

March 2024

Independent Review of the National Legal Assistance Partnership

Final Report

This Review has travelled the country to meet with a wide range of stakeholders, many of whom are and provide services to Aboriginal and Torres Strait Islander peoples. The Reviewer and the team from ACIL Allen met with many people on country. We thank them for their welcomes to their various countries and acknowledge their Elders past present and emerging. We acknowledge and support their ongoing struggle for reconciliation, truth, and treaty.

This report was prepared on the lands of the Ngunnawal people, the Wurundjeri Woi-wurrung, and Bunurong Boon Wurrung peoples of the Kulin nation, and the Whadjuk Nyoongar people. The Reviewer and the ACIL Allen team acknowledge Traditional Owners of these lands.

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Reviewer's foreword

The last decade of legal assistance

In its 2014 Inquiry Report, Access to Justice Arrangements (the PC Report), the Productivity Commission established the private, social and economic benefits of improving access to the civil justice system. My approach in this Review has been to accept this underlying economic justification and move onto more practical matters.

The PC Report contained 18 recommendations to improve legal assistance in Australia, but only three of these were taken up by the then government.

There have been subsequent reviews, at regular intervals, of the National Partnership Agreement (NPA) and the Indigenous Legal Assistance Program (ILAP) – however, funding was out of scope, limiting the ability to drive meaningful change in the sector.

Thus, while there have been a range of investigations, there has been relatively little change in the last decade. This has led to the neglect of Australia's legal assistance sector, as discussed throughout this Report.

This Independent Review presents an opportunity to generate meaningful reform for the legal assistance sector. In particular, it is a starting point for implementing the recommendations of the Productivity Commission's recent review of the National Agreement on Closing the Gap as they relate to the legal assistance sector. There is not much point to a Review if its work and recommendations do not lead to transformational change.

Governments will determine whether my recommendations are accepted and implemented, bringing about the funding and service improvements required to meet the legal needs of the most disadvantaged Australians. This Report provides the evidence to drive informed decision-making about policy directions for all service providers.

Access to justice

The National Legal Assistance Partnership (NLAP) has an inadequate focus on outcomes. As a result, it is simply not possible to determine with any clarity what outcomes the legal assistance system is seeking to achieve, and therefore what data needs to be collected to monitor outcomes. Indeed, the very name National Legal Assistance Partnership is about means, not outcomes.

It is no wonder that many stakeholders complain about excessive data requirements, and actively question whether the vast bulk of the data collected is used for any meaningful policy or compliance purpose. It is certainly the case that a substantial proportion of the data required for this Review was not readily available and much of the data on hand was of little use.

The outcomes sought by governments should be to support access to justice, thereby delivering reduced unmet legal need to the benefit of both the individuals involved and the community as a whole. Thus, this Report will refer to the successor framework to NLAP as the Access to Justice Partnership (A2JP). The use of this term also assists in writing this Report by avoiding confusion between 'old NLAP', 'current NLAP', and 'new NLAP', or clumsier nomenclature such as NLAP 2.0.

Met and unmet legal need

If I were developing a legal assistance framework from scratch, I would first undertake an assessment of legal need on a demographic and geographic basis, exploring what level of need was being met without government intervention. Government would then consider regulatory and other policy actions to reduce or address need, resulting in a set of unmet needs that either would be addressed by the legal assistance sector or left unmet. The costs of addressing the need to be met through legal assistance could then be established, and resources distributed between legal assistance providers having regard to universality, efficiency and cultural appropriateness of their service provision.

Regrettably, this approach is not possible given this Review's timeframes. The last nationwide survey of legal need was published in 2013 and did not provide an adequate basis for funding decisions. This problem was known in 2014 and the PC Report recommended that the ABS undertake periodic surveys to inform future funding decisions. In April 2016, the government of the day did not address this recommendation in its lamentable response to the PC Report, but suffice to say no such survey appears in prospect. To this end, I recommend again that the ABS should do such work.

To acquit the Terms of Reference (ToR) I am required to form a view of the current level of unmet legal need. To do this I have had to adopt an approach that deals with qualitative and quantitative data readily at hand. A range of consultants and research institutes have recently undertaken credible studies of legal need and/or unmet need focused on individual jurisdictions or particular demographic cohorts. I convened an expert Technical Reference Group to appraise these studies and inform the Review's approach. Regrettably, that process did not yield any advances in our quantitative understanding of the issues.

Noting the data limitations, the Review has seen no quantitative evidence that either legal need or unmet legal need in Australia are falling. But there is sufficient qualitative evidence to enable me to conclude both have increased since the PC Report.

Broader socio-economic conditions and policy changes are contributing to the increase in legal need, including:

- growing impacts of entrenched economic disadvantage, discrimination, and intergenerational trauma, experienced by Aboriginal and Torres Strait Islander peoples
- increasing costs of living leading to higher incidence of issues in consumer protection, housing and homelessness, and social security, among others
- growing awareness and levels of mental ill-health
- increasing prevalence and severity of environmental disasters
- changes in Commonwealth Government policies in areas such as migration, refugees, veterans and serving personnel entitlements, social security entitlements, and NDIS eligibility and plans
- state and territory criminal law reform, particularly in relation to bail, sentencing and family violence.

The question arises as to who should receive legal assistance? This is ultimately a matter for governments. Australia's legal assistance system is based on the notion that governments should ensure the most disadvantaged people in the country have access to adequately funded legal assistance services. There is no statement of the level and type of legal need that governments wish to eliminate or at least mitigate. To be fair to Ministers, in the absence of quality legal needs assessments, such a statement would be a house built on sand.

So, who are these disadvantaged people? While reference can be made to priority client groups, the policy intent is not clear in the current arrangements. To ration capacity, service providers have imposed means tests which vary across service providers and jurisdictions. While this is a legitimate response to a situation of excess service demand, the policy merit depends on the appropriateness of these tests. In 2014, the PC Report declared these means tests were 'too mean' – meaning they excluded people experiencing genuine hardship. At the time of the PC Report, an estimated 14% of Australians lived below the ACOSS poverty line but the Productivity Commission estimated only 8% of households could access legal aid under prevailing means tests. Research for National Legal Aid suggests nothing much has changed, which means over 1.5 million people living below the poverty line are ineligible for legal assistance under current means tests.

To raise means tests broadly to the poverty line, in 2014, the PC Report recommended a \$200 million increase in assistance funding for civil matters, to be shared by the Commonwealth, states and territories. I have made a similar recommendation of an amount of \$459 million for 2025-26. The difference in the two estimates broadly reflects more qualifying persons due to population growth, a wider range of matters, and increasing costs of provision due to wage and general price inflation and to increased complexity.

Closing the Gap

It is clear to me that Aboriginal and Torres Strait Islander peoples experience greater unmet legal need than any other group in the community. While resourcing of Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) has been inadequate for well over a decade, and despite the Justice Policy Partnership, NLAP and the approaches adopted by some state officials actively work against self-determination. The Productivity Commission recently identified problems regarding approaches of officials to providing services to Aboriginal and Torres Strait Islander peoples. These problems were observed during this Review. While I make funding and process recommendations to address these issues, it is critically important the Attorneys-General insist on real cultural change from their officials.

The funding problem

Drawing on the evidence provided to the Review, I am satisfied that current funding levels are insufficient to meet the legal assistance needs of the Australian community. I make recommendations as to how to reduce this deficiency.

The proportion of funding for each service provider category accounted for by 'baseline' funding has fallen. While not the policy intention, this is an almost inevitable outcome of the preference of governments for short-term, relatively small specific funding packages, and increasing use of competitive tendering processes for allocating funding to new programs rather than allocation on an administrative basis.

It is a well understood proposition in economics that where services are priced at short-run marginal cost, a firm with fixed costs will not be sustainable. This is why economic regulators generally set prices at average cost, or at least long run marginal cost which includes the cost of expanding the fixed cost base. The current tendering processes are akin to pricing services at short-run marginal cost, accounting only for labour costs plus an inadequate margin for overheads.

It is clear that service providers have growing pressures on their fixed costs: cyber security, the need to provide appropriate workplaces, increases in rent above CPI, insurance and so on. On top of these costs, providing new services or expanding supply of existing ones requires more capital for premises and equipment. The current tendering arrangements fail to fund these legitimate cost increases.

Very few service providers have been in existence for less than ten years. Over their lives of most governments have been their primary or sole funders. There is very little evidence of maladministration or malfeasance in the sector. Rather than known trusted partners providing a valued service to community, government has treated service providers like sporting clubs tendering for funds to renovate a block of change rooms.

Service providers show a strong capacity and willingness to collaborate with each other; the challenges in collaboration seem largely limited to some central agencies. However, the level of competitive tendering has taken us to a place where, by design, we put organisations that are collaborative by nature in competition with each other. In some cases, that competition can have existential outcomes.

This Review has not seen any evidence that demonstrates the superiority of this funding approach. What I see is the undermining of financial sustainability of decades-old community-based organisations. Further, the atomisation of funding and reporting strikes at the heart of integrated, multidisciplinary, holistic, client-focused support. This atomised approach is a primary contributor to a range of other problems, including poor labour market outcomes and the growth of unnecessary data collection.

There is no amount of badgering from officials that will lead to a sustainable productivity-based solution in the absence of appropriate (read more substantial) funding. Rather, the better approach is to rebase funding on what is required for service providers to operate effectively and efficiently; that is, fund the service provider, not the individual service. This will ameliorate pressures caused by funding fragmentation and tendering.

Getting the base funding right

During the Review, we heard from service providers that the current resourcing level is too low to safely provide services; these concerns relate primarily to FVPLS, ATSILS and Community Legal Centres (CLCs). This safety concern encompasses a range of matters, including:

- workloads that are not a risk to workers' wellbeing, including enabling staff to take annual leave entitlements
- suitability of premises consistent with accepted WHS norms
- suitable vehicles to travel to regional and remote locations to see clients and attend court
- appropriate office systems, including client records management and IT capable of supporting the sector to take advantage of future innovations, including AI
- appropriate accommodation for staff in regional locations
- access to trauma-informed mental and cultural support, especially given many workers are exposed to vicarious trauma.

Same job same pay

The 2014 PC Report observed substantial pay differentials between ATSILS and Legal Aid Commission (LAC) staff. With the exceptions of South Australia and Queensland, these gaps remain, although it is not clear that arrangements in those jurisdictions are sustainable.

I am satisfied the situation with ATSILS reflects the general situation with CLCs and FVPLS. Beyond the apparent inequity, and the fact that many non-government legal assistance lawyers have substantially higher workloads than their LAC counterparts, this situation is causing significant attraction and retention problems for non-government providers.

Legal assistance has a highly feminised workforce. I am recommending that the Commonwealth adopt a policy of 'same job, same pay' for legal assistance workers, and close the wages gap by increasing funding to ATSILS, CLCs and FVPLS in 2024-25, the last year of NLAP. That funding should enter the funding base for A2JP. The Commonwealth should withhold funding until it receives evidence that employment contracts have been varied. Payments to services should be made within 30 days of receiving evidence, with allowance for backdating wages to 1 July 2024. We estimate the cost of this recommendation to be \$66 million in 2024-25.

Incentives for non-metropolitan practice

These issues impact acutely on regional and remote areas. I make a number of recommendations to address regional and remote employment issues. Principal among them is a HECS forgiveness scheme whereby if a person works for non-government legal assistance providers in rural, regional or remote locations for a period of five years, their outstanding HECS debt will be forgiven by the Commonwealth. This scheme would also be available to lawyers working in private practice in regional and remote areas who could demonstrate that over a five-year period 45% of their work was on grants of legal aid.

Reasonable remuneration for private practitioners

The 2014 PC Report recognised that private lawyers would not undertake legal aid work if they were not adequately compensated for it and suggested this issue should be addressed as part of a broader assessment of medium-term funding for legal assistance. No such assessment has taken place until now. We have heard that the private profession is particularly reluctant to take on legal aid work precisely for the reason foreseen by the PC Report a decade ago. The court scales provide a useful benchmark for the opportunity costs faced by lawyers when considering accepting grants of legal aid. They have the added advantages of being jurisdictionally focused, periodically and independently reviewed, and reflect both the nature of the work and the experience of the practitioner concerned. I have recommended that the Commonwealth establish a working group with an independent chair to develop a framework for future levels and structure of grants of legal aid.

To test private providers' supply elasticity and to address current unmet legal need, I have recommended as an interim measure that the Commonwealth fund an increase in grants of legal aid for Commonwealth matters (including briefed out work for LACs and FVPLS) to the court scales levels for 2024-25. This is expected to cost \$88 million for Independent Children's Lawyers, and \$44 million for other Commonwealth matters. I recommend this approach for all grants of legal aid when determining A2JP base year funding.

Ensuring funding sustainability going forward

Chapter 21 of the 2014 PC Report outlined a framework for how governments might make longer term, sustainable funding decisions for the legal assistance sector. There is little evidence in the current environment that those recommendations have been actioned.

The Review has heard that while remuneration is the main employment issue impacting the legal assistance market, a number of other issues should be addressed. It was consistently put forward by stakeholders that funding uncertainty associated with non-government service providers makes recruitment difficult.

Contracts are often limited to a year or two on lower pay without certainty of rights like long service and parental leave. This compares poorly with ongoing public service employment, legal aid, and other government legal services like police prosecutors.

I have recommended that all funding agreements, including for FVPLS, be of the same length as the A2JP, namely five years, and be executed promptly. Further I have recommended that short-term funding and competitive tendering, which have grown substantially over the life of NLAP, be wound back, both to increase funding certainty and to reduce cost, especially in reporting and compliance.

As a general principle, I have recommended that within the A2JP, total funding provided by governments be indexed by the sum of the growth in demand and price indicators. I also provide a mechanism to protect service providers from abnormal economy or sector wide price shocks as have been experienced in recent years: governments are far more able to manage such shocks than service providers.

Government decisions can impact demand for legal assistance services. I have recommended that where governments undertake policy or law reforms that impact demand for legal assistance services, they produce a Legal Assistance Impact Assessment. This Assessment will set out the impacts on relevant service providers, and their funding response to these impacts, with the intention that ongoing funding becomes part of baseline funding. This is similar to the Justice Impact Tests long proposed by the Law Council of Australia, most recently in its landmark report the *Justice Project*, led by former Chief Justice of Australia, the Hon Robert French AC.

While respecting independence of the judiciary, it must be recognised that changes in court procedures can also impact on demand for legal assistance. Proper consideration needs to be given to ensuring that legal assistance providers can respond to changes in the justice system driven by the courts and government.

Thank you

A very large number of people have contributed to the work of this Review. Frontline staff, service providers, peak bodies and government stakeholders have demonstrated significant dedication, expertise and passion in supporting the Review in tight timeframes, and while under pressure to deliver services in their already constrained environment. The willingness of so many to contribute under these pressures has made it possible to conduct this Review, and I acknowledge the importance of their participation. While only a very small proportion of this material is cited in this Report, everyone's contributions have played a role in forming the Review's findings and recommendations.

I am grateful that various Attorneys-General, other Ministers, and judicial officers, have taken time to meet with me and share their insights into the legal assistance sector. I particularly want to thank the Hon Chansey Paech MLA, Attorney General of the Northern Territory, who arranged logistics for a visit to Wadeye, and accompanied the Review team on the visit. The Commonwealth Attorney-General's Department provided initial support and has been a constant source of information and support on this journey, for which I am grateful.

Finally, I want to thank the team at ACIL Allen, led by Amy Mehrton and Les Trudzik, for their support and friendship over an intense consultation and drafting exercise.



