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Dear Dr Mundy

**Submission in response to the National Legal Assistance Partnership 2020-25 Review Issues Paper**

I write to provide you with a submission on behalf of the South Australian Attorney-General's Department (AGD) in response to the National Legal Assistance Partnership 2020-25 (NLAP) Review (the review) Issues Paper. Thank you for granting an extension until 6 November 2023.

The review is an opportunity to realise the benefits of the existing NLAP and identify issues and solutions to help improve outcomes for vulnerable Australians that can be implemented under the next iteration of the NLAP.

As the current South Australian Government Department which holds responsibility for the administration of NLAP funding, AGD is well positioned to provide insight into challenges and opportunities in relation to the provision of legal assistance services in South Australia.

AGD is currently undertaking South Australia's first state-wide assessment of legal need. This piece of work will support the South Australian government and the legal assistance sector to better understand the prevalence of legal problems across the state and the sufficiency of legal services for vulnerable demographic groups in order to better target legal assistance services.

Thank you for agreeing to consider the legal needs assessment interim report, which will be provided to your office by 17 November 2023, to support an understanding of unmet legal need in South Australia.

I welcome further discussions on the review and invite you to contact me should you have any questions relating to the submission or legal assistance in South Australia.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Kilvert', written over a white background.

Adam Kilvert  
**EXECUTIVE DIRECTOR, POLICY AND COMMUNITY**

Enc: South Australia's submission in response to the National Legal Assistance Partnership Review Issues Paper



# **Submission to the National Legal Assistance Partnership 2020-25 Review**

Attorney-General's Department, South Australia

November 2023

## Acknowledgement of Country

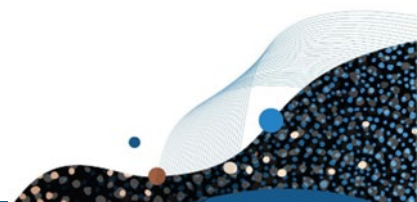
We acknowledge and respect Aboriginal<sup>1</sup> people as the state's First Peoples and nations and recognises Aboriginal people as the Traditional Owners and occupants of lands and waters in South Australia.

We recognise:

- the spiritual, social, cultural and economic practices of Aboriginal people come from their connection to traditional lands and waters
- maintaining cultural heritage beliefs, languages and laws are of ongoing importance to Aboriginal people today
- Aboriginal people have made and continue to make a unique and irreplaceable contribution to South Australia.

We acknowledge Aboriginal people have endured past injustice and dispossession of their traditional lands and waters and the effects of such injustice and dispossession are still felt today.

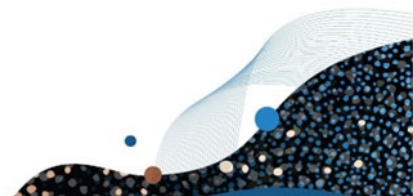
1. In South Australia, the term Aboriginal is adopted to refer to people who identify as Aboriginal, Torres Strait Islander, or both Aboriginal and Torres Strait Islander.



## Introduction

This submission to the National Legal Assistance Partnership 2020-25 (NLAP) Review (the review) has been prepared by the South Australian Attorney-General's Department (AGD), as the South Australian government department responsible for the strategic planning and allocation of NLAP funding to the legal assistance sector (the sector). The submission refers to the following key issues discussed in the NLAP Review Issues Paper:

1. Funding
  - 1.1. 'No state or territory loses'
  - 1.2. Flexibility of Funding
  - 1.3. Administration Funding
  - 1.4. Funding Distribution Models
  - 1.5. The nature of legal assistance providers as community organisations
2. Legal assistance for Aboriginal Australians
  - 2.1. Over-representation of Aboriginal people in the criminal justice system
  - 2.2. Inclusion of ATSILS and FVPLS' in the next iteration of the NLAP
  - 2.3. Funding for Aboriginal clients and ATSILS
3. Regional and remote service delivery in South Australia, and
4. Unmet legal need.



## 1. Funding

Whilst it is recognised that the scope of this review is to look at Commonwealth Government funding arrangements under the NLAP, it is important to acknowledge that South Australia is also a major funder of the legal assistance sector in this state. AGD provides approximately \$30 million per annum to the sector, representing a nearly 45% funding share of the overall investment in the sector.

