

Submission to the Independent Review of the National Legal Assistance Partnership

October 2023

Acknowledgement of country

National Legal Aid acknowledges Traditional Owners of Country throughout Australia and recognises the continuing connection to lands, waters, and communities. We pay our respect to Aboriginal and Torres Strait Islander cultures; and to Elders past and present.

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National Legal Aid Strategic Plan

The Strategic Plan for National Legal Aid (NLA) below outlines the vision, purpose, goals and work of NLA in 2021-24.



NATIONAL LEGAL AID (NLA) STRATEGIC PLAN 2021-2024

NLA VISION

- A primary voice for the legal assistance sector and those experiencing legal need
- Thought leaders in the legal assistance sector, proactively influencing policy
- A unified voice for all Legal Aid Commissions

NLA PURPOSE

- To lead and encourage a national system of legal aid that allows disadvantaged individuals to access justice
- To ensure the legal assistance sector is adequately funded
- To provide a forum for collaboration at a national level between government, stakeholders, community and legal assistance providers, to develop best practice legal assistance

<h4>GOAL 01</h4> <p>INCREASE CORE FUNDING FOR LEGAL AID COMMISSIONS</p>	<h3>STRATEGY</h3> <ul style="list-style-type: none"> → Contribute to the NLAP mid-term Review → Establish compelling case for the next NLAP 	
<h4>GOAL 02</h4> <p>INFLUENCE FAMILY LAW POLICY AND FUNDING</p>		<ul style="list-style-type: none"> → Advocate for legislative and service delivery reform that will enhance access to justice → Increase funding for family law representation
<h4>GOAL 03</h4> <p>ADDRESS ABORIGINAL AND TORRES STRAIT ISLANDER JUSTICE</p>		<ul style="list-style-type: none"> → Provide culturally appropriate services → Reduce over-representation in the criminal justice system and deaths in custody

HOW NLA WILL WORK - OUR WORK WILL BE:



Evidence based



In partnership with others



Putting clients at the centre of what we do



Recognising the role of legal and non-legal advocates in advice giving, prevention and early intervention, advocacy and law reform

Acronyms

AAT Administrative Appeals Tribunal

ACCOs Aboriginal Community Controlled Organisations

AI Artificial Intelligence

ART Administrative Review Tribunal (formerly Administrative Appeals Tribunal)

ATSILS Aboriginal and Torres Strait Islanders Legal Services

CLCs Community Legal Centres

FASS Family Advocacy and Support Service Program

DAVLS Defence and Veterans Legal Service

FVPLS Family Violence Prevention Legal Services

HJP Health Justice Partnership

ICLs Independent Children's Lawyers

LACs Legal Aid Commissions

LA ACT Legal Aid ACT

LANSW Legal Aid NSW

LANT Legal Aid NT

LAQ Legal Aid Queensland

LAWA Legal Aid Western Australia

LSCSA Legal Services Commission of South Australia

MOU Memorandum of Understanding

NAAJA North Australian Aboriginal Justice Agency

NDIS National Disability Insurance Scheme

NLA National Legal Aid

NLAP National Legal Assistance Partnership

PULS Public Understanding of Law Survey

PC Report Productivity Commission Report: Access to Justice Arrangements

TLA Tasmania Legal Aid

VLS Victims Legal Service

VLA Victoria Legal Aid

VLS Victims Legal Service

Your Story Your Story Disability Legal Service

Executive Summary

National Legal Aid (**NLA**) welcomes the Commonwealth government review of the National Legal Assistance Partnership (**NLAP**), the key funding mechanism for Commonwealth investment in Family and Civil Law, as an opportunity to address the critical under-resourcing issues across the legal assistance sector to better support people experiencing disadvantage to access justice. Addressing this issue will better support government and community to improve the wellbeing of some of the most marginalised people in our society.

Legal assistance is an integral part of supporting people experiencing disadvantage to exercise their human rights and be safe, to be financially independent, and to be able to access services and fully participate in the community.

Legal assistance has been significantly under-resourced and there are high levels of unmet need in the community. The Victoria Law Foundation's ground-breaking report on the Public Understanding of Law Survey (**PULS**) released this year found over 12 legal problems per 10 respondents, with over half of these being identified as unmet need, and with those experiencing disadvantage having greater unmet need that is more likely to be of longer duration.¹ The main legal problems related to employment, health, safety and housing which, if left unresolved, have major impacts on an individual's basic needs including income, housing and health and broader impacts not only on the justice system but on service systems such as women's safety services, child protection, health, disability and policing.²

The Access to Justice Productivity Commission Report (**PC Report**) almost a decade ago outlined the sustainability issues of the legal assistance sector and unmet legal assistance need and recommended immediate investment of \$200 million to address this.³ This did not occur. NLA supports immediate investment across Aboriginal and Torres Strait Islander Legal Services (**ATSILS**), Community Legal Centres (**CLCs**), Family Violence Prevention Legal Services (**FVPLS**) and Legal Aid Commissions (**LACs**) to address the current deficits. NLA also supports a review of the current NLAP funding model to transform it into a demand-based model that addresses ongoing and forecasted legal assistance sustainability issues and unmet legal assistance need.

Immediate investment need

LACs are the main legal assistance service providers to people experiencing disadvantage, providing approximately 1.7 million instances of legal assistance and approximately 150,000 grants of aid annually across Australia.⁴

LACs provide end to end expertise across areas of civil, family and criminal law. The recent Benefits of Access to Justice report identified that LACs deliver approximately \$600 million per annum in cost savings to the community.⁵ LACs are uniquely positioned to deliver national services and have demonstrated the value of these via the Your Story Disability Legal Service (**Your Story**) (delivered in partnership with ATSILS) and the Defence and Veterans Legal Service (**DAVLS**).

The Justice on the Brink Report has undertaken modelling to review the current sustainability risks for LACs and update the PC Report recommendations as they pertain to LACs. This modelling has identified that an increase of \$484 million per annum is required immediately to better meet legal need and assist in preventing market failure with:

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- \$317 million to expand civil and family law grants.
 - \$98 million to increase the means test to be accessible to 9% of Australian households.
 - \$69 million to increase private practitioner fees by 18% to begin to address the immediate threat of market supply failure.⁶

This investment, alongside a commitment to continued investment in ongoing core funding and the transformation of all current NLAP short term funding programs into core funding, would address current sustainability issues and enable the establishment of needs based civil law practices in all LACs to be delivered in partnership across the legal assistance sector. This would include increased legal assistance at the Administrative Review Tribunal (**ART**) (migration, NDIS, social security and child support), the expansion of human rights, discrimination, employment, migration, consumer and disaster legal assistance and the ongoing establishment of national disability and veterans' legal services. It would also allow for an increase in parenting and property family law legal assistance and a continued focus on supporting women and children who have experienced or are at risk of domestic and family violence within the family law system.

It is estimated that this would provide the equivalent of approximately 70,000 additional grants of aid and would enable approximately 95,000 additional households to be eligible for Legal Aid.⁷ Importantly, it would also in part begin to address the market supply issues regarding the fees available for private practitioners, who undertake 72% of all grants of aid work for LACs.⁸

LACs have also identified that immediate investment of \$40 million is required to address current deficits in the Independent Children's Lawyer (**ICL**) Program and support the changes to be implemented via the Commonwealth Government's family law reforms. This investment would provide approximately 3,000 additional grants of aid and better support the 600 ICLs to deliver this service.

LACs deliver services in partnership with and alongside CLCs, ATSILS and FVPLS. These services also require immediate investment to address unmet legal assistance need, current sustainability and wage parity issues.

Planning for the future

The above investment will only address current deficits and does not address ongoing and forecast legal assistance sustainability issues and unmet legal need. Within the next 2 years, for the legal assistance sector to meet ongoing and future demand there needs to be a review of the current NLAP funding model to transform it into a demand-based model that incorporates:

- evidence based assessment of legal need.
- legal assistance service resourcing within planning on legislative reform, court reform or other drivers of increased legal assistance need.
- assessment of the real costs of legal assistance service delivery, including grant structures, the provision of specialist reports and private practitioner fees.
- assessment of costs associated with strategic advocacy.
- assessment of costs associated with culturally safe service delivery.
- assessment of costs associated with rural and remote service delivery.

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- assessment of costs of holistic service delivery including community legal education, community and allied supports and administrative and other infrastructure.
 - assessment of the cost benefits of legal assistance in the context of across government priorities.

Labour market issues also need to be carefully considered. Immediate investment to address wage parity issues and to increase private practitioner fees by 18% will in part begin to address this as will building the real costs of legal assistance service delivery (including grant structures, specialist report costs and private practitioner fees) into the funding model. However, it is anticipated that there will continue to be challenges in recruiting and retaining a legal assistance workforce, particularly in regional, rural and remote areas. It is proposed that \$10 million per annum is allocated to develop a national workforce strategy that includes opportunities for cross-sector promotion and experience, shared learning and development, and focuses on addressing workforce gaps in regional, rural and remote areas.

Supporting planning for the future

To assist in planning for the future, a range of investments are also required across the legal assistance sector as part of the NLAP infrastructure. The PC Report recommended almost a decade ago improvements to the legal assistance evidence base that again have not been implemented. It is recommended that a total of \$15 million per annum is embedded into the NLAP to support national legal needs analysis, a data action plan, an outcomes framework and a research and evaluation framework. The development and implementation of these initiatives will mean that Commonwealth and State Governments will be well placed in 2030 to assess the impact of the legal assistance sector in the context of unmet need and be able to make informed resource allocation decisions.

In looking to the future there is ample opportunity for improved collaboration and efficiencies within the NLAP. This is best achieved by transforming the NLAP into a shared responsibility agreement across Commonwealth, State and Territory jurisdictions that encapsulates all legal assistance service delivery and funding and delineates a stronger stewardship role for all jurisdictions, including taking responsibility for assessing ongoing and future demand and responding to this. This shared responsibility would best be supported by the development of a funded National Legal Assistance Strategy that prioritised collaboration and shared service delivery in rural and regional areas.

This shared responsibility would also be supported by revising the NLAP so that it supports the view of Aboriginal Community Controlled Organisations (**ACCOS**) regarding whether there should be a First Nations Legal Assistance Partnership, incorporates the Closing the Gap targets and priority reforms and includes accountability mechanisms for legal assistance services on the implementation of actions to meet these. This should focus on self-determination, be adaptable as treaty and other processes occur across jurisdictions and ensure data sovereignty and collection that includes an understanding of the intersectionality of issues for First Nations communities.

Alongside this, a strategic advocacy fund should be established to support the legal assistance sector to undertake strategic advocacy and litigation as recommended by the Robodebt Royal Commission. In addition, an innovation fund should be established to further expand on efficiencies achieved by developing innovative service delivery, particularly around Artificial Intelligence and technology, and to further improve collaborative and efficient approaches.

For LACs, NLA recommends:

- Commitment to ongoing provision of NLAP core funding for LACs.
- Immediate additional investment in Legal Aid of \$484 million to implement the Productivity Commission recommendations at 2023 cost levels, including:
 - \$317 million to expand Civil Law and Family Law grants by approximately 70,000.
 - \$98 million to increase the means test so that 9% of Australian households are eligible.
 - \$69 million to increase private practitioner fees by 18%.

The expansion will allow for increased needs based civil law practices in all LACs including increased legal assistance at the Administrative Appeals Tribunal (**AAT**) (migration, National Disability Insurance Scheme [**NDIS**], social security), disaster legal help and housing and homelessness legal assistance. It will also allow for an increase in parenting and property family law legal assistance.

- Immediate investment in Legal Aid of \$40 million to support the expansion and enhancement of measures to reinforce quality service delivery to children and to ensure a suitable qualified pool of ICLs for appointment.
- Immediate commitment to continued ongoing funding for all time limited programs currently funded under the NLAP including Respect@Work, the Family Advocacy Support Service Program (**FASS**), amica, Your Story, DAVLS and the NDIS Appeals Program.
- Reviewing funding for Commonwealth Criminal Cases, including implementing a demand-based funding model to ensure funding for all expenditure on all eligible matters including administration and management, and establishing legal assistance funding for Federal Offenders at risk of parole refusal or revocation of parole.
- Implementation of accountability mechanisms within the NLAP based on the Closing the Gap targets and priority reforms to monitor the efforts of LACs to ensure culturally safe service delivery.

Across the NLAP and legal assistance sector, NLA recommends:

- Immediate commitment of ongoing and increased funding to our legal assistance partners - ATSILS, CLCs and FVPLs – to address unmet legal need, provide wage parity and service delivery sustainability.
- Immediate commitment to embed CPI increases into the NLAP.
- Commitment to the development of a demand-based funding model across the legal assistance sector within the next 2 years that includes:
 - evidence based assessment of legal need.
 - embedding legal assistance service resourcing within planning on legislative reform, court reform or other drivers of increased legal assistance need.
 - assessment of the true costs of legal assistance service delivery, including grant structures, the provision of specialist reports and private practitioner fees.

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- assessment of costs associated with strategic advocacy.
 - assessment of costs associated with culturally safe service delivery.
 - assessment of costs associated with rural and remote service delivery.
 - assessment of costs of holistic service delivery including community legal education, community and allied health supports and administrative and other infrastructure.
 - assessment of the cost benefits of legal assistance in the context of across government priorities.
 - Revision of the structure of the NLAP so that it:
 - incorporates the Closing the Gap targets and priority reforms including a self-determination approach.
 - supports the view of ACCOs regarding whether there should be a First Nations Legal Assistance Partnership alongside the NLAP.
 - is adaptable as treaty and other processes occur at a national and state and territory levels.
 - drives data sovereignty including a stronger data collection and data sharing focus to understand the other intersecting issues experienced by First Nations clients.
 - Implementation of a shared responsibility arrangement between Federal and States/Territories that incorporates the provision of legal assistance across all jurisdictions.
 - Allocation of \$15 million per annum across the NLAP to build the legal assistance evidence base to inform the demand-based funding model and to support needs based and high quality service delivery and develop:
 - a national legal needs analysis.
 - a data action plan that includes annual reporting on Commonwealth and State/Territory legal assistance service data.
 - an outcomes framework.
 - an evaluation framework.
 - research agenda on priority and emerging issues.
 - Allocation of \$10 million per annum across the NLAP to implement a legal assistance workforce development strategy to address labour market issues, particularly in rural and remote areas.
 - Allocation of \$5 million per annum across the NLAP to establish a systemic advocacy fund for all legal assistance services and that the revised NLAP explicitly references the role of strategic advocacy as a core function of the legal assistance sector.
 - Allocation of \$2 million per annum across the NLAP to develop a National Legal Assistance Strategy and State/Territory based collaborative service delivery plans, prioritising rural and remote service delivery.
 - Allocation of \$5 million per annum across the NLAP to implement an innovation fund, with a focus on emerging legal needs and the use of Artificial Intelligence and technology within the justice system and the legal assistance sector.

Section 1: Background to effectiveness and legal need

LACs are a critical component of the legal assistance and broader social justice system. LACs are independent statutory bodies that deliver Legal Aid services. There are 8 LACs based in each state and territory. LACs are the main providers of legal assistance in Australia and are responsible for most of the legal assistance representation services at courts and tribunals.

Nationally, LACs provide over 1.7 million instances of legal assistance a year and in 2022/2023 this included:

Legal Aid Commission legal assistance instances 2022/23

4600 CLE & presentations > 781,000 information & referral > 307,000 legal advice & legal tasks > 456,000 duty lawyer appearances > 6,800 dispute resolution conferences > 151,000 grants of aid

The services provided by LACs and funded via the NLAP are in civil and family law and include early intervention, advice, representation in dispute resolution, and representation in tribunals and courts on a duty basis and through grants of aid.