Dr Warren Mundy FRAeS FAICD | Independent Reviewer

Acronyms and abbreviations

4Rs Network	National Regional, Rural, Remote and Very Remote Community Legal Network
A2JP	Access to Justice Partnership
AASW	Australian Association of Social Workers
AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
ACCHOs	Aboriginal Community Controlled Health Organisations
ACCOs	Aboriginal and Torres Strait Islander Community Controlled Organisations
ACE	Aboriginal Community Engagement
ACNC	Australian Charities and Not-for-profits Commission
ACOSS	Australian Council of Social Services
ACT	Australian Capital Territory
ADR	Alternative Dispute Resolution
AEST	Australian Eastern Standard Time
AGD	Commonwealth Attorney-General's Department
AI	Artificial Intelligence
AIHW	Australian Institute of Health and Welfare
ALAO	Australian Legal Aid Office
ALRM	Aboriginal Legal Rights Movement
ALS	Aboriginal Legal Service
APAC	Australian Psychology Accreditation Council

APBC	Australian Pro Bono Centre
AJAT Network	Access to Justice and Technology Network
ATO	Australian Tax Office
ATSI	Aboriginal and Torres Strait Islander
ATSILS	Aboriginal and Torres Strait Islander Legal Service
Australians	Both Australian citizens and non-citizens temporarily or permanently living in Australia
AWAHS	Albury Wodonga Aboriginal Health Service
CAGR	Compound Annual Growth Rate
CALD	Culturally and Linguistically Diverse
CEPEJ	European Commission for the Efficiency of Justice
CFDR	Collaborative Family Dispute Resolution
CGC	Commonwealth Grant Commission
CIR	Cox Inall Ridgeway
CLASS	Community Legal Assistance Service System
CLCA	Community Legal Centres Australia
CLCs	Community Legal Centres
CLE	Community Legal Education
CLS	Community Legal Services
CMS	Client Management System
CNS	Custody Notification Service
COAG	Council of Australian Governments
CPD	Continuing Professional Development
CPI	Consumer Price Index
CRM	Customer relationship model
CSP	Collaborative Service Planning
CSP	Commonwealth Supported Place
Disability Strategy	Australia's Disability Strategy 2021–2031
DSS	Department of Social Services

DVU	Domestic Violence Unit
EAGP	Early appropriate guilty plea
EBA	Enterprise Bargaining Agreement
ECCCF	Expensive Commonwealth Criminal Cases Fund
EFTSL	Equivalent Full-Time Student Load
FAM	Funding Allocation Model
FASS	Family Advocacy and Support Service
FCA	Federal Court of Australia
FDM	Funding Distribution Model
FDR	Family Dispute Resolution
FFA	Federation Funding Agreement
FTE	Full-time equivalent
FVPLS	Family Violence Prevention Legal Service
FY	Financial Year
GCLS	Gippsland Community Legal Service
GDP	Gross Domestic Product
GST	Goods and Services Tax
HECS	Higher Education Contribution Scheme
HELP	Higher Education Loan Program
HJPs	Health Justice Partnerships
HRCLS	Hume Riverina Community Legal Service
ICLs	Independent Children's Lawyers
ICT	Information and Communication Technology
IGA	Intergovernmental Agreement on Federal Financial Relations
ILAP	Indigenous Legal Assistance Programme
IT	Information Technology
JD	Juris Doctor
LAC	Legal Aid Commission

LACs	Legal Aid Commissions
LAIA	Legal Assistance Impact Assessments
LANSW	Legal Aid New South Wales
LANT	Legal Aid Northern Territory
LAW Survey	Legal Australia-Wide Survey
LGBTIQA+	Lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual, and other gender identities
LLB	Bachelor of Law
NAAJA	Northern Aboriginal Alliance Justice Association
National Agreement	National Agreement on Closing the Gap
National Framework	Safe and Supported: the National Framework for Protecting Australia's Children 2021–2031
National Strategic Framework	National Strategic Framework for Legal Assistance
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
NDIS	National Disability Insurance Scheme
NFVPLS	National Family Violence Prevention Legal Services
NIAA	National Indigenous Australians Agency
NIRA	National Indigenous Reform Agreement
NLA	National Legal Aid
NLAP	National Legal Assistance Partnership 2020-25
NPA	National Partnership Agreement on Legal Assistance Services 2015-20
NSW	New South Wales
NT	Northern Territory
NTLAC	Northern Territory Legal Aid Commission
ODPP	Office of the Director of Public Prosecutions
OECD	Organisation for Economic Cooperation and Development
OH&S	Occupational Health and Safety
OSF	Open Society Foundations

PC	Productivity Commission
PC Report	2014 Inquiry Report, Access to Justice Arrangements
PLT	Practical Legal Training
PPF	Public purpose fund
PQE	Post-Qualification Experience
Pro bono	Services provided by private practitioners for free or at reduced cost
PULS	Public Understanding of Law Survey
PwC	PricewaterhouseCoopers
QLD	Queensland
RACS	Refugee Advice and Casework Service
Review	Review of the National Legal Assistance Partnership (NLAP) and related matters
RRR	Rural, regional, and remote
RSL	The Returned and Services League
SA	South Australia
SACS	Social and Community Services
SCAG	Standing Council of Attorneys-General
SCHADS	Social, Community, Home Care and Disability Services
TALS	Tasmanian Aboriginal Legal Service
TAS	Tasmania
AIS	Aboriginal Interpreter Service
Coalition of Peaks	Coalition of Aboriginal and Torres Strait Islander Peak Organisations
The National Plan	National Plan to End Violence against Women and Children 2022–2032
The Partnership	Justice Policy Partnership
The Strategy	National Legal Assistance Data Strategy
The Working Group	National Data Standards Working Group
ToR	Terms of Reference

TRG	Technical Reference Group
UNODC	United Nations Office on Drugs and Crime
VALS	Victorian Aboriginal Legal Service
VIC	Victoria
WA	Western Australia
WPI	Wage Price Index

Recommendations

1. Legal needs survey

The Reviewer recommends, consistent with recommendation 25.1 of the PC Report, the relevant Minister should, pursuant to section 9 of the Census and Statistics Act 1905 (Cth), direct Australian Bureau of Statistics to undertake a national legal needs survey at five-yearly intervals. The survey should collect data to measure both legal need and unmet legal need.

The surveys must address specific priority groups identified in the A2JP with sufficient granularity to identify jurisdictional and regional variations to support funding decisions.

The results of the first survey should be published by such a time as to be available for the review of A2JP and related matters.

Subject to annual expenditure timing, the Commonwealth should provide a total of \$3 million in 2024-25, \$6 million in 2025-26 and a further \$41 million over the life of A2JP.

2. Addressing unmet geographic need

There are parts of Australia where there are little or no legal assistance services provided to disadvantaged and vulnerable people. Governments should work with service providers and organisations like Victoria Law Foundation and the NSW Law and Justice Foundation to better understand these geographic areas of legal need and the nature and cost of the services needed to efficiently fill these gaps. The agreed cost of these services should be included in the step funding of the A2JP. Given the scale of this task it is likely it will take a number of years and priority should be given to those areas of greatest need and ease of implementation.

For those services funded solely by the Commonwealth (currently outside NLAP, but will become part of A2JP), the Commonwealth should undertake a similar exercise to ensure that services intended to be national in character are adequately funded to service all parts of the country.

3. Complete FVPLS coverage

The Reviewer notes that there are large parts of Australia, metropolitan and non-metropolitan, where the services of FVPLS are not available.

The Reviewer recommends that the Commonwealth should work with the FVPLS Forum, other FVPLS and other ACCOs providing services to Aboriginal and Torres Strait Islander women with a view to ensure complete national geographic coverage of FVPLS. The Reviewer expects this will involve the extension of the service areas of existing FVPLS, the establishment of new FVPLS and potentially the conversion of some existing ACCOs into FVPLS.

As a starting point, focus should be placed on the locations identified by NFVPLS noted in this Report

4. Legal Assistance Impact Assessment for administrative law

The Reviewer considers that there is insufficient certainty around a range of Commonwealth administrative law matters for him to be able to make firm funding recommendations at this time.

Once these matters are settled, the Commonwealth should undertake a Legal Assistance Impact Assessment with a view to adjusting the baseline funding of those services who have substantial Commonwealth administrative law caseloads.

5. Civil law

To address the persistent gaps in civil law assistance first identified by the Productivity Commission in 2014, and to help Australians experiencing legal issues as a result of cost of living increases, governments should provide additional funding for civil legal assistance services, including early intervention and mediation, to allow legal assistance providers to offer a greater number of services and prevent unresolved civil matters becoming criminal matters.

Particular focus should be placed on supporting statewide and national specialist CLCs (whether currently funded under NLAP or not) and providing resources to ATSILS and FVPLS to develop and implement culturally appropriate services for Aboriginal and Torres Strait Islanders services alone and in partnership with specialist CLCs. This should be done through the baselines process set out in chapter 7.

Further, the Commonwealth, states and territories should increase funding for additional civil and family law funding broadly in line with the recommendation 21.4 of the PC Report. The Reviewer expects this to cost all governments \$459 million in 2025-26.

The Productivity Commission estimated in 2014 that around 60% of the cost associated with this recommendation should be borne by the Commonwealth – the Reviewer has not revisited this estimate.

The principle of 'Commonwealth money for Commonwealth matters' should not apply to Commonwealth funding of these grants.

6. Funding for disaster response

The Reviewer recommends that governments include in the baseline funding for the A2JP sufficient funding for legal assistance providers to develop and maintain suitable preparedness to respond to community legal need in the event of natural disasters. By including in baseline funding, service providers will have flexibility in use of funds during disaster periods and other times.

The development of this service response should be led by jurisdictional governments recognising the need to involve LACs and community service providers and the unique geographic and climatic and cultural circumstances of different communities, especially where there are high levels of community property ownership. This funding should support partnering with other service providers, particularly external financial counsellors. It would be expected that some CLCs would be identified as leads for responding to disasters, based on their specialist capabilities.

Governments should develop funding packages for immediate deployment in the event of disasters, noting that these would sit outside baseline funding but would be able to be deployed in a flexible, tailored and responsive fashion. The initial size and scope of these packages should be determined with review mechanisms in place to adapt within weeks of the disaster event. The Commonwealth should share the costs of these packages equally with the states and territories.

7. Women's funding stream

The Reviewer recommends that funding for women's legal services be separated from the general CLC stream and quarantined under the A2JP.

Each jurisdiction should establish a women's legal assistance forum, including FVPLS, ATSILS, LACs and other CLCs, to consider how best to allocate any future women's specific funding – consideration should be given to develop existing fora to undertake this work. The Commonwealth should be represented on these fora.

Additional funding of \$0.25 million, commencing from 2024–25, should be provided to Women's' Legal Services Australia so it can function as the national women's legal assistance peak.

8. Priority client groups

The Reviewer recommends that the A2JP priority groups list be expanded to include:

- women
 - LGBTIQ+ people
 - people living below the ACOSS defined poverty line
 - recent migrants, refugees and asylum seekers
 - veterans and serving personnel.
-

9. A2JP must address Closing the Gap Priority Reforms

The Reviewer considers there is little evidence that the NLAP framework has materially addressed the Closing the Gap Priority Reforms. To correct this the A2JP in its founding document must:

- recognise the shared responsibility of the Commonwealth, state and territory governments for both achieving those Closing the Gap targets that relate to the legal system and for the provision of legal assistance funding to achieve them.
- ensure legal assistance ACCOs and other representative organisations are involved in all decision making that involves the provision of legal assistance services to Aboriginal and Torres Strait Islander peoples.
- ensure legal assistance ACCOs have adequate funding to develop their organisations and people to enhance the scope, scale, quality and cultural appropriateness of their services. Resourcing in 2024-25 is recommended in recommendation 17 to assist with the implementation of the recommendations of this Review.
- commit governments to continuous improvement of their own engagement practices with legal assistance ACCOs and their clients.
- explicitly recognise Aboriginal and Torres Strait Islander data sovereignty in its data collection and reporting arrangements including in relation to the data held by non-ACCO legal assistance providers.

10. All Commonwealth legal assistance provided by ACCOs to be funded through A2JP

The Reviewer believes that better service co-ordination and service, including the appropriate level and scope of service provision by ACCOs, is best achieved by all Commonwealth legal assistance provided to ACCOs being brought together under a single agreement subject to the governance reforms recommended throughout this Report.

The Reviewer recommends the baseline funding for FVPLS be brought into the A2JP. The FVPLS would remain a separate, quarantined funding line administered by the Commonwealth Attorney-General's Department, but the same model of funding be adopted as is set out in section 7.2 of this Report. The administration of ATSILS funding is not affected by this recommendation.

11. Self-determination in existing services

Consistent with the Closing the Gap Priority reforms the Reviewer recommends that governments should commission an independent review of specialised services provided by LACs and CLCs to Aboriginal and Torres Strait Islander clients to ensure that the allocation of resources by governments maximises ACCO involvement, while recognising that Aboriginal and Torres Strait Islander peoples have legitimate rights to access culturally appropriate services across the sector, and that there is a need to provide appropriate resources to deal with conflicts and service coverage issues.

This review should be co-designed with relevant ACCOs and consider the costs and benefits of reallocation of resources between existing service providers (including the transfer of funding, staff and premises and transitional costs where relevant), and any additional funding reasonably necessary for the ACCO to provide the relevant services.

12. Self-determination in new services

The Reviewer is of the view that there is sufficient evidence to conclude that on occasions when new funding is provided for services with particular relevance to Aboriginal and Torres Strait Islander peoples, there has been inadequate consultation with relevant ACCOs regarding the deployment of such funding.

The Reviewer recommends that the A2JP requires each jurisdiction to establish a consultative forum to discuss and where possible agree how future funding for services for Aboriginal and Torres Strait Islander peoples is to be distributed between the relevant ACCOs and other service providers. Membership of these forums should include all relevant ACCOs in the jurisdiction plus a representative of the Commonwealth. Governments should consider how existing fora might be adapted to perform this task.

13. Aboriginal interpreters

The Reviewer considers that access to interpreter services is essential for Aboriginal and Torres Strait Islander Australians to have proper access to justice and that funding is currently inadequate.

The Commonwealth together with the relevant jurisdictional governments and service providers should determine an adequate level of interpreter funding for legal assistance purposes as soon as practicable.

14. NLAP funding model to be abandoned

The existing funding distribution models that inform the distribution of NLAP funding should not be used for the development of the funding of the A2JP. The Reviewer's alternative approach is set out in subsequent recommendations.

15. Reduction in fragmentation

The Reviewer considers that there is an inefficiently high level of fragmentation in the current funding base. In the setting of the baseline funding for 2025-26, all existing programs that have been favourably evaluated should be included in baseline funding unless there are particular policy circumstances where the program will terminate.

If pilots commenced before the commencement of the A2JP are subsequently positively evaluated, they should similarly be included in baseline funding.

In the future where governments undertake pilots, they should be undertaken on the basis that if successful, they will be deployed to all other relevant providers in the jurisdiction and included in ongoing baseline funding.

16. Reduce competitive tendering for legal assistance

The Commonwealth, state and territory governments should abandon competitive tendering as the preferred means of allocating new funding for legal assistance services, moving away from funding individual services and programs. This will reduce compliance burdens, provide greater funding certainty, improve efficiency, and encourage greater collaboration and holistic service provision.

Competitive tendering should only be used where it is clearly the case that it will generate significant benefits over administrative allocation of funding.

17. Rebasement of community service providers

The Reviewer recommends that the levels of funding for each community sector provider be reset to reflect the true costs of operating sustainable organisations.

This should be done on trilateral basis between the Commonwealth, state or territory governments and service providers.

Priority should be given to ATSILS and FVPLS followed by CLCs then LACs.

The Reviewer recommends in 2024-25 that \$12 million be allocated to ATSILS and \$4 million to FVPLS to ensure they have the capacity to develop their organisations and for other matters discussed in chapter 12.

