

Submission to the NLAP Review

Victorian Department of Justice and Community Safety response to the National Legal Assistance Partnership review

Acknowledgement of Traditional Owners

The Department of Justice and Community Safety (department) acknowledge Aboriginal and Torres Strait Islander people as the First Peoples and Traditional Owners and custodians of the land and waterways upon which our lives depend.

We acknowledge and pay our respect to ancestors of this country, Elders, knowledge holders and leaders – past and present. We extend that respect to all Aboriginal and Torres Strait Islander peoples.

We recognise that Aboriginal and Torres Strait Islander communities are steeped in culture and lore having existed within Australia continuously for some 65,000 years. We acknowledge the significant disruptions to social and culture order and the ongoing hurt caused by colonisation. We acknowledge the ongoing leadership of Aboriginal communities across Victoria in striving to build on these strengths to address inequalities and improve Aboriginal justice outcomes.

The department acknowledges the inherent strength of Aboriginal and Torres Strait culture recognising the wealth of experience that the Aboriginal and Torres Strait community holds.

Our submission to the NLAP Review

The department acknowledges the strengths and vision of the Victorian legal assistance sector in maximising outcomes for the most vulnerable members of our community. The Victorian legal assistance sector is built on a commitment to deliver better outcomes, grow investment to meet demand and collaborate to deliver innovation and service excellence. Victoria considers that the NLAP Review should put forward recommendations that build on this foundation and reinforce the focus on ensuring support for disadvantaged and vulnerable communities. The department and the Victorian legal assistance sector will continue to work together to achieve a sustainable and resilient sector ensuring all Victorians have access to appropriate and timely legal assistance.

The department's submission has been prepared in consultation with key Victorian stakeholders, including Victoria Legal Aid, the Federation of Community Legal Centres, Victoria Law Foundation, Victorian Aboriginal Legal Service, Djirra, Law Institute of Victoria and Victorian Bar. Together, four key Victorian priorities were identified:

- **Securing a fair share for Victoria so all Victorians have access to justice and equality before the law**

Sustainable partnerships ensure Aboriginal and Torres Strait Islander Services (ATSILS), Community Legal Services (CLCs) and Legal Aid Commissions (LACs) are supported to grow and meet the needs of Victoria's growing population.

- **Supporting effective Aboriginal services through the NLAP**

Devolving decision making on program design and delivery, investing in culturally appropriate holistic supports to intervene in legal problems early, and building a strategic evidence base on progress towards Closing the Gap through investing in Aboriginal-led policy and data capability.

- **Ensuring funding flexibility in NLAP baseline and specialist streams**

This will enable governments to invest in strategic service approaches which address the intersectional and often complex drivers of disadvantage.

- **Useful NLAP data collection through efficient reporting processes**

Data collection is purposeful and meaningful evidence is used to guide decision making and understand the impact of investment and program design to address the needs of all communities.

These themes are reflected throughout this submission. The department's submission takes a question-and-answer format to the Issues Paper circulated by the independent reviewer, Dr Mundy, drawing on relevant material that supports the department's position.

Legal assistance for Aboriginal and Torres Strait Islander Australians

3.1 Self-determination

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

Investing in Aboriginal leadership ensures the legal assistance sector effectively contributes to closing the gap between Aboriginal and non-Aboriginal outcomes and presents the best value for money.¹

Self-determination and cultural appropriateness can be best supported through engaging with ATSILS early on the design and implementation of legal assistance funding arrangements. This includes scoping legal need and service system capability and co-designing deliverables and indicators of success. Centring the NLAP on self-determination may provide a stronger, community-focused evidence base on what works well for Aboriginal people and their community-controlled organisations.

Facilitating ATSILS' early involvement in setting the strategic direction of legal assistance policy will assist to ensure that NLAP initiatives are fit for purpose and informed by Aboriginal perspectives. Further, strengthening the partnership with ATSILS on legal assistance policy design respects Aboriginal community ownership of data and information, and creates space for increased community-led decision making on how information about First Peoples is used and stored.

3.2 Arrangements over time

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

The NLAP recognises the importance of early intervention, holistic, multidisciplinary and intersectional approaches to legal assistance for First Nations communities, however funding remains predominantly attached to core legal services. Increasing the NLAP baseline will support ATSILS to extend funding to holistic approaches without compromising the quality of core legal services. Greater flexibility recognises that community-control in addressing legal needs is an act of self-determination.² This includes options to integrate legal services into non-legal settings and early intervention initiatives to support better and longer-term outcomes for Aboriginal people.