LAC services are provided to the most disadvantaged people in Australia – in 2022/2023 of the 151,000 Legal Aid approved matters, 100% were for financially disadvantaged clients, 24% were for Aboriginal or Torres Strait Islander people (or 74% for Legal Aid Northern Territory (**LANT**) and 37% for Legal Aid Western Australia (**LAWA**), and a significant proportion of those accessing family and civil law services were women and children.⁹ Over 86% of all family law legally aided matters included issues of domestic and family violence.¹⁰

Approximately 25% of clients receiving intensive legal assistance self-identified as a person with a disability based on 2020/21 data.¹¹

LACs run regular client surveys that have positive findings. The surveys have a very high uptake by clients who also provide detailed feedback on improvements indicating a high level of engagement and trust between LACs and clients.

Overall client satisfaction ranges from 62% - 78% with those receiving legal representation having a much higher level of satisfaction. For example, Legal Aid Queensland (**LAQ**) had 86% client satisfaction for those receiving legal representation and Legal Aid NSW (**LANSW**) had 80% client satisfaction for those receiving ongoing help.¹² This indicates that with access to Legal Aid people have a much better experience in the legal system.¹³

Legal Aid Commission Case Studies

*Client stories have been de-identified.

Family Advocacy and Support Service (FASS)

Chloe separated from her partner of 10 years and became the primary carer for 3 children. During the relationship her partner perpetrated financial and emotional abuse towards Chloe.

A FASS Duty Solicitor:

- presented the available options and with Chloe's consent assisted her in an on the spot application for mediation regarding their children and property.
- gave Chloe legal advice in relation to parenting arrangements, property settlement, divorce and Apprehended Domestic Violence Orders.

A Domestic Violence Unit Financial Counsellor:

- identified two debts because of financial abuse and was successful in obtaining a waiver of both debts.

The FASS Social Support Worker for Women:

- worked alongside the duty lawyer and with Chloe's consent, referred Chloe to a Victims Services counsellor, provided psycho-social education to Chloe around family violence and discussed supports for the children.
- undertook comprehensive risk assessment and safety planning for Chloe.

Your Story Disability Legal Support (Your Story)

June has low vision and PTSD. June's Council have been sending her rates notices in a format that she is unable to read because of her low vision. This has led to June not paying her rates and the Council taking enforcement action against her in the Local Court.

June was served with a Statement of Claim from her Council concerning unpaid rate notices. Initially, June attempted to represent herself unassisted through the Court process. June contacted the Your Story Info Line for help.

A Your Story lawyer:

- provided June with legal advice about the enforcement action as well as a potential disability discrimination complaint against the Council.
- negotiated a settlement of the matter with the Council to discontinue the proceedings, waive all additional fees and for June to pay the outstanding rate amount.
- worked with June's support worker to ensure that June could make the payment.
- re-drafted the Court forms so that June was able to execute the Notice of Discontinuance form and discontinue the proceedings. The enforcement action against June has now resolved.

Legal Aid NSW Disaster Response Legal Service (DRLS)

Sarah and John's home and farm in the Riverina were badly damaged in the October 2022 floods. They were cut off for many weeks.

John attended a Recovery Assistance Point. A Service NSW worker referred them to the DRLS. They had not made an insurance claim, were in financial hardship and needed mental health support.

The DRLS:

- assisted them to lodge a claim with their Insurer and successfully advocated for the release of temporary accommodation benefit to enable them to purchase a caravan to place on the property.
- emergency payment from the Insurer for immediate expenses and connected Sarah to mental health support.
- referred them to the Legal Aid NSW in-house financial counsellor who obtained a 3-month deferral on their mortgage payments and a waiver of their credit card debt of \$8,000.
- When the Insurer denied the claim based on maintenance issues they were assisted to appeal, and the insurer subsequently agreed to accept the insurance claim in full. The Insurer has since commenced the building

LACs provide high quality legal assistance at scale that is value for money. The 'mixed model' of service delivery used by LACs includes a combination of in-house legal and private practitioner legal assistance and is a hallmark of Australian Legal Aid service delivery. The approximately 4,600 FTE staff employed by LACs deliver Legal Aid services alongside approximately 2,660 private practitioner firms across ACT, NSW, NT, Qld, Tasmania and Victoria and 970 individual private practitioners across SA and WA. Private practitioners collectively deliver approximately 72% of services provided via Legal Aid grants.¹⁴

The mixed model enables LACs to deliver services across rural, remote, regional and urban areas, with specialist expertise in a broad range of legal issues, across the spectrum of intervention points ranging from information to representation, and in a cost effective and efficient way. The model also contributes to the quality, skills development and capability of the private legal sector through the complexity of matters and learning and development support provided by LACs.

The service delivery model also enables LACs to develop their services to respond to emerging need. LACs have implemented specialist services for First Nation communities, at risk families, women and children who have experienced domestic and family violence, people who have experienced sexual harassment or discrimination, people with disability, older people, veterans, and communities impacted by disaster. Specialist services support trauma informed legal assistance and a holistic approach by embedding legal assistance with social supports and delivering this in partnership with a range of community stakeholders and people with lived experience.

Elder Abuse Service - LANSW

The LANSW Elder Abuse Service operating on the NSW Central Coast is an integrated model with lawyers working alongside social workers to support clients experiencing elder abuse. This model seeks to address the many barriers older clients face in speaking out about abuse. It supports older people by providing legal assistance and a range of social supports. In the last financial year, the service recovered and/or safeguarded nearly \$2 million for older clients.¹⁵ This covered situations where older clients had provided money to adult children in return for care, including "granny flat" type matters. It also included money refunded by banks that failed to act on the red flags of financial abuse, such as sudden uncharacteristic and erratic spending patterns.

The service delivery model also positions LACs to be well placed to identify systemic issues and ably contribute to law reform and systems change through providing advice to government and other advocacy including strategic litigation. The recent findings of the Royal Commission into the Robodebt scheme are a clear example of the crucial role LACs can play with regard to strategic litigation and access to justice. There are many other examples of systemic advocacy by LACs ranging from advocating for changes to Federal Circuit and Family Court of Australia processes to improve the client experience, to submissions on policy and legislative changes for improvement of the NDIS, to advocacy with insurance companies around their policies for people impacted by disaster.

LACs aim to work collaboratively across the legal assistance sector to maximise access and outcomes for clients. This includes joined up service delivery in a range of civil law areas, frontline service coordination to assist in managing demand and conflict issues, and practice support via initiatives such as Communities of Practice and shared resources.

Victoria's first dedicated legal service for victims of crime

The Victims Legal Service (**VLS**) in Victoria provides an example of coordinated, collaborative and innovative partnerships for civil legal assistance delivery. The VLS provides legal advice and assistance in financial assistance and compensation, and restitution and compensation order matters to victims of crime, and is delivered statewide in partnership between Victoria Legal Aid (**VLA**), Victorian Aboriginal Legal Service (Djirra), Women's Legal Service Victoria and seven Community Legal Centres across Victoria. The VLS was designed in partnership with these services, the Victorian government and lived experience experts (victims of crime/ victim-survivors) with the aim of providing victims of crime with trauma-informed, specialised and coordinated legal information and advice services that are culturally safe, equitable and accessible. The VLS is coordinated through a working group of service providers providing governance, a Project Coordinator employed at VLA and a community of practice of VLS partners. The service provides a dedicated state-wide helpline delivered by VLA as the primary entry point (although there is a no wrong door approach to service provision across the partners) and legal advice and file-work provided by all service partners. In the first 3.5 months of the VLS, which commenced in March 2023, the VLS helpline responded to 682 enquiries and made 162 referrals to VLS partners.

Legal Aid services contribute to broader government and community priorities. Access to justice and the provision of legal assistance to people experiencing disadvantage is often understood as only impacting the justice system. However, Legal Aid services make an impact across a range of social policy and systems including community resilience and financial independence, child protection, disability, homelessness, social security, ending violence against women and Closing the Gap. LACs also play a key role in promoting and protecting human rights.

This is best illustrated by the Benefits of Providing Access to Justice Report - an independent cost benefit analysis of federally funded Legal Aid family and civil law service delivery. This analysis estimated that LAC services deliver approximately \$600 million in benefit to the community each year, representing a Benefit Cost Ratio of 2.25.¹⁶ This includes costs saved within the legal system from legal representation, dispute resolution services and efficiencies from duty lawyer services. Importantly it also identifies avoided costs to individuals and government through addressing domestic and family violence, minimising out of home care costs and reducing pain and suffering experienced as a result of legal issues. For example, more than half the savings identified (approx. \$378 million) are in supporting women and children to escape domestic and family violence.¹⁷

LACs face significant challenges in delivering legal assistance for people experiencing disadvantage – limited access, increased demand, limited supply.

LACs across the country are facing a range of challenges in meeting the legal assistance needs of people experiencing disadvantage. These challenges have in part arisen due to the erosion of Commonwealth funding via the NLAP.

The Justice on the Brink Report identifies that:

“Commonwealth funding for legal aid per capita has shrunk by 3 per cent over the past decade. Per capita spending went from \$18.59 to \$18.10. State and territory per capita spending grew by almost

30 per cent, from \$21.94 to \$28.40. As a result, the Commonwealth now spends 64 cents on the state and territory dollar, down from 85 cents.¹⁸

Limited access

LACs have had to restrict their income and assets tests to maximise service delivery in a tight fiscal and demand environment, limiting eligibility to Australians living well below the poverty line. In 2014 the Productivity Commission estimated that only 8% of Australian households were eligible for Legal Aid with more than 13% of households living below the poverty line and recommended that the means test be increased by 10% to address this.¹⁹ LACs have not had the resources to increase their means tests in line with this recommendation. In fact, since 2014 some LACs have not been able to increase their means tests at all.²⁰

Alongside this, LACs have had to reduce the type of service available to manage resources. The Justice on the Brink report identifies the ways in which the LAC service footprint has been reduced, including restricting eligibility for and the range of services available under a family law grant, tightening the criteria for ICL assistance, and limiting availability of employment and NDIS legal assistance.²¹

These limitations significantly impact who can access legal assistance in Australia.

Increased demand

Alongside a restricted income and assets test and a reduced service footprint, LACs have seen an increase in legal assistance need and in the complexity of support and advice required in the family and civil law areas without a comparable increase in resources. This has occurred alongside legislative and court reform that has not considered the impact of the reforms on Legal Aid service delivery and the increased costs in delivering legal assistance to people experiencing disadvantage.

The Justice on the Brink Report summarises the drivers for increasing legal assistance need in Australia:

Demand for legal assistance has been rising, driven by strong population growth and developments across a number of key drivers in legal need.

Employment problems are more common today because 21 per cent more people are employed in Australia than 10 years ago. Non-scam contacts recorded in the Australian Consumer and Competition Commission database grew by 60 per cent between 2013 and 2021, so goods and services related legal needs are more prominent. Family law demand is up because 2021 saw 18 per cent more divorces than 2013.

Government payment-related need has grown because the number of people on commonwealth government payments, benefits, allowances, and pensions is 26 per cent higher this year than a decade ago. Legal need arising from debt has increased because average household debt as a per cent of disposable income grew 10 per cent between 2013 and 2021.

The PULS released this year by the Victoria Law Foundation found that in Victoria there were over 12 legal problems per 10 respondents, with over half of these being identified as unmet need, with those experiencing disadvantage having greater unmet need that is more likely to be of longer duration.²² The Justice on the Brink Report has extrapolated these findings nationally and suggests that there are more than 24 million legal problems nationwide.²³

Legal Aid is critical in family law. 40-50% of family law parenting matters have at least one party who is legally aided, approximately 5,000 children receive independent best interests representation via

Legal Aid and over 8,000 dispute resolution conferences per year are supported by LACs. Over 86% of legally aided family law matters include an issue of domestic and family violence.²⁴

Despite this, LACs have not been resourced to meet the increasing family law demand with a 14% increase in total family law court applications from 2013/14 to 2020/2021²⁵ and a nearly 25% increase in independent children's lawyer appointments during the same period.²⁶

In the civil law area, LACs have responded to changing and increased legal assistance needs, including building expertise in the disability and disaster areas. LACs have utilised short term, time limited resources to meet these needs. Since 2019 LACs have provided over 10,000 services to assist clients to participate in the Disability Royal Commission process.²⁷ LACs have also been integral in supporting disaster affected communities. For example, since 1 January 2020 in NSW, LANSW has provided approximately 8,375 legal services to people impacted by disaster.²⁸ In addition, 2,520 calls were answered on the LANSW Disaster Response Legal Service Helpline.²⁹

However, the resourcing to provide legal assistance to people experiencing disadvantage has not kept pace with demand. For example, the AAT experienced an estimated 400% increase in NDIS review cases in 2021/2022 and, as at January 2022, had a backlog of approximately 4,000 cases.³⁰ In addition, the disaster response funding ceased in June 2023 despite the increase in the number of affected communities and the ongoing long term legal issues experienced by these communities because of disaster.

LACs are an integral component of the legal system and need to be funded and considered alongside the resourcing of courts and other legal program areas as part of legislative or court process reform or in response to other drivers of increased legal assistance need.

Limited supply

LACs are also facing challenges in retaining private practitioners to deliver legal aid services. In 2022/2023 72% of Legal Aid matters were assigned to private practitioners.³¹ Private practitioners are essential in delivering Legal Aid services in regional and remote areas of Australia. However, the fees provided to undertake these matters have been limited and not kept pace with increased costs. Again, due to limited resources, some LACs have not been able to increase their fees at all with some providing the same amount per hour to private practitioners as they were in 2007.³² There is also a lack of parity between the fees paid to criminal law practitioners and family law practitioners with fees for family law practitioners being up to \$45 an hour less in some jurisdictions.

The low level of fees is impacting on the Legal Aid supply model with all LACs experiencing a significant decline in the number of private family law practitioners willing to undertake Legal Aid work. In Victoria, the number of firms undertaking Legal Aid family law work has reduced by more than 50% in nine years. This loss of private practitioners has accelerated in recent years. For example, in Queensland there has been a 32% reduction in available family law private practitioners since June 2021.³³ In South Australia there has been a reduction in available family law private practitioners by 26% since 2018.³⁴

The Federal Circuit and Family Court of Australia's case management pathway, introduced in September 2021 has also caused a decline in family law practitioners willing to undertake Legal Aid work. LACs are supportive of these reforms, particularly the aim of settling matters quickly and earlier. However, the increased workload, including preparation of additional documents and additional appearances at the early stage of proceedings, without ongoing resources acknowledging this increased workload, has negatively impacted on private practitioners' acceptance of legally aided

clients. The extra time and resources required to consult with clients has had a particular impact in regional, rural and remote communities. For example, practitioners involved in the ICL service in these areas often need to take significant time out of their practice to travel and meet the children.

The limited availability of private practitioners has an impact on access to justice for people experiencing disadvantage, particularly in regional and remote areas of Australia and creates delays in legal and court processes leading to additional stress for vulnerable and disadvantaged people and increased costs to the legal system.

There is significant threat of market supply failure within the legal assistance sector that needs to be addressed to help ensure access to justice for people experiencing disadvantage, particularly in rural and remote areas and for vulnerable people including women and children escaping domestic and family violence.

Funding models and demand over time

Immediate investment requirements

NLA recently commissioned Impact Economics to undertake a review of the PC Report recommendations and update them to understand the investment required in 2023 as it pertains to LACs to address the issues identified over a decade ago and still impacting the reach and sustainability of LACs service provision.