As cost-of-living pressures persist, many Australians are facing increased hardship which can lead to greater need and complexity for legal issues. The baseline funding provided under the NLAP should be increased to reflect this greater need and complexity. Consideration must also be given to the funding distribution models (FDMs) that determines the allocation of NLAP funding to ensure it is fair and equitable. Accordingly, transparency of the FDMs under the NLAP should be a priority.

### 1.1. 'No state or territory loses'

A 'no state or territory loses' principle was adopted for the first year under the NLAP, meaning each subsector across every jurisdiction received, at a minimum, their baseline funding from the preceding year.

Whilst the case for increased funding for the sector is outlined in this submission, AGD advocates for a similar 'no state or territory loses' principle to be applied under the next iteration of the NLAP, where Aboriginal and Torres Strait Islander Legal Services (ATSILS), Legal Aid Commissions (LACs) and community legal centres (CLCs) in each jurisdiction receive as a minimum, their total funding received in 2024-25 (this includes all funding streams, not just baseline funding as occurred in 2020).

Further, AGD has received significant feedback from service providers that baseline funding under the NLAP has not increased commensurately with the Consumer Price Index. As such, the Commonwealth should apply sufficient indexation to ensure funding agreements recognise the increasing cost of service delivery over the course of the agreement.

### 1.2. Flexibility of funding

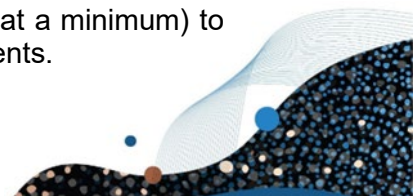
AGD receives consistent feedback from the sector regarding the extent to which restrictions on the use of Commonwealth funding under the NLAP limits their ability to operate an efficient and cost-effective service.

Whilst new and discrete streams of funding help to solve a 'point in time' issue they create a lack of flexibility in the use of funding and can create burdensome reporting requirements. Further, as funding streams are often time-limited, they don't provide longer term funding stability for legal assistance providers, impacting on the ability of the sector to attract and retain staff and invest in longer-term capability development for the organisation.

AGD understand that new priorities emerge over time, and that it is difficult to predict need for an entire 5-year funding agreement. However, it is AGD's preference that where funding does become available outside of the NLAP (eg as a result of Federal budget measures), this funding is added to existing baseline funding, rather than creating a new funding stream, to provide flexibility for legal assistance providers in the use of funds. States and territories can then build discrete projects into contract management processes to ensure accountability for funds and to measure outputs.

### 1.3. Administration funding

AGD supports the continuation of administration funding at existing levels (at a minimum) to support states and territories to drive delivery of outcomes in future agreements.



Upon commencement of the NLAP, states and territories experienced a significant increase in requirements, particularly in relation to contract management and compliance, systems planning and oversight, as well as data and reporting. This has in turn resulted in AGD undertaking considerable work and providing ongoing support to service providers to ensure obligations under the NLAP are met.

The continuation of administration funding in future agreements will allow AGD to continue ensure the state is able to meet its obligations to the Commonwealth under the NLAP, as well as support strategic planning for the sector to improve outcomes for clients. If there was to be a significant increase in requirements of states and territories in the next iteration of the NLAP (eg inclusion of Family Violence Prevention Legal Services [FVPLS']), additional administration funding would be required for South Australia to manage this.

#### 1.4. Funding Distribution Models

Recommendation 3 of the Review of the National Partnership Agreement released in 2018<sup>1</sup> called for greater transparency in how the Commonwealth Government determines funding allocations and recommended that this detail is provided to states and territories. Whilst the NLAP specifies the total amount of funding for each jurisdiction, broken down by the different parts of the sector, it does not detail the calculations for the funding model used to distribute funds amongst states and territories. AGD appreciates the detail on the FDMs provided in Addendum 1 to the Issues Paper<sup>2</sup> which provides further information on the FDMs used to distribute baseline Commonwealth legal assistance funding. In order for AGD to provide informed feedback on the FDMs, more information is required in relation to the calculation and weightings of each component of the FDMs.

AGD advocates for more transparency in the calculation of the FDMs, and notes that the Commonwealth Attorney-General's Department will be submitting to the reviewer a paper with options for updated and alternative FDMs. AGD looks forward to being consulted on the FDMs options for the next iteration of the NLAP, including the calculations and weightings of each component, to ensure fair and equitable distribution of funds amongst states and territories.

Importantly, the wage element of the cost factor component should reflect the need for each part of the sector to be competitive in the current labour market.

