

**Call for Legal Assistance Service Data Action Plan,
new agreed data principles, and appropriate data resourcing.
National Legal Assistance Partnership Review
October 2023**

Purpose

As part of the Review of the National Legal Assistance Partnership 2020-2025 (the Review), the Australian Legal Assistance Forum (ALAF) is calling for the development of a Legal Assistance Service Data Action Plan, for data requirements pursuant to future funding agreements to accord with agreed ALAF national legal assistance data principles, and for data collection, recording, and reporting by legal assistance service providers to be appropriately resourced by funders.

Review – Term of Reference 3

An evaluation of data collection, performance monitoring and reporting, including:

- a) the current reporting framework, including its purpose, utility, and data quality, with consideration of the data capability across and the administrative burden on the sector.
- b) exploring alternative frameworks and approaches to improve the data availability, reliability, quality, and better connection with the broad outcomes.
- c) opportunities and strategies to enhance data collection of legal assistance that improve service delivery, guide future outcomes-based frameworks, and align with Closing the Gap Priority Reforms 2 and 4.

Background

Legal assistance service data collection and analysis is critical to develop an evidence base for the purposes of understanding systemic issues, informing service delivery, and achieving outcomes for clients and the community. Data collection and analysis helps to demonstrate legal need and contributes to the case for investment in legal assistance, although legal assistance service data, cannot alone do this. It is critical that broader legal need, including unmet legal need, is also captured. Previous surveys such as the Legal Australia-Wide (**LAW**) Survey and pre targeted research, such as that conducted by Chris Cunneen and Melanie Schwartz into the civil and family law needs of First Nations persons, have previously provided a strong understanding of the extent of legal need in Australia, the extent to which it is met and the consequences of unmet legal need. However, these surveys are dated and ensuring a comprehensive picture of Australians' current legal needs is fundamental to future reform. The balance of this paper focusses on matters related to legal assistance service data.

Current arrangements

The objective of the National Legal Assistance Data Strategy June 2021 (the Data Strategy), is to “provide a robust policy framework for the collection, storage, reporting, transmission, and analysis of NLAP service data.”¹ NLAP service data is to be “collected and reported consistent with the DSM.” (National Legal Assistance Data Standards Manual).²

The DSM was developed at the instigation of the Commonwealth Attorney-General’s Department (AGD) and with the requested involvement of representatives of the legal assistance sector (including ALAF representatives).

Different types of service and different service matter types are provided variously by the individual legal assistance service providers for different communities, issues and purposes. This means identifying data sets, definitions and counting rules against which the entire sector can consistently report is challenging.

National legal assistance data development began in 2010 and involved the considerable commitment and effort of each of the legal assistance service providers working with AGD to identify common data sets, definitions and counting rules. Many face to face and remote meetings of the peak representatives were necessary, as were detailed consultations and feedback processes between peak representatives and the organisations that they represented across the country, and between peak representatives and the AGD.

The DSM was first introduced to coincide with the National Partnership Agreement on Legal Assistance Services 2015-20, and prior to all aspects of the DSM being settled by legal assistance service providers. It was envisaged that amendments to the DSM would be required over time.

Both the Data Strategy and the DSM contain data principles.

Issues experienced by the sector

- NLAP data requirements have presented challenges in terms of demonstrating outcomes and the extent of the benefits of the legal assistance sector to government, the community and clients, and for informing program and service design and evaluation.
- The introduction by the NLAP 2020-25 of the requirement to report “client unit level data” has presented persisting ethical and resourcing issues in terms of being able to adequately explain to clients and community how the data collected from them is utilised and/or purposeful and protected. Personal data should not be provided without informed consent. Legal assistance providers have been faced with the time consuming challenge of significant and complex data work to ensure that privacy is protected and clients are not able to be identified from unit level data that they have been compelled to provide.
- Collection, recording and reporting of large volumes of data requires appropriate electronic and human systems support and maintenance of systems over time. Electronic systems are expensive including to adjust, and, for data to be accurately and consistently collected, people who are capturing, entering and/or extracting data require training including about definitions,

¹ Australian Government Attorney-General’s Department, [National Legal Assistance Data Strategy June 2021](#), 5.