The Report finds that an immediate increase of \$484 million in LAC funding per year is required:

- \$317 million to reach the recommended share of family and civil grants – an increase of 70,000 per annum.
- \$98 million to reach the recommended means testing coverage by increasing eligibility to 9% of Australian households.
- \$69 million to protect the sector from the immediate threat of supply failure by increasing private practitioner fees by 18%.

This investment will ameliorate the issues outlined above and identified in the PC Report and immediately address the current sustainability issues for LACs.

Alongside this, immediate investment is also required across the legal assistance sector for ATSILS, CLCs and FVPLS to assist in meeting unmet need and to address wage parity and current sustainability issues.

Funding for the future of legal assistance

The Justice on the Brink Report also highlights the limitations of the methodology used to arrive at the immediate investment required, and identifies that further modelling is needed, again based on the Productivity Commission recommendations on identifying unmet legal need and using this as an evidence base to inform decisions regarding future investment in an appropriate service reach – a reach that has changed in terms of service delivery expectations and structure over the last decade.

The Justice on the Brink Report recommends a regular national survey on legal need, focussed on unmet legal need, to better assist in understanding current and future demand for legal assistance. This should also consider the legal needs of marginalised groups, including First Nations communities and rural and remote communities.

The Justice on the Brink Report also notes that modelling is conservative as the structure of grants and actual costs of matters has not been updated and private practitioner fees were already at a very low rate when assessed by the Productivity Commission in 2014. To build a legal assistance sector that can meet ongoing and future demand, modelling the real costs of providing legal assistance, including LACs grants structures and the ongoing under-pricing of private practitioner fees, is required. This should include a comparison of the funding structures and fees provided by government when engaging lawyers via other agencies such as the NDIS.

Demand for legal assistance service delivery has also been impacted by a range of government policy, legislative and court reforms with no assessment of or additional investment in the resources required to support people experiencing disadvantage to access justice within these changes. Recent examples of reforms that have impacted on legal assistance demand without adequate additional funding to support clients include Robodebt, the Family Court merger with the Federal Circuit Court, migration policy changes and the implementation of the NDIS.

Similarly, there is little modelling or understanding of the cost benefits of legal assistance in supporting broader government priorities such as the National Agreement on Closing the Gap, addressing violence against women and supporting people with disability. The recently commissioned independent report on the cost benefit of Legal Aid for example identified that there is an approximately \$600 million benefit to the community in delivering Legal Aid services. The 'Measuring What Matters' Wellbeing Framework introduced by Treasury includes a legal assistance measure that will in part identify the legal assistance contribution across the community. Incorporating the cost benefits of legal assistance as part of determining investment in legal assistance would be beneficial.

In addition, clients accessing legal assistance services do not present with issues that are solely funded by the Commonwealth or by the States/Territories. To better meet legal assistance, a demand funding model that included a commitment to a shared responsibility arrangement for Federal, State and Territory governments would more ably meet the needs of communities and ensure a client centred, joined up and more efficient approach.

Legal assistance service delivery has also in recent years been hampered by the provision of time limited funding for specific programs rather than enhancing core funding. This short-term funding is provided for priority services such as FASS, Respect@Work, Your Story and the DAVLS. Short term funding presents a range of challenges for service delivery including recruiting and retaining staff and providing ongoing services to clients, as legal matters can often extend beyond the funding cycle. A model that is committed to ongoing core funding rather than time limited program-based funding is critical to ensuring effective legal assistance service delivery.

Finally, current funding models do not adequately incorporate the associated infrastructure and administrative costs of legal assistance service delivery including data management. A funding model that included consideration of these costs would also ensure more efficient and effective legal assistance service delivery.

The priority is for immediate investment to address the current under-resourcing and support the system to become sustainable. However, alongside this, the NLAP should develop a funding model that provides a demand modelling approach across the legal assistance sector that enables flexible allocation of funding to better meet legal need and includes:

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1. appropriate evidence-based assessment of legal assistance needs and demand for legal assistance services by people experiencing disadvantage with a view to positive adjustment of NLAP funding formulas to better meet this demand.
 2. embedding resourcing of legal assistance services in planning for any legislative reform, court reform or other drivers of increased legal assistance need including policy reforms, to help ensure people experiencing disadvantage have access to justice.
 3. assessment of the real costs of legal assistance service delivery, including grant structures and private practitioner fees.
 4. assessment of costs associated with strategic advocacy.
 5. consideration of culturally safe service delivery with appropriate investment that reflects the additional costs associated with this.
 6. consideration of rural and remote legal assistance service delivery with appropriate investment that reflects the additional costs associated with service delivery in these areas.
 7. incorporation of a holistic service delivery model that includes investment for allied and other community supports and the provision of community legal education.
 8. modelling the impact and cost benefits legal assistance provides to broader government priorities including the Measuring What Matters Framework, Closing the Gap, addressing violence against women and supporting people with disability, and embedding resourcing of this within the funding model.
 9. a shared responsibility arrangement between the Federal and States/Territory Governments that incorporates the provision of legal assistance across all jurisdictions.
 10. a commitment to long term core-based funding rather than time limited program funding.
 11. incorporation of the infrastructure and administrative costs associated with legal assistance service delivery, including investment and maintenance for ICT systems and governance and controls related to the protection of data.
 12. a commitment to embedding CPI increases into all Federal funding for legal assistance.

Funding for legal assistance has been a commitment of the Federal Government since 1973. The NLAP Review Issues Paper and the Impact Economics Justice on the Brink Report identify that Federal investment in Legal Aid has decreased by 3% per capita over the past 10 years, despite demand increasing.³⁵

In order to address the resourcing issues, there needs to be a commitment to ongoing core funding with embedded CPI increases, regular evidence-based demand and funding model review every five years, and capacity for positive adjustment of the funding in response to emerging issues every two years.

Section 2: Service delivery

Disadvantage

The NLAP needs to provide investment, accountability/monitoring structures and establishment of an evidence base that ensures legal assistance is provided to as many people experiencing disadvantage as the resources allow, that it meets the needs of clients (including community supports as well as legal assistance) and that it is provided at the right intervention point. The investment should have regard to the Federal Government 'Measuring what Matters' wellbeing framework³⁶, the economic benefit of investment for the legal system and other social policy systems and a viable safety net that reflects change in community need.

The NLAP currently requires prioritisation of systemically disadvantaged groups, and while legal assistance services report on this, there is no monitoring, management or public reporting about whether and how services are prioritising disadvantaged groups.

The primary measure of disadvantage for LACs for access to a grant of Legal Aid is poverty. LACs have undertaken extensive work to ensure that, alongside this measure, grants of aid are available and accessible to priority disadvantaged groups including First Nations communities, people with disability and women and children escaping domestic and family violence. LACs have also undertaken extensive work to provide other forms of legal assistance to a broader spectrum of the community via community legal education, advice lines, legal tasks and online and other resources. LACs have adjusted service delivery to respond to emerging needs and priority groups including for people impacted by disaster, veterans, women's safety (including Respect@Work), the LGBTQIA+ community and people experiencing homelessness.

LACs are committed to and have developed service models that are embedded in the community, provide wrap around services and support prevention and early intervention approaches. LACs are also developing a co-design service delivery approach that develops services in partnership with people with lived experience and communities.

Disability Legal WA

LAWA recently launched Disability Legal WA which assists people with a disability to navigate the justice system. The service provides triaging, referral and case management across various services depending on the client's needs, in recognition of the fact that at least 29% of clients disclose a disability or mental health issue.

Civil Law Service for Aboriginal Communities - LANSW

The LANSW Civil Law Service for Aboriginal Communities uses an intensive outreach service model to service regional and remote communities in NSW. Their outreach schedule, service focus and locations are developed in partnership with community and community organisations. It embeds Aboriginal staff and cultural knowledge into their way of working and has been acknowledged as exemplar of how a mainstream service works with Aboriginal and Torres Strait Islander people and communities.

The demand for legal assistance services greatly outweighs the available resourcing and consequently, LACs are continuously balancing reach of their services with impact of the assistance that can be provided. This is managed via prioritisation of investment on, for example, advice lines, Community Legal Education, grants of aid and systemic advocacy. It is also managed via triaging clients and policy review that can impose restrictions but also ensure access for people experiencing disadvantage with specific vulnerabilities.

To ensure that legal assistance services are effectively able to meet the legal assistance needs of people experiencing disadvantage, the NLAP needs to move away from specific requirements regarding disadvantaged groups and service delivery models and instead include the following:

1. a funding model that incorporates the components identified in section 1 of this submission.
2. an outcomes framework that legal assistance services publicly report against and that provides information on client profile, assistance type and impact/outcome of assistance measures.
3. an evidence base that provides an outline of legal need for people experiencing disadvantage to enable measurement/assessment of investment in the context of the funding model and outcomes framework.

Regional, rural and remote communities

There are a number of additional challenges in delivering legal assistance services in regional, rural and remote communities including higher levels of legal assistance need, issues in recruiting and retaining staff including in-house practitioners and private practitioners, access to specialist and community supports and additional travel costs.

Private practitioner coverage in Queensland

The map below outlines the limited coverage by private practitioners in Queensland.



Preferred supplier service coverage in Queensland



These issues are experienced across the legal assistance sector and in these communities, services work closely together to manage capacity and gaps as best as possible.

The NLAP should incorporate the following to assist in addressing these challenges:

1. a funding model that incorporates the components identified in section 1 of this submission (page 18).
2. a resourced legal assistance workforce development strategy that includes a prioritisation of recruitment and retention of staff in regional, rural and remote areas as outlined in section 5 of this submission (pages 54- 55).
3. resourcing for collaborative service delivery planning in rural and remote communities to assist in ensuring that client service is effective and efficient as outlined in section 4 of this submission (page 49).

Civil Law service delivery

Unresolved civil legal problems, such as those related to housing, mental health, employment or family, are recognised as having far reaching consequences for both the individuals involved and for the broader community. For individuals, unresolved civil legal problems can lead to diminishing health and restrict social and economic participation, as well as triggering further legal problems, including possible criminal and family legal issues. These consequences for individuals often generate costs which are borne by society, whether in the justice system or in other publicly funded systems.

The recently released, ground-breaking PULS surveyed over 6,000 respondents in Victoria to identify their understanding of legal problems and legal assistance needs. The survey found over 12 legal problems per 10 respondents, with over half those legal problems ultimately becoming unmet needs. The Justice on the Brink Report has extrapolated the PULS data nationally and has identified that this yields over 24 million legal problems nationwide, including 12 million problems that won't be appropriately resolved. Again, looking at the PULS findings, for those respondents who had legal issues, the significant majority of legal problems were in civil law, including goods and services, employment, housing, government payments and fines. The PULS notes the inextricable links between legal problems and disadvantage and the impact of legal problems on stress, confidence, family, ill-health, harassment, employment and housing.

Civil law Legal Aid assistance for people experiencing disadvantage is significantly undervalued and underfunded in Australia. This includes in critical areas including disability legal assistance, migration, homelessness, debt, employment, social security, disasters and veterans' legal assistance.

In 2022-2023 nationally civil law services were only 2% of all grants of Legal Aid; 5% of all Legal Aid duty lawyer services and 40% of all legal advice and legal tasks.

The limited reach of civil law legal assistance was identified in the PC Report where it was recommended that additional funding of approximately \$200 million be provided for civil legal assistance (Recommendation 21.4, including family law legal assistance). The PC Report also recommended the provision of adequate funding to support the provision of legal assistance on priority issues and based on more contemporary measures of legal need.

Civil law legal assistance is critical to supporting the implementation of a range of Australian Government priorities including Administrative Review Reform, Closing the Gap targets 9 - 14, Respect@Work, the Disability Royal Commission Recommendations and NDIS Review, consumer Protection, refugee reform and the National Plan to End Violence Against Women and Children.

This role has been acknowledged in a number of recent Royal Commissions including Robodebt (recommendations 12.4) in recognising the importance of systemic advocacy, Disability (reccs 5.4 and 6.21) in recognising the critical role of legal advocacy both generally and for NDIS Appeals and Banking³⁷ an in recognising the importance of the provision of legal assistance alongside financial counselling.

The Justice on the Brink report has completed updated modelling of the PC Report recommendations including the additional funding required to provide for civil law legal assistance which has been identified as \$220 million for an additional 54,000 grants of aid.

Increased investment in civil law

In providing civil law services LACs make a significant difference to the lives of people experiencing disadvantage, provide legal assistance that supports human rights and improves quality of life and prevents the escalation of legal issues including in the family and criminal law areas.

Additional investment would enable the LACs' civil law practices to expand to better meet the needs of communities and target significant areas of unmet need. Legal Aid civil law services are and should continue to be delivered in partnership with CLCs and ATSILS in order to ensure access and high quality, culturally safe legal assistance to as many people experiencing disadvantage as possible. NLA is committed to the Agreement on Closing the Gap priority reforms and will continue to further support the development of civil law service delivery within ATSILS where prioritised by them.

The priorities for any increase in funding for Legal Aid civil law assistance, delivered in partnership with CLCs and ATSILS, nationally would be:

1. Immediate investment of \$220 million to:
 - a) build up the civil law practices in each LAC across Australia so that legal assistance was more consistently available based on need and not based on the postcode or State or Territory in which people reside.
 - b) provide greater access to legal representation for people experiencing disadvantage who are at risk including for First Nations communities, people with disability and victim-survivors of domestic and family violence and elder abuse and in areas of high vulnerability including homelessness, social security, disability, disasters, veterans, and migration.
 - c) provide a holistic approach to legal assistance that ensures that civil law legal assistance provides multidisciplinary assistance that supports clients also experiencing a range of legal issues and prevents and minimises the impacts for clients across civil, criminal, and family law.
 - d) support the Administrative Review Reform by providing increased legal assistance for people participating in administrative review, including NDIS appeals, social security, child support and migration.

2. Immediate commitment to continued ongoing funding for all time limited programs currently funded under the NLAP including Respect@Work, Your Story, DAVLS and the NDIS Appeals Program.

And, the priorities for funding across the legal assistance sector would be:

3. Implementing a national approach to disaster legal help that provides sustainable legal support alongside increased capacity for surge responses when disasters occur.

Civil Law funding increase priorities

As the Justice on the Brink Report identifies by extrapolating the PULS findings, there is significant unmet legal assistance need in Australia and this unmet legal assistance need is predominantly in civil law. Funding for civil law Legal Aid assistance varies in each jurisdiction and so there is variability as to the type and scale of legal assistance provided by LACs.

Limited civil law assistance

All LAWA Civil Lawyers are based in the Perth office. Given Western Australia is the largest state, it is a challenge to provide civil law assistance to people living in rural and remote communities and ideally the client should be receiving assistance from a locally based lawyer. Some regional offices have criminal or family lawyers who have some civil training and so can provide some civil law services, but this is based solely on the skillset of the lawyer, and a poor response to unmet need. It costs disproportionately more to place a lawyer in a regional office than in the Perth office, and funding agreements need to account for the true cost of delivering services in regional areas. Much of the recent additional funding that has been received for program specific services has been insufficient to start a service in a regional area.

Tasmania Legal Aid (**TLA**) has one part time civil lawyer currently working two days a week in the North of the State. Service scope is limited to providing legal advice and legal tasks to a small number of people living in Tasmania. TLA has no capacity to provide representation for civil matters such as fines and housing issues for many Tasmanians facing disadvantage who are unable to resolve their issues themselves or pay for a private lawyer.

The Legal Services Commission of South Australia (**LSCSA**) provides initial advice and legal tasks across general civil law areas. However, ongoing representation is limited to matters for which special purpose funding has been obtained (appeals in NDIS, guardianship, administration and mental health matters). There is currently no ongoing assistance for South Australians with matters involving housing, consumer protection, debt, employment, elder abuse and many other civil concerns.

