

Department of Justice Tasmania Submission for the NLAP Review

The Department of Justice Tasmania (the Department) welcomes the opportunity to provide a submission to the Independent Review of the *National Legal Assistance Partnership 2020-2025* (NLAP).

The Office of the Secretary within the Department provides policy support to Agency Executive on the legal assistance sector and administers State and Commonwealth funding to Tasmania Legal Aid, Tasmania Aboriginal Legal Service and a number of community legal centres (CLCs).

The Department consents to this submission being published on the Review website, being identified in the report of the Review as having made a submission and being quoted with attribution or anonymously in the report of the Review.

The Department makes the following observations in relation to select issues from the Issues Paper, as set out below. It is noted that individual Tasmanian legal assistance service providers will provide their own submission to the Review.

Adequacy of funding to the sector, including staff attraction and retention in regional areas

Due to its smaller size and population spread across a number of regions, Tasmania is considered an outer regional part of Australia, with parts of the east coast and most of the north-west and west coasts considered remote.¹ These regional areas experience high levels of disadvantage with increases in demand on legal services due to clients' lower incomes, high rates of unemployment, and difficulties attracting staff to regional centres.

Common incentives to attract people to work in these regions include relocation expenses. Whilst the Tasmanian Government offers some relocation expenses, this is available for State Service employees only (including Tasmania Legal Aid) and is not available to CLCs or Aboriginal and Torres Strait Islander Legal Services (ATSILS). Some CLCs are offering other incentives to attract staff, such as compressed hours and paid time off during the week for self-care activities. However, it is the Department's view that challenges in attracting staff to regional areas of Tasmania may be ameliorated through the allocation of additional Commonwealth funding to cover reasonable relocation expenses and other incentives to attract and retain staff, including ensuring pay parity across various services, which is addressed in further detail below.

The current NLAP funding model does not adequately take into account the extent of disadvantage in Tasmania, for example, extremely low literacy levels, low housing affordability, ageing population and regional issues. Tasmanians are disproportionately affected by illiteracy due to intergenerational and regional disadvantage, as well as lower

¹ Australian Bureau of Statistics (Jul2021-Jun2026), [Remoteness Areas](#), ABS Website, accessed 18 October 2023.

education attainment among young Tasmanians². Tasmania is also the poorest state in Australia, with incomes 12 per cent below the national average³.

Therefore, it is contended that as unique factors that influence disadvantage in Tasmania are not taken into account at a Commonwealth level, Tasmania received proportionally less than it should have under the NLAP, despite Commonwealth funding for Tasmanian CLCs and TLA under the NLAP increasing from 2019-20 levels by 9.6 per cent. It is important to note that this was an issue prior to the commencement of the former National Partnership Agreement (NPA), which resulted in the reduction in funding for Tasmania under the former NPA.

As noted above, the increase in Commonwealth funding also does not adequately take into account economic growth and increasing operating costs and salaries.

The Tasmanian Government is therefore required to 'top up' Commonwealth funding allocated to the legal assistance sector due to the insufficiency of this funding to cover service delivery. The Tasmanian Government has allocated an additional \$3.2 million to the legal assistance sector over the life of the NLAP, until 2026. This is in addition to the record investment of \$2.2 million per year over four years from 2021-2022, to ensure that Tasmanians who need extra help can access free or low-cost legal services. Additionally, in 2023-2024, the Tasmanian Government committed an additional \$820,000 to extend the 2021 commitment for a further year until 30 June 2026.

This additional state government funding has been necessary and is in recognition of the critical role of the legal assistance sector in supporting the most vulnerable members of the Tasmanian community. This record funding to the Tasmanian legal assistance sector has been required despite additional funding the Commonwealth has allocated to Tasmania through the NLAP over the last few years.

Attracting and retaining legal and support staff in Tasmania, particularly in regional areas, is becoming increasingly difficult. This is having a significant impact on service delivery in the legal assistance sector. CLCs report difficulties in recruiting discrete funded roles within their organisations, which results in centres unable to expend allocated funding in accordance with the relevant funding conditions. In these circumstances, the Department is required to seek approval from the State Attorney-General for extensions of time to expend funding tied to particular programs or projects, placing an administrative burden on both the service and Department in facilitating this.

In Tasmania there also exists a pay parity issue between state service lawyers, for example at Tasmania Legal Aid (TLA), the Office of Public Prosecutions, Crown Law Services and CLCs, due to the application of different Industrial Awards. Legal practitioners at TLA are paid under the Legal Practitioners Award and those in Government Departments under the Tasmanian State Service Award. CLCs are covered by the Social, Community, Home Care and Disability Services (SCHADS) Award, and the Tasmanian Aboriginal Legal Service under an Enterprise Agreement.

² <https://www.news.com.au/national/breaking-news/tasmanian-adults-disproportionately-affected-by-illiteracy/news-story/687c3b7483c49f8243c323b6f4e6bcc5>

³ <https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/average-weekly-earnings-australia/may-2023#state-and-territory>

As a result of these different Awards, lawyers at TLA and within the State Service are paid at higher rates than their CLC counterparts. This disparity leads to the CLCs reporting difficulties in attracting and retaining staff and is leading to the CLCs offering other incentives to attract staff, as outlined above.

Advocacy

Advocacy is an important role for services to undertake. For example, under s. 7 of the *Legal Aid Commission Act 1990*, the TLA Board is able to make recommendations to the Tasmanian Attorney-General with respect to any law reforms it considers desirable. This power is linked to advocacy. TLA, Women's Legal Service Tasmania (WLST), TALS, and to a lesser degree, some CLCs, are prominent in the media advocating for change on a range of issues affecting vulnerable Tasmanians.

Advocacy is an important trigger for governments to implement change in policy. For example, TALS is advocating for the Tasmanian Government to fund a Custody Notification Service in Tasmania, placing Tasmania in line with most other States and Territories. The Department is supporting and working with TALS on this initiative, with a view to putting a proposal to the Tasmanian Attorney-General in 2024.

WLST has cited a lack of funding to fully deliver its services to the Tasmanian community, however, also plays a large and important role in advocating for change for women affected by family violence in Tasmania. There is the question of where the balance lies with legal assistance services' role within the community – advocacy vs service delivery. Increased advocacy may impact on service delivery for smaller services by generating more work than a centre's resources allow. There is also a perception in the community that increased advocacy for a particular issue will increase the number of people able to be provided assistance. In reality, this is not always the case when other factors are taken into account such as an increase in demand for services within existing resources, and limited availability of additional government funding.

Increased, discrete funding for advocacy for community legal centres will alleviate pressure on already stretched resources allocated for front line service delivery.

Efficiency

It is the view of the Department that Commonwealth processes in delivering the NLAP must be streamlined to reduce the burden on legal assistance services, as well as Departments that administer the funding on the Commonwealth's behalf. The Commonwealth Attorney-General's Department ('the Commonwealth') advised that this would occur with updates to data recording requirements, however, in reality the outcome was that the processes were streamlined for the Commonwealth. This has not been the experience of the states and territories.

The Department has held frequent discussions with the sector on the impact of the NLAP reporting burden.

The reporting template that the Commonwealth require the states and territories use has changed significantly over the course of the NLAP, therefore it has been difficult to compare data. It would appear to be more regulatory in nature as opposed to a genuine exercise in obtaining information to map trends in the delivery of services across jurisdictions.

The Commonwealth recently noted some errors in the data may have been caused by the large number of data points in the Jurisdictional Performance Report in March 2022. Therefore, some assistance was sought to re-design the templates to reduce errors, make the template easier for all to use, increase the quality of the data, and still be NLAP compliant. A new template was provided for the September 2022 reporting.

All data collected and reported on should be useful and reliable. As noted above, it has been difficult comparing data in the templates. Data should not be used if it is not reliable or, if it does not seek to add any value to the delivery of services.

Services have reported the following issues with the additional NLAP reporting requirements:

- Additional administrative support is required to collect and report data.
- Efficient and effective service delivery and the number of services that are able to be delivered has been adversely affected.
- An increase in the cost of data collection and reporting: including data collection systems, training, staff time in training and ongoing service delivery.
- Little, or no evidence as to how the provision of the additional data to the Commonwealth has been used or how it has improved service design or the delivery of services.
- Currently extremely burdensome.
- Data systems have required substantial changes to capture all of the information the Commonwealth require.
- As a smaller state, Tasmanian legal centres don't have large teams of staff, making it more difficult to manage the administration of their centres. As a result, there is increasingly less time for frontline service delivery.
- Increasing baseline funding and reducing the use of additional funding streams in the Bilateral Schedule to the NLAP would improve the efficiency of the NLAP.
- Funding for the Tasmanian CLC peak, CLC Tas, in line with resourcing of other States and Territory peaks. CLC Tas are currently resourced by a part-time policy officer, funded by the Tasmanian Government.

Data

Six monthly NLAP reporting is sufficient, with reports due in September and March of each financial year.

Administering additional funding streams in the NLAP has become increasingly complex. Services have noted an increased complexity in administering additional reporting requirements, if it hasn't been rolled into baseline funding.

Issues include:

- Depending on the funding amount provided to a service for a particular funding stream, it can be hard to collect data if the funding amount doesn't equate to FTE positions dedicated to this funding stream. Therefore questions arise over data quality. Many services need to collect data by apportioning the number of services based on the percentage split vs total legal assistance funding method. For example, if the total legal assistance funding is \$1,000,000 and the additional funding stream allocation is \$100,000, 10% of total services would be reported as related to the additional funding stream.
- Increasingly tight timeframes imposed by the Commonwealth. There have been instances when the Department has been given a short amount of time to provide comments or feedback (for example, following the submission of NLAP reporting we are given only a day or two to respond to any questions the Commonwealth may have). As a smaller jurisdiction, Tasmania has a small team of three staff overseeing the administration of NLAP and State funding to the Tasmanian legal assistance sector. As such, the Department does not always have the capacity to review documents and provide feedback quickly.
- CLASS and other reporting systems: the ability of data management systems to support any additional data being collected has been affected. Tasmanian CLCs are of the view that CLASS needs to be abandoned and a new management system explored.
- Data Standards Manual (DSM) – the Department holds an annual DSM workshop for Tasmanian legal assistance providers to ensure consistency across the Tasmanian Legal Assistance Sector, which usually raises concerns and differences. It is the Department's view that regular national workshops be held for the sector. The ABS have raised many inconsistencies around the collection and reporting of data.
- Reporting requirements for CLCs – the reporting requirements for Tasmanian CLCs date back to the historical Commonwealth Community Legal Services program. CLCs have raised that there appears to be a lot of unnecessary work for them. The Department acknowledges that this needs to be altered and plan on working with Tasmanian CLCs to streamline reporting requirements. The Department is of the view that reducing some of this reporting burden will enable centres to redirect their focus to frontline service delivery. It is understood that other States are also reviewing CLC reporting requirements and believe there should be national consistency, or some guidance, from the Commonwealth on this issue.