18. Rates of grants of legal aid

The Reviewer recommends:

- For the period of A2JP grants of legal aid to private practitioners should be set at the same level as provided in the court scales (or some other relevant standard) where the matter is heard.
 - The Commonwealth should provide \$44m in 2024-25 and \$46 million in 2025-26 for this purpose in relation to matters funded under NLAP (apportioned 91% family matters, 7% criminal matters and 2% civil matters and excluding funding of ICLs which is the subject of a separate recommendation)
 - State and territory Governments should provide \$337 million in 2025-26 for this purpose in relation to matters funded under NLAP (apportioned 85% criminal matters, 13% family matters and 2% civil matters).
 - LAC baseline funding for 2025-26 should reflect this level of grants of legal aid across all categories of matters.
 - LACs should be allowed to determine whether this additional funding is used for private practitioners or internal lawyers.
 - A working group should be established with an independent chair, supported by independent consultants, to develop a framework for the future of the levels and structure of grants of legal aid, including for lawyer assisted alternative dispute resolution. This should include consideration of the cost of delivering culturally appropriate approaches. SCAG should consider these recommendations with a view to varying baseline funding in 2027-28.
-

19. Rates of grants for Independent Childrens Lawyers

The Reviewer recommends that:

- For the duration of the A2JP, the Commonwealth should fund LACs to provide ICLs appointed by the Family Courts at the relevant levels of the courts' scales prevailing at the time the service is provided.
- LACs should be allowed to determine whether this additional funding is used for private practitioners or internal lawyers.
- If a court orders an ICL to procure expert reports or other material, those disbursements should also be funded at scale rates.
- The Commonwealth should provide \$84 million in 2024-25 and \$88 million in 2025-26 in this regard.
- Any cost orders made to the benefit of LACs for the provision of ICLs should be offset against the cost of providing ICLs. An annual reconciliation arrangement should be put in place to carry forward any over/under recoveries.
- For the duration of A2JP, where lawyers are appointed to independently represent children under state or territory laws (such as in some care and protection matters) state and territory governments should fund LACs to remunerate these lawyers in accordance with the relevant jurisdictional court scales. This should support adequate supply lawyers for state and territory matters and avoid them showing a preference for matters in the Family Courts.
- To the extent that ATSILS, FVPLS or CLCs are ordered by the relevant courts to provide ICLs as set out above, funding should be provided the relevant LAC on a pass-through basis – the order of the Court should be the sole criteria for provision of funding.

20. Step

The Reviewer recommends that Governments should provide additional substantial funding in relation to a number of priorities matters the addition of new priority groups, addressing specific areas of geographic need, providing additional grants of aid in civil and family law matters and funding for disaster preparedness and response. These are captured in recommendations 2, 3, 4, 5 and 7.

As part of the step process, consideration should be given to providing additional funding for services that have been successfully piloted by other service providers where provided.

21. Indexation

The Reviewer recommends that, once the funding for the base year 2025-26 is determined, subsequent years funding should be indexed each year by the sum of the expected growth in demand and the expected rate of growth in prices in the jurisdiction concerned.

In the event that the growth in the price index in any year exceeds forecast by more than 2%, then the forecast price index increase should be replaced with the actual price index increase.

In the event that agreement can't be reached between governments about a new funding sharing approach, indexation as described in this section should be applied to all Commonwealth, state and territory funding streams.

22. Legal Assistance Impact Assessment

The Reviewer recommends that when a government undertakes law reform (including but not limited to changes in law, policy or court procedure) that can be expected to change demand for legal assistance service it should undertake a Legal Assistance Impact Assessment (LAIA). The LAIA should consider the impacts for each affected legal assistance provider and determine what funding is required to provide appropriate services to affected clients irrespective of what the funding arrangements of services providers is.

Where significant impacts are found, the government of the jurisdiction making the changes should ensure that relevant legal assistance providers are properly resourced to deal with such impacts through an immediate and ongoing increase in baseline funding.

For the avoidance of doubt, a policy measure that reduces demand should lead to funding reductions, but these should be deferred until two years after the implementation of the measure or the end of the A2JP, whichever comes earlier.

23. Portability of entitlements

The Reviewer recommends that governments work with peaks and the relevant unions to develop a portable entitlement scheme for all workers in the legal assistance sector, including LACs. At a minimum this scheme should address long service leave but consideration should be given to including others, such as sick and parental leave, where appropriate and when the benefits of increased labour market mobility outweigh the incremental costs to the scheme.

24. Workforce Strategy

The Reviewer recommends that the Commonwealth Government, in collaboration with unions, state and territory governments and peak bodies, develop a national workforce development strategy for the legal assistance sector to attract and retain a skilled, well supported, and diverse workforce. This strategy should address:

- development of a robust data set on the legal assistance workforce as part of the improved approach to data discussed in chapter 10
- attraction and retention strategies
- remuneration and entitlements, including portable entitlement schemes
- continuing professional development and supervision
- career pathways and progression.

It is recommended that \$5m be provided by the Commonwealth for these purposes in 2024-25 with a view that ongoing funding of the strategy be shared by the states and territories during the A2JP

25. Remuneration of community legal assistance workers

The Reviewer recommends the Commonwealth Government should provide additional funding in last year of NLAP (2024-25) to increase the remuneration of both legal and non-legal staff working in CLCs, ATSILS and FVPLS to equivalent pay as that of the LAC in the respective jurisdiction. The estimated cost of this in 2024-25 is estimated to be \$66 million - \$35 million for CLCs, \$25 million for ATSILS and \$6 million for FVPLS. The estimated cost of this in 2025-26 is estimated to be \$69 million - \$36 million for CLCs, \$26 million for ATSILS and \$7 million for FVPLS.

To access this funding, which can be back dated to 1 July 2024, the relevant service providers must demonstrate employment conditions have been varied and approved through the relevant industrial processes. No funding is to be provided to service providers for 2024-25 who fail to have necessary workplace arrangements in place by 30 June 2025.

This funding should be embedded in the baseline funding moving forward.

26. HECS-HELP Forgiveness Scheme

Commencing in 2025-26, the Australian Government should establish a HECS-HELP forgiveness scheme for rural, regional and remote community sector lawyers and those in private practice doing substantial legal assistance work, and should leverage the learnings of similar schemes currently administered for the medical and teaching workforces.

Under the assumption that HECS-HELP balances are only forgiven after 5-years of continuous service, the cost of the first cohort (commencing in 2026-27) will be realised in 2030-31, estimated to be \$6 million.

States and territories should fund an extension to the scheme to cover LAC lawyers working in regional areas to avoid distortions in the legal assistance labour market.

27. Use of baseline funding

The Reviewer considers current interpretations restricting baseline funding to the provision of legal services inhibits service provider flexibility and the development of holistic wrap-around services.

The Reviewer recommends that the A2JP make clear that funding provided under it may be used in pursuit of all of its outcomes and is not limited to the employment of lawyers and their direct support staff. Such a provision should be included in service contracts.

28. Advocacy and law reform

The Reviewer accepts that strategic advocacy and law reform activities that seek to identify and remedy systemic issues, and so improve access to justice and reduce demand for frontline services. This work should be recognised and encouraged as core work for the sector.

As such, the Reviewer recommends that the A2JP primary agreement explicitly acknowledge the importance of advocacy and law reform in the work undertaken by all legal assistance providers covered by the A2JP and that this inform the establishment of baseline funding recognising the different levels and types of work undertaken by different providers.

Governments should consider how pooled funding arrangements might be put in place in smaller jurisdiction to support existing collaboration by legal assistance providers to undertake this work.

29. Technology funding

The Reviewer recommends the Commonwealth establish a Justice Technology Innovation Fund to:

- fund the development, trial and evaluation of technological solutions and digital tools for the legal assistance sector, including the application of artificial intelligence technologies
- consider opportunities for expanding the deployment of digital tools across all jurisdictions that have been successfully evaluated
- explore technology partnerships between legal assistance providers, governments and other community organisation.

The Fund should be governed by a Board comprising of no less than six people and no more than ten people. The Board must at all times be able to demonstrate the following skills are present:

- an understanding of the use of technology by people within the priority groups
- an understanding of the provision of legal assistance services in Australia
- an understanding of the deployment of technology to community-based organisations, and in particular ACCOs
- assessment, risk management and governance of high risk grant programs
- venture capital and start-ups
- cyber security
- ethical issues including those related to the law and the application of technology
- application of technology to the resolution of disputes
- the training of workers in the use of legal technology systems
- Aboriginal and Torres Strait Islander data sovereignty and self-determination

The Commonwealth should provide initial funding of \$5 million in 2025-26 with supporting contributions to be made by all governments and other parties over the life of the A2JP.

The fund may accept funding from non-government sources subject to the approval of the Commonwealth Attorney General who should publish guidelines for such contributions alongside and investment guideline for the fund no later than 30 June 2025.

Initial annual funding of \$0.5 million be provided in 2024-25 and 2025-26 by the Commonwealth to meet these governance objectives and to recruit the Board. Remuneration of directors should be determined by the Remuneration Tribunal. The remuneration of the Board and the other expenses of the fund should be funded by the Commonwealth.

30. Term of A2JP

Despite the benefits of a longer agreement, given the scope of the reform challenge proposed by the Reviewer, the A2JP should have a five-year term commencing 1 July 2025.

The costs and benefits of a longer term should be considered by the next review.

The Reviewer recommends that the term of future service provider funding agreements should match the term of the A2JP. In particular, short duration core funding agreements for FVPLS and some CLCs must be replaced by five-year agreements commencing 1 July 2025.

31. Better coordination and reporting of legal assistance funding by the Commonwealth

The Reviewer considers that there would be significant transparency and administrative efficiencies gained from the consolidation of Commonwealth legal assistance funding administration in the Attorney-General's Department. To this end

- administrative arrangements should be put in place to ensure funding from non-AGD Commonwealth sources is provided through AGD with appropriate monitoring arrangements designed to minimise the number of service provider compliance engagements and contact points
- AGD should maintain an appropriate data set on all Commonwealth legal assistance funding to facilitate the publication of an annual Legal Assistance Funding Statement with the Budget Papers
- AGD should make public a consolidated database of all Commonwealth, State and Territory funding provided to legal assistance providers covered by the A2JP.

32. Improved Commonwealth involvement

At the Commonwealth level, overarching guidelines must be established, setting a standard framework within which state and territory governments are to operate. These should be reflected in the Outcomes Framework and other A2JP documentation. The Commonwealth must play a leading co-ordinating role, providing clarity and certainty around roles and responsibilities.

To address widespread concerns of community legal sector providers about the absence of Commonwealth involvement and administrative challenges experienced with some with state and territory administrative arrangements, the Commonwealth, through AGD, should be a party to future funding deeds.

Peaks, the Commonwealth, state and territory governments should build on existing agreements to develop proforma service agreements for each of the four service provider types within the relevant jurisdiction.

33. LACs not to administer funding

The Reviewer recommends that states and territories departments should be responsible for the administration of funding provided by the Commonwealth for ATSILS, LACs and CLCs. The ability to delegate to government agencies other than the relevant policy department the responsibility for the administration of Commonwealth funding to a legal assistance providers should not be a feature of the A2JP.

34. Commonwealth money for Commonwealth matters

The principle of 'Commonwealth money for Commonwealth matters' for the use of monies provided to LACs as set out line clause 63 of NLAP should not be continued in the A2JP wherever a state or territory gives an explicit commitment to provide funding over the life of the A2JP.

This increased flexibility will enable LACs to more effectively address emerging complex issues, including those associated with the cost of living such as mortgage and financial stress, tenancy and homelessness

35. Sharing the funding task

Outside those service providers to be directly funded by the Commonwealth (FVPLS and those CLCs currently funded by the Commonwealth outside NLAP) the Commonwealth and each state and territory should agree and commit to minimum funding contributions over the life of the A2JP. The minimum amounts to be funded by each government in respect of each state and territory should be specified in a bilateral schedule to the A2JP bearing in mind the timing issues discussed in chapter 12.

Funding from the Commonwealth to the states and territories for the administration of NLAP should not continue in the A2JP with all governments adequately funding their own administrations in recognition of the fiscal benefits that they receive from the provision of legal assistance as discussed in section 3.2 of this Report. These resources are more appropriately devoted to funding legal assistance providers.

36. Outcomes framework

The Commonwealth, state and territory governments should agree an Outcomes Framework for the legal assistance sector. This should include a national set of outcomes and indicators with robust and consistent data to monitor progress towards national priorities and inform future policy and funding decisions. To the greatest extent possible, this should leverage previous work already done by the Commonwealth, state and territory governments and sectoral peaks.

Service contracts with providers should address a subset of the outcomes agreed by governments and their reporting obligations should be limited to these.

As a matter of urgency, the Commonwealth should appoint consultants to develop an Outcomes Framework for the A2JP for agreement prior to the commencement of the A2JP. In developing this framework, regard should be had to previous work and involve consultation with state and territory governments and service provider peaks. This is estimated to cost \$0.5 million in 2024-25.

SCAG should consider and adopt this framework, or a variant of it, no later than 30 June 2025.

37. Performance indicators and Data Standards Manual

The performance indicators that underpin the A2JP should be revised to focus on Outcomes Framework set out in Recommendation 37 and have particular focus on the delivery on the Priority Reforms of the National Agreement on Closing the Gap.

The Data Standards Manual should then be redrafted to reflect the new set of performance indicators and address concerns raised by legal assistance providers and include elements relating to the costs of service provision.

The Commonwealth should lead engagement with state and territory officials and service providers to increase uptake of the DSM, ensuring alignment of definitions.

38. Data systems

The Reviewer accepts the position put by a large number of stakeholders that CLASS should be replaced at the earliest opportunity without disrupting normal service delivery.

The Commonwealth should fund the development and effective implementation of (including training in) a legal assistance sector-wide data collection platform to provide a national repository that can collate data from other front end data entry applications. For the avoidance of doubt, this system should collect data on all services and sources of funding, including those services funded by the states and territories and any funded by the Commonwealth outside A2JP.

The platform should be implemented across all sub-sectors and should replace CLASS. Fields should be linked to the outcomes framework.

Once developed, provision of data to this system should be a condition of receiving A2JP funding.

The A2JP should require governments to commit to maximising the use of existing data collection points when providing additional funding for pilot programs. To the extent that data fields must be added, this must be agreed between the Commonwealth, the government providing the funding and the relevant peaks.

Efforts should be made to minimise duplication with ABS data collection and to align the systems to the greatest extent possible having regard to the costs of system development, user costs, and compliance and data security requirements.

Acknowledging that a replacement for CLASS will take a number of years, governments should work with service provider peaks to 'optimise' the use of the system with a focus on reducing reporting to data this is particularly useful.

39. Temporary indexation

To determine funding in 2024-25, 2023-24 funding should be indexed at a rate of 4.5% to which amounts from other funding recommendations should be added. It is estimated this will cost the Commonwealth \$14.7 million in 2024-25.

In the event that the baselining exercise has not been completed in time to set funding for 2025-26 for any given community legal assistance provider, its funding be set at a level 10% higher than that provided in 2024-25.

In subsequent years, until the baselining exercise is completed, its funding should be increase by 10% each year.

Introduction

1

1.1 Terms of Reference for the Review

In accordance with the Federation Funding Agreements (FFA) Framework, and consistent with the National Legal Assistance Partnership (NLAP), this Review evaluates the extent to which the objective, outcomes and outputs of the NLAP have been achieved. Specifically, it focuses on:

- a holistic assessment of legal need and the adequacy of all Commonwealth legal assistance funding
- an evaluation of the effectiveness and challenges of service delivery
- an evaluation of data collection, performance monitoring, and reporting.

The full Terms of Reference are provided at Appendix A.