Administering ATSILS and FVPLS Commonwealth funding through the States and Territories improves visibility of funding and supports governments to focus resourcing on persisting gaps while mitigating the risk of duplication.³ Ensuring the equitable distribution of funding also enables ATSILS and FVPLS to maximise outcomes for their communities through a range of funded programs.

On the other hand, direct funding for the Victorian Custodial Notification Scheme (CNS) has facilitated direct engagement between ATSILS and the National Indigenous Australians Agency. This has meant

¹ *Burra Lotjpa Dunguludja* Aboriginal Justice Agreement link [here](#) accessed 2 October 2023

² <https://www.closingthegap.gov.au/national-agreement> p. 8

³ Victorian Legal Assistance Strategy link [here](#) accessed 2 October 2023

Victorian evidence on CNS effectiveness has contributed to a broader evidence-base on best practice for ensuring the safety of Aboriginal people in police custody.⁴

The department continues to work in partnership with the Aboriginal Community Controlled Organisation (ACCO) sector through the Victorian Aboriginal Justice Agreement to ensure funding arrangements respond to the intersectional and diverse needs of Aboriginal communities in Victoria. National engagement and broader policy development should continue to be supported.

3.3 Funding levels

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

Culturally appropriate legal services to support First Nations communities requires adequate and flexible funding informed by self-determination principles. The current NLAP has been responsive to surge demand and uplifting funding for ATSILS for discrete initiatives. However, the overall impact of baseline funding on sustaining legal services is effectively reduced due to annual funding not meeting indexation and inflation. The sector has also advised that there are reverberating impacts on the workforce when legal assistance providers cannot meet award wage increases.

Increasing the indexed baseline funding quantum to meet CPI and Award wages will ensure ATSILS have the confidence and capacity to expand their services to meet increasing demand. This includes establishing place-based regional services to support the 50 per cent of Victorian Aboriginal people who reside in regional Victoria. Moving away from specific purpose and timebound funding will also support the sector to have confidence to invest in expanding their service capacity to where legal needs are identified. This will immediately reduce the burden on central locations to deliver services remotely and/or to rely on extensive travel.

Elevating partnerships with ATSILS at the point of designing funding models, deliverables and outcome measures will ensure the NLAP measures enable ATSILS to flexibly move resources to meet real and emerging needs.

Issues to be explored

4.1 Effectiveness

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

The NLAP promotes strong collaboration between sectors and governments integral to ensuring access to justice for communities through their diverse service settings. This collaboration has supported governments to understand pressures on the sector, and supports the Commonwealth to stay informed of issues impacting vulnerable cohorts across jurisdictions. The NLAP has actively supported jurisdictions to develop legal assistance strategies as a tool to elevate local issues and solutions.

Consideration may be given to broadening the NLAP's scope of funding arrangements and service design to invest in localised, evidence-based solutions identified in legal assistance strategies across jurisdictions.

The NLAP recognises that emerging needs can arise over the course of agreements and allocates discrete, specific purpose bilateral funding in response to these issues. This should be continued with consideration given to removing the limitation on LACs' use of NLAP funding for Commonwealth only matters. In circumstances where the Commonwealth seeks to quarantine investment for Commonwealth

⁴ National Indigenous Australians Agency, Custody Notification Service evaluation announcement link [here](#), accessed on 2 October 2023

matters these limitations should be developed in close consultation with the sector to ensure this approach does not impact on the ability of LACs to address actual demand in Victoria.

4.2 Legal need

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

The demographic profile of legal needs in Victoria is complex. The Victoria Law Foundation's Public Understanding of the Law Survey (PULS) flagship project surveyed over 6000 respondents to augment historical approaches to legal needs surveys and better understand legal capability, attitudes and experience of the law in the Victorian community.⁵ Research like this can support governments to implement evidence-based solutions that are responsive to the unique needs of the communities they represent. Forecasting future Victorian needs may also be enabled through periodic national surveys. It may also be beneficial to undertake a progress assessment of the persisting civil needs identified in the Indigenous Legal Needs Project (2013).⁶

The *Public Understanding of Law Survey Volume 1: Everyday Problems and Legal Need (2023)*⁷ found that increased demand, including consumers presenting with complex and multiple legal issues continues to grow in Victoria within the context of significant legislative and system reforms. PULS also found individuals in Victoria experience a complex cluster of legal problems, with 53 per cent of those who had faced legal problems, experiencing multiple legal problems.