This contributes to inequities in access to justice and is exacerbated for people living in rural and remote areas. The further away a client is from a heavily populated area the less access there is to services. The fewer services the client is able to access, the higher the chance the client has of needing civil law legal assistance.

Additional investment in Legal Aid civil law would enable LACs to expand their civil law practice and better meet the needs of their communities. Any expansion would involve undertaking a strategic, evidence-based approach to ensure that there is increased legal assistance, including legal representation, for First Nations communities, regional and remote communities, people with disability and victim-survivors of domestic and family violence and in areas of high vulnerability including homelessness, social security, disability, disasters, veterans support and migration.

Civil Blueprint - LANSW

LANSW is implementing a Civil Blueprint which articulates, for the first time, an overarching Statement of Purpose for a large and diverse practice. The Civil Blueprint re-focuses priorities and resources to provide civil law services to people experiencing deep and persistent disadvantage or dislocation, with legal problems involving fundamental needs. This means directing services to a more targeted group of clients, with matters that are likely to have the greatest impact on their basic needs, rights and entitlements.

The expanded civil law service would also be developed in partnership with CLCs and ATSILS and would focus on a multidisciplinary and holistic approach that provides legal assistance support to clients across the range of civil, family and criminal legal assistance needs and would further develop the evidence base around the impact of civil law legal assistance in preventing and supporting family and criminal law issues.

Mental Health Legal Rights Service - VLA

Recently, a new legal service model for people with matters in Victoria's Mental Health Tribunal has been co-designed in partnership with lived experience experts, legal service partners and cross sector stakeholders. The Mental Health Legal Rights Service was co-designed over a series of workshops and will be delivered across three legal services in collaborative partnership: VLA, the Victorian Aboriginal Legal Service and the Mental Health Legal Centre. The co-design group, which included a majority of people with lived or living experience of the mental health system, developed recommendations for a Mental Health Legal Rights Service that increases access to legal assistance and representation for consumers at the Mental Health Tribunal, improves outcomes, contributes to a human-rights based system, works collaboratively and embeds consumer lived experience expertise, including in governance and evaluation. The Mental Health Legal Rights Service will now be implemented through specific funding commitments from the Victorian Government as a result of recommendations from the Royal Commission into the Victorian Mental Health System.

Katherine Health Justice Partnership - LANT

LANT Civil Law Service in Katherine operates a HJP with Wurli Wurlinjang Aboriginal Health Service, specifically their Katherine Individual Support Program. Katherine Individual Support Program is a case management program delivered to Aboriginal persons experiencing homelessness, chronic health conditions and high frequency hospital emergency department admissions. The partnership seeks to address the unmet legal needs of this highly vulnerable cohort as well as upskill and capacity build the connected medical and social support services identify the intersection of their work and legal issues. Working closely with the program case manager and other health professionals, the HJP seeks to address legal barriers to improving health - access to housing, social security law, consumer law and more – in a ‘wrap-around care’ model. Services are delivered daily from a homelessness drop-in centre. The Katherine Doorways Hub, operated by key stakeholder, The Salvation Army. The HJP consists of a lawyer with admin support and works alongside a Social Support Worker within the Criminal Law Service of the LANT Katherine office.

An adequately resourced civil law service program in LACs across Australia would allow the provision of services across diverse areas of civil need including:

- Migration
- Social security
- Disability, including NDIS
- Employment
- Discrimination
- Human rights
- Consumer law
- Disaster
- Elder abuse
- Victims support

These services would vary in intensity (information, advice, legal task or casework and representation) depending on the need and capability of the client, allowing for prioritisation of clients, including First Nations communities, regional and remote communities, people with disability and victim-survivors of domestic and family violence.

Service models would also include allied professionals within legal teams and be designed in partnership with service users. Services would be designed to reach regional and remote areas and engage with communities to promote awareness and understanding of legal issues. Services would

approach issues systemically, including with resourcing for strategic advocacy and litigation to inform and shape broader change.

The expanded civil law service would aim to ensure access to legal assistance for people experiencing disadvantage across every State and Territory that provides impactful intervention and outcomes and builds on the existing civil law footprint across the legal assistance sector.

Examples of how civil law matters would expand are outlined below:

Meeting employment law need

Since the establishment of the LANSW employment law team in 2011, employment law has consistently been in the top four legal issues about which clients seek advice. Employment law claims are either about the underpayment of wages and entitlements or compensation is factored according to weeks of pay (the median compensation ordered in an unfair dismissal hearing is 5-7 weeks' pay). This means that whilst the amount sought may be significant to the economic wellbeing of the worker, it will not make economic sense to pay a private lawyer to represent the worker. CLCs provide some employment services but most do not have the capacity to undertake litigation or more intensive tasks.

To manage the demand for employment law advice, LANSW has had to restrict eligibility for advice to workers earning (or who were earning prior to dismissal) to an income cap. A worker's job is what stands between them and poverty. Once a worker loses their job, they are often not far from debt, mortgage stress, possible family violence and homelessness. With greater funds, LACs could more fully meet the need for employment law advice and representation that exists in the community. They could also put resources into conducting outreach and developing projects to reach the most vulnerable workers, such as projects to build upon and expand legal services targeting exploitation of temporary visa holders in regional areas in the agriculture industry.

Limited assistance available for migration law

The NLAP recognises assistance in migration matters as a Commonwealth priority, and people who are culturally and linguistically diverse as a priority client group. The contribution from private practitioners working in migration law in all States or Territories under grants of aid is minimal. Chronic underfunding of migration legal assistance from federal governments has also contributed to structural inequality which has left many asylum seekers and other marginalised non-citizens unable to access appropriate legal services. There is significant unmet legal need including in relation to judicial review, merits review and non-citizens facing the legal consequences of family violence.

In addition to migration assistance in administrative review, there is a pressing need for increased funding and capacity-building in migration legal assistance more broadly. LACs who provide migration legal assistance work with people seeking asylum, people in immigration detention and refugees with a focus on judicial review of refusal decisions, merits review, visa cancellations and citizenship decisions.

Increased investment in migration legal assistance as part of the NLAP review process could support increased legal assistance for unrepresented litigants in immigration detention, holistic and wrap-around assistance to non-citizens facing multiple legal problems and explore opportunities for early intervention work.

Legal assistance is a core service during disasters

Disasters cause huge disruption and insecurity in Australian communities, creating new legal issues and exacerbating existing issues. Recent disasters such as the Black Summer Bushfires, the Covid-19 pandemic, and widespread flood events across the country have demonstrated that significant legal need arises in such events and the necessity of improving how disaster legal assistance is planned and funded to meet the increased need. Many of the legal issues include insurance, housing and tenancy, disaster grants, credit, debt and financial hardship, employment, social security, domestic and family violence and family law. Research including the PULS shows that disasters exacerbate disadvantage and can tip others who were previously coping into disadvantage.³⁸ The PULS found that individuals impacted by the 2019-2020 bushfires in Victoria were “more likely to have justiciable problems, have a greater number and longer-lasting problems, and make greater use of services”.³⁹ Further, the survey recognised that disaster legal response will “become more necessary and need to last longer”.⁴⁰

Community members require early assistance when a disaster strikes, and legal assistance providers must be ready for immediate mobilisation. Currently, disaster funding is provided reactively after a disaster event, and it usually takes many months for the allocation of funds to be determined. This causes significant delays to disaster-impacted individuals receiving the legal assistance they need and creates a risk of further exacerbation of legal problems. Funding needs to be delivered on an ongoing basis for the full range of support required, so that legal services are resourced and ready to go when a disaster hits.

NLA supports the NLAP disaster legal assistance joint submission recommendation for core funding for disaster response legal programs and would prioritise any additional funding to enable this.

Increasing legal assistance within Administrative Review

LACs have the expertise and capacity to increase their provision of legal assistance for Administrative Review matters, specifically NDIS Appeals, migration and social security and child support matters. Some LACs currently provide the following Administrative Review support, noting that there are significant differences in service provision between the various states and territories:

Social security and child support matters

Some LACs provide legal assistance for these matters at the Social Services and Child Support Division and General Division. This includes social security advice clinics, including three days per month via VLA, fortnightly via LAWA, four weekly clinics via LANSW, and two weekly clinics by LAQ. LANT provides limited advice on social security matters. Due to funding constraints and capacity LANT does only limited grants of aid on social security appeals. The LSCSA has only very limited funding for complex social security appeals in exceptional circumstances.

VLA and LANSW have a Child Support Legal Service that assists clients with administrative processes available through Services Australia's Child Support department to change assessments, object to decisions, draft agreements and enforce or discharge arrears. Grants of Legal Aid are also provided to eligible clients for representation at review hearings.

Migration matters

Some LACs provide legal assistance in the Migration and Refugee Division and General Division (NSW, VIC). This includes a weekly advice service for unrepresented non-citizens in the general division in relation to character cancellation or refusals, operated by VLA and LANSW, and a monthly advice service for citizenship matters through VLA. In 2021-22 LACs across NSW, Victoria and South Australia provided approximately 4,487 legal advices, 961 legal tasks, 123 legal representations and 219 grants of Legal Aid for immigration matters.

In the context of states with smaller numbers of migration matters, it has not been possible to provide legal advice and representation from the very small pool of general civil funding allocated to these LACs. LAC advice and representation for migration matters is either highly limited or non-existent due to limited resources.

However, the lack of existing services in this space is in no way indicative of a lack of need. For example, in Western Australia there is a desperate need for funded services with 1,139 applications lodged in the Migration and Refugee Tribunal in WA in 2020-21.

NDIS matters

LACs provide legal assistance in the NDIS Division (all State and Territory LACs). This includes advice clinics - one day per week (VLA & LAWA), two days per week by LAQ, three days per week by LANSW and on demand (LAACT).

Recommendation 6.21 of the Disability Royal Commission Report recommends immediate additional funding of \$20.3 million per annum to increase access to the NDIS Appeals Program. Nationally, in 2021-2022 over 1,500 legal advices, over 1,200 assistances and over 370 representations (grants of Legal Aid) were provided by LACs for NDIS Appeals.

All jurisdictions are experiencing significant increases in demand. For example, LAQ provided 372 advices in 2021-22 and provided 771 advices in 2022-23. VLA received 94 applications for legal assistance for NDIS appeals at the AAT in 2020-2021, and 203 applications in 2021-2022. This is a 115% increase from 2020-2021 to 2021-2022, which demonstrates the increase in appeals and the significant flow-on demand for legal assistance services.

Due to high demand and limited resources, LACs have also had to instigate waitlists and/or further limit criteria to access legal assistance. For example, in 2021-22 LAWA received 245 applications for legal representation, but the majority were only able to receive advice and assistance with legal tasks as capacity limitations meant LAWA was unable to provide grants for representation.

Expansion of Administrative Review legal assistance

Additional investment would enable the establishment of a legal assistance advice line, expansion of current advice clinics and an increase in the provision of legal representation. This would support a triaged approach, reduce the number of matters being heard before Tier 2 of the Tribunal and ensure a more effective and efficient process for ART administration and management of hearings as well as providing more effective legal assistance to applicants.

A summary is provided below, with further detail available in the proposals submitted to the Attorney-General's Department as part of the current Administrative Review reforms.

Advice line

Providing a triaging approach via an advice line for assessment of cases and referral to legal representation could assist in reducing the number of applicants who withdraw their application, whose applications are dismissed for non-appearance, and who do not file within the correct time frame. A triaging approach could also assist with any alternate processes that may be implemented to as part of the Administrative Review Reform such as the recently trialled NDIS Independent Expert Review Panel. Existing CLC advice lines and the NLA Your Story/DAVLS advice lines could be expanded and adapted to provide this service.

Administrative Review Legal Assistance Coordination and Early Intervention Advice Clinics

Additional investment would enable the scaling up of the advice clinics already provided by some LACs at the AAT and would include:

- a migration ART clinic in the general division and the migration and refugee division.
- a NDIS and social security clinic.
- a child support clinic.

The clinics would comprise of lawyers who would review relevant documents prior to the appointment and provide advice to the client, including advice on merit and procedure. Following the advice, the

lawyers may also provide legal task assistance such as drafting a letter of advice or reviewing further documents.

The expansion of early intervention advice clinics would also include LANT providing outreach support to clients in the Northern Territory where there is currently no Administrative Appeals Tribunal Review Registry.

Legal representation

Currently, for NDIS Appeals matters the NDIA is represented in every matter before the AAT by experienced solicitors, and in many cases, when the matter is going to hearing, by barristers. This is also the case for the Department in migration matters in the General Division. The environment is generally adversarial, and the requirements can be technical. It can be intimidating for unrepresented applicants and non-legally trained advocates. A fair process requires balanced representation for both applicants and respondents. The funding provided to government agencies and the LACs for legal representation should be more proportionate and appropriate to enable LACs to advise people about the merits of their matter and to represent them at the AAT accordingly.

Having legal representation has a significant positive impact on outcomes for clients in both the NDIS and migration jurisdiction and can assist in ensuring processes are efficient and effective and can lead to earlier resolution. A recent analysis of 18,196 migration cases decided by the AAT found that asylum seekers with legal representation are seven times more likely to succeed before the AAT. The same analysis found that 52% of asylum seekers were unrepresented before the Tribunal. Currently, approximately 63% of NDIS appeals matters are unrepresented.

Scaling up the availability of legal representation for applicants would increase access to justice for highly vulnerable members of the community and improve the efficiency of the administrative review process.

Systemic changes

Any expansion of legal assistance to support administrative review system reform also needs to be undertaken alongside systemic changes that reduce the demand and address barriers that impact on the fairness of processes, delays and administrative costs. Action to address these issues would in turn reduce the scale of legal assistance required to support people experiencing disadvantage in the Tribunal. These were outlined in the NLA submission on Administrative Review Reform and include:

- Ensuring primary decision-making is robust, fair and efficient.
- Legislative and policy change to address the increase in volume of matters as a consequence of policy decisions.
- Appointing members in line with demand and with expertise to conduct hearings efficiently and effectively.
- Review of the adversarial nature of matters and the impact that government appointed solicitors and barristers may have alongside unrepresented and non-legally trained advocates.
- Adherence to Tribunal hearing, such as Gender Guidelines and Guidelines on Vulnerable Persons and the model litigant rules.

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- Effective alternative dispute resolution (ADR) processes, including strengthening the Tribunal's ADR processes, which facilitate resolution of matters on the basis of the evidence available.
 - Review of access to registries, including access to people living in the Northern Territory. Accessibility is particularly important for marginalised clients (remote, First Nations people and people living with disability).
 - Resourcing the Tribunal to support clients and facilitate increased legal assistance coordination.

Respect@Work, National Disability Legal Service and National Defence and Veterans Legal Service – moved into core funding

Respect@Work

Following the Australian Human Rights Commission 'Respect@Work: Sexual Harassment National Inquiry Report', specific funding was allocated in September 2021 under the NLAP Bilateral Agreement to LACs, CLCs and ATSILS across Australia over four years to provide front-line support to address workplace sexual harassment.

NLA supports the Respect@Work Legal Assistance Community of Practice joint submission recommendation for Respect@Work legal assistance services to be moved into core funding and for consideration of additional funding to be provided for sexual harassment legal services as a core service of the legal assistance sector and would prioritise any additional funding to enable this. For further information, see the separate submission on Respect@Work.