1.2 Overview of Review approach

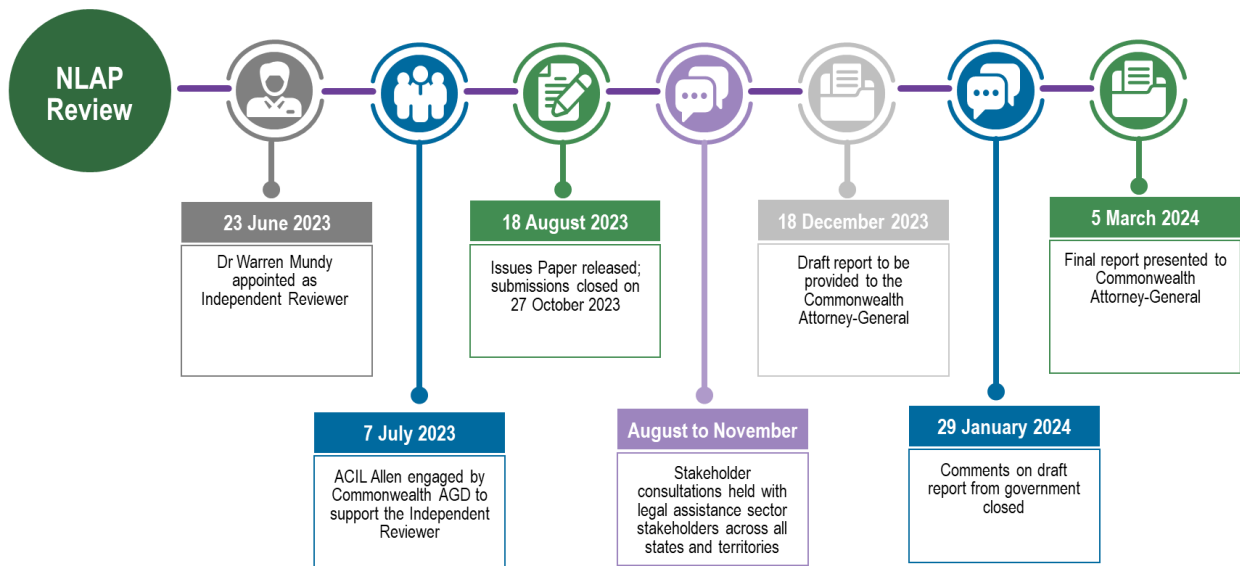
On 23 June 2023 the Commonwealth, state and territory Attorneys-General appointed Dr Warren Mundy to conduct the Review.

Dr Mundy was the Presiding Commissioner on the Productivity Commission's Public Inquiry into Access to Justice Arrangements (2014). Subsequent to that public inquiry, Dr Mundy served as a director of Westjustice (a community legal service in the western suburbs of Melbourne) from 2015 to 2018. He believes sufficient time has passed since his involvement with Westjustice for it not to constitute a conflict of interest.

A limited competitive tender was conducted to identify a suitable consulting firm to support Dr Mundy during the course of the Review. An evaluation panel of Commonwealth, state and territory officials selected ACIL Allen.

The Review timeline is provided in Figure 1.1.

Figure 1.1 Overview of timelines



The Review has drawn on evidence from a range of sources, including published literature, workforce data analysis, government reports and inquiries, and consultation with stakeholders across jurisdictions. To support the Review, an Issues Paper was released in August 2023 detailing the Terms of Reference, background information on the NLAP, and key lines of inquiry.

A public submission process was conducted, and submissions were received from Commonwealth, state and territory governments, national and jurisdictional peak legal assistance bodies, service providers, individual workforce members, academics, and the legal profession and their representative bodies. A list of submissions received is provided in Appendix B. These submissions (other than those where confidentiality was requested) were published on the Review's website. While access to the submissions once the review is concluded is a matter for AGD, the Reviewer is of the strong view that it is in the public interest for these submissions remain generally accessible.

Consultations were held across the country, with Dr Mundy visiting every jurisdiction. A stakeholder engagement plan was developed in consultation with the various Attorneys-General and Justice Departments, and peak stakeholder groups. Key stakeholders included service providers, peak bodies, government agencies and local stakeholders across both metropolitan and regional locations. Appendix B provides a list of organisations the Reviewer met with.

A draft of this report was provided to all governments in late December 2023 for comment by 29 January 2024. The Reviewer appreciates this was a short timeframe given the holiday period, but this was unavoidable. Despite the short comment period, feedback was received from officials of all governments. The Reviewer is grateful for the many corrections and suggestions provided, all have which have been considered by the Reviewer and many incorporated.

Chapter 6 was subsequently provided to jurisdictions at the direction of AGD in late February 2024. This led to no material changes to what was provided.

A summary of key activities and data sources is provided in Figure 1.2.

Figure 1.2 Review activities



National Legal Assistance Partnership

2

2.1 National Legal Assistance Partnership 2020-2025

The NLAP is an agreement between Commonwealth and all state and territory governments under which the Commonwealth provides funds to the states and territories for disbursement to legal assistance providers. Not all Commonwealth, state and territory legal assistance funding is provided through the NLAP.

The NLAP follows the National Partnership Agreement on Legal Assistance Services 2015-20 (NPA) and the Indigenous Legal Assistance Program (ILAP), which expired on 30 June 2020. Under NLAP, three streams of the legal assistance funding were brought together: Legal Aid Commissions (LACs), Aboriginal and Torres Strait Islander Legal Services (ATSILS), and most Community Legal Centres (CLCs). Under NLAP, state and territory responsibilities include allocation and administration of funding and performance monitoring, which they undertake with the support of administrative funding from the Commonwealth.

2.2 Previous reviews

NLAP was informed by the findings of the 2014 Productivity Commission Public Inquiry into Access to Justice Arrangements (the PC Report), the 2014 review of the National Partnership Agreement on Legal Assistance Services, and 2018 reviews of NPA and ILAP described below.

2.2.1 Access to Justice Arrangements Productivity Commission Inquiry (2014)

The PC Report established the private, social and economic benefits of improving accessibility of the civil justice system.

The PC Report recognised that the cost of accessing justice services and securing legal representation can prevent Australians from gaining access to the justice system. The Productivity Commission examined then current costs of accessing justice services and securing legal representation, and the impact of these costs on access to, and quality of, justice.

The Productivity Commission made 88 recommendations to improve access to civil justice, of which 18 have direct relevance to this Review. The core findings of the PC Report relevant to this Review included that:

- a legal needs survey be undertaken at regular intervals by the Australian Bureau of Statistics
- eligibility principles for grants of legal aid for civil (including family) law cases should be made consistent
- governments should implement cost-effective strategies to proactively engage with at-risk Aboriginal and Torres Strait Islander peoples to reduce their likelihood of needing legal assistance to resolve disputes with government agencies

- funding should be provided for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services
- Legal Assistance Forums in each state and territory should be used to reach an agreement between the 4 main providers as to their respective roles.

The then Government's response, some 18 months after the PC Report was provided, addressed only three of the 18 recommendations relevant to this Review.

2.2.2 Review of the National Partnership Agreement on Legal Assistance Services (2014)

The Commonwealth Government Attorney-General's Department (AGD) commissioned Allen Consulting Group to review the NPA. The Terms of Reference were to assess progress towards NPA objectives and outcomes by Commonwealth-funded legal assistance programs.

Allen Consulting Group made recommendations to improve NPA implementation and effectiveness. The Commonwealth Government did not release a formal response to the evaluation, but the recommendations informed the next iteration of the NPA. The key findings were that:

- there were significant levels of unmet demand for legal assistance services, particularly by the most disadvantaged, across a wide range of areas of law and service categories
- there was scope to improve coordination of legal and related support services provided to clients with complex needs to reduce the impact legal problems have on these clients' lives
- some quality concerns were attributed to high caseloads, inexperienced staff, ability to attract and retain staff in regional and remote areas, and gaps in quality assurance processes
- preventative and early intervention efforts could be more effective with greater local planning and a coordinated approach that made best use of available resources and expertise
- funding did not support delivery of legal assistance services that could effectively implement policy and priorities set by Commonwealth, state and territory governments.

2.2.3 Review of the National Partnership Agreement on Legal Assistance Services (2018)

In 2018, the AGD engaged Urbis to undertake a review of the NPA. The purpose of the review was to assess the effectiveness, efficiency and appropriateness of the NPA as a mechanism for achieving its objective and outcomes within available resources. The review identified best practice and opportunities for improvement.

The Commonwealth did not release a formal response to the review, but the recommendations informed the development of the NLAP. Key findings were that:

- aspirations, objectives and principles within the NPA remained appropriate
- experience and implementation of the NPA varied between jurisdictions and sub-sectors
- the NPA enabled but was not driving innovation in legal assistance service delivery
- the NPA had not yet impacted system efficiencies, largely due to transitional and implementation costs
- funding had been consolidated, but there are further opportunities for streamlining
- short-term funding cycles and the residual effects of proposed funding cuts in 2017 impacted negatively on CLCs
- NPA indicators were limited in their representation of sector performance
- the data standards continued to be 'bedded down' across the sector, but represented solid progress toward more uniform data at the national level
- governments had largely fulfilled their formal roles and responsibilities under the NPA, but there are opportunities for more active policy leadership.

2.2.4 Review of the Indigenous Legal Assistance Program (2019)

AGD contracted Cox Inall Ridgeway to conduct an independent review of ILAP (2015-2020), which provided primary funding for Aboriginal and Torres Strait Islander legal assistance services in Australia. High-level findings of the ILAP review were that:

- ILAP provided essential funding that enables delivery of unique and specialised legal assistance services for Aboriginal and Torres Strait Islander peoples
- services delivered by ATSILS with ILAP funding support were cost effective, high quality, culturally appropriate and accessible, to the extent possible within available resources, and were consistent with ILAP objectives and outcomes
- the focus on delivery of criminal law services by ATSILS was consistent with ILAP objectives, outcomes and service delivery principles
- there were opportunities to improve ILAP and thus strengthen delivery of legal assistance services to Aboriginal and Torres Strait Islander peoples (Cox Inall Ridgeway, 2020).

Cox Inall Ridgeway's ILAP Review included 12 recommendations for improvement. As with the Allen Consulting Group and Urbis NPA reviews, the Commonwealth did not release a formal response to the recommendations.

2.3 National Strategic Framework for Legal Assistance

The National Strategic Framework for Legal Assistance provides a policy framework to guide all government legal assistance policy development, service delivery and sector planning. The Framework outlines the shared objective for all Commonwealth, state and territory government funded legal assistance:

To further a national, integrated system of legal assistance that is focused on keeping the justice system within reach, maintaining the rule of law, and maximising service delivery within available resources. Within this system, legal assistance services should be delivered in a high quality and culturally appropriate manner.

The National Strategic Framework sets out six guiding principles for providing legal assistance services:

1. Focus service delivery on people facing disadvantage
2. Client centred and appropriate services
3. Collaboration and integrated approaches
4. Appropriately timed responses and preventative action
5. Empowerment and resilience
6. Continuous learning and improvement.

These principles should be read in conjunction with the additional Priority Reforms of the National Agreement on Closing the Gap (National Agreement), discussed in chapter 5.

2.4 NLAP's objectives and outcomes

The NLAP's objective is to contribute to integrated, efficient, effective and appropriate legal assistance services that, within available resources, focus on improving outcomes and keeping the justice system within reach for vulnerable people facing disadvantage.

The NLAP aims to facilitate achievement of the following outcomes (Clause 14 of NLAP):

- a) Legal assistance services are focused on, and accessible to, people facing disadvantage.
- b) Legal assistance services are delivered in a client-centric manner to better consider people's legal needs and capabilities.
- c) Legal assistance and other service providers and governments collaborate to provide integrated, client-centric services to address people's legal and other problems.
- d) Legal assistance services are provided at an appropriate time, which best addresses an individual's legal needs, including preventative action when appropriate.
- e) Legal assistance services empower people and communities to understand and assert their legal rights and responsibilities and to address or prevent legal problems.
- f) Legal assistance providers are supported to build the capacity of their organisations and staff to ensure they can effectively respond to evolving service demand.

The NLAP also supports delivery of Aboriginal and Torres Strait Islander specific legal assistance services (Clause 15, NLAP), consistent with self-determination as defined in NLAP, to:

- a) Enable and empower Aboriginal and Torres Strait Islander peoples in addressing their legal needs.
- b) Improve access to justice outcomes for Aboriginal and Torres Strait Islander peoples.

2.5 Roles and responsibilities under the NLAP

Commonwealth responsibilities

Under the NLAP 2020-2025, the Commonwealth role is defined as being (Clause 22, NLAP):

- **Policy and strategic guidance:** facilitating information sharing at the national level with the states and territories and the legal assistance sector; organising, facilitating and participating in forums at the national level with states and territories and the legal assistance sector.
- **Provision of funding:** providing a financial contribution to the states and territories for the delivery of mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services in accordance with NLAP; providing a financial contribution to support the states and territories in administering NLAP.
- **Sector planning and development:** leading, conducting and participating in national collaborative service planning; providing specific guidance and support to states and territories on requirements and implementation of collaborative service planning; sharing resources at the national level which support ongoing development and capacity of the legal assistance sector within available funding.
- **Performance monitoring:** monitoring and assessing performance under the NLAP to ensure outputs are delivered, and outcomes are achieved; and facilitating improvements to the collection of nationally consistent data and the *National Legal Assistance Data Standards Manual*.

State and territory responsibilities

The Commonwealth provides quarantined administration funding to states and territories to carry out their roles under NLAP (Clause 26, NLAP). The role of states and territories includes:

- **Policy and strategic guidance:** facilitating information sharing at the jurisdictional level with the Commonwealth and the legal assistance sector; organising, facilitating and participating in jurisdictional legal assistance forums with the Commonwealth and state and territory governments, and the legal assistance sector; providing, on an annual basis, states and territories funding information for legal assistance services to the Commonwealth, in a manner and format established by the Legal Assistance Services Inter-Governmental Committee; facilitating provision of Legal Assistance Service Data.
- **Allocation and administration of funding:** allocating or distributing, as applicable, and administering quarantined Commonwealth funding for the delivery of mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services, in accordance with NLAP; allocating or distributing, as applicable, and administering quarantined social and community services (SACS) supplementation until 30 June 2021 to eligible service providers through a fair and transparent process.
- **Sector planning and development:** leading, conducting and participating in jurisdictional and local collaborative service planning; supporting ongoing development and capacity of the legal assistance sector within available funding.
- **Performance monitoring:** reporting on delivery of outcomes and outputs; monitoring and assessing delivery of legal assistance services under NLAP; ensuring that Community Legal Centres funded under NLAP collect data; ensuring Legal Assistance Service Data is collected and reported consistent with the *National Legal Assistance Data Standards Manual*.

Joint responsibilities

The Commonwealth and states and territories are jointly responsible for (Clause 30, NLAP):

- participating in consultations with the legal assistance sector as appropriate regarding implementation of NLAP
- meeting biannually on a bilateral basis to discuss the operation of NLAP
- ensuring ongoing collection and transparent reporting of nationally consistent data
- working with the legal assistance sector to increase data availability
- developing an outcomes-based framework for legal assistance services
- supporting the Independent Review.

2.6 Priority groups

The NLAP specifies the following national priority client groups under Schedule A, clause A.3:

- Aboriginal and Torres Strait Islander peoples
- children and young people (0-24)
- older people (over 65, or over 50 for Aboriginal and Torres Strait Islander peoples)
- people experiencing, or at risk of, family violence
- people experiencing, or at risk of, homelessness
- people in custody and/or prisoners
- people residing in rural or remote areas
- people who are culturally or linguistically diverse
- people with a disability or mental illness
- people low education levels
- single parents.

This list is intended to recognise that certain cohorts of people facing disadvantage are more likely to experience legal problems, less likely to seek assistance and less able to access services. These cohorts are also often impacted by intersectionality, discussed further in the section 9.3, which requires legal assistance providers to deliver a complex array of person-centred and culturally safe services, including interpreters.

States and territories do identify other priority client groups specific to their respective jurisdictions. For example, Queensland has identified LGBTIQ+ people, and migrants and refugees, as priority groups.

2.7 What has the NLAP achieved?

This Review's Terms of Reference direct the Reviewer to explore the extent to which the objective, outcomes and outputs of NLAP have been achieved. This section provides a high-level summary of the conclusions drawn and outlines the principles that guide recommendations in subsequent chapters.

Activities and outputs

Establishment of the NLAP has seen delivery of a range of activities and outputs, as intended through the Agreement's design. Key outputs have included:

- providing funding for mainstream, specialist and Aboriginal and Torres Strait Islander services (see chapters 5 and 6 for detail on funding)
- facilitation of national and local collaborative service planning activities (see chapter 9 for an assessment of the impact of CSP activities)
- performance monitoring through Commonwealth, state and territory reports (see chapter 10 for an analysis of data and reporting requirements).