² Ibid 4.

parameters, privacy/secretcy/confidentiality provisions and the purpose for which data is to be used including why complete data sets are important. Staff and the private legal practitioners undertaking legal aid work change over time and knowledge needs to be managed. Increasingly resources are needed to support secure storage and transmission of personal data noting the rise of cyber attacks and theft of data.³

- Whilst all legal assistance sector representatives aim to adhere to the DSM, it has become clear that there are varying interpretations of definitions and counting rules being applied to the existing standards. This is for a number of reasons including because some parts of the DSM were never agreed by providers, that resources are limited, and proxies and mapping therefore need to be used, and because the DSM and reporting against it have not been comprehensively reviewed for some years.

ALAF Proposed Legal Assistance Data Action Plan

ALAF proposes that as part of, or consequent upon the NLAP Review, that an appropriately resourced Data Action Plan be created which identifies:

- The purpose and efficacy of NLAP data collection and reporting requirements.
- The ethics and privacy issues related to data collection and reporting requirements.
- The resourcing required to enact quality consistent data collection, recording, and reporting.
- A process for ongoing review and adjustment of data collection and reporting requirements to ensure that future data is being appropriately used including to guide service development, design and delivery.

ALAF Proposed New National Legal Assistance Data Principles

ALAF has identified the following principles from a perspective of co-design and collaboration to guide consideration of future legal assistance data collection and reporting.

1. First Nations people and communities should maintain data sovereignty in line with the Priority Reforms of the National Agreement on Closing the Gap.

Closing the Gap – Priority Reform Four requires data sovereignty.⁴

“Data sovereignty, as it relates to First Nations communities, is their right to maintain, control, protect and develop their cultural heritage, traditional knowledge, and traditional cultural expressions, as well as their right to maintain, control, protect and develop their intellectual property over these.”⁵

Rights of data sovereignty should include that:

³ As stated by the Productivity Commission, *Access to Justice Arrangements* (2014) “Changing the data collection systems to make them fit for purpose may be a costly exercise, but the benefits to the community mean that it is warranted. Government should bear the costs associated with the transitioning to new data collecting requirements as the public will benefit the most from evidence-based policy made in regards to the civil justice system” 896.

⁴ Closing the Gap Priority Reforms <https://www.closingthegap.gov.au/national-agreement/priority-reforms>

⁵ Data Governance and Sovereignty - Cultural Ways - Australian Indigenous HealthInfoNet citing [Kukutai, T. Taylor, J. \(Ed.\) \(2016\) Indigenous data sovereignty: toward an agenda. Canberra: ANU Press.](#) <https://healthinonet.ecu.edu.au/learn/cultural-ways/data-sovereignty/#aihref1>

- Data collection, recording, and reporting is purposeful and contributes to positive benefits for First Nations communities.
- Approaches to design and collection are collaborative.
- Data reporting and use are transparent.
- Data is obtained with free and informed consent in an ethical manner that includes ensuring privacy.
- The burden of data collection, recording and reporting, and its impact is minimised for individuals and communities.

A revised data strategy should include reference to Closing the Gap priority reforms and acknowledgment of First Nations data sovereignty and independent data ownership and management.

2. Data will only be required where its purpose has first been made clear and its use in, or applicability to, program or service evaluation or design or development is demonstrable and agreed by legal assistance service providers.

The purpose of data reporting pursuant to the NLAP needs to be transparent and streamlined to ensure that it contributes to the development of Australia’s well-being.

All stakeholders need to be able to understand why data is being required, how it is being used and how it contributes to illustrating the impact and outcomes of legal assistance service delivery, and to agree to its collection.

Data collection, recording and reporting is resource intensive and should not be undertaken at the expense of front-line service delivery particularly without a demonstrably beneficial purpose proportionate to the data collection burden.

3. Data collection, reporting and storage will comply with relevant legislation, privacy principles, and legal professional requirements and data security must be paramount.

Legal assistance service providers collect and retain highly confidential and sensitive information.

The current NLAP says *“Legal Assistance Service Data will only be used for policy, analysis, research, and statistical purposes and will not be used for compliance, regulatory, national security or law enforcement purposes.”*⁶

Legal assistance service providers are concerned about inappropriate access to data/information.

A NLAP risk management strategy for data collection, storage, and reporting that identifies how legal and professional compliance will be managed by all involved should be developed in consultation with all relevant stakeholders. The different State and Territory legislative regimes are noted.⁷

⁶ National Legal Assistance Partnership 2020-25, Schedule D8.

⁷ E.g. Privacy legislation and secrecy provisions in the enabling legislation of Legal Aid Commissions.

It is considered that all parties should have a comprehensive understanding of constraints nationally including the reasons for existence of constraints, and how appropriately informed consent to use of data can be achieved.

4. Required data collection, recording, and reporting is to be appropriately resourced by funders.

Data collection, recording, and reporting is administratively burdensome, time consuming, and expensive. It can detract from service delivery because the resourcing it requires diverts funding from service delivery, increases the cost of service delivery (time with client), and causes concern to some clients about why information is being sought and the use to which it is being put.

In many instances there is no effective provision in electronic systems to record and/or report data. Legal assistance data requirements need to be contained as per Principles 1-3 and the sector needs to be appropriately resourced to address the costs related to electronic and human data collection including staff time and training, and ensuring data security.

5. When analysing legal assistance data, data users will take into account the different operational contexts in which Service Providers operate to ensure that appropriate and accurate conclusions are made and in preparing to publish any material will endeavour to ensure that that analysis and conclusions have been checked with respective providers.

There have been occurrences of inappropriate data comparison, notably when data sets have been incomplete, resulting in misunderstandings about demand and the issues being experienced in respective communities.

Data to be published should always be subject to checking by providers, including to ensure that any comparisons that could be made across the sector are accurate.

Attachment A (DSM V.3 July 2021)

The National Legal Assistance Data Standards Manual and the collection of legal assistance data is guided by five principles:

Principle 1

In collecting data, Service Providers should note the overarching principles from the National Strategic Framework for Legal Assistance 2020-25:

- Focus service delivery on people facing disadvantage.
- Client centred and appropriate services.
- Collaboration and integrated approaches.
- Appropriately timed responses and preventative action.
- Empowerment and resilience.
- Continuous learning and improvement.

Principle 2

Service Providers will spend more time helping people and less time collecting and recording data. In practice, this will mean collecting fewer data items to reduce the burden on Service Providers and ensuring that the data collected is meaningful and useful.

Principle 3

Data collection will be consistent over time to establish a strong evidence base and allow for comparisons to be made across the legal assistance sector.

Principle 4

When analysing legal assistance data, data users will take into account the different operational contexts in which Service Providers operate to ensure that appropriate and accurate conclusions are made.

Principle 5

Data will be collected, stored and disseminated in accordance with Australian Privacy Principles or the equivalent state or territory privacy law, as well as the relevant legislative and professional requirements.

Attachment B National Legal Assistance Data Strategy (June 2021)

Principles

The Data Strategy will be guided by the following principles:

1. NLAP service data should support, not detract from, the quality of frontline service delivery.
2. NLAP service data should support evidence-based policy and program development.
3. NLAP service data should complement other data and information sources.
4. The security and privacy of NLAP service data must be safeguarded.

The objective, principles and outcomes of the Data Strategy should be achieved in a manner consistent with the principles in the *National Strategic Framework* and, in the context of services delivered to Aboriginal and Torres Strait Islander Australians, the *National Agreement on Closing the Gap*. The Strategic Priorities are subject to meeting relevant legislative obligations. To the extent possible, the activities covered under the Data Strategy should seek to adhere to data sovereignty principles, including consultation on access to and analysis and representation of data.