National Disability Legal Service

The Disability Royal Commission made 222 recommendations, many of which are likely to require legal assistance to effectively implement. Your Story has a national call centre, website and social media channels as well as other accessible ways for clients to get in contact. Your Story is well placed to be transformed into a National Disability Legal Service to support the implementation of the Disability Royal Commission recommendations and continue to support the ongoing legal problems experienced by people with disability. Further information is available in the separate Your Story submission.

National Defence and Veterans Legal Service

In December 2018 Robert Cornall AO⁴¹ recommended establishing a Veterans' National Legal Service to be delivered by LACs throughout Australia. Legal Aid would be available for any veteran appealing access to entitlements within the Administrative Review Tribunal. This recommendation has not been enacted by government. DAVLS is delivered by a multi-disciplinary team spread across Australia. DAVLS is an independent, trauma informed, multidisciplinary team that consults people with lived experience in its design. DAVLS could be transformed into an ongoing national legal assistance service that would be broadened beyond Tribunal appeals to include early intervention. Further information is available in the separate DAVLS submission.

Family Law service delivery by Legal Aid Commissions

LACs provide a wide range of family law services nationally. These services respond to family violence and family breakdown and help to ensure the safety of all people, including children. They also help to ensure the economic security of those affected.

Around 192,000 family law, family violence, and child protection services requiring the skill of a lawyer, were delivered by LACs in 2022-2023. These services included the appointment of ICLs, legal representation in legally assisted family dispute resolution, legal representation and negotiations at or before court, duty lawyer, legal advice tailored to the individual, and discrete task assistance, such as drafting services.

Many more services, such as social support, and legal and non-legal information and referral, were delivered through LAC initiatives such as the FASS, amica, and via online and telephone advice and support. Community legal education, including to community-based social services providers, was delivered to help ensure people understand their rights and obligations. Law reform and advocacy were undertaken in relation to systemic issues including aiming to address women's and children's safety.

Family Law grants for dispute resolution and representation services

LAC lawyers and the private legal practitioners who undertake work at Legal Aid fee rates are the main providers of family law legal representation across the country. LAC clients often experience multiple circumstances of disadvantage, and the issues presenting in the cases in which they are involved can be challenging and complex.

The family law legal advice, legal information, and community legal education work of LACs assists many people to resolve their own family law issues without the need to litigate. However, some people will need a grant of Legal Aid for more intensive assistance to progress their matter, such as early intervention legally assisted family dispute resolution (FDR) and/or lawyer negotiations. To receive a grant of Legal Aid a party must pass a range of eligibility tests including means, merits, guidelines, and competing priorities in an environment of limited funding. Where a matter is not appropriate for legally assisted FDR due to one or more risk factors, or the matter has not resolved at dispute resolution or through negotiation, but the party's situation has merit, then provided the other eligibility tests are met, LACs will fund litigation. LACs do not fund matters to litigation where a party's case lacks merit.

In 2022-2023 LACs delivered more than 23,000 grants of Legal Aid for legal representation in Commonwealth family law matters including for legally assisted FDR. A further 20,000 legal representation services were also delivered in State/Territory-based family violence and child protection. These matters may have had a connection to Commonwealth family law matters. Family violence is an issue in the vast majority of Commonwealth family law matters where a grant of Legal Aid has been made for legal representation. It is not uncommon in matters where family violence is alleged for a party to misuse process in a way that is perceived to be a continuance of the alleged violence.

In 2022-23 LACs provided approximately 6,800 FDR conferences, with a national settlement rate of 76%.⁴² The FDR Conference service involves screening for risk, all necessary arrangements for the FDR conference, and the provision of an accredited Family Dispute Resolution Practitioner to chair the conference. One or more parties in these legally assisted FDR conferences will have a grant of Legal Aid for legal representation at the conference. Legally assisted FDR will address power

imbalance in many matters; however some matters will be unsuitable even for legally assisted FDR, and as indicated above, they and matters that do not settle may need to be funded to litigation where a party has merit.

Appropriate settlement is good for clients and relieves pressure on the legal system. The 2023 Benefits of Providing Access to Justice report found that having a matter resolve through legally assisted Family Dispute Resolution at the LACs, as opposed to litigation without Legal Aid, saved \$92 million annually.⁴³

The importance of Family Law service delivery

The National Plan to End Violence Against Women and Children has identified intersections between domestic and family violence and family law and the role of legal assistance in supporting women and children and the contribution legal assistance can make in ending violence against women and children.⁴⁴ Nationally, around 60% of the recipients of family law grants of Legal Aid for legal representation made by LACs are women and, it is estimated that more than 86% of Commonwealth family law matters involve issues of domestic and family violence.

Family Law legal assistance not only supports families, it is also integral to the efficiency of the legal system. The 2023 Benefits of Providing Access to Justice report found that matters where there are self-represented parties take 20% longer to resolve than matters where representation is available.⁴⁵ The Australia's National Research Organisation for Women's Safety and the Australian Law Reform Commission have noted despite the complexity of the family law system, self-represented litigants are common and are "largely due to the high cost of legal representation [and the] limited availability of legal aid."⁴⁶

As the Justice on the Brink Report identifies, access to family law legal assistance for people experiencing disadvantage has not kept pace with increasing demand and the complexity of matters, and under-resourcing has limited access to assistance via the means test and is also creating market supply risks. Levers used to control expenditure of limited funds over time have included restricting means tests, matter type guidelines, merit requirements, and special circumstances.⁴⁷

Family Law funding increase priorities

The priorities for increases in family law funding to LACs nationally and which it is sought be indexed annually are:

1. Immediate investment of:
 - \$97 million to expand family law grants for representation services by approximately 16,000 matters per annum to provide increased parenting and property legal assistance.
 - \$98 million to reach the recommended means testing coverage by increasing eligibility to 9% of Australian households.
 - \$69 million to protect the sector from the immediate threat of supply failure by increasing private practitioner fees by 18%.
2. Investment of \$40 million to support the expansion and enhancement of measures to reinforce quality service delivery to children and to ensure a suitably qualified sufficient pool of ICLs for appointment.
3. Commitment to continued ongoing funding for the FASS Program and amica.
4. The development of a demand-based funding model across the legal assistance sector within the next 2 years that includes assessment of costs of holistic service delivery including

community legal education, community and allied supports and administrative and other infrastructure, including the provision of specialist reports.

Expanding Family Law grants

The PC Report recommended increased investment in family law service delivery. The Justice on the Brink report has completed updated modelling of the PC Report recommendations including the additional funding required to provide for family law legal assistance which has been identified as:

- \$97 million for an additional 16,000 grants of aid.
- \$98 million to reach the recommended means testing coverage by increasing eligibility to 9% of Australian households.
- \$69 million to protect the sector from the immediate threat of supply failure by increasing private practitioner fees by 18%.⁴⁸

It is proposed that this additional investment for grants of aid provide legal assistance for both parenting and property matters by providing grants of aid to expand the FDR mediation program and for legal representation where matters are not suitable for FDR including because the other party is not engaging or not engaging with good faith.

Additional funding would facilitate the expansion and enhancement of the Small Claims Property Program at LACs. This Program was initially trialled in 2020 and following positive evaluation, in 2022 by the Australian Institute for Family Studies funding of the program was rolled into NLAP core funding.⁴⁹ The evaluation of the Trial found that it helped achieve a quicker, safer and less stressful resolution of legal issues for separating couples, particularly in situations of family and economic violence.

The evaluation found the Program was particularly effective for people experiencing family violence, economic abuse and where there is inequality in bargaining power or risk of economic hardship arising from an unresolved property dispute.

Around 80 per cent of cases that had a mediation conference came to an agreement, showing the scheme is an effective and efficient way of resolving family law property matters.

The expansion of support for property matters aims to support the Family Law Reforms that are focused on improving support for women who have experienced family violence by supporting earlier economic recovery and financial independence for vulnerable people.

The challenges outlined in the Justice on the Brink report regarding restricted access to the means test and the market supply issues predominantly relate to the provision of family law legal services. Immediate investment to increase the means test so that 9% of Australian households are eligible for Legal Aid and to increase private practitioner fees by 18% would both enhance access to family law legal services and help ensure the ongoing sustainability of these services.

It is noted that the Justice on the Brink modelling has utilised existing grant funding. If additional funding was to be provided, then a restructuring of the grants funding to reflect current requirements would also need to occur.

Expanding the Independent Children's Lawyer Program

ICLs are ordered by the family law courts in family law parenting matters involving the most serious cases of abuse and neglect. The ICL represents the best interests of the children and provides vital assistance, including gathering relevant evidence for the court. The ICL is independent of the parties and facilitates settlement wherever possible and appropriate, thereby saving court time and associated resources.

In the financial year 2022-23, around 5,000 grants of Legal Aid for the appointment of an ICL were approved. This was notwithstanding that some LACs rationed appointments, and the courts, particularly in some locations, have been mindful of funding constraints in making orders. Accordingly, the numbers of 'orders and requests', and appointments do not reflect the real extent of need. It is estimated that around 10,500 applications about children were filed in the Federal Circuit and Family Court of Australia and the Family Court of Western Australia in 2022-2023.⁵⁰

It is proposed that the ICL program be expanded to provide best interest representation in approximately 77% of children's matters.

There are approximately 600 ICLs currently on LAC Panels. These ICLs are either in-house LAC lawyers or lawyers in private practice. There is concern that ICLs who are private practice lawyers on LAC ICL Panels/lists are withdrawing from the work. This is because of a combination of factors including low remuneration, the need for improved professional support, and the nature of the work, such that new practitioners are difficult to recruit. For example, LAWA currently has only 7 ICLs available to take new grants of Legal Aid (appointments) and a backlog of ICL orders to assign. Supply is a threshold issue before any additional grants can be delivered.

To be appointed as an ICL, a lawyer needs to have successfully completed the ICL National Training course, have a minimum of five years relevant family law experience, and be accepted onto a LAC ICL Panel or List. Funding for improved quality measures such as revised and additional professional development resources, including a new Learning Management System, interviews and auditing of practices, and recruitment of new ICLs, has repeatedly been identified as needed but has not been forthcoming.

It is expected that the impending family law reforms will place increased pressure on ICLs, if not directly, then indirectly as the system is already under significant strain, and the public awareness and education campaign will likely lead to increased expectation of, and potential appointment of ICLs. Submissions and evidence to the Senate Standing Committee on Legal and Constitutional Affairs Family Law Amendment Bill Inquiry suggest that there may be increasing expectations of further work within each appointment even if the numbers of appointments themselves do not rise because of increasing public awareness and education.

It is noted that the modelling for additional ICL grants has utilised existing grant funding. If additional funding was to be provided, then a restructuring of the grants funding to reflect current requirements would also need to occur. For further information please refer to the additional paper on ICLs provided.

Family Advocacy and Support Services and amica – moved into core funding

Family Advocacy and Support Services

FASS is a court based legal and social support service operating in each Federal Circuit and Family Court of Australia and Family Court of WA registry. The FASS provides lawyers and social support workers to assist family law clients affected by family violence, providing supports and referrals for both victim-survivors and alleged perpetrators.

Arising out of the Third Action Plan under the National Plan to Reduce Violence against Women and their Children 2010-2022, the FASS was originally established in 23 service locations, comprising 16 family law courts and 17 circuits. This was subsequently expanded to a further 26 locations following the merger of the Federal Circuit and Family Court of Australia and in response to an independent review and several inquiries recognising that the FASS is a successful program that fills a critical gap in frontline service provision for parties to family law proceedings involving family violence.

Delivery of trauma informed, integrated specialist domestic and family violence services has had significant benefits for families moving between the state-based family violence and child protection systems and federal family law system. We anticipate strengthening these pathways for Aboriginal and Torres Strait Islander families with the expansion of the Specialist Indigenous Lists – thus contributing to meeting Closing the Gap targets and objectives. The FASS also enhances the functioning of other key initiatives of the Federal Circuit and Family Court of Australia to assist in addressing domestic and family violence, including the Lighthouse Project and the Evatt List.

The FASS was positively evaluated in 2018 and the evaluation demonstrated that the FASS is an important and effective program filling a key gap for families impacted by domestic and family violence. Not only has the service increased awareness of domestic and family violence by families and stakeholders, but it also increased access to legal and support services contributing to improved legal and non-legal outcomes for families.

Although the FASS has been operating since 2017, the funding has not been incorporated into the NLAP core and has been renewed on a 2–3-year basis. This lack of consistent, long-term funding creates significant challenges in managing fixed term contracts with staff and partner organisations and planning service delivery improvements to better meet the needs of FASS clients. Given that FASS has become an essential component of the family law and domestic and family violence service system, it should be considered as an ongoing, core program within the NLAP.

If FASS funding is not continued, the impact will be most acutely felt in regional and remote areas where:

- This will disproportionately impact Aboriginal and Torres Strait Islander families;
- There is already a dearth of specialist services; and
- Rates of domestic and family violence are significantly higher than the national average.

amica

NLA has also developed early intervention dispute resolution initiatives such as amica, an online tool that assists separating couples to agree on parenting, property and financial issues. amica was funded by the Commonwealth Government and designed by family lawyers. amica's artificial intelligence was initially built to provide a suggested division of assets for separating people

consistent with what a lawyer or Court would recommend. amica has been developed over time to include a one-sided interaction informing people of likely entitlements, and to address children's issues.

Since amica's launch in 2020, there have been over 1.6 million website views, 8,200 users have registered on amica, 4,000 individuals have received a suggested asset division, and 2,500 individuals have produced finalised agreements including consent orders.

This service delivery is significant; however ongoing promotion is necessary to ensure that the tool is fully utilised by the community. Given that amica is a component of the family law service system, it should be considered as an ongoing, core program within the NLAP.

Development of a demand-based funding model – including costing for holistic service delivery and infrastructure including the provision of specialist reports

The current funding arrangements for the provision of family law legal assistance have limited costings for the provision of allied health and other community services and limited resourcing for the commissioning of specialist reports required as a routine part of family law matters.

Recognition needs to be made of the inadequacy of current funding not just for the number of services delivered but the increased cost of those services. Legal Aid fee scales need to be increased including the amount paid for specialist reports. The low level of payment is discouraging the uptake of work for Legal Aid grants.

Should additional funding of \$484 million be provided, then these costs would be increased to better reflect the current costs.

As outlined in section 1 of this submission, in understanding current and future legal assistance need, including the full spectrum of service delivery costs, a demand-based funding model should be developed as part of the NLAP over the next 2 years.

Increasing the capacity of the legal assistance sector to undertake systemic advocacy

Recognising that everyone cannot be assisted individually, LACs prioritise strategic advocacy to influence changes to laws, policies and systems to maximise our impact and address systemic issues, particularly where we see the same issue impacting a large number of people, or a particular group of people.

VLA's strategic advocacy and strategic litigation in response to the Robodebt scheme is a key example of an issue identified through service provision and sector engagement, prioritised for strategic litigation and accompanied by strategic advocacy and communications. The outcome was \$1.76 billion in waived and refunded Robodebts issued to over 443,000 people. The benefit of this strategic advocacy was recognised in the Robodebt Royal Commission Report which found the strategic litigation test cases ran by VLA were crucial in the demise of the Robodebt scheme, and exposed the illegality of Robodebt when other checks on the scheme did not or could not. The report also recognised the value of free legal assistance, noting the work of VLA in response to Robodebt, in not only providing support for individual clients but also in acting in the interests of public good.

The Report includes a recommendation focused on funding legal assistance for its public interest role:

When it next conducts a review of the National Legal Assistance Partnership, the Commonwealth should have regard, in considering funding for legal aid commissions and community legal centres, to the importance of the public interest role played by those services as exemplified in their work during the Scheme (**Recommendation 12.4**).