Under NLAP, the Commonwealth, states and territories are to work together to develop an outcomes-based framework to guide the focus on impact. Unfortunately, after several years this work is yet to bear fruit and is at best a work-in-progress. As a result, NLAP has not had a sufficient focus on outcomes. The strategic framework, key performance indicators, and reporting requirements focus on activity and output rather than on outcomes achieved for clients and the wider community.

Outcomes

The NLAP has not comprehensively delivered its intended outcomes. There are several key factors which have led to this, discussed in greater detail in subsequent chapters, and summarised at a high level in Table 2.1.

Table 2.1 Summary of NLAP's performance against outcomes

NLAP outcome	Assessment
Legal assistance services are focused on, and are accessible to, people facing disadvantage	Services are, in principle, aimed at people facing disadvantage but are not accessible to all people, whether in quantity, focus and/or location. This is primarily driven by inadequate funding.
Legal assistance services are delivered in a client-centric manner to better consider people's legal needs and capabilities	Where resources permit, service providers adopt a client-centric manner to meet legal needs, with many providers increasingly using holistic or wraparound service models. In addition to not being properly funded, the value of these services is not accurately reflected in the performance data set.
Legal assistance and other service providers and governments collaborate to provide integrated, client-centric services to address people's legal and other problems	Government funding is often siloed, not integrated nor whole-of-client focussed to deal holistically with the increasingly multifaceted and complex (intersectional) needs of clients. The sector is naturally collaborative. However, fragmented unnecessarily competitive processes and resource constraints prevent optimal levels of collaboration within and across service provider types.
Legal assistance services are provided at an appropriate time, which best addresses an individual's legal needs, including preventative action when appropriate	Many clients are not assisted until their legal problems have escalated to needing advice or representation (especially in criminal matters). Service providers are not funded explicitly to provide educational, early intervention or prevention services.
Legal assistance services empower people and communities to understand and assert their legal rights and responsibilities and to address, or prevent legal problems	Under NLAP there has been limited focus on community legal education. This has limited the extent to which communities can address or prevent legal problems. This is exacerbated by services for Aboriginal and Torres Strait Islander peoples not being provided by Aboriginal Controlled Community Organisations (ACCOs) wherever possible.
Legal assistance providers are supported to build the capacity of their organisations and staff to ensure they can effectively respond to evolving service demand.	Organisational funding is insufficient, and workloads too great, for many funded organisations to provide safe and appropriate work environments. Lack of funding means limited capacity to respond to increases or changes in services demand. Lack of funding obstructs innovation. Organisational capacity must be addressed before funding can be increased.
Enable and empower Aboriginal and Torres Strait Islander peoples in addressing their legal needs	Aboriginal and Torres Strait Islander peoples experience challenges accessing services due to service provider capacity issues, conflicts and geographical remoteness. Service delivery has not prioritised self-determination, with funding going to non-ACCOs to provide services to Aboriginal and Torres Strait Islander peoples. Outcomes are inconsistent with Priority Reforms.
Improve access to justice outcomes for Aboriginal and Torres Strait Islander peoples	There is little evidence of improved access to justice for Aboriginal and Torres Strait Islander peoples. Many legal processes and structures have embedded disadvantage.

Source: *Synthesis of evidence provided to the Review.*

Conclusion

It is the Reviewer's conclusion that the NLAP has contributed to the overarching objective of integrated and effective legal assistance services, but has not delivered efficient or appropriate approaches focused on outcomes.

Beyond substantial funding increases identified in this report, significant changes are required from all governments, their officials and service providers to achieve NLAP's intended objectives. The outcomes sought by governments should support access to justice, thereby delivering reduced unmet legal need to the benefit of both the individuals involved and the community as a whole. Thus, the Reviewer's recommendations seek to shift the focus from 'legal assistance' to 'access to justice' to increase the intensity of focus on intended outcomes.

This Report refers to the successor framework to NLAP as the Access to Justice Partnership (A2JP). Alongside the name change, delivering on access to justice requires Commonwealth and state and territory governments to adapt their approaches to working in collaboration with each other and the legal assistance sector. This contrasts with adopting an approach which in many instances is little more than administering a grant process. If governments do not adopt a client-centric approach, how can they expect service providers to do so?

The following principles underpin this Review's recommendations:

- **Genuine partnership rather than just a service agreement** – A2JP should involve collective commitment from both levels of government to support delivery of the overarching objective, and to ensure legal assistance services meet community needs.
- **Evidence informed** – A2JP must improve the focus on outcomes, and appropriate data capture, to ensure decisions on funding levels, distribution and approach are appropriately targeted to positive community impacts.
- **Sustainable organisations, rather than individual service funding** – A2JP's design should embed a focus on funding sustainable service providers, rather than services, to ensure organisations have the capacity to deliver the outcomes required, now and into the future.
- **Whole of client perspective** – A2JP must avoid fragmentation in both funding and service delivery to ensure clients can be supported end-to-end, minimising risks of traumatisation and inefficiencies.
- **Collaborative culture** – barriers to collaboration, such as competitive tendering, must be removed to ensure the sector leverages the natural strengths in working together to meet the needs of disadvantaged Australians.
- **Efficiency** – better regulatory design and investment in people, systems and premises will lead to higher levels of productivity.
- **Closing the Gap** – A2JP must clearly address, through funding and other mechanisms, both relevant targets and processes of self-determination articulated in the Priority Reforms.

Legal assistance landscape

3

Box 3.1 Key points

- Government-funded legal assistance is an integral part of ensuring the justice system is accessible to all Australians. The Australian legal assistance landscape has evolved over time, from an ad hoc assortment of providers and policy arrangements to a structured policy portfolio jointly funded by Commonwealth and state and territory governments.
- There are 4 main government-funded legal assistance service providers: Legal Aid Commissions (LACs), Community Legal Centres (CLCs), Aboriginal and Torres Strait Islander legal services (ATSILS) and Family Violence Prevention Legal Services (FVPLS).
- LACs are statutory authorities of the states and territories. They are the largest providers and service a range of criminal, civil, family and administrative matters. LACs also provide holistic services and run a range of prevention programs.
- CLCs are community-based organisations, focused on civil and family law matters. Some provide specialist services (for example, supporting tenancy issues or refugee cohorts). Others have a geographic focus (such as the Townsville region or Marrickville).
- ATSILS and FVPLS are Aboriginal Community Controlled Organisations (ACCOs) focused on meeting the legal needs of Aboriginal and Torres Strait Islander Australian peoples. Due to high levels of demand and restricted funding, ATSILS have a heavy focus on criminal law matters, but provide a wider range of civil and family law services where funding permits. FVPLS have a unique wraparound support model, focused on supporting Aboriginal and Torres Strait Islander women and children at risk of, or experiencing, family violence.

3.1 What is legal assistance?

Australia's justice system provides individuals, families, businesses and governments with a range of mechanisms to prosecute crimes and resolve disputes, including courts, tribunals, ombudsmen, and alternative forms of dispute resolution. The justice system supports resolution of civil, family and criminal matters covering relationships, child protection, human rights, education, employment, finances, injury, health, housing and dealings with government.

Access to justice is important for parties to a dispute, and for the community as a whole. A well-functioning justice system underpins protection of rights, foundations of social cohesion, economic activity and community wellbeing.

Every member of the Australian community must have fair and equitable access to legal redress, regardless of their circumstances. Disadvantaged Australians in particular face barriers in accessing the justice system, including financial barriers, communication barriers and lack of awareness of their rights.

Without access to properly resourced legal assistance, Australians suffering financial stress will be unable to get assistance for a wide range of matters affecting their economic wellbeing. These matters include housing and homelessness, mortgages and other dealings with financial institutions, public housing, small claims, workplace issues, and family breakdown and violence – the prevalence of which are exacerbated in the current cost of living environment.

Australian governments fund legal assistance services to ensure equitable access for all community members. Legal assistance services include community legal education, access advice, document preparation, representation in courts and tribunals, and mediation and arbitration to avoid disputes and reduce costs. Access to some of these services are subject to means, matter and merit tests.

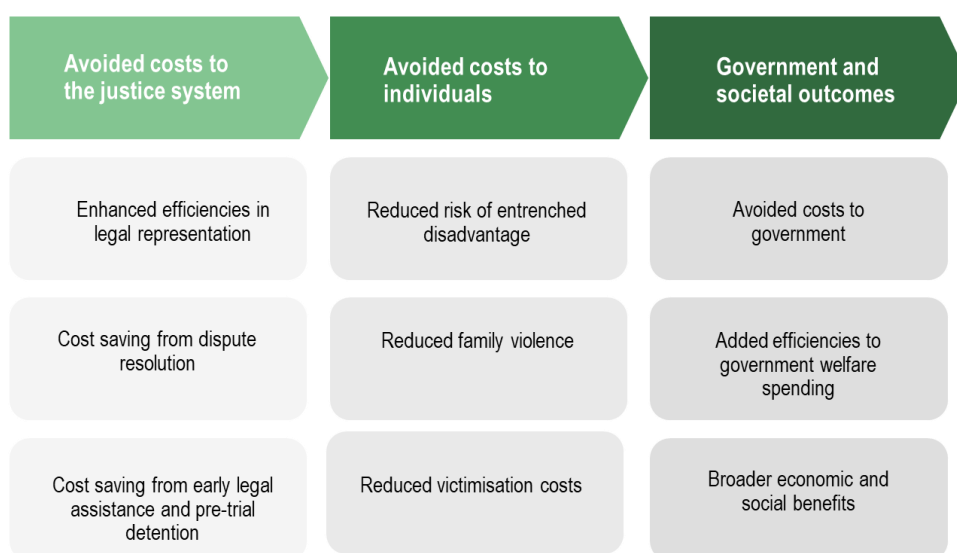
3.2 The economics of legal assistance

Providing accessible legal assistance services can deliver benefits to individuals receiving services and the broader community. While a range of moral and rights-based benefits can be attributed to the delivery of legal assistance, these benefits are challenging to quantify in monetary terms (Flynn, McCulloch, and Naylor, 2016). To address this gap in the evidence base, there is a growing body of literature dedicated to examining the economic benefits of legal assistance services.

Quantifying the benefits of legal assistance can be beneficial for understanding the need for, and efficiency of, government funding (World Bank, 2019). The quantifiable benefits of legal services demonstrate that legal services form a tenable basis for developing effective, socially productive fiscal policies at national and state levels.

The economic benefits of legal assistance can be divided into three broad categories or outcomes: avoided costs to the justice system, avoided cost to individuals, and broader government or societal outcomes. The key types of economic benefits within these categories are captured in Figure 3.1.

Figure 3.1 Framework for the economic benefits of legal assistance



The most recent example of such work in the Australian context was carried out by PwC for National Legal Aid (National Legal Aid 2023). This study found that quantifiable benefits from Commonwealth funding of LACs (of which 96% related to family law matters, the remainder relating to Commonwealth crimes, and civil and administrative matters) were 2.25 times the funding in present value terms. It is important to note that because of difficulties in quantification, the PwC study does not include, or only partially values, a number of the benefits categories identified in Figure 3.1, particularly those in the second and third columns.

Time and resources do not permit the Reviewer undertaking similar analyses for Commonwealth funding of CLCs, ATSILS and FVPLS. However, it is difficult to see how funding for these services would not achieve similar benefit-cost ratios, especially given prevention of harm and incarceration of Aboriginal and Torres Strait Islander peoples arising from the funding of ATSILS. Also, given a substantial amount of the work undertaken by CLCs and FVPLS is in family law, one would expect similar results as for LACs, at least in relation to family law matters.

Similarly, time and resources (and probably data) prevent similar *marginal* analyses of various expenditure proposals recommended in this Report. However, given it appears that current expenditure is so far from the efficient level (where costs and benefits are equal), substantial increases in funding are much more than likely to generate benefit-cost ratios greater than one. That said, as expenditure increases, benefit-cost ratios can be expected to fall at a sectoral level despite individual programs presenting positive investment cases.

Given this, the literature discussed below, and the material discussed throughout this Report, the Reviewer is confident that the recommendations contained within this Report, if implemented efficiently, will generate economy-wide benefits, in addition to making material improvements to the lives of many disadvantaged people and communities.

3.2.1 Avoided costs to the justice system

Enhanced efficiencies in legal representation

Legal assistance improves operational capacity and efficiency of civil and criminal courts. Most notably, the literature highlights that legal assistance generates a range of avoided costs to the justice system. This benefit is largely due to the capacity to reduce the number of self-represented or unrepresented litigants in courts.

As discussed in section 4.3.2, increases in self-representation may be an indicator of successful reform. As the Productivity Commission found in 2014, the majority of self-represented litigants are in that position because of their economic circumstances; they would rather be represented. Self-representation generally impedes the ability for courts to operate efficiently as it requires greater resourcing and time to ensure court matters are heard and resolved. Legal assistance facilitates access to legal representation for individuals who would otherwise be unable to afford it, resulting in fewer self-representing litigants appearing before courts, thus considerably lowering time, administrative and resource-related costs (Gabe, 2016).

A study undertaken by Greacen (2011) on six trial courts in California's San Joaquin Valley demonstrated that providing legal assistance enhanced court efficiencies by reducing the number of court hearings and staff time. The study also found that only US\$0.23 was spent on legal assistance for every US dollar of overall court cost savings. This amount dropped to US\$0.13 for every US dollar of savings when benefits to litigants were considered.

Providing legal assistance reduces court costs associated with litigants who choose to self-represent. Without appropriate guidance, self-representing litigants tend to make mistakes such as filing incorrect applications or misunderstanding rules of evidence (Price Waterhouse Coopers, 2009). Providing duty lawyers helps to mitigate these inefficiencies through providing support and advice to self-representing litigants, resulting in considerable cost savings for courts. In the Australian context, addressing these inefficiencies was calculated as an annual benefit of \$62 million in 2022 (PwC, 2023).

In the case of criminal courts, legal assistance can have a similar impact on improving efficiencies through reducing the number of self-represented or unrepresented litigants appearing before criminal courts. As noted by the Department of Justice, Canada (2016), legal assistance reduces burdens on court proceedings through decreasing workloads and associated costs, reducing the number of court appearances before cases are ready for trial, limiting the number of additional hearings, and reducing the potential for trials getting adjourned due to the accused being incapable of presenting a defence.

Cost savings from dispute resolution services

In the family law context, providing legal assistance reduces court costs as matters can be resolved through family dispute resolution services rather than through litigation. Family dispute resolution services offered by legal assistance providers improve efficiency of courts as time and resources taken to resolve matters are less compared to litigation. In the Australian context, the annual benefit of legal assistance in improving the efficiency of mediation services was estimated as \$92 million in 2022 (PwC, 2023). Similarly, in a report published by KPMG (2018) on the evaluation of Family Dispute Resolution services in LACs throughout Australia, it was estimated the program had a cost-benefit ratio of 1.58.

Cost savings from early legal assistance services pretrial detention

Access to legal assistance can significantly improve efficiencies in criminal justice processes, particularly for plea-bargaining processes and pretrial detentions. The Reviewer has heard on numerous occasions about the challenges faced by ATSI criminal lawyers in being able to properly engage with clients prior to the first engagement with the court and subsequently to provide criminal lawyers, largely as a result of an insufficient funding.

There is evidence to suggest access to legal assistance early on increases the likelihood of a successful plea-bargaining process, leading to more early resolutions of criminal proceedings and subsequently fewer resources and less time expended by courts (Dandurand and Jahn, 2018).

Providing legal assistance in criminal matters through Expanded Duty Counsels also positively impacts on funding expended for court processes in the criminal justice system. As noted in a study undertaken by the Prairies Research Consultants (2017), access to legal assistance early on improves efficiencies in court processes as it increases potential for early resolutions of cases and reduces the number of court appearances and number of cases going to trial.

Providing legal assistance can also reduce court spending for pretrial detentions which often places significant administrative and resource burdens on the criminal justice system. As an example, in Alberta, Canada, a pilot project provided representations during bail hearings. It was found that the legal assistance provided reduced detentions by 4%, which translated to avoiding approximately CAD\$1.2 million in operational remand costs (Irving, 2016). The Reviewer suspects reduction in detentions may be much greater in regional areas where detainees are predominately young Aboriginal and Torres Strait Islander men, and where the cost of detention can be much higher, such as is the case in the Northern Territory when detainees are moved for detention from regional locations such as Wadeye to Darwin.