Over the course of the current NLAP, legal needs in Victoria have exceeded sector capacity and funding. Future volumes of PULS will provide a detailed assessment of the Victorian sector's capability to meet the legal needs identified in volume one. However, preliminary evidence indicates that within the current sector capacity context, the majority of individuals who obtain legal advice still have unmet legal need.⁸ Sector capacity to address legal need has been impacted by the following circumstances:

- The 2021 census reported a Victorian population of 6.5 million.⁹ Victoria is expected to be the fastest growing state in the country with its population anticipated to reach 7.8 million by 2026-31, a projected increase of approximately 20 per cent.¹⁰ Populations in regional areas and outer metro corridors are increasing and placing pressure on local service systems. Victoria also hosts four of the top ten fastest growing Local Government Areas (LGAs) in the country, including Melton (first in the country), Wyndham (fifth), Melbourne (seventh) and Mitchell (ninth).¹¹
- Successive interest rate hikes and booming house prices have made it difficult to service mortgages¹² resulting in increased volume of civil law problems presenting to CLCs.
- Family law matters represent a considerable amount of the services provided by CLCs.¹³ The Joint Select Committee on Australia's Family Law System interim report stated that in 2018–19, 93 per cent of legal representation services provided by LACs, 52 per cent of dispute resolution services

⁵ Victorian Law Foundation, Public Understanding of Law Survey homepage link [here](#) accessed on 2 October 2023

⁶ Allison, F., Cunneen, C., Schwartz M, Project *The civil and family law needs of Indigenous people in Victoria* (2013) A Report of the Indigenous Legal Needs Project in association with the Jumbunna Indigenous House of Learning link [here](#) accessed on 7 September 2023.

⁷ Balmer, N.J., Pleasence, P., McDonald, H.M. & Sandefur, R.L. (2023). *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*. Melbourne: Victoria Law Foundation

⁸ Victorian Law Foundation, Public Understanding of Law Survey homepage 'legal advice meets legal needs, right?' link [here](#) accessed on 24 October 2023.

⁹ <https://www.abs.gov.au/articles/snapshot-vic-2021> accessed on 24 October 2023

¹⁰ Victoria in the Future, the official Victorian State Government projection of population and households link [here](#).

¹¹ Australian Government Centre for Population, *Fastest Growing Local Government Areas* link [here](#) accessed on 16 October 2023

¹² Victorian Government, *Victoria's Housing Statement the decade ahead 2024-2034* p. 7 link [here](#) accessed on 16 October 2023

¹³ JSC p. 19 link [here](#) accessed on 16 October 2023

delivered by CLCs, and 57 per cent of dispute resolution services delivered by ATSILS related to family law matters.¹⁴

An increase in Victorian baseline funding may assist to manage the volume of legal need. This may also increase capacity for tailored ATSIL services for Aboriginal young people¹⁵ and broader supports for victims of crime.¹⁶

Further, dedicated investment in forward planning and preparedness for extreme weather events may enable the sector to respond to changes to legal need and increased community vulnerability.¹⁷ Adequate funding should support communities through the recovery period (often for many years after the event).¹⁸ Funding flexibility under the NLAP may also support the transformation of service systems based on findings of various Commonwealth and State based inquiries.¹⁹

4.3 Roles and Responsibilities

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

The NLAP should continue to support mutual oversight and accountability through the complementary roles of the Commonwealth and State/Territory governments. This approach enables timely, open channels of communication to ensure access to justice flexibly responds to unique State based issues placing pressure on sectors and communities.

Greater clarity between State and Commonwealth roles should be considered to reduce administrative and consultation burden on the sector. Consideration should be given to the role of Commonwealth leadership to ensure NLAP funding arrangements are compatible with national priorities.

The continuity of States (and their delegates) as the principal funding administrator works well, as States are best placed to understand the local legal assistance landscape, where the need is and how the need should be addressed.