Other strategic advocacy work undertaken by LACs includes informing and influencing decision makers, including through leading collaborative work across legal and other sectors and providing submissions and evidence informed by direct practice experience to inquiries, consultations and Royal Commissions. For example, some LACs have utilised their memberships of regulatory and industry committees in the areas of Australian Consumer Law, Banking and Finance and Insurance to advocate to improve how our clients are impacted in these areas on a daily basis. LACs have also been able to raise issues with industry practices that our clients are experiencing both in a disaster and non-disaster context and work with industry to see clients' experiences improved and provide early intervention by solving problems for clients of LACs but also clients with similar problems who may not have sought assistance directly from a LAC.

Strategic advocacy work is undertaken by LACs but without any direct funding provided for this function. This work is largely funded through the allocation of organisational funding because of the direct benefit seen for our clients, through better policies and the fairer and more efficient operation of a legal system. This is also the case regarding the strategic advocacy work that is undertaken by ATSILS, CLCs and FVPLS.

Strategic advocacy work is also undertaken by the legal assistance sector without direct reference to this function within the NLAP and there is no national measurement of the impact of this work. We see the clear need for this work to be undertaken across the legal assistance sector to support government legislative reform agendas, address systemic legal issues by clients and support the innovative use of funding to reach as many clients as possible.

We recommend the NLAP review contemplates allocation of funding to recognise the value of systemic advocacy, and to increase and further embed the capacity of the legal assistance sector to engage in this work and recommend:

- the allocation of \$5 million per annum across the NLAP to establish a systemic advocacy fund for all legal assistance services.
- the development of a demand-based funding model across the legal assistance sector within the next 2 years which incorporates assessment of costs associated with strategic advocacy.
- the revised NLAP explicitly references the role of strategic advocacy as a core function of the legal assistance sector and incorporates measurement of its impact into an NLAP outcomes framework.

Section 3: Legal Assistance for First Nations communities

The role of LACs in providing legal assistance to First Nations communities

As mainstream service providers that deliver over 1.7 million instances of legal assistance each year it is vital that LACs are accessible to First Nations communities and equipped to deliver culturally safe and responsive services.

In 2022/2023 24% of clients receiving Legal Aid grants were First Nations people, with this figure rising to 37% in Western Australia and 74% in the Northern Territory.

LACs provide services alongside ATSILS and FVPLS and play a key role in supporting First Nations communities to have choice in legal assistance provider, alongside CLCs. LACs also have a role where there are instances of conflict of interest.

LACs play a critical role in providing grants of Legal Aid following referral from ATSILSs due to conflict-of-interest issues. LACs are the only legal assistance organisations who have capacity to engage private practitioners via their grants system, and this arrangement is currently the most appropriate way to manage this issue.

Referrals to LANT from the North Australian Aboriginal Justice Agency

Since 2011 there has been a Memorandum of Understanding (**MOU**) between LANT and North Australian Aboriginal Justice Agency (**NAAJA**) in relation to referral protocols. The MOU applies to formal referrals where NAAJA has been acting for a client, a conflict of interest arises which prevents NAAJA from continuing to represent a client, and NAAJA refers the client to LANT. The MOU specifically excludes duty lawyer referrals of new matters at court.

In 2020-21, the first year of the NLAP, there were 872 NAAJA Duty Lawyer referrals to LANT. This figure increased to 1,974 in 2022-23. This represents a 226% increase in NAAJA Duty Lawyer referrals to LANT over the last 2 years. NAAJA referrals constituted 29% of LANT duty lawyer matters in 2021-2021, 39% in 2021-22 and 54% in 2022-23.

In 2020-21, there were 1,694 formal referrals under the MOU from NAAJA to LANT. This figure increased to 2,387 in 2022-23. This represents a 41% increase in NAAJA formal referrals to LANT over the last 2 years. In 2021-2021 NAAJA referrals constituted 52% of LANT case matters under a grant of Legal Aid, 50% in 2021-22 and 56% in 2022-23.

In 2022-23, 99.7% of NAAJA formal referrals for which aid was granted were conflict referrals. Only 3 were capacity referrals.

LACs also provide support to ATSILS when capacity is reached by these services or there are other issues such as staffing gaps that limit service delivery. This would be ameliorated by additional investment in ATSILS but even so, LACs would continue to have a role in working in partnership with ATSILS in local communities to provide legal assistance.

Aboriginal and Torres Strait Island Legal Service Queensland & LAQ - working together

LAQ has worked collaboratively with ATSILS for many years, particularly in regional and remote locations. Many remote circuit locations, such as Gulf communities in Queensland are serviced by ATSILS primarily and LAQ provides a complementary legal service for conflict matters and to assist with demand capacity. Furthermore, due to staffing shortages and funding challenges over the past 12 months, ATSILS have been required to withdraw criminal law services in regions such as Cairns, Mount Isa and Townsville. In these locations, LAQ has stepped in to deliver duty lawyer and representation services to ensure vulnerable First Nations people have access to vital legal assistance. These services have been primarily delivered by in-house LAQ lawyers and in some locations through the engagement of preferred supplier law firms. LAQ offers opportunities for ATSILS staff to access and engage in continuing professional development training opportunities and also has released experienced lawyers on leave without pay to take up legal roles with ATSILS. This ensures that ATSILS have a greater depth and capacity to deliver quality legal services during a challenging period.

LACs have developed a number of tailored initiatives aimed at improving service delivery to First Nations communities. These have been developed in consultation with community, First Nations staff and ACCOs including ATSILS.

For example, VLA is taking steps to ensure that all new services are designed in close consultation with the Victorian Aboriginal Legal Service and Djirra, including by developing principles for ongoing engagement between the Boards of each organisation, to help ensure a culturally safe and collaborative approach. This is also evidenced in consultative processes to develop Reconciliation Action Plan priorities, cultural capability initiatives, bail and remand services, priority help lines, and focussed initiatives such as the Lotjpa service for First Peoples engaging with the Yoorrook Justice Commission.

FamAC – Family Law Service for Aboriginal Communities - LANSW

The Family Law Service for Aboriginal Communities is a state-based, Aboriginal led service made up of lawyers dedicated to assist Aboriginal and Torres Strait Islander families and children in family law and care and protection matters. The FamAC team provides advice, early intervention support, outreach and casework litigation to Aboriginal and Torres Strait Islander families and children currently involved in or at risk of being involved in family or care and protection proceedings.

In addition to providing culturally safe, holistic and trauma-informed early intervention, representation and social support services to Aboriginal communities across NSW, it also helps build the capacity of all in-house staff to provide culturally safe services.

Legal Yarn - LAWA

On 1 June 2023, LAWA launched 'Legal Yarn', a dedicated helpline for First Nations people across Western Australia. The service was designed 'by mob, for mob' and is staffed by 6 First Nations staff members, as part of our First Nations Strategy. Staff provide callers with culturally sensitive support, legal information, and referrals to legal and non-legal support as required. Legal Yarn also aims to provide a career development pathway for First Nations staff within LAWA.

Blurred Borders - LAWA, LANT, LAQ

LAWA and LANT originally developed the 'Blurred Borders' resource kits for legal and community service providers working with Aboriginal people in the Northern Territory / Western Australia cross-border region. As different laws apply on each side of the border, this can create confusion and misunderstanding. The Blurred Borders resources use visual art, plain language and storytelling to make legal concepts understandable. LAWA designed these resources for Aboriginal people who do not speak English as a first language.

The Blurred Borders initiative was initially funded by the Commonwealth Government as a three-year project, for use in bail and criminal process, and family violence. LAWA has since expanded the resource kit for use in WA in other areas of law including child protection, work and development permit scheme, and tenancy. LAQ is adapting the Blurred Borders project for their jurisdiction.

One of the three goals of the NLA Strategic Plan 2021- 2024 aims to address Aboriginal and Torres Strait Islander justice issues and all LACs are committed to and required to implement the Closing the Gap priority reforms and targets. As part of this, LACs have undertaken a range of initiatives to improve our organisations capability in delivering services to First Nations communities. All LACs have First Nations strategies or strategic plans and have Board and Executive level commitment to overseeing and implementing these.

First Nations Advisory Committee - LAQ

LAQ has established a First Nations Advisory Committee, which is a sub-committee of the LAQ Board whose purpose is to guide the ongoing development of LAQ's cultural capability in providing best practice legal services to First Nations peoples. The First Nations Advisory Committee aims to reduce disadvantage in Aboriginal and Torres Strait Islander communities by:

- Ensuring a strong First Nations workforce is developed and maintained.
- Addressing and monitoring ways to increase the number of First Nations legal professionals.
- Assisting to embed cultural capability across the organisation to ensure that service meet the needs of First Nations peoples.

The First Nations Advisory Committee oversees the LAQ First Nations Strategic Plan and the First Nations Action Plan. The First Nations Strategic Plan is a two-year plan which articulates LAQ's purpose, objectives and values and sets the parameters for operational planning. The First Nations Action Plan forms the second stage of planning and shows how the strategic plan is put into action across LAQ business units.

First Nations Strategic Plan in 2021: 'Jalba, Coming Together' - LAWA

LAWA First Nations Staff Network developed their First Nations Strategic Plan and it contains five key goals relating to client services, leadership, people and culture, employment and advocacy. Implementation is overseen by the LAWA executive, including employment targets, the cultural learning framework and the development of best practice standards. The Plan also supports the employment of First Nations Community Legal Education Officers in regional offices. They now have Community Legal Education Officers in Kununurra, Broome and Port Hedland offices, who provide a vital link to the community and critical social support to clients.

All LACs have First Nations workforce targets that are either above or on par with their State/Territory public service targets and LANSW, LA Queensland, and LAWA have a First Nations workforce higher than their State public service targets.

Legal Aid Commission	First Nations workforce	First Nations Workforce Target (Public Service)
Legal Aid NSW	8%	3%
Legal Aid Queensland	4.4%	3%
Legal Aid Western Australia	5.4%	3.7%

There has also been a focus the development of resources for LAC practitioners, both in-house and private practitioners, to support the delivery of culturally safe services, by assisting them to better understand and implement culturally safe ways of working with First Nations clients.

Best practice standards for representing Aboriginal clients – LANSW

The Best Practice Standards for Representing Aboriginal Clients were developed in 2019 to provide practitioners with practice information and guidance on how to represent Aboriginal and Torres Strait Islander clients in a culturally appropriate way.

The standards are a starting point in the continuous journey of cultural competency. They set minimum expectations about the knowledge and expertise that lawyers need to understand Aboriginal culture and family and community structures to better represent those clients.

The Best Practice Standards include general standards that apply to all practice areas and standards specific to family law, civil law and criminal law matters.

First Nations Cultural Capability Framework – VLA and the Law Institute of Victoria

All First Nations clients deserve access to culturally appropriate legal services that help them feel safe, respected and listened to. VLA and the Law Institute of Victoria are working with Aboriginal community-controlled legal organisations and First Nations networks to ensure First Nations voices are centred in the framework. Implementation of the First Nations Cultural Capability Framework will lead to better outcomes for First Nations clients in the justice system and promote culturally safe workplace practices.

The First Nations Cultural Capability Framework will support Victorian legal practitioners in meeting their responsibilities to First Nations clients. This commitment reflects their organisational roles and responsibilities to prescribe practice standards for legally aided services and to promote professional practice and set specialisation standards respectively. The framework will articulate domains of knowledge, behaviour and action that are necessary to provide culturally capable services. The framework will lead to the creation of a best practice guide for Victorian practitioners, establish new service standards that practitioners must adhere to and new learning resources.

Improving investment in legal assistance for First Nations communities

NLA supports a significant overall increase in baseline funding across the sector, including for ATSILS and FVPLS, which will be referred to collectively as ACCOs. Whilst LACs have the legislative mandate to provide services across their jurisdiction, ACCOs should be adequately funded so First Nations people have a genuine choice of which service they use. This is necessary for true self-determination.

LACs are required to actively address the socio-economic targets and outcomes within the National Agreement on Closing the Gap and are committed to implementing the priority reforms within the Agreement on Closing the Gap including building the ACCOs sector (priority 2) and transforming government organisations (priority 3). The Agreement recognises the importance of self-determination, and the vital role ACCOs play in ensuring it is achieved. These reforms are the key to ensuring that real, impactful change can happen for First Nations communities.

Consequently, NLA supports additional investment being provided to ACCOs to enable these organisations meet the legal assistance needs of First Nations communities.

The evidence base for this additional investment should be identified and led by ACCOs in consultation with First Nations communities and include:

- Assessment of the legal need for First Nations communities.
- Assessment of the resources required to provide services in regional, rural and remote areas and in a culturally safe way.

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- Provision of wage parity for ACCOs with LACs and CLCs.
 - Assessment of the resources required to provide holistic services including access to community supports and access to interpreters.

Even with additional investment provided to ACCOs, LACs will continue to have a major role in providing legal assistance to First Nations communities, both in ensuring choice of provider and in managing conflict of interest issues.

In addition, while it may be the case that most LACS receive sufficient funding for conflict referrals from ATSILS, that is not the case for LANT. Consequently, NLA supports additional investment being provided to LANT to enable LANT to meet the legal assistance needs of First Nations communities in the Northern Territory.

Accountability mechanisms also need to be implemented to ensure that LACs are ensuring culturally safe service delivery. These should be based on the Agreement on Closing the Gap priority reforms and targets and should include the development of partnership agreements between LACs and ACCOs that focus on implementing a shared decision-making process for legal assistance service delivery.

Investment in LACs therefore needs to:

- ensure a shared decision-making process via a service delivery partnership and co-design approach between ACCOs and LACs including resourcing of partnership and coordination arrangements and the implementation of service delivery agreements around conflict of interest.
- enable culturally safe service design and delivery including the provision of community supports and access to interpreters.
- support initiatives that work to meet the Closing the Gap targets and priority reforms including governance and workforce targets, with an emphasis on those areas where there are significant First Nations populations.
- resource capacity for systemic advocacy on issues that impact First Nations communities and for this to be led by First Nations people.
- implement data sovereignty and measurement systems that allows for the tracking, measurement, and evaluation of the impact of and client satisfaction with service delivery for First Nations communities.
- enable LANT to meet the legal assistance needs of First Nations communities in the Northern Territory.

And, the NLAP needs to:

- Reference the Agreement on Closing the Gap targets and priority reforms including a self-determination approach. The NLAP should drive cultural capability improvements and the increased level of First Nations employment needed within sector and provide greater discretion to allocate funding to support the Closing the Gap targets and priority reforms.
- Support the view of ACCOs regarding whether there should be a First Nations Legal Assistance Partnership alongside the NLAP.

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- Be adaptable as treaty and other processes occur at a national and state and territory levels that will see policy and service delivery change.
 - Drive a stronger data sovereignty and data collection and sharing focus to understand the other intersecting (legal and non-legal) issues experienced by First Nations clients (e.g. Centrelink, fines, housing issues), plus understanding First Nations client trajectories through legal, child protection and court systems and drive more holistic support and service models.

Section 4: Roles and responsibilities and efficiency

The NLAP outlines the Commonwealth resourcing of the legal assistance sector and consequently is only a part of the provision of legal assistance in Australia as it does not encompass the State and Territory provision of legal assistance, which is a significant investment and larger than the current Commonwealth investment in most States and Territories. It also does not include other portfolio legal assistance funding, such as the NDIS legal assistance funding provided by the Department of Social Services.

Alongside this, States and Territories have been given the responsibility for the administration and determination of funding for additional programs under the NLAP. In some jurisdictions this includes administration of CLC Program funding by LACs.

This has resulted in:

- Limitations in understanding the full extent of the impact of legal assistance service delivery across Australia.
- Inconsistency in legal assistance service delivery nationally.
- Limitations in efficient use of resources nationally to promote, refer and assist clients.
- Increased administrative burden for legal assistance services due to different reporting requirements.

At a program management and public policy level it is difficult to understand and measure the full extent of the impact of legal assistance as there is an incomplete picture of service delivery and a lack of coordination of this service delivery.

For example, the NLAP currently includes funding for ATSILS to deliver state based legal assistance including criminal law legal assistance and child protection but does not capture the contribution made by the States and Territories to LACs to also deliver these services. This means that there is limited national, State/Territory or program level understanding of the level of service delivery let alone the impact of this service delivery.

This is also an issue even within NLAP funding programs. For example, Respect@Work has been rolled out via the States and Territories and each jurisdiction has funded different service delivery models with different objectives and reporting requirements. There is no national coordination, data collection or evaluation plan which limits the management and monitoring of the program including understanding the impact and difference the program has made for clients. It also limits efficient promotion of the program to communities and clients and limits the development of good practice amongst service providers and any efficiencies that could be gained via consistent service models.

These issues are also experienced in the administering of the CLC Program, and, in those jurisdictions where LACs are administering this Program, are compounded by perceptions of conflict of interest and mixing of performance management and collaborative service delivery roles.

This lack of coordination is also experienced at a service delivery level. Legal assistance includes supporting clients across civil, criminal and family law and clients often present with a multitude of legal issues that aren't confined to one area of law. For example, women and children escaping domestic and family violence may require support for domestic violence orders, child protection assistance, family law assistance and housing and other financial legal assistance. From a funding

perspective, this can mean that LACs are receiving a mix of Commonwealth and State funding and managing multiple components in service delivery design and the administration and reporting of this funding.

Domestic and family violence – State and Commonwealth funding

Following the release of two reports from the Women’s Safety and Justice Taskforce, the Queensland Government expanded funding, resourcing and support for several important initiatives and programs. This underpins the response to domestic and family violence in Queensland. These initiatives include increased funding to already established Domestic and Family Violence Specialist Courts in three current locations at Southport, Beenleigh and Townsville as well as standing up new specialist courts in Cairns and Brisbane.

Increased services have been funded to protect and support victims, including expanded legal representation in proceedings to protect counselling records and legal representation to support the ban on cross-examination of a protected witness in criminal domestic violence related matters. These State funded services complement Commonwealth funded services such as the Domestic Violence Unit in Rockhampton and the expanded coverage of the FASS, to deliver more holistic and effective legal services across multiple court jurisdictions in civil, criminal and family law matters.

Multiple reporting processes – State and Commonwealth funding

Multiple reporting processes – LSCSA & LANSW

LSCSA has recently reviewed its reporting and acquittal processes and has identified that it currently has 15 different reporting templates and acquittal processes to comply with across State and Commonwealth funding. LANSW has identified 30 different processes. This results in unnecessary administrative burden both in providing the reports and in capturing the data required for the reports.

Alongside this, there is a missed opportunity in leveraging the Commonwealth and State resources effectively and a lack of shared responsibility in ensuring that legal assistance is meeting the needs of communities.

Bush Courts sustainability and funding - LANT

Historically, LANT has provided criminal law services in remote circuit courts (colloquially known as Bush Courts) when the North Australian Aboriginal Justice Agency, and its predecessors, have been unable to provide the service because of conflict. Territory funding has not included funding for these services (except for a specific allocation this financial year) and LANT has had to rely upon ad hoc arrangements to seek reimbursement.

From March 2022 to October 2022, because of inadequate funding, LANT suspended granting aid for Bush Court matters. Their inability to provide Bush Court services meant that some of the most socially and economically disadvantaged clients were unrepresented. Almost 100% of people appearing before these courts are First Nations Territorians who are experiencing financial disadvantage and who speak an Aboriginal language as their first language. Involvement in the NT justice system is difficult at any time, but lack of legal representation meant that people did not understand the charges they faced and did not receive legal advice about whether they should plead guilty or not guilty. People who are unrepresented cannot identify a defence, or conduct a complicated defended hearing, or understand matters which the court will take into account in mitigation when sentencing an offender. People may be sentenced to imprisonment who might otherwise not be if they are legally represented.

LANT was able to resume Bush Courts with supplementary Northern Territory funding.

In 2022-23, 82% of LANT criminal law clients with a grant of Legal Aid for case representation were First Nations people. This figure has increased by 22% in the last 4 years. The funding pressures disproportionately impact First Nations people and their right to access to justice.

To address these issues, the NLAP should be supported by the development and implementation of a National Legal Assistance Strategy and restructured as a shared responsibility agreement across Commonwealth and State and Territory jurisdictions with a stronger delineated stewardship role for all jurisdictions, including taking responsibility for assessing ongoing and future demand and responding to this. These arrangements have been similarly structured in other portfolios, including housing, homelessness and health.

A National Legal Assistance Strategy would outline national legal assistance priorities, capture the contribution made across Commonwealth portfolios, within the NLAP and by State and Territories and report publicly on achievements measured against the priorities. It would also assist in identifying the contribution of legal assistance towards other whole of Government priorities including the 'Measuring What Matters' Wellbeing Framework, Closing the Gap and the National Plan to End Violence Against Women and Children.

The restructuring of the NLAP as a shared responsibility arrangement would enable a coordinated legal assistance service delivery approach, with capacity to leverage off the resources to ensure appropriate contributions and improve efficiencies in administration and data collection and reporting.

A National Legal Assistance Strategy and a shared responsibility NLAP could also be supported by the development of State/Territory collaborative service delivery plans that include agreements on joined up services across the legal assistance sector and prioritise rural and remote service delivery.

It is noted that the current NLAP required the development of State and Territory based Legal Assistance Strategies and Legal Assistance Action Plans. However, there was limited coordination as to their requirements and no additional funding provided for co-ordination and implementation. Consequently, the Strategies and Plans mirror the issues around consistency and coordination of the NLAP and legal assistance service delivery.

Allocation of \$2 million per annum across the NLAP to develop a National Legal Assistance Strategy and State/Territory based collaborative service delivery plans, prioritising rural and remote service delivery would assist in ensuring that the Strategy and plans have the resources required to support appropriate development and implementation.

Section 5: Labour market

Workforce

Nationally, LACs have a workforce of approximately 4,600 FTE. Approximately 38% of these positions are lawyers and approximately 83% are service delivery related positions.

LACs are a women-based workforce, approximately 78% of the workforce are women, approximately 71% of management positions are women and approximately 74% of in-house lawyers are women. This is significantly higher than the general legal profession, where 55% of lawyers are women and higher than the broader government legal sector where 69% of all lawyers are women.⁵¹

All LACs have focused on increasing the number of First Nations people within their workforces, with approximately 4% of positions being held by First Nations people. This is significantly higher than the general legal profession (0.8%).

First Nations workforce initiatives - LANSW

In 2022, LANSW, TAFE NSW and Macquarie University entered into a collaboration agreement to implement and evaluate employment, credentials and careers for Aboriginal people in legal services.

The Legal Career Pathways Program commenced in 2022 and will run over four years and will recruit 200 Aboriginal people to be employed by LANSW and support those staff to complete a Certificate III in Legal Services, a Certificate IV in Legal Services Administration and/or a Diploma of Paralegal Services and if desired progress from these Certificates up to a Diploma of Paralegal Services. The project also establishes a pathway from the Diploma of Paralegal Services to the Juris Doctor in collaboration with Macquarie Law School.

The Legal Career Pathways Program seeks to address the Closing the Gap targets by supporting the development of a strong and capable Aboriginal legal services workforce, that has the capacity to deliver culturally appropriate services to clients and communities.

Remuneration for LAC staff can be less than in the private sector and is less than government lawyer counterparts. Recruitment and retention of staff has become more challenging over the past 5 years, particularly in rural and remote areas, although this has also been experienced in urban areas in New South Wales and Victoria. This is despite the legal profession growing by 57% over the last decade. This issue has been exacerbated in the context of short-term funding. Short-term funding makes it difficult to recruit and retain staff, who often leave when they know the funding cliff is approaching, taking their expertise and stakeholder knowledge with them.

LAQ recruitment and retention challenges

LAQ faces ongoing recruitment and retention challenges. The reasons for this include a tight labour market and recruiting candidates with suitable work experience for the roles they apply for. The challenges are particularly prevalent for roles in rural and remote areas of Queensland. The reasons for this include the non-competitiveness of LAQ salaries for some roles, as well as the added pressure of finding suitable accommodation in some centres.

LAQ has a target vacancy rate of 5%. At August 2023, LAQ had a vacancy rate of 16% across Queensland with significant vacancies in regional locations.

From 1 January 2023 to 28 September 2023, LAQ has undertaken 150 externally advertised processes, representing 201 vacancies. This represents an increase in vacancy advertising of 100% (n=75) for the same period for 2022. Case example in regional and remote areas include:

- Mt Isa - vacancy rate was 25% (as at August 2023) and closure of ATSILS in the Mt Isa Area has increased client demand for services
- Townsville – vacancy rate was 26% (as at August 2023) and only 55% of advertised vacancies (n=5) have yielded suitable candidates

From January 2023 – 28 September, 10% of all advertising resulted in no successful appointment. LAQ also has a higher than desired turnover rate, which was 14 % in 2022/23.

LANT recruitment and retention challenges

The table shows the high rate of LANT crime personnel turnover between 2018 – 2023.

NT Crime Personnel Turnover per financial year	
	Turnover
2018/19	54%
2019/20	26%
2020/21	29%
2021/22	36%
2022/23	44%

LACs have undertaken initiatives to attract and retain staff, particularly in rural and remote areas.

Following a review of the regional graduate program in February 2023, LAWA introduced a range of strategies to encourage more graduates to take up positions in the regions. These include paying for

Practical Legal Training introducing a permanency incentive after a two-year placement, and changing our relief model so that graduates are not used for that purpose. The paid Practical Legal Training initiative appears to have led to considerably more interest and uptake from high performing graduates.

All LACs promote the job security and flexibility of their positions, however, this is currently challenging due to the insecure nature of the funding provided via short-term programs which has limited the capacity of LACs to offer permanent positions, instead being limited to temporary, fixed-term contracts.

Table: Projected percentage loss of funding if short-term programs are not extended

LAC	Percentage of NLAP funding as short-term funding FY 2024/25
LAACT	17%
LAQ	11%
LANSW	17%
LAWA	23%
LSCSA	13%
NTLA	19%
TLA	29%
VLA	10%

Alongside this, 72% of Legal Aid grants are delivered by approximately 2,660 private practitioner firms and an additional 970 individual private practitioners across Australia. As the Justice on the Brink Report identifies there is a threat of market failure for Legal Aid service delivery due to the lack of increase in private practitioner fees. The report recommends immediate investment of \$69 million to assist in ameliorating this risk. This has been further outlined in section 1 of this submission (pages 15-16).

These workforce challenges are experienced across the legal assistance sector and are exacerbated in CLCs and ACCOs because of limited resources and lower wage levels.

Workforce development

There is currently no national approach to workforce development across or within the legal assistance sector, with each organisation responsible for managing the learning and career development needs of its staff. This can result in inefficiencies, duplication and inconsistent practice.

The With You national mental health training project and the upcoming Coercive Control training project are examples of the possibilities for sector wide development of learning and development approaches and resources that can be delivered to not only the legal assistance sector, but to the wider legal profession.

With You Training Package - NLA

The With You Project (**With You**) is a training package for trauma-informed, rights-based legal services to clients experiencing distress, poor mental health and/or suicidality. It has been developed through collaboration across the entire legal assistance sector and will be freely available to the legal assistance sector. In 2024, it will be implemented nationally to over 12,700 lawyers, allied professionals, and legal support staff.

With You has created the first national model of trauma-informed, rights-based lawyering, based on rigorous national consultations with 534 legal assistance staff, clients and mental health professionals; literature reviews and a survey of best practice. With You has developed an implementation-ready resource designed to ensure trauma-informed, rights-based organisations. It serves as a comprehensive guide to inform service design.

Alongside this, there is a multitude of career development opportunities that could be provided across the legal assistance workforce in a streamlined and consistent manner that could help address workforce gaps in rural and regional areas and provide management and other career development opportunities that foster a collaborative approach and a better understanding of legal service delivery in different communities and environments.

This could include rotational secondments to rural and regional areas of Australia, management and senior solicitor opportunities between CLCs, LACs and ATSILS and specialisation experience within specialist CLCs, ACCOs and dedicated LAC teams.

A legal assistance National Workforce Development Strategy that included resources for addressing the current workforce recruitment and retention strategies and learning and development needs would assist in addressing a number of the current workforce issues.

It is recommended that:

1. There is a commitment to ongoing, core funding within the NLAP rather than one-off or pilot program funding to assist with providing permanent, ongoing roles for staff.
2. There is immediate investment of \$69 million to increase private practitioner fees by 18% and that this is indexed.
3. Legal assistance roles are remunerated at the same level/range across the sector on a same work same pay principle.
4. There is investment of \$5 million in a National Workforce Development Strategy that:

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- supports consistent and efficient learning and development across the sector through collaborative initiatives (e.g., With You, Coercive Control training but instead of one-off funding a planned approach to this – with funding also provided to each peak for specific work for each section of sector and delivery of areas of expertise across the sector).
 - supports career development and assists in managing rural and remote service delivery issues across the legal assistance sector through secondment and promotion opportunities both nationally and across all legal assistance services.
 - supports the development of a diverse workforce via developing workforce profile and implementation plan to address any identified gaps (therefore increasing First Nations and CALD workforce, succession planning around ageing workforce, gender analysis of management vs frontline, identifies role of allied workers across sector
 - implements recruitment and retention strategies across the legal assistance sector.
5. That there is increased investment of \$ 5 million across the legal assistance sector to address rural and remote legal assistance service delivery challenges. It is proposed that this is undertaken in partnership with the States and Territories to look at service delivery issues, legal assistance need and funding responsibility in the context of commitment to First Nations Justice and the Closing the Gap targets and priority reforms.

This could include:

- Tailored incentive program funding to legal practitioners that can be utilised for relocation, additional leave, professional development or additional salary in return for a commitment of at least 2 years of service delivery in remote communities;
- National expansion of the WA Regional Graduate Program for graduates to rotate amongst remote communities over 2 years, with a focus on First Nations graduates. This would provide salaries, administration and supervision support and HELP fee relief
- National campaign to attract law students and graduates to working in legal assistance in rural and remote communities.

Section 6: Data

Building the evidence base around better understanding the impact of and need for legal assistance services delivered via the NLAP should be an integral, resourced component of the NLAP.

The Federal Government is committed to broadening and improving the impact measurement and evidence base around investment in policies and programs via developing a national framework on wellbeing via the Treasury Measuring What Matters Statement and through the establishment of a Treasury based Australian Centre for Evaluation.

It is vital that any future NLAP ensure that it is able to demonstrate to Treasury and the Australian community the contribution of legal assistance in benefiting the community, including measuring the success of the NLAP in providing access to justice to people experiencing disadvantage and assessing the value for money provided to the justice system and the Australian community in delivering these services.

It is also vital that the NLAP can demonstrate the contribution of legal assistance towards the Closing the Gap priorities, to the key outcomes of the National Plan to End Violence Against Women and Children and to other whole of government priorities.

The PC Report included recommendations that focused on building the evidence base of the legal assistance sector including:

- the establishment of service delivery targets and benchmarks (Recommendation 21.8)
- the implementation of a legal needs survey, including underrepresented groups in line with NLAP Review timeframes (Recommendation 25.1)
- the establishment of a civil justice clearinghouse within the Australian Bureau of Statistics (Recommendation 25.3).
- the establishment of an evaluation advisory committee to prioritise areas for quantitative research (Recommendation 25.4)

It is proposed that the NLAP include the following to build the evidence base to measure and assess whether people experiencing disadvantage are provided with access to justice and that legal assistance services are providing support that meets the needs of the community:

1. Commitment of \$15 million per annum to be allocated to:
 - a) national legal needs analysis.
 - b) development of a NLAP Outcomes Framework.
 - c) building legal assistance service capability to understand, implement and administer the NLAP Outcomes Framework.
 - d) development of a NLAP Evaluation Framework and funding of evaluation projects with a commitment to prioritising innovative service delivery and service delivery in emerging priority areas.
 - e) development of a NLAP Research Agenda and funding of research projects that further enhance the legal assistance evidence base.
 - f) development of a NLAP data action plan that addresses:
 - the purpose and efficacy of NLAP data collection requirements.
 - the ethics and privacy issues related to any data collection requirements.
 - the resourcing required to enact data collection and to promote data quality and consistency.

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- a process for ongoing review and adjustment of any data collection requirements to ensure that the data is appropriately guiding NLAP service design and delivery and being used appropriately.
2. Commitment to developing and implementing a NLAP Outcomes Framework in a collaborative way that builds common understanding of outcomes measurement and capability across the legal assistance sector and jurisdictions. This could be based on the Victorian approach.
 3. Commitment to ensuring First Nations sovereignty and ownership of knowledge, that this is led and managed by First Nations legal assistance services and that this capability is built for all legal assistance services but particularly First Nations legal assistance services.
 4. Commitment to ensuring that client and lived experience-centred approaches are embedded into all evidence-based work and that this capability is built for all legal assistance services.
 5. Inclusion of all Commonwealth and State and Territory funded legal assistance service delivery in all evidence base work, to provide the full picture of national legal assistance service delivery across criminal, family and civil law.

It is proposed that this is implemented over the lifetime of the next 5-year NLAP with the first 2.5 years focused on collaboratively developing the outcomes and evaluation frameworks, research agenda and infrastructure required for implementation with a view to full implementation by year 4 of the NLAP.

Implementation of the above will provide a clearer picture to the Federal Government and the Australian community of the value of investment in legal assistance services and will provide evidence as to the adequacy and scope of this investment.

Section 7: Opportunities

Whilst there has been significant under-resourcing of legal assistance services on an ongoing basis there is also scope for improved efficiencies that could more effectively deliver consistent, efficient and high-quality legal assistance services. Within the LACs service delivery space, there are opportunities that the NLAP could better support to improve service delivery outcomes and maximise resources.

National models

LACs are well placed to further develop and deliver national legal services that increase the reach of legal assistance and maximise available resources whilst also having the capacity to tailor services to local community need.

The successful delivery of the Your Story and the DVLS to support the Disability Royal Commission and the Royal Commission into Defence and Veterans Suicide demonstrates how a joined up and collaborative approach that includes centralised access points, consistent client resources, dedicated specialist staff and coordination with local service delivery can provide a service that meets the needs of particular client groups and can work more effectively with community services such as disability and veterans advocates to provide holistic, wraparound services and work together on systemic issues.

There is opportunity to transform these current services into ongoing specialist services for people with disability and veterans that builds on achievements and expands the focus of these services to the range of legal assistance needs that these client groups experience, including NDIS appeals and veterans entitlements matters.

NLA has also provided coordinated, national resources in areas of family law including separation and family violence law help. There is opportunity to adapt these models for other national legal issues including social security, disasters, migration and areas of family law.

Use of technology and Artificial Intelligence

These initiatives have been developed mostly within existing and limited resources. With the progress made recently around online technology and Artificial Intelligence (**AI**) it is essential that the NLAP and allied funding model invest in greater application to improve access to justice and support a systems approach. This could be done in partnership with the courts and broader justice system and would need to be developed in a considered way that identified and managed the various risks and challenges relating to privacy, data security, bias, workforce changes, and other ethical considerations with a need to pilot some small changes before undertaking greater change or reform at scale.

The potential for AI to deliver better outcomes for clients and efficiencies is significant and it would be a missed opportunity and significant risk for the next NLAP to be silent on this and not stimulate adoption of this technology with appropriate investment. This is because the community is already embracing AI, as is the legal profession, the courts and other parts of government service delivery. It is vital the legal assistance sector remains progressive.

Key benefits include:

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- a. Improved access to assistance – the potential of AI to dramatically increase usability and availability of information delivered via automated communication channels like chatbots could lead to more people receiving actionable tailored guidance on what help they need and how to get it without needing to interact with legal service organisations' staff.
 - b. Greater understanding of help seeker needs and preferences and improved capacity to respond to them.
 - c. Greater use of data driven insights – more sophisticated analysis and identification of themes and potential responses for demand performance, budget, workforce and market
 - d. Potential for a better understanding of the factors that drive legal need and more effectively target legal and non-legal interventions.
 - e. Reduction of low intensity/repetitive service delivery and support work enabling reprioritising staff to higher complexity/impact activity.
 - f. Reduced administrative load for private practitioners and CLCs, increasing the value of grants and capacity to focus on client need.

There is an abundance of opportunities to improve Legal Aid service delivery, including but not limited to:

- a. Online resources such as amica for the provision of tailored assistance with legal issues where the process is standardised.
- b. Eligibility assessment for clients streamlining the assessment and application process
- c. Triaging, navigation and advice provision.
- d. Knowledge management tools reducing grants administrative task load for Private Practitioners and CLCs.
- e. Continued expansion of online mediation and dispute resolution.
- f. Improving case management and preparation and streamlining the submissions process and brief preparation for a range of court matters, perhaps starting with the Expensive Commonwealth Criminal Cases Fund.

Virtual Office program - LAWA

LAWA's Virtual Office network deploys high-quality video conferencing screens to 21 locations across the State, including in two women's refuges. The Virtual Office screens connect clients from remote, regional and some metropolitan areas with a Legal Aid lawyer based in Perth for one-off advice sessions. The network is delivered in partnership with a range of local community organisations (e.g. libraries, community centres) who host the screens, assist clients during their appointments and help connect clients with other services. It is a cost-effective way to address unmet need and provide access to justice to people who might not typically access services.

InfoChat - LAWA

Established in February 2019, LAWA's InfoChat service has proven to be a vital resource for Western Australians seeking legal information and assistance. This service operates seamlessly across LA WA's website, with real-time chat capabilities with agents handling up to six client inquiries at a time. InfoChat has provided assistance on more than 50,000 occasions, including to people experiencing family violence, by providing safe access to information or scheduling call-backs.

In addition to the real-time chat capabilities, the service offers AI-powered "bot" technology, enabling 24/7 access to legal information, resources, and website guidance. The software incorporates AI-powered technology that learns from past interactions, user behaviour, and language, effectively guiding clients to relevant information through predictive FAQs. With over 1,130,000 page views on the website each year, this guided interactive experience has proven to be invaluable to clients seeking legal information.

Legal Help - VLA

VLA's Legal Help phonenumber and Legal Help Chat services play an integral role in helping the public, increasing access to justice and preventing the escalation of legal problems by answering legal questions or connecting clients with other organisations that can help.

In early 2020, Legal Help piloted a new intake solution which consolidated multiple systems into one convenient tool. This means Legal Help staff spend less time switching between multiple screens and records all relevant information in one location.

The combination of the two systems means we can now recognise repeat callers, if they call from the same phone number. After confirming the person's details, it removes the need for clients to repeat their story, which was identified as a key frustration of help-seekers.

Lived experience and co-design

Good practice service delivery entails partnership of people with lived experience in the development, design and implementation of services. This approach is becoming a core approach in many service areas that work with vulnerable people, including the mental health and disability sector.

This is being progressed in the legal assistance sector, with clear examples in both CLCs and LACs. These initiatives have developed mostly within existing and limited resources.

Lived experience initiatives - VLA

VLA's commitment to lived experience leadership and co-design has grown since 2015 through the then newly established Independent Mental Health Advocacy Service, which was codesigned and evaluated by lived experience experts. VLA employed the first dedicated lived experience role, the Senior Consumer Consultant, to oversee and promote consumer leadership, including supporting mental health lived experience advisory group, Speaking from Experience was established in 2016. Since 2016, the Senior Consumer Consultant and Speaking from Experience have contributed to service design and evaluation, policy development, recruitment, resource development and strategic advocacy and reform work at VLA. They have also supported improvements in internal systems, processes and structures, which has facilitated significant organisational cultural change.

VLA continues to work toward embedding consumer leadership in its organisational culture, including the establishment of an advisory group for VLA's Independent FASS, which began in 2019 and consists of people with lived experience of the child protection system. The Independent Family Advocacy Support Lived Experience Consultant guides the work of the consumer advisory group in advising VLA on its work with people who have contact with the child protection system. This group has provided input to VLA submissions and also reviewed legal education materials, including child protection factsheets. The work of VLA's lived experience staff and advisory groups provides a tangible example of how a justice agency has incorporated lived experience leadership into its operations. It also highlights the value of this leadership and the depth and diversity of expertise it provides in shaping services and reform.

To support these opportunities, it is proposed that:

1. There is commitment to continued ongoing funding for all time limited programs currently funded under the NLAP including Your Story and the DAVLS.
2. There is commitment to supporting the further development of national legal assistance service delivery models.
3. There is allocation of \$5 million per annum across the NLAP to implement an innovation fund, with a focus on emerging legal needs, incorporating lived experience into service design and the utilisation of AI and technology within the justice system and the legal assistance sector.

Appendix A: Commonwealth Criminal Cases

Whilst Commonwealth Criminal Cases are currently funded outside of the NLAP, it would be useful to review the arrangements for these alongside the NLAP Review. Outlined below are some opportunities for consideration for the Expensive Commonwealth Criminal Cases Fund and the provision of legal assistance for Federal Offenders at risk of parole refusal or revocation of parole.

Expensive Commonwealth Criminal Cases Fund (ECCCF)

In addition to funding under the NLAP, LACs can apply for funding under the Expensive Commonwealth Criminal Cases Fund (**ECCCF**) for costs incurred in representing clients in:

- serious, high cost, Commonwealth criminal matters (such as drug importation, people smuggling, terrorism, fraud and slavery).
- Commonwealth post-sentence orders (such as continuing detention orders).

The ECCCF aims to ensure that LACs have sufficient resources to represent people who cannot afford private legal representation and have been charged with serious Commonwealth criminal offences or are subject to an application for a post-sentence order.

The funding prevents matters from being adjourned, postponed or stayed and ensures LACs do not need to reallocate funding away from other Commonwealth service priorities, such as family law matters.

There are a range of challenges in the implementation of the ECCCF including:

- Effectiveness and efficiency of the Fund. The Attorney-General has written to the Auditor-General requesting that a performance audit of the ECCCF be undertaken including assessing the effectiveness and efficiency of the ECCCF, expenditure of funds and the administration of the program.
- Ineligibility due to LACs restrictive means tests, particularly in fraud cases. The majority of Australians cannot afford to pay for the significant costs of representation in these matters, regardless of income. This is in part due to the type of matter but is also due to the resource intensive way the Commonwealth Director of Public Prosecutions runs the matters which can include extensive and detailed briefs and the release of evidence over an extended period of time.
- The fees paid by LACs to legal practitioners undertaking this work are significantly less than commercial or private rates and the rate paid via the Attorney-General's Department. This can limit the practitioners available to undertake this work due to the resourcing required to run the cases, and potentially jeopardize equality of arms between prosecution and accused.
- The funding does not allow for administration costs relating to the coordination and management of the fund.

Whilst the ECCCF is outside the NLAP, it would be useful for the Review to consider:

- Implementing a demand-based funding model so that LACs are able to appropriately plan for and manage the funding of these matters and be assured they will be funded for all expenditure on all eligible matters including administration and management.
- The value for money provided by LACs in comparison to other government legal practitioner expenditure.

- Reducing the administrative and reporting requirements of the fund in the context of the value for money provided.

Resourcing of LACs to assist Federal Offenders at risk of parole refusal or revocation of parole

There is currently a gap in the provision of legal assistance to Federal Offenders at risk of parole refusal or revocation of parole and an opportunity for the NLAP to incorporate this legal assistance and allocate resources to enable assistance to be provided by LACs across Australia.

LANSW is the only LAC in Australia regularly providing legal advice and representation to federal offenders in the parole process.⁵² This is provided using existing resources. LANSW solicitors provide legal assistance to federal offenders who are seeking release to parole, have been refused parole, or have had their parole revoked. In 2022, LANSW assisted 93 inmates in relation to their parole consideration.⁵³

Across the country, a substantial number of federal offenders have their parole determined each year without proper access to legal advice, and without the assistance of a legal representative. This lack of access to legal assistance is impacting on the rates of release on parole for Commonwealth offenders which are significantly lower than those for State offenders and are getting lower each year. In the financial year 2021-2022 parole was considered for a total of 356 Commonwealth offenders. Parole was granted to 203 offenders (**57%**) and refused for 153 offenders (**43%**).⁵⁴

Comparatively, in 2021 the NSW State Parole Authority considered parole for 1728 offenders, granting parole to 1506 (**87%**) and refusing parole to 222 (**13%**).⁵⁵ In Victoria the Adult Parole Board considered parole for 1220 offenders for the financial year 2021-2022, granting parole (or progressing the offender to re-parole suitability assessment) in 1074 cases (**88%**).⁵⁶

While State parole release rates have been fairly steady in recent years,⁵⁷ Commonwealth parole release rates have been decreasing. The following table shows release rates since 2018-19:

Year	2018-19	2019-20	2020-21	2021-22	2022-23 (up to 31/5/23)
Total	306	300	319	356	370
Parole granted	236	206	183	203	197
Percentage of parole granted	77%	69%	57%	57%	53%

There are undeniable advantages to federal offenders and the community generally, in federal offenders having access to legal representation for their parole consideration. These include:

- Disadvantaged clients, such as those with physical, cognitive or mental health disabilities, or those who have limited English language skills, are able to put a case for release to the decision maker.
- Errors or unfair conclusions in pre-release reports can be identified, questioned or challenged to provide an effective voice for offenders in matters that concern them.
- Errors in the applicable law, for example regarding the elements of offences, can be identified and corrected to facilitate fair decision making. These errors might be made by Community Corrections in preparing the pre-release report, or by the decision maker considering release on parole.

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- The families and support persons of offenders can be contacted and assisted to put relevant information before the decision maker.
 - Referral to appropriate local agencies can be made by the legal representative, improving the parole release arrangements.
 - Evidence based reasons in support of parole can be put to the decision maker, for example concerning recidivism rates for certain types of offences and the appropriate management of risk.
 - Difficulties with an offender's access to programs in custody can be identified or verified and raised in an appropriate way.
 - Systemic problems within the prison system such as access to interpreters can be identified and their impact explained.
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- ⁵¹ Law Society of NSW, 'Profile of Solicitors', <https://www.lawsociety.com.au/advocacy-and-resources/gender-statistics/profiles-surveys-and-statistics>
- ⁵² Information provided to Legal Aid NSW by the Commonwealth Parole Office. Confirmed in June 2023.
- ⁵³ Legal Aid NSW also assists a relatively small number of offenders each year with revocation of parole matters before the Local Court or District Court.
- ⁵⁴ Figures produced to the Senate on 26 September 2023 show that for the period 1/1/21 to 11/9/23, 522 offenders out of 1003 were granted parole, (52%). In all States except WA and NSW release rates were lower than 52%. In the NT, all 9 offenders considered for parole in that period were refused parole.
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