3.2.2 Avoided costs to individuals

Reduced risk of entrenched disadvantage

People engaged with the justice system often experience a range of interconnected socio-economic vulnerabilities, which in turn increase barriers to engage with and navigate the justice system. This is particularly the case for Aboriginal and Torres Strait Islander peoples experiencing legal need. Legal problems left unaddressed increases the likelihood of escalation into more serious legal and non-legal problems, consequently impacting individuals' productive capacity, ability to secure adequate employment and thereby contribute to GDP growth, and overall engagement with society (Law Council of Australia, 2018).

As highlighted in an article by Baughman (2017), for pretrial detainees a loss of productivity and access to employment results in 'lost freedom' which can be valued as high as US\$6770, even for the least dangerous defendants. To reduce these costs incurred by individuals engaged in the justice system, the World Bank (2019) maintains that investing in legal assistance and other access to justice mechanisms, supports fostering human capital accumulation and sustainable economic development, and reduces individuals' experiences of inequality.

Reduced family violence

Providing specialist family law services through legal assistance reduces the probability of future domestic violence, enables better access to justice for individuals experiencing family violence, and reduces costs associated with family violence for individuals.

Court data in Australia indicate that 79% of all initiating family law applications present a risk of domestic and family violence, with 62% of matters screened for family violence being categorised as high risk. Further it is noted that while family violence presents a significant risk to women and children's human rights, it also places substantial financial burdens on individuals undergoing these experiences. In the context of Australia, for example, the cost of family violence to individuals was estimated at \$22 billion in 2016 (KPMG, 2016).

Legal assistance services have the potential to reduce family violence costs incurred by individuals and can generate long-term improvements to women's livelihoods. These long-term improvements include enhancing women's economic status and financial self-sufficiency, decreased physical and mental health costs, and increased productivity (Rosenberg, 2015). Similar benefits can be expected to flow to children in such circumstances. In Australia, the estimated annual benefit of reduced impact of family and domestic violence in 2022 has been valued at \$307 million (PwC, 2023).

Reduced victimisation costs

Providing legal assistance services reduces 'victimisation costs' experienced by individuals engaged with the justice system. Victimisation costs can be understood as experiences of pain, suffering, trauma, fear, reduced quality of life, damaged reputation, lost dignity and reduced life chances that are associated with ongoing unresolved legal matters (World Bank, 2019).

Stress and trauma linked to delays in court processes or pending litigations can also have a compounding effect on other areas of the individual's life, with increased potential for family breakdown, homelessness or poverty. Legal assistance services can reduce victimisation costs by shortening the time required to finalise legal matters, reduce cost-burdens associated with access to justice, and assist individuals to holistically address their problems. For example, PwC's report (2023) estimated an annual benefit of legal assistance of individuals, in the form of reduced pain and suffering, at \$25 million in 2022.

3.2.3 Government and societal outcomes

Avoided costs to government

There exist a range of costs associated with legal issues remaining unresolved for governments and society more broadly. Lack of access to appropriate and timely legal assistance can have significant fiscal impacts as costs of unsolved legal problems tend to shift to other areas of government spending, such as health care, housing, child protection and incarceration.

A study undertaken by Farrow et al (2016) found that in Canada, the costs of not funding legal assistance resulted in increased costs in other areas of public spending by approximately 2.35 times. Similarly, a study from the US state of Kentucky found that US\$1 spent on legal assistance to secure a domestic violence protective order resulted in \$32 in avoided costs for government spending (World Bank, 2019).

Additionally, investment in legal assistance services addressing criminal matters can produce significant government savings through avoided costs linked to arrest, conviction, incarceration, probation and post-prison supervision, while increasing chances of pretrial release (National Institute of Corrections, 2017). For example, it is estimated that on average in the United States the annual cost to detain one inmate is US\$22,650, while pretrial release programs cost the government between US\$3100 and US\$4600 per defendant. These are significant cost-saving impacts on government spending.

The Reviewer is not aware of any Australian studies on the economic benefits of legal assistance in relation to criminal matters. However, given that most costs in civil matters are not avoided in criminal matters, and that there is the additional cost of incarceration in criminal matters, it seems benefit-cost ratios for criminal legal assistance would be at least comparable to those of civil legal assistance.

Added efficiencies to government welfare spending and outcomes

Legal assistance is associated with improved outcomes in family violence, housing costs and reliance on out-of-home care for children. Investment in legal assistance services enhances effectiveness of public expenditure on welfare supports to disadvantaged communities through reducing the number of people accessing these services. This in turn contributes to improving efficiencies in achieving governments' welfare policy outcomes.

As an example, a cost-benefit study commissioned by the Wisconsin Bar Association (Notterman, 2015) estimated that US\$8.4 million in public funding for local domestic service providers, including legal assistance services, averted roughly US\$20 million in public funding costs.

Similar benefits have been estimated for out-of-home care costs incurred by governments to protect children who experience domestic or family violence. In Australia, it has been observed that out-of-home care costs the government an average of \$57,085 per person each year, while the benefit to governments in 2022 of preventing children from engaging with out-of-home care was estimated to be \$22 million (PwC, 2023).

In the case of housing, the evidence base highlights that providing legal assistance prevents evictions and reduces the number of individuals entering shelter systems. As an example, a study in Massachusetts found that the state's legal assistance service prevented or delayed 1,851 evictions in 2009. Further, the study found that 25% of those individuals would have entered the shelter system had their evictions not been delayed or prevented, which subsequently amounted to \$8.4 million in avoided shelter costs (World Bank, 2019).

Broader economic and social benefits

Legal assistance services can assist individuals in returning to paid employment, contributing to their economic participation. Notably, the literature highlights that individuals who receive judicial relief through aid are more likely to spend more, which subsequently contributes to supporting job growth and stimulating the economy (Notterman, 2015). A study from the University of Minnesota examined the benefits of legal assistance to women who experienced intimate partner violence and found that legal assistance services can improve incomes and reduce poverty. The study found that women's average income increased by approximately US\$5,500, and the likelihood of being in poverty a year after legal assistance services also decreased. The study estimated that every dollar expended on legal assistance was associated with a US\$2.41 increase in income for women experiencing intimate partner violence.

A number of studies conducted in different countries indicate substantial economic benefits at the societal level from providing legal assistance. One study conducted in the UK estimated that for every GBP£1 expended on Citizens Advice services, which are similar to legal assistance services, there was an estimated benefit of GBP£33 to GBP£50 to individuals and other stakeholders (Preložnjak, 2017). Similarly, a study undertaken by The Perryman Group found that for every US\$1 expended on legal assistance services in the US state of Texas, the local economy gained at least US\$7.42 in total spending, comprising US\$3.56 in benefits to gross product and US\$2.20 in personal income (Abel and Vignola, 2010).

3.3 Evolution of legal assistance

The Australian legal assistance sector has developed over four key stages, with each marked by a pivot in funding and sector planning. Through these changes, the sector has moved from its origins as a loose collection of discrete quasi-public services to a complex and nationally integrated system of legal assistance.

Before 1970: A largely absent Commonwealth

From Federation to early 1970s, virtually no federal funding was allocated to legal assistance services, with responsibilities to fund them left to states and territories. Citing concerns with a lack of legislative competency, the Commonwealth Government provided legal assistance only in limited circumstances and to specific groups. The limited scope of Commonwealth legal assistances was:

- a person tried by court martial who could have legal costs paid by the Commonwealth (*Defence Force Act 1903 (Cth)*, s 96)
- a person committed for trial for a Commonwealth offence who did not have the means to pay for a defence could apply for an appointment of counsel (*Judiciary Act 1903 (Cth)*, s 69(3))
- Legal Services Bureau offices provided legal advice and representation to servicepersons, ex-servicepersons and their dependents.

States and territories had an ad hoc and fragmented patchwork of legal assistance services. Between 1933 and 1967, each state had independently implemented publicly funded legal assistance, public defender, or public solicitor programs. Despite the gradual development of programs, there was no consistency in policy or practice across jurisdictions (Commonwealth of Australia, 1997). Legal assistance was initially provided by the legal profession through law societies and bar associations, and later funded by the state governments.

1970-1996: Governments step up

The modern legal assistance sector in Australia developed in 1970s, with governments taking an active role in developing the legal aid sector. Grassroots community legal centres were established, and the Commonwealth government became more involved in the legal assistance sector. Members of the legal profession began providing free legal advice and services to their communities. Those early organisations, which include Redfern Aboriginal Legal Services (1970) and Fitzroy Community Legal Centre (1972), laid the foundation for modern ATSIILS and CLCs, and grew with support from members of the legal profession, law students and academics.

In recognition of those efforts, Redfern Aboriginal Legal Service and Fitzroy Community Legal Centre were first awarded Commonwealth Grants in 1970 and 1973 respectively. From 1977, CLCs have been funded variously under Commonwealth and state or territory programs (Basten, 1983).

The Whitlam Government also sought to establish a national legal aid program, creating a national legal aid office (the Australian Legal Aid Office, or ALAO) in 1973. The ALAO provided legal assistance where either the matter was concerned with federal law, or the Commonwealth was deemed to have a special responsibility for the person. As the ALAO did not deal with matters solely within the legislative competency of states, it existed in tandem with state legal assistance schemes. By the end of 1975, the ALAO was assisting 10,000 clients per month (Commonwealth of Australia, 1997).

After a 1976 review of the legal aid sector in Australia, the Commonwealth decided it was preferable for states and territories to operate legal assistance, and that the governments should jointly fund legal assistance. Pursuant to the new approach, the ALAO offices merged with newly created statutory Legal Aid Commissions in each state and territory, which took over responsibilities for legal assistance in their jurisdictions (Commonwealth of Australia, 1997). Due in part to the notion of joint funding, legal assistance management and supply was characterised by a 'sense of shared purpose and responsibility' (PwC, 2009).

Between 1987 and 1989, the Commonwealth entered into bilateral agreements with each state and territory to provide funding for legal aid under special purpose payments. Notably, while all agreements used an indexation formula based on price and wage levels, those agreements did not account for demand growth (Noone, 2001).

1996-2010: Transition to purchaser-provider model for legal aid

In June 1996, the Commonwealth Attorney-General advised states and territories that the Commonwealth was terminating the existing joint funding agreements for legal aid and sought to enter a new funding agreement. As compared to the previous period, the Commonwealth made several crucial modifications to the new funding arrangement, including:

- Commonwealth legal aid funding could be used only to assist in matters arising under Commonwealth law
- Commonwealth funding was subject to Commonwealth priorities, guidelines and a Commonwealth accountability mechanism
- Commonwealth to become a purchaser of services, not a jointly responsible partner
- total funding reduced.

During this period, both the share and level of Commonwealth funding decreased (from 49% in 1997 to 32% in 2010). This resulted in states and territories bearing a greater share of funding, a decrease in legal aid service levels, and an increase in the number of CLCs.

2010-Present: Advent of new Federal Financial Relations

In November 2008, COAG agreed to significant reform of Australia's Federal Financial Relations in recognition of the broader vertical fiscal imbalance and a need for collaborative intergovernmental policy setting across Australia. This agreement led to the creation of a new Intergovernmental Agreement on Federal Financial Relations (IGA). Under the IGA, in June 2010, governments signed the 2010 National Partnership Agreement on Legal Assistance Services (NPA 2010).

As compared to the immediately preceding period, the advent of the IGA brought about a renewed emphasis on partnership and greater Commonwealth involvement in legal assistance. The overarching aim of NPA 2010 was to provide a 'national system of legal assistance'. Thus, NPA 2010 provided:

- Commonwealth funding for LACs through states and territories
- policy framework, but not funding, for a 'holistic approach' to reforms by providers, including CLCs, ATSILS, and FVPLS
- earlier resolution of legal problems that, when appropriate, avoids litigation (Allen Consulting Group, 2014).

In 2015, after NPA 2010's expiry, a NPA 2015 was entered into. In addition to NPA 2010's key changes, NPA 2015 further provided for:

- a new funding allocation model
- adjusted performance benchmarks and requirements for reporting
- introduction of collaborative service planning
- CLC funding to be distributed by states and territories (Urbis, 2020).

It is important to note that since 2010, despite the urging of the Productivity Commission in 2014, there has been no attempt to align aggregate funding levels with actual legal need and costs of service provision.

3.4 Legal assistance providers

The legal needs of disadvantaged Australians are currently serviced by government funded providers that offer a range of services, including information, advice, assistance with legal applications, casework, advocacy and law reform. Each provider plays a different mix of roles.

3.4.1 Legal Aid Commissions (LACs)

LACs are independent statutory bodies that provide information, legal advice and representation in courts and tribunals. There are eight LACs, one in each state and territory, which support most Australians who receive publicly funded legal assistance. Each LAC has offices across its jurisdiction, covering metropolitan, regional and rural locations, and employs lawyers and non-lawyers to provide services to clients. Some LACs administer CLC funding in their jurisdictions, on behalf of their governments. The following types of legal assistance are provided by LACs:

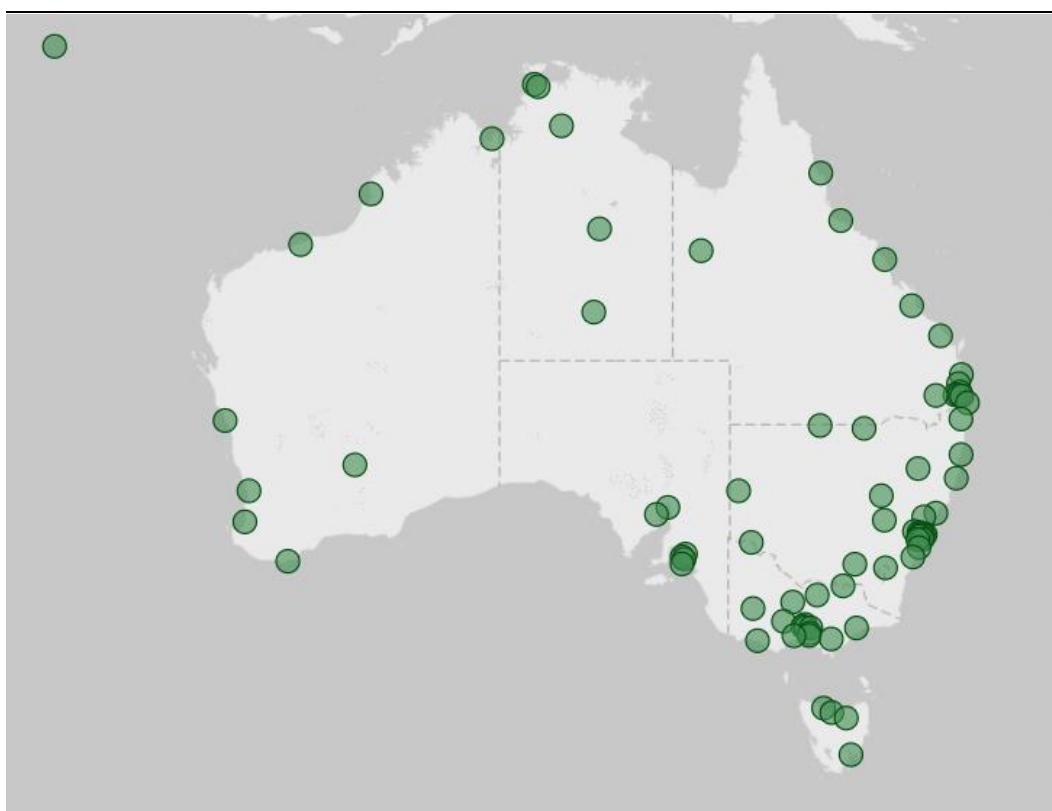
- legal services to individuals who lack the means to hire a lawyer for representation in court and other proceedings and resolution of other legal matters. These services can be provided by LAC staff or via private practitioners through so called 'grants of legal aid'
- duty lawyer services to individuals who appear in court without legal representation on that specific day
- other representational services including assistance with alternative forms of dispute resolution, particularly in family law matters
- information and guidance on legal rights, responsibilities and available solutions

- conducting educational programs to enhance public awareness and understanding of the law and legal options
- advocacy and law reform.