4.4 Disadvantaged groups

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

While the NLAP has taken an evidence-based approach to identifying vulnerable cohorts, an uplift in baseline funding will ensure service responses can adequately adapt to the unique and changing circumstances in which disadvantage can occur. The NLAP will also benefit from enabling flexibility to meet the service needs of priority cohorts identified by the State.²⁰

In Victoria, vulnerable cohorts include:

¹⁴ JSC p. 19 link [here](#) accessed on 16 October 2023

¹⁵ Commission for Children and Young People *Our Youth, Our Way: Inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, Melbourne (2021) link [here](#) accessed on 11 October 2023

¹⁶ Victorian Law Reform Commission *Review of the Victims of Crime Assistance Act 1996* Final report (2018) link [here](#) accessed on 12 October 2023

¹⁷ Balmer, N.J., Pleasence, P., McDonald, H.M. & Sandefur, R.L. (2023). *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*. Melbourne: Victoria Law Foundation. P.95

¹⁸ Disaster Legal Help Victoria link [here](#)

¹⁹ Victoria, Royal Commission into Victoria's Mental Health System, Volume 3, Parl Paper No. 202, Session 2018–21 (document 3 of 6) p.350

²⁰ Balmer, N.J., Pleasence, P., McDonald, H.M. & Sandefur, R.L. (2023). *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*. Melbourne: Victoria Law Foundation. P.47-49

- People within recognised vulnerable cohorts may experience varying barriers and legal issues depending on where they live and what they need. For example, young people, who may face different barriers and legal issues depending on where they live and what they need as distinct from their adult counterparts.²¹
- Victim survivors of family violence who may not leave violent relationships due to poverty.²² Djirra, the Family Violence Prevention Legal Service (FVPLS) in Victoria reports that “Aboriginal and Torres Strait Islander women are criminalised for living in poverty: sent to prison for matters relating to homelessness, housing insecurity, mental health, alcohol and other drug dependencies and Acquired Brain Injury.”²³ Further family violence legal complexities also arise for “women who have called police to seek help for family violence and who are then misidentified by police as the primary aggressor.”²⁴
- People living with mental illness who present to their services with civil legal problems. This includes infringements, debts, family legal problems, housing and homelessness.²⁵ Legal assistance is often most effective when part of an integrated approach, including in the pre and post release stages of care or prison.²⁶

There are a range of steps to support the sector in responding to the scale and breadth of legal need at a national level through collaboration. Embedding adaptable funding levers in NLAP agreements will enable early intervention and surge service responses to meet legal needs as they arise.

4.5 Regional, rural and remote communities

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

Legal needs are exacerbated for people living in regional Victoria due to lack of available legal services and systems, including appropriately qualified practitioners and legal sector workforces. These issues are further compounded in regional areas impacted by climate events.

While the Commonwealth’s Funding Allocation Model gave regard to regional indicators, populations in regional Victoria have significantly expanded since the pandemic. As such, a current review may inform whether an uplift in baseline funding is required to address service gaps where little to no service coverage exists, including ATSL services. This will significantly reduce the burden of travel and remote delivery from central locations. This includes consideration of virtual/tele service delivery models to supplement place-based services. The contraction and/or expansion of regions during the NLAP’s term should also be considered in future agreements.

Supporting flexible uses of funding may also support the sector to meet surge regional demand (e.g., the expansion of Victorian courts and tribunals, such as the Bendigo and Shepparton precincts), and resource planning and coordination for climate events. If progressed, service design for investment in

²¹ Commission for Children and Young People, *Our Youth, Our Way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2021

²² Summers, Anne, *The Choice: Violence or Poverty. Domestic Violence and its Consequences in Australia Today*, Paul Ramsay Foundation (2022) p. 9 link [here](#) accessed on 16 October 2023

²³ Djirra submission to the Aboriginal and Torres Strait Islander Action Plan to End Family Violence Against Women (2023) p. 20 link [here](#) accessed on 16 October 2023

²⁴ Djirra submission to the Aboriginal and Torres Strait Islander Action Plan to End Family Violence Against Women (2023) p. 17 link [here](#) accessed on 16 October 2023

²⁵ Federation Community Legal Centres submission to Royal Commission into Victoria’s Mental Health System (2019) p.6 link [here](#) accessed on 16 October 2023

²⁶ Federation Community Legal Centres submission to Royal Commission into Victoria’s Mental Health System (2019) p.6 link [here](#) accessed on 16 October 2023

regional needs should be undertaken in close collaboration with the sector, as local organisations are best placed to understand the capacity of regional service systems.

4.6 Funding models

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

As outlined in 4.2 *Legal need*, the current funding model does not meet Victorian legal needs.

Even with the State contributing almost double that of the Commonwealth, legal needs continue to exceed available services. Increased Commonwealth funding is required for all Victorians to have access to justice and equality before the law. Any consideration of funding splits or contributions should be in excess of the overall current contribution. Additional legal assistance sector funding will build on the Victorian legal assistance sector's commitment to delivering better outcomes, growing investment to meet demand and collaboration across the sector to underpin innovation and excellence.

Greater baseline funding, with greater flexibility on its use, should be considered to preserve stability in the sector and accommodate local service delivery, including for areas impacted by state-based legislative and system change.²⁷ Baseline funding sources are also the most effective way to support ATSILS, LACs and CLCs to respond to Closing the Gap priorities through service delivery and strategic advocacy.

Any increase in funding should also accommodate core legal assistance operations and support the sector to appropriately resource sustainable workforces through supervision (for paid staff and volunteers), administration, evaluation capability, professional development and wellbeing support. Investment in infrastructure such as appropriate office spaces, information barriers, and technology support are also crucial to service effectiveness.

In addition, the Commonwealth Funding Distribution Model should enable greater flexibility to accommodate changing circumstances and need during the term of the NLAP. This includes removing the limitations on LACs to use funding for Commonwealth matters only.²⁸ This will enable LACs to take responsive approaches and direct funding to emerging evidence on demand and surge requirements.

4.7 Managing demand over time

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

The current five-year agreement cycle offers a balanced approach to providing certainty to the sector while also enabling periodic evaluation and co-design to ensure responsiveness to community needs. The effectiveness of five-year terms may be maximised by allocating indexed baseline funding upfront and confining the role of funding tranches to specialist investment in emerging issues. This assists to retain core staff and service capacity.

Funding sustainability and sector stability should be a key consideration when determining the most appropriate timeframe for the next NLAP agreement. The agreement should have appropriate mechanisms to adjust to changing needs and have appropriate review periods. Changing needs may be accommodated through time-limited increased investment with flexible uses, including community legal education and responses to climate events.

²⁷ The Victorian Orange Door Network link [here](#).

²⁸ National Legal Assistance Partnership 2020-2025 clause 63.

4.8 Wraparound services

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

Legal assistance helps people to navigate a broad range of social supports to improve overall wellbeing. Legal services are most effective when embedded in multidisciplinary systems as people identify legal problems in many settings and through many doors. The long term benefits of supporting individuals through holistic modes of care has been evidenced in Victoria.²⁹ The Royal Commission into Family Violence recognised the role of wraparound support as an effective intervention so the trajectory into child protection for vulnerable families was interrupted and reversed.³⁰ The benefits of multidisciplinary approaches to mental health have also been well documented with the vision that community-based mental health services offer fully integrated care and wellbeing supports.³¹

4.9 Early intervention

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

Community-led early intervention is central to diverting vulnerable people from the criminal justice system.³² This is achieved through fostering strong partnerships with legal and non-legal services to deliver evidence-based pro-social supports aimed at improving mental health and wellbeing, and ensuring families are free from family violence. Early intervention can include wrap around, holistic services and community legal education. It can also mean immediate access to a lawyer at the right time.³³

The Victorian Early Intervention and Investment Framework recognises that investing in early intervention and prevention improves lives and program outcomes, and presents the best value for money through decreased reliance on acute services.³⁴ The department supports successful evidence-based programs under a range of state-based strategies.³⁵

Findings of PULS revealed 21 per cent of respondents experiencing a justiciable problem obtained advice from a legal service. A further 29 per cent of respondents obtained advice from an independent source but not a legal service.³⁶ Extending the NLAP to encompass early intervention delivers on several domains under the *Measuring what matters* national wellbeing statement.³⁷

Legal assistance funding should support a range of integrated services. This may be facilitated using a flexible approach to baseline funding. This may mean greater capacity for financial counselling, Health Justice Partnerships, ACCOs, emergency accommodation and services, social work, family violence advocates, alcohol and other drug services and mental health supports. These services demonstrate

²⁹ Goodrick, Delwyn, Sampson Emma *Meeting People Where They Are: Delivering Integrated Community Legal services* (2020) Federation of Community Legal Centres Victoria link [here](#) accessed on 18 October 2023

³⁰ Recommendation 145 - Victoria, Royal Commission into Family Violence (2016) Summary and Recommendations p 84 link [here](#)

³¹ Recommendation 5 - Victoria, Royal Commission into Victoria's Mental Health System (2021) link [here](#)

³² Both government and non-government stakeholders consulted with the ILAP review are acutely aware of the importance of investing in medium to long term programs and early prevention responses to prevent entry and re-entry to the justice system Cox Innall Ridgeway, *Review of the Indigenous Legal Assistance Program (2015-2020)* p.14 link [here](#) accessed on 2 October 2023

³³ Cox Innall Ridgeway, *Review of the Indigenous Legal Assistance Program (2015-2020)* p.57 link [here](#) accessed on 2 October 2023

³⁴ <https://www.dtf.vic.gov.au/funds-programs-and-policies/early-intervention-investment-framework>

³⁵ Wirkara Kulpa Aboriginal Youth Justice Strategy Victoria link [here](#)

³⁶ Balmer, N.J., Pleasence, P., McDonald, H.M. & Sandefur, R.L. (2023). *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*. Melbourne: Victoria Law Foundation p.99

³⁷ Australian Government *Measuring what matters* < https://treasury.gov.au/sites/default/files/2023-07/measuring-what-matters-statement020230721_0.pdf accessed on 2 October 2023

effective linkages to legal assistance and contribute to early intervention and access to justice. NLAP funding may also support the development and management of pathway partnerships.

4.10 Advocacy

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

An upfront investment in the policy and advocacy capability may reduce downstream costs on justice systems. Legal assistance providers are well placed to identify and provide evidence-based advice to governments on strategic advocacy and law reform. NLAP investment in ATSIL research will also be consistent with Royal Commission into Aboriginal Deaths in Custody recommendations on enabling self-determination. Investment in strategic litigation capability may also assist system changes to reduce the over-representation of Aboriginal people in custody.

4.11 Efficiency

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

Legal service providers receive funding from many sources. This frequently results in a multitude of compliance reports and the collection of unique data sets to acquit compliance for each funding stream. This increases the burden on service providers, diverting resources from front-line services to data and reporting collection.³⁸ Future agreements may benefit from reviewing current reporting and data collection practices to understand whether current approaches provide the best insight into the impact of legal assistance, and whether the reporting burden is commensurate to its utility.

Transitioning future agreements to an outcomes-focused approach should consider reducing a reliance on unique data sets which heavily focus on outputs. This includes streamlining reporting for legal assistance providers delivering across jurisdictions (e.g., Victorian-New South Wales border communities).

4.12 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?

Legal service providers provide advice and representation to consumers on administrative appeals. NLAP agreements may consider consequential costs arising from administrative appeals. Funding may enable timely advice for consumers who bring matters or respond to the Commonwealth, particularly in regional areas. Further, the Commonwealth may consider bolstering legal service responses beyond reforms in the Administrative Appeals Tribunal.

4.13 Labour market

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

³⁸ McDonald, H.M., McRae, C., Balmer, N.J., Hagland, T., & Kennedy, C. (2020). Apples, oranges and lemons: The use and utility of administrative data in the Victorian legal assistance sector. Melbourne: Victoria Law Foundation p.47

Appropriate and timely legal services require the recruitment and retention of a skilled workforce. This is a challenge in the Victorian legal assistance sector as noted in the Victoria Law Foundation's *Working in Community Legal Centres in Victoria: Building and maintaining a sustainable workforce*.³⁹

Many factors contribute to and require consideration when considering workforce supply and remuneration, including:

- employees moving to seek better salaries. There is an opportunity to invest in career development and competitive remuneration packages (including work arrangements) to make the community legal sector a long-term employer of choice for graduates in an otherwise diverse and competitive labour market.
- time-limited funding may not cover establishment and ongoing salary costs. This impacts the ability to provide employees with job security and makes it difficult to recruit and retain legal practitioners, particularly senior and principal roles.
- cost of living pressures making it difficult to attract staff in regional locations.
- extensive travel required to deliver place-based services in regions, particularly when responding to climate events. This extended reach can exacerbate caseload pressures.
- a strengthened commitment to workforce wellbeing to manage safety, vicarious trauma and cultural load for practitioners. The *measuring what matters* national framework provides meaningful indicators to assess the impact of NLAP planning to ensure funded workforces are enduring and healthy over the next agreement.

A self-determined ATSIL-led workforce strategy may also assist in understanding and responding to the unique issues and outcomes sought by ATSIL workforces.⁴⁰ This strategy should be informed by the evidence-based formulated under self-determined access to justice recommendations⁴¹ and consider training and capacity building to ensure culturally safe workplaces.

The sector has also called for dedicated investment in capacity building and planning for staff delivering services to communities impacted by climate events. This ensures workforces have access to professional development to adequately respond to unique and complex issues arising from these scenarios and ensures staff wellbeing.

4.14 Data collection

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

The NLAP currently requires data collection on service outputs and uptake. The sector has consistently reported that this generates a high administrative burden and only paints part of the picture when assessing the overall impact of legal assistance on reducing disadvantage. There is work underway to supplement this reporting with an NLAP outcomes framework.

The current reporting burden is exacerbated for CLCs and ATSILS which often absorb the costs of administration and reporting. The findings of the Victorian Law Foundation's *Apples, oranges and lemons: The use and utility of administrative data in the Victorian legal assistance sector*⁴² found that

³⁹ Kutin, J. J., McDonald, H. M., Balmer, N. J., Hagland, T., & Kennedy, C. (2022). Working in community legal centres in Victoria. Results from the Community Legal Centres Workforce Project: Building and maintaining a sustainable workforce. Melbourne, Australia: Victoria Law Foundation link [here](#) accessed on 2 October 2023

⁴⁰ Cox Innall Ridgeway, *Review of the Indigenous Legal Assistance Program (2015-2020)* p. 131 link [here](#) <accessed on 2 October 2023>

⁴¹ Commonwealth, Royal Commission into Aboriginal Deaths in Custody (1991) *Final Report* Recommendation 108

⁴² McDonald, H.M., McRae, C., Balmer, N.J., Hagland, T., & Kennedy, C. (2020). Apples, oranges and lemons: The use and utility of administrative data in the Victorian legal assistance sector. Melbourne: Victoria Law Foundation.

without dedicated funding to improving data practices, there remains a tension between using resources for frontline legal service provision and improving organisational practices such as data management.⁴³ The review may benefit from considering how investment in current reporting and case management systems such as Actionstep and CLASS can be enhanced and leveraged without adding manual data collection burden on organisations.⁴⁴

Future agreements also present an opportunity to support the sector through dedicated funding to improve data collection capability, the usability of existing systems and processes, data analysis and evidence-based continuous improvement practices. This will also augment the transition to an outcomes focused NLAP with the State as the funding administrator. The administrative burden on the State will also be reduced if reporting for various funding sources can be streamlined.

The Victorian Collaborative Planning Committee (CPC) is progressing a sector-led Outcomes Pilot to strengthen the evidence base of service outcomes for consumers. The pilot comprises 16 organisations and leverages existing practices and feasible data collection methods. It is envisaged that this work will contribute to the Victorian sector's position on the NLAP outcomes framework. Work is also underway through the Victorian Aboriginal Justice Agreement to embed outcomes-focused approaches in the design of justice policy and program grants.

Consideration should be given to how existing State work can be used to inform future NLAP agreements. There may also be benefit to greater communication and transparency between the Commonwealth and service providers regarding the use of data and how it translates to evidence-based policy development. Transparency is crucial to ensuring Aboriginal governance and decision making determines how First Nations lived experience is used by governments and contribute to the Closing the Gap reforms.

4.15 Opportunities

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

The NLAP provides an effective national approach to legal assistance and reduces the fragmented approach to funding and risks associated with single-issue program responses. The review may consider incorporating the Custodial Notification Scheme into the NLAP baseline to strengthen the national roadmap to eliminating Aboriginal deaths in custody. Similarly, the NLAP may consider a strengthened national approach to preparing for future climate events and other emergencies.

Addendum on funding distribution models

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

Funding distribution should meet the unique needs of each jurisdiction, irrespective of whether they pertain to State or Commonwealth matters. Consideration may also be given to the pressure on the Victorian sector in absorbing costs associated with both increasing populations and consequential costs arising from expansion to court systems directly impacting legal needs. This includes the expansion of the children's and Koori courts.

⁴³ McDonald, H.M., McRae, C., Balmer, N.J., Hagland, T., & Kennedy, C. (2020). Apples, oranges and lemons: The use and utility of administrative data in the Victorian legal assistance sector. Melbourne: Victoria Law Foundation. p.47

⁴⁴ McDonald, H.M., McRae, C., Balmer, N.J., Hagland, T., & Kennedy, C. (2020). Apples, oranges and lemons: The use and utility of administrative data in the Victorian legal assistance sector. Melbourne: Victoria Law Foundation p.62-64