#### 1.5. The nature of legal assistance providers as community organisations

Whilst it is the primary function of legal assistance providers to deliver legal assistance services, it is recognised that many clients present with multiple complex needs, some of which if not addressed can inhibit the ability for the legal assistance sector to adequately address their immediate legal needs. Interventions relating to housing, welfare payments, domestic and family violence, child protection and mental health are often required.

The dedicated mental health funding provided through the NLAP is an example of an effective model that can provide the legal assistance sector with the expertise and capacity to help address these broader needs through upskilling legal staff and / or making referrals to the relevant service systems. It is proposed that this model could be replicated and expanded as a general social support type function in legal assistance services providers.

#### Section 1 recommendations:

1. Greater transparency in the calculation of the funding distribution models.
2. A 'no state or territory loses' principle should be applied under the next iteration of the National Legal Assistance Partnership, based on total funding received in 2024-25.

<sup>1</sup> Review of the National Partnership Agreement on Legal Assistance Services 2015-20 Final Report – November 2018

<sup>2</sup> <https://nlapreview.com.au/uploads/media/NLAPReview-IssuesPaperAddendum-Final-1693453758.pdf>

3. The wage component of the FDM must enable all parts of the sector to be competitive in the labour market.
4. Baseline funding under the National Legal Assistance Partnership should increase commensurately with the Consumer Price Index to recognise the increasing cost of service delivery over the course of the agreement.
5. There is a continuation of administration funding for states and territories under the next National Legal Assistance Partnership.
6. Funding and resources are provided to legal assistance providers to enable them to triage broader client needs, enabling the legal practitioners to effectively manage the presenting legal need.

## 2. Legal assistance for Aboriginal Australians

### 2.1. Over-representation of Aboriginal people in the criminal justice system

In South Australia, as with all other jurisdictions in the country, Aboriginal people are significantly over-represented in the criminal justice system.

In September 2022, South Australia's Attorney-General, Hon Kyam Maher MLC, appointed eight members to an Advisory Commission into the Incarceration Rates of Aboriginal Peoples in South Australia (Advisory Commission), including Aboriginal Elders, community representatives and academics. The Advisory Commission was established to inquire into, and provide advice on, lowering the over-representation of Aboriginal people in custody in South Australia. The Report of the Advisory highlights the need for change in the criminal justice system and makes 41 recommendations to government.

The Report notes that since the 1991 *Royal Commission into Aboriginal Deaths in Custody* identified and made recommendations to address the over-representation of Aboriginal people in custody, the Aboriginal adult proportion of the total prisoner population in South Australia has increased from 14% in 1991 to 25% in 2022<sup>3</sup>.

The over-representation of Aboriginal adults on remand in South Australia is even more pronounced; 61% of all Aboriginal adults in prison are on remand, compared to 46% of all prisoners (ie both Aboriginal and non-Aboriginal)<sup>4</sup>.

Further, while Aboriginal young people represent 4.8% of South Australia's population aged 10 to 17 years, in 2020-21 43% of the young people in detention or under supervision in the community were Aboriginal. In 2020-21, an Aboriginal young person was 24 times more likely to be in detention than a non-Aboriginal young person<sup>5</sup>.

All Australian governments have committed to the objective and outcomes outlined in the *National Agreement on Closing the Gap* (Closing the Gap), including reducing the rate of Aboriginal young people and adults in incarceration. However, the rate at which Aboriginal adults are incarcerated nationally is still disproportionately high.

The impact that contact with the criminal justice system has on Aboriginal people extends to other aspects of their life, including development, social-connections, education, employment and connection with family. This disruption, and their experiences in prison, can exacerbate the risk of further involvement in the criminal justice system and create intergenerational disadvantage. In 2021-22 45.2% of Aboriginal adults released from prison, returned to prison within two years, compared to 30.7% for non-Aboriginal people<sup>6</sup>. This repeated contact with the criminal justice system has clear resource implications on the legal assistance sector.

<sup>3</sup> Australian Institute of Criminology, Australian Prisoners 1991: Results of the National Prison Census 30 June 1991 (Report, June 1992) 23.

<sup>4</sup> Australian Bureau of Statistics, Corrective Services, Australia, June Quarter 2022 (15 September 2022)

<sup>5</sup> Australian Institute of Health and Welfare, Youth justice in Australia, 2020-21 (31 March 2022)

<sup>6</sup> Report on Government Services 2023

There is a clear need to ensure that there is sufficient legal assistance available to Aboriginal people to ensure fair and effective access to justice, and that the mechanism by which this funding is provided to the legal assistance sector supports strategic, holistic and efficient service delivery for all Aboriginal peoples.