Accessing legal aid requires applicants to satisfy means and merits tests set by each LAC. Despite the PC Report recommending far greater consistency, these tests continue to vary significantly on income and asset criteria which govern access to services, even for services funded by the Commonwealth. Appendix D contains an overview of means tests and variations across jurisdictions.

The directors of state and territory LACs come together at a national level to form National Legal Aid (NLA). NLA acts as a central contact point and advocate for issues of interest to all LACs. NLA provides a framework for exchange between LACs, sponsors research and promotes development of best practice in legal aid.

Figure 3.2 Map of LAC office locations



Source: LAC websites and reporting 2023

3.4.2 Community Legal Centres

Community Legal Centres (CLCs) are independent, not-for-profit community organisations that offer advice, representation and legal education to their communities. They use a variety of delivery models: some operate from a single office (such as Cairns Community Legal Centre), some from multiple offices (such as WEstjustice), and some are entirely online (such as Youth Law Australia). Many CLCs employ professionals such as allied health workers, social workers and financial counsellors to provide more holistic solutions to client problems.

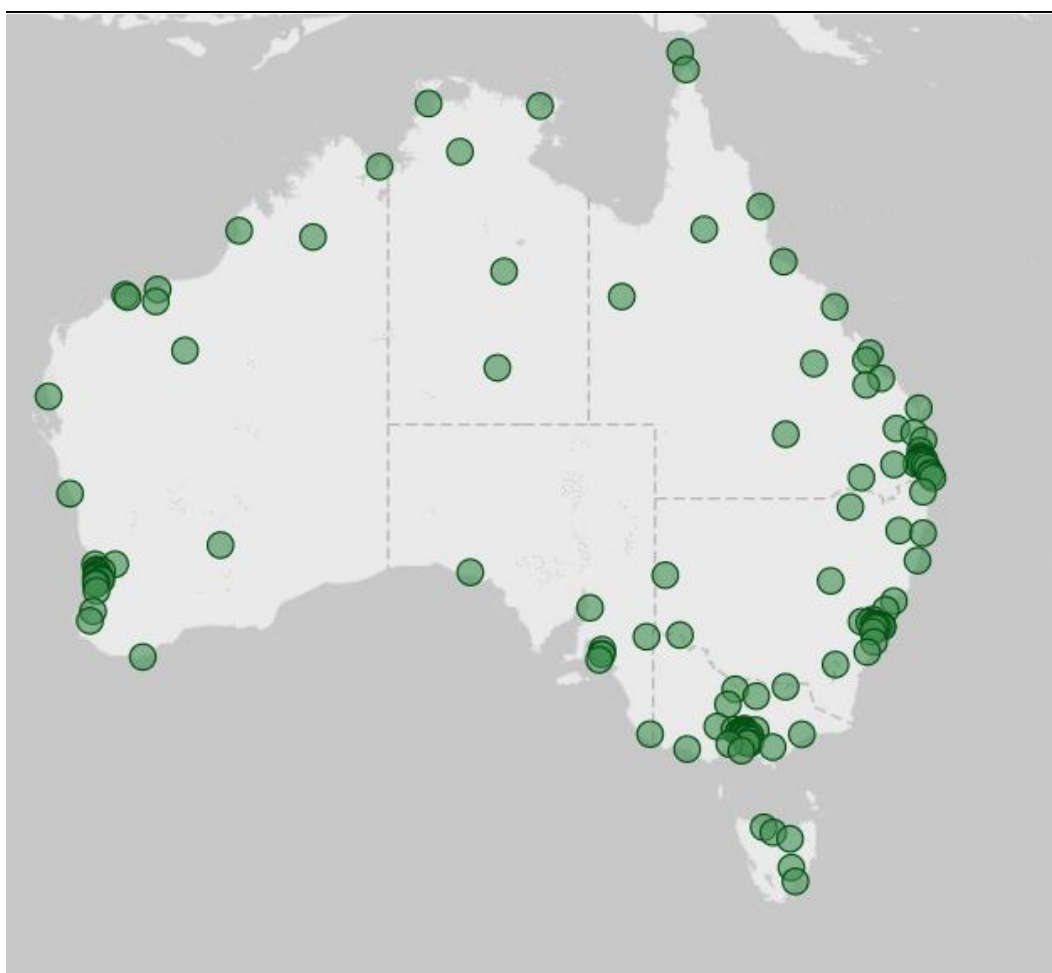
CLCs assist Australians who cannot afford a private lawyer and who are unable to obtain a grant of legal aid due to eligibility issues (for means or matter reasons) or conflicts of interest. CLCs are also involved in implementing early intervention and preventive measures, as well as participating in policy and law reform advocacy.

The broad spectrum of CLCs offers services in particular areas of law (such as tenancy or social security law), and for particular community groups (such as women, young people, refugees and those living with a disability). Others provide a wide range of civil law services to a geographic community. It is common for CLCs of all types to partner with other groups and organisations to embed their services with the community, making use of volunteers and pro bono services.

The Reviewer believes there are 179 CLCs across the country, of varying size and scale. Some CLCs provide local services, others provide statewide or national services. CLCs started operating in Australia over 50 years ago – the first being the Redfern Legal Centre founded in 1970. While there is a lack of comprehensive data on the age of CLCs, the Reviewer is confident that the median age of CLCs is well in excess of 10 years. This view is shared by participants in this Review.

The peak body for CLCs, Community Legal Centres Australia (CLCA), supports the community legal sector to provide high-quality, free and accessible legal and other services. In 2022-23 the Commonwealth provided \$313,000 per year to support CLCA's core functions, and an additional \$245,000 for specific activities. There are also peak bodies in most states and territories.

Figure 3.3 Map of CLC office locations



Source: CLC websites and reporting 2023

3.4.3 Aboriginal and Torres Strait Islander Legal Services (ATSILS)

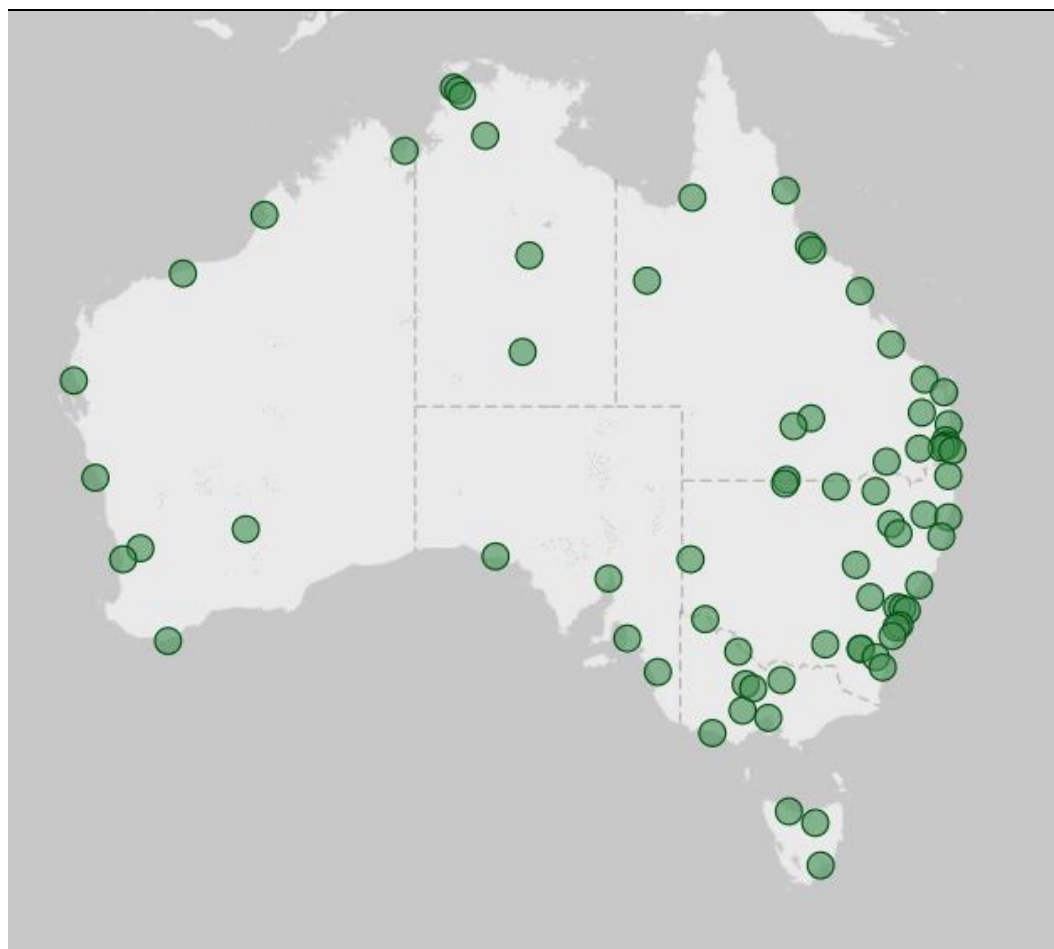
ATSILS advance and protect the legal and human rights of Aboriginal and Torres Strait Islander peoples. As Aboriginal Community Controlled Organisations (ACCOs), ATSILS ensure service delivery builds the strength and empowerment of Aboriginal and Torres Strait Islander communities and people, thereby ensuring services are culturally appropriate and safe.

ATSILS operate across Australia, providing criminal, civil and family law services to Aboriginal and Torres Strait Islander peoples, although as mentioned earlier, demand and funding constraints force them to focus on criminal matters. The first ATSILS were established 50 years ago in NSW to provide culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples.

There are currently seven ATSILS: North Australian Aboriginal Justice Agency; Aboriginal Legal Service of Western Australia; Aboriginal Legal Rights Movement, South Australia; Victorian Aboriginal Legal Service; Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd; Aboriginal Legal Service (NSW/ACT) Limited; and Tasmanian Aboriginal Legal Service. ATSILS have offices across their respective jurisdictions, covering metropolitan, regional and rural locations.

ATSILS have a national peak body, NATSILS, that represents community controlled ATSILS. NATSILS advocates at the national level for the rights of Aboriginal and Torres Strait Islander peoples within the justice system. In 2022-23 the Commonwealth provided \$647,772 in funding to support NATSILS' activities as the peak body.

Figure 3.4 Map of ATSILS office locations



Source: ATSILS websites and reporting 2023

3.4.4 Family Violence Prevention Legal Services (FVPLS)

FVPLS are currently funded by the Commonwealth through the National Indigenous Australians Agency (NIAA). They sit outside NLAP but are a core part of the legal assistance environment.

FVPLS were established by the Commonwealth in 1998 as a program under the former Aboriginal and Torres Strait Islander Commission. The purpose of the FVPLS sector is to provide ‘...Indigenous victims of family violence access to services which allow them to pursue their human rights to equal protection of the law, which could otherwise be unavailable without FVPLS’ (Nous, 2013, p.48).

FVPLS assist Aboriginal and Torres Strait Islander peoples, predominantly women and children, who are victims/survivors of family violence and/or sexual assault, or who are at immediate risk of such violence. Working in partnership with various service providers, FVPLS offer culturally safe, free, and easily accessible legal assistance, casework, counselling, court support and non-legal assistance to Aboriginal and Torres Strait Islander adults and children who are experiencing violence and/or sexual assault.

The FVPLS sector is underpinned by objectives to:

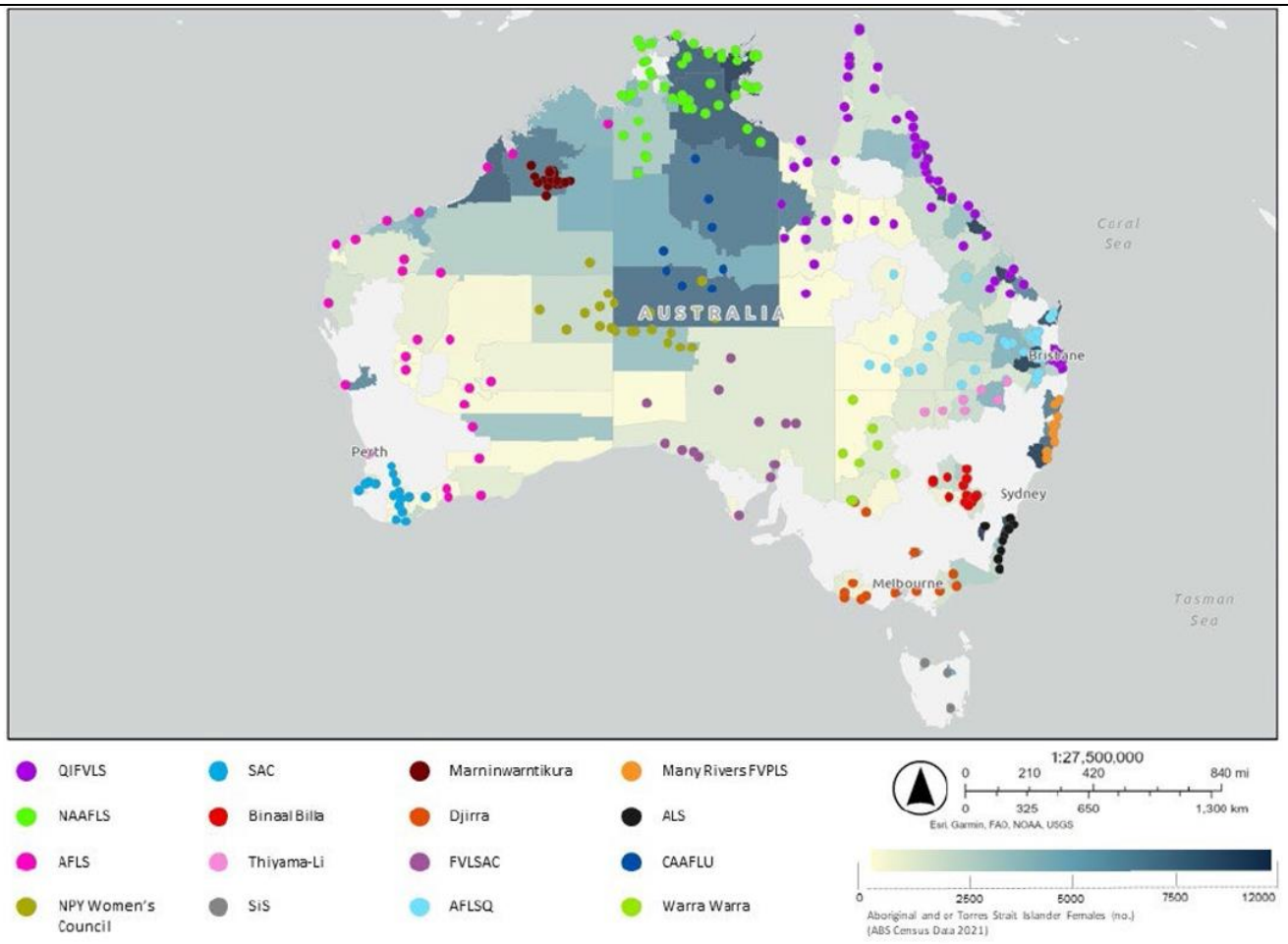
- address high rates of domestic and family violence experienced by Aboriginal and Torres Strait Islander women and children
- support Aboriginal and Torres Strait Islander women and children’s access to justice
- remove barriers for women and children within the justice system.

FVPLS objectives are closely aligned with Targets 12 and 13 under the National Agreement on Closing the Gap:

- Target 12: By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45%.
- Target 13: By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%, as progress towards zero.

There are 16 FVPLS across the country, with at least one FVPLS per jurisdiction. The National Forum for FVPLS (NFVPLS) was established in May 2012 to represent member organisations. The NIAA provided funding to the National Forum of \$3 million over three years (2022-23 to 2024-25). Not all FVPLS are National Forum members.

Figure 3.5 Map of FVPLS office locations



Source: NIAA, 2023

3.4.5 Private practitioners

Private practitioners (individuals and firms) provide representation for disadvantaged Australians through grants of legal aid in criminal, civil and family law matters. Generally, private practitioners apply to be on LAC practitioner panels which are lists of lawyers who are approved to act for clients in family law, criminal law or child protection matters. According to NLA, 72% of Legal Aid matters were assigned to private practitioners in 2022-23.

Pro bono services are provided for free by private practitioners. Services provided at reduced cost are referred to as low bono services. Lo bono services are services provided at rates significantly below market rates. These services are provided to individuals and community organisations across a wide range of civil matters including, licensing, conveyancing, workplace relations and insurance. According to the Australian Pro Bono Centre (2022), in 2022 large law firms provided 90% of all pro bono hours, followed by small firms (5%) and individuals (1%). Paralegals accounted for 4% of all pro bono hours recorded.

Many larger firms maintain partnerships with CLCs. These may involve direct referrals and co-counselling, or delivery of pro bono services directly through CLCs. These partnerships typically target particular client groups or areas of unmet need. This allows the CLC to provide services in areas of the law not covered by LACs. In 2022 for example, the Refugee Advice and Casework Service (RACS) received over 25,000 hours of pro bono and volunteer legal support from 16 major law firms.

Similarly, the Refugee Legal Centre engages with around 20 legal firms to support its work through pro-bono and volunteer legal support, budgeting for approximately \$20 million worth of pro bono.

Relative to the size of the practicing solicitor workforce in each jurisdiction, lawyers in the Australian Capital Territory, Northern Territory, Victoria and Western Australia delivered a greater proportion of pro bono hours than their proportion of the solicitor workforce would suggest (Australian Pro Bono Centre Target Report, 2022).

3.5 Legal assistance services

3.5.1 Types of services

Legal assistance services include a range of different activities:

- legal information and resources available through online, telephone and in-person channels
- services promoting community legal education (CLE) and other preventative measures
- provide initial legal advice and referrals, both legal and non-legal
- assistance services to aid individuals with specific legal needs, including preparation and lodgement of applications
- assistance from duty lawyers for those requiring immediate legal support at courts and some tribunals
- in-depth case work services to address complex legal matters
- advocacy, law reform, and policy development efforts to bring about positive changes in the legal system
- public interest litigation
- non-legal services related to legal problems, for example, social work and financial counselling.

Some legal assistance providers offer services dependent upon their focus and areas of specialisation.

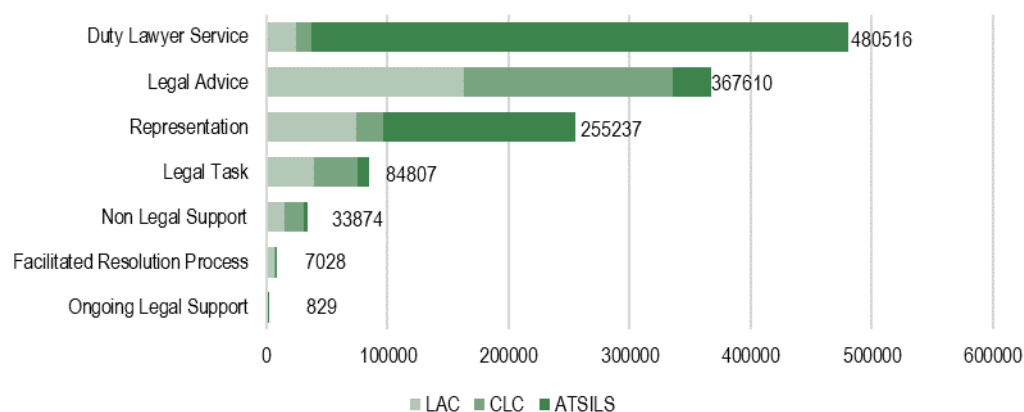
Overview of types of services provided

In 2022, over 1.1 million services were provided by NLAP-funded service providers. Duty lawyer services accounted for almost half of all services provided (42%). Legal advice (32%) and legal representation (22%) represented the majority of services. Legal tasks (7%), non-legal support (3%), facilitated resolution processes (1%) and ongoing legal support (0.1%) were also provided to those receiving legal assistance.

Services provided by LACs, CLCs and ATSILS differ at a national level.

LACs played a key role in providing facilitated dispute resolution services (they were responsible for 96% of this service type), legal tasks (47%), legal advice (44%) and non-legal support (44%). CLCs provided 70% of ongoing legal support, legal advice (47%), non-legal support (46%) and legal tasks (43%). ATSILS provided 92% of duty lawyer services, and 62% of representation services.

Figure 3.6 Types of service delivered, 2022



Source: State and Territory NLAP reporting, 2022.

3.5.2 Types of matters

Civil

Legal assistance in civil law aims contribute to a fairer, inclusive and rights-focused community. Common civil matters include human rights, consumer and commercial disputes, tenancy, debt, discrimination, workplace issues, planning and neighbour disputes, sexual harassment and compensation to victims of crime. The PC Report (2014) and the Reviewer (Mundy, 2015) have set out the importance of a well-functioning civil justice system to the efficient operation of a modern market economy.

Administrative

Administrative legal assistance helps individuals in disputes with governments and government agencies. Administrative matters often relate to Comcare, veterans' entitlements, social security, mental health, guardianship and administration, child protection, infringements, public housing and immigration.

Criminal

Legal assistance in criminal matters generally involves providing legal advice to, and representation for, people charged with criminal offences who cannot otherwise afford legal assistance. This includes both summary and indictable offences under the laws of states, territories and the Commonwealth.

Criminal legal assistance supports the outcomes of *Dietrich v The Queen* (1992) 177 CLR 292, which requires that a person charged with a serious criminal offence should, except in exceptional circumstances, have their trial stayed until they can obtain legal representation, if they choose to seek to it.

Family

Legal assistance in family matters aims to help people to resolve their family disputes regarding property and custody and maintenance of children. These disputes are now understood to cover most matters that involve children's physical, psychological and cultural wellbeing. Key activities can involve capacity building, alternative dispute resolution, family violence intervention order matters, and representation.

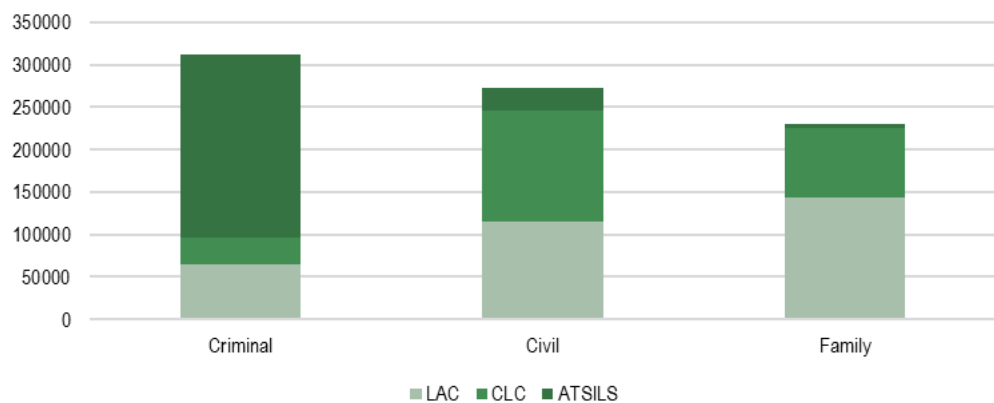
Overview of types of matters

Over 730,000 matters were captured in 2022 in the legal assistance sector, and are attributed to Criminal, Civil or Family law categories. It is important to note that data reflects the fact that multiple services may be provided across different matters for a single client. Criminal matters accounted for the greatest proportion (43%), followed by Civil (including administrative) (37%) and Family (31%).

Most services provided for criminal matters were attributed to ATSILS (69%), with LACs contributing almost a quarter of services for criminal matters (21%). Civil matters were relatively evenly shared between CLCs (48%) and LACs (42%). LACs were responsible for the majority of family law matters (63%), and CLCs for just over a third of family matters (35%).

It is important to note that there are limitations in the data. Domestic and family violence (DFV) and child protection matters are not differentiated. No data were available in a similar format to compare the level of administrative law matters among service providers.

Figure 3.7 Types of matters by service provider, 2022



Source: State and territory NLAP reporting, 2022.

3.6 Policy context

A range of national strategies interface with access to justice in Australia, spanning portfolios, policies and communities. Key relevant strategies, plans and frameworks are outlined below.

3.6.1 Closing the Gap

In 2020, all Australian governments, and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, signed the National Agreement on Closing the Gap (the National Agreement). The National Agreement marked a commitment to mobilising all avenues available to governments to achieve the Agreement's objectives. The focus is on addressing entrenched inequality faced by Aboriginal and Torres Strait Islander peoples, and in partnership improving outcomes across social, economic, political and cultural spheres.

The National Agreement's objective is to enable Aboriginal and Torres Strait Islander peoples and governments to work together to overcome inequality experienced by Aboriginal and Torres Strait Islander peoples, and to achieve life outcomes equal to all Australians.

The Agreement's intended outcomes are:

- Shared decision-making: Aboriginal and Torres Strait Islander peoples are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements.

- Building the community-controlled sector: There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander peoples across the country.
- Improving mainstream institutions: Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander peoples, including through the services they fund.
- Aboriginal and Torres Strait Islander-led data: Aboriginal and Torres Strait Islander peoples have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.
- Socio-economic outcomes specified in the National Agreement.

3.6.2 Measuring What Matters: Australia's Wellbeing Framework

Measuring What Matters is Australia's first national wellbeing framework that guides action towards a more healthy, secure, sustainable, cohesive and prosperous Australia. The Wellbeing Framework has five wellbeing themes:

- **Healthy:** A society in which people feel well and are in good physical and mental health, can access services when they need, and have the information they require to take action to improve their health
- **Secure:** A society where people live peacefully, feel safe, have financial security and access to housing
- **Sustainable:** A society that sustainably uses natural and financial resources, protects and repairs the environment and builds resilience to combat challenges
- **Cohesive:** A society that supports connections with family, friends and the community, values diversity, and promotes belonging and culture
- **Prosperous:** A society that has a dynamic, strong economy, invests in people's skills and education, and provides broad opportunities for employment and well-paid, secure jobs.

Inclusion, equity and fairness are cross-cutting dimensions of the Framework.

Access to justice is identified under the Secure wellbeing theme.

3.6.3 National Plan to End Violence Against Women and Children

On 17 October 2022, Commonwealth, state and territory governments released the National Plan to End Violence against Women and Children 2022–2032 (the National Plan).

The National Plan is the overarching national policy framework that guides actions towards ending violence against women and children. The National Plan outlines how all parts of society, including governments, industry, media, educational institutions, the family, domestic and sexual violence sector, communities and individuals, must work together to end gender-based violence.

The National Plan outlines four domains:

- **Prevention:** working to change the underlying social drivers of violence by addressing the attitudes and systems that drive violence against women and children to stop it before it starts.
- **Early intervention:** identifying and supporting individuals who are at high risk of experiencing or perpetrating violence and prevent it from reoccurring.
- **Response:** providing services and supports to address existing violence and support victim-survivors experiencing violence, such as crisis support and police intervention, and a trauma-informed justice system that will hold people who use violence to account.

- Recovery and healing: helping to reduce the risk of re-traumatisation and supporting victim-survivors to be safe and healthy to be able to recover from trauma and the physical, mental, emotional, and economic impacts of violence.

The National Plan identifies responsibilities the Commonwealth has to make improvements to the justice system, including family law, to improve legal responses to better protect victim survivors and prevent re-traumatisation, and to support family violence legal services.

Specifically, the National Plan identifies the following actions relating to access to justice:

- Ensure victim-survivors have access to appropriate and timely survivor-centred justice responses. This may include alternative and complementary interventions to criminal justice pathways and family courts to identify and implement responses for domestic and family violence.
- Improve alternative civil justice and non-criminal pathways for holding perpetrators to account.
- Explore enhancement of Women's Legal Services when supporting victim-survivors experiencing gender-based violence, including capacity building for Women's Legal Services for diverse cohorts including Aboriginal and Torres Strait Islander peoples.

3.6.4 National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030

The National Strategy is a comprehensive 10-year plan, a nationwide framework, focusing on prevention and improved response to child sexual abuse in all environments. This framework gained unanimous support from all First Ministers and was officially introduced on October 27, 2021. Its primary goal is to diminish the risk, prevalence and impact of child sexual abuse and associated damage.

This strategy emerged as a principal recommendation from the Royal Commission into Institutional Responses to Child Sexual Abuse. It addresses either completely or in part, 100 recommendations made by the Royal Commission. The execution of the National Strategy is structured around two action plans, each spanning four years (2021-2024).

The strategy encompasses five key themes, in line with those identified by the Royal Commission and various stakeholders. These themes include raising awareness, education, fostering child-safe environments, aiding and empowering victims and survivors, promoting national approaches to address harmful sexual behaviours in children, focusing on prevention and intervention of offenses, and enhancing research and knowledge.

Specific initiatives under the National Strategy are tailored to support and empower victims and survivors, with a focus on improving their access to justice.

3.6.5 National Framework for Protecting Australia's Children

Safe and Supported: The National Framework for Protecting Australia's Children 2021–2031 is Australia's framework to reduce child abuse and neglect and its intergenerational impacts (National Framework). The National Framework identifies four focus areas:

- a national approach to early intervention and targeted support for children and families experiencing vulnerability or disadvantage
- address overrepresentation of Aboriginal and Torres Strait Islander children in child protection systems
- improve information sharing, data development and analysis
- strengthen the child and family sector and workforce capability.

3.6.6 Australia's Disability Strategy

Australia's Disability Strategy 2021–2031 (Disability Strategy) is Australia's national disability policy framework. It sets out a plan for continuing to improve the lives of people with disability in Australia.

The Disability Strategy was developed by Commonwealth, state, territory and local governments, through more than two years of engagement with people with disability, their families and carers. The Strategy's purpose is to:

- provide national leadership towards greater inclusion of people with disability
- guide activity across all areas of public policy to be inclusive and responsive to people with disability
- drive mainstream services and systems to improve outcomes for people with disability
- engage, inform and involve the whole community in achieving a more inclusive society.

The Disability Strategy identifies outcomes in: employment and financial security; inclusive homes and communities; safety, rights and justice; personal and community support; education and learning; health and wellbeing; and community attitudes.

Under the Safety, Rights and Justice Outcome Area, the key outcome is that the rights of people with disability are promoted, upheld and protected, and people with disability feel safe and enjoy equality before the law. Policy Priority 2 aims for policies, processes and programs to provide better responses to people with disability who have experienced trauma. Policy Priority 4 aims for the rights of people with disability to be promoted, upheld and protected. Policy Priority 5 aims for people with disability to have equal access to justice.

3.6.7 Disability Royal Commission

The Disability Royal Commission was established in April 2019 in response to community concern about reports of violence against, and the neglect, abuse and exploitation of, people with disability.

The Disability Royal Commission investigated:

- preventing and better protecting people with disability from experiencing violence, abuse, neglect and exploitation
- achieving best practice in reporting, investigating and responding to violence, abuse, neglect and exploitation of people with disability
- promoting a more inclusive society that supports people with disability to be independent and live free from violence, abuse, neglect and exploitation.

The Royal Commission reported to the Commonwealth Government on 29 September 2023. It made 222 recommendations on how to improve laws, policies, structures and practices to ensure a more inclusive and just society that supports the independence of people with disability and their right to live free from violence, abuse, neglect and exploitation.

The recommendations encompass stronger legal frameworks to protect the rights of people living with disability. Key recommendations include:

- Recommendation 4.1: Establish a Disability Rights Act
- Recommendation 4.13: The duty to provide an interpreter
- Recommendation 4.19: Co-design a new complaints mechanism for people with disability
- Recommendation 4.20: Enabling remedies through the courts
- Recommendation 4.22: Strengthening disability rights protection in state and territory laws
- Recommendation 5.4: Review of national agreements, including the NLAP
- Recommendation 6.21: Additional funding for advocacy programs

- