that there must be an investment in capability building within (and outside of) the NLAP, to:

- Ensure the principles of Indigenous data sovereignty and data governance are applied, including the provision of Aboriginal governance and oversight.
- Guarantee that data is able to be contextualised and disaggregated at local levels that are meaningful to Aboriginal communities.
- There is consistent, transparent and contextualised reporting and dissemination of data.
- Aboriginal priorities and community data needs are centred.
- Aboriginal interpretation of data is applied.
- Aboriginal data is reported in context.¹⁷

We further note the Productivity Commission’s Review of the National Agreement on Closing the Gap: Draft Report from July 2023, which suggested that in order to enable stronger data governance arrangements to enable tracking of progress under the National Agreement on Closing the Gap, an organisation or entity with dedicated resourcing and staffing to lead data development could be appointed. In the context of reporting processes inside (and outside) of the NLAP, the same considerations regarding Indigenous data governance should apply. ACCOs such as the FVPLS units should be given the power to decide how and when Indigenous data is gathered, analysed and used. We would welcome the establishment of an ACCO-specific database, similar to the CLASS or ActionStep databases used for the collection and storage of information for legal assistance services, for the input of service delivery information for all ACCO services. Where State and Commonwealth Government agencies would seek to access the data stored in that ACCO-specific database, we would require those agencies to go through a request process for accessing the data with the relevant ACCO/s.

¹⁵ Ian Brown and Maelona Stephens, NSW Government, “Ngaramanala: Aboriginal Knowledge Program Responding to Indigenous Data Sovereignty and Indigenous Data Governance”, 2023, slide 17.

¹⁶ Ian Brown and Maelona Stephens, NSW Government, “Ngaramanala: Aboriginal Knowledge Program Responding to Indigenous Data Sovereignty and Indigenous Data Governance”, 2023, slides 18-19.

¹⁷ Ian Brown and Maelona Stephens, NSW Government, “Ngaramanala: Aboriginal Knowledge Program Responding to Indigenous Data Sovereignty and Indigenous Data Governance”, 2023, slide 27.

Per the Productivity Commission's recommendations about an independent organisation or entity to lead data development in the context of the National Agreement, the data and reporting capacities of legal assistance services must be invested in to enable them to:

- Collect data that reflects Indigenous priorities, values and culture.
- Reinforce rather than restrict Indigenous community goals and ambitions.
- Protect Indigenous data integrity.
- Support Indigenous leadership in data decision making.
- Be accountable to Indigenous people on decisions around data collection and use.
- Recognises Indigenous interests, including collective interests, in relation to data.