## 2.2. Inclusion of ATSILS and FVPLS in the next iteration of the NLAP

AGD strongly recommends that, in line with Priority Reform One on Closing the Gap in relation to formal partnerships and shared decision-making between Government and Aboriginal Community Controlled Organisations (ACCOs), any decisions regarding the inclusion of ATSILS and FVPLS in the NLAP or in a separate, standalone agreement, and the content of such agreement, is made in partnership with the National Aboriginal and Torres Strait Islander Legal Service and the National Family Violence Prevention Legal Service Forum.

AGD considers that inclusion of ATSILS in the NLAP has presented benefits. The commencement of the NLAP in 2020 saw the South Australian Government take over the administration and contract management for legal assistance services delivered by the Aboriginal Legal Rights Movement (ALRM) for the first time. In turn, AGD has formed a strong partnership with ALRM, which has enabled closer and more structured consultation with ALRM on priorities of the Commonwealth and state governments.

Further, AGD believes that the inclusion of ATSILS in the NLAP has enabled ALRM to access funding streams they might not have had the ability to access had they remained in a separate agreement, including for example mental health funding, Family Law Pilot funding and increased funding to support vulnerable women. ALRM having access to this funding has also supported AGD to consult with ALRM on the development of new programs funded under the NLAP to ensure they are culturally appropriate (eg the Family Law Pilot), and encourage better collaboration amongst the sector, which has in turn built the cultural capacity of the sector as a whole.

Should funding for ATSILS revert to a stand-alone agreement, AGD strongly suggest that administration and contract management for ATSILS should remain with states and territories. It is AGD's experience that administering this funding has supported strengthened relationships between government and ALRM and has enabled ALRM to better influence and access state government levers to support the intention of the NLAP and justice outcomes for Aboriginal people.

Similarly to ATSILS, AGD considers that state and territory administration and contract management of FVPLS' would support strengthened relationships between state government and South Australia's FVPLS, Family Violence Legal Service Aboriginal Corporation (FVLSAC). FVLSAC provides a crucial service to Aboriginal victim/survivors of family violence in South Australia and is the only legal assistance provider with a permanent face-to-face presence in key regional areas of South Australia, including Port Lincoln and Ceduna. Closer and more formal collaboration through administration of the service agreement with FVLSAC for delivery of legal assistance services would be beneficial to the state, sector and Aboriginal South Australians.

## 2.3. Funding for Aboriginal clients and ATSILS

Alongside other jurisdictions, South Australia's ATSILS has implemented service restrictions arguing there is inadequate funding to deliver appropriate legal support to Aboriginal South Australians. ALRM has specifically raised concerns with the level of funding available to support the provision of state-wide specialist, culturally appropriate legal and non-legal services to Aboriginal people in South Australia.

It is AGD's view that funding for ATSILS should be considered within the context of:

- Adequate funding for delivery of a state-wide service
- ATSILS role in advocating for better outcomes for Aboriginal people, and





- Governance and organisational development.

It is also acknowledged that both LACs and CLCs provide a significant number of services to Aboriginal clients, providing a viable alternative for those that wish to use them. To this end, it is important that all services within the legal assistance sector are culturally competent and safe for Aboriginal people.

#### Adequate funding for delivery of a state-wide service for Aboriginal people

South Australia is home to many high needs remote communities, including the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands. Servicing Aboriginal people on the APY Lands presents a unique, complex and costly service delivery challenge, with ALRM estimating that the APY court circuit cost is approximately \$15,000 per circuit, requiring unique supports, including the need for heavy-duty off-road vehicles to access the remote communities. FDMs should include consideration of the complexity of service delivery in a jurisdiction like South Australia, with extremely remote communities, cross-border populations, and the diseconomies of service provision to small, isolated communities. These complexities impact on cost-of-service delivery and the ability to achieve economies of scale and service delivery efficiencies.

Accordingly, it is recommended that the NLAP FDMs provide for the actual amount of legal need for Aboriginal people across the state, recognising client need, the complexities of remote service delivery, and the necessary administrative costs required to provide such services at an acceptable level.

#### Governance and organisational development for ATSILS

Closing the Gap Priority Reform Two relates to building the ACCO sector. It notes that elements of a strong ACCO sector are ones in which there is sustained capacity building and investment in ACCOs.

With a requirement under the NLAP to prioritise funding towards frontline service delivery, it is difficult for ATSILS to manage their funding in the long term to support their necessary growth and organisational capacity.

Noting this, AGD recommends that there should be considerations to ensure adequate funding to support the organisational capability of ATSILS for things such as governance, recruitment, strategic planning, and investment in infrastructure and fleet.

#### **Section 2 recommendations:**

1. Any decisions regarding the inclusion of Aboriginal and Torres Strait Islanders Legal Services and Family Violence Prevention Legal Services in the National Legal Assistance Partnership or in a separate, standalone agreement, and the content of such agreement, should be made in partnership with the National Aboriginal and Torres Strait Islander Legal Service and the National Family Violence Prevention Legal Service Forum.
2. That if a standalone agreement was contemplated, the administration and contract management for ATSILS should remain with states and territories.
3. That the NLAP FDMs provide for the actual amount of legal need for Aboriginal people across the state, noting the additional cost drivers that often present for this priority population group.



### 3. Regional and remote service delivery in South Australia

Twenty-four percent of South Australians reside in regional or remote areas<sup>7</sup>. As a national priority client group identified in the NLAP, it is critical that people residing in regional, rural and remote communities have access to sufficient and effective legal assistance services.

Service delivery in regional, rural and remote areas has proven challenges, including:

- lack of available and affordable infrastructure
- additional cost of service delivery (as discussed in section 1.3 above)
- difficulty in attracting and retaining staff (remuneration and employment conditions which are not sufficient to attract and retain suitably qualified legal professionals)
- higher instances and likelihood of conflicts of interest, and
- increased complexity and compounding disadvantage.

In terms of service delivery, these challenges have a profound impact on the ability to service regional areas and in extreme cases, have resulted in the inability to deliver face-to-face services in some regional locations (as mentioned in section 1.3 above).

Further, these challenges, and the increased cost and effort in servicing regional, rural and remote communities, are not captured in data and performance monitoring.

South Australia differs to many other jurisdictions in that, outside of its capital city of Adelaide, there are no major regional centres. After Adelaide, with a population of 1.38 million, the next largest town is Mount Gambier, with a population of 26,878<sup>8</sup>. It is difficult to provide an efficient service to such a high needs group, representing 24% of the state's population, spread across a jurisdiction the size of South Australia, without sufficient resources to do so.

It will be important that this review considers unmet legal need in regional areas and the additional resources and supports that are required to ensure quality service delivery in regional locations, including increased funding in recognition of costs of travel, the need for infrastructure to support face-to-face service delivery, the ability of the sector to increase salaries to attract and retain suitably qualified staff, and appropriate FDMs to account for diseconomies of scale.

#### Section 3 recommendation:

1. Funding in future agreements takes into account unmet legal need in regional and remote areas and the additional resources and supports that are required to ensure quality service delivery in regional and remote locations.

### 4. Unmet legal need

It is critical that governments understand the level and spread of legal need in the community in order to effectively allocate resources where they are needed most. Legal assistance provider data, whilst it has its limitations, supports an understanding of 'met' legal need. However, research undertaken into 'unmet' legal need is disparate and outdated, with the last nation-wide legal need survey being undertaken in 2012<sup>9</sup>.

To support an understanding of legal need in South Australia, AGD has invested in an assessment of legal need which is currently being undertaken by ACIL Allen Pty Ltd. The findings of this assessment will be critical in assessment the level of unmet legal need in South Australia, and an interim report will be provided to the NLAP reviewer to inform his deliberations.

<sup>7</sup> ABS, 2022

<sup>8</sup> ABS, 2022

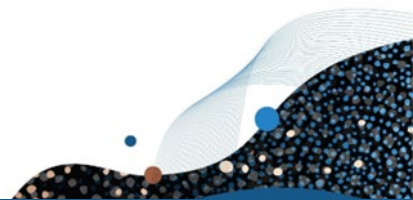
<sup>9</sup> Law and Justice Foundation – Legal Australia-wide survey - 2012



Acknowledging the importance of being able to determine the level of unmet legal need going forward, AGD advocates for the inclusion in the NLAP, the requirement for the Commonwealth Government to undertake a national legal need survey before the expiration of the next iteration of the NLAP, in order to provide an evidence base upon which future funding is allocated.

**Section 4 recommendation:**

1. The next National Legal Assistance Partnership includes a requirement for the Commonwealth Government to undertake a national legal need survey before its expiration, in order to provide an evidence base upon which future funding is allocated.





**Government  
of South Australia**

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Attorney-General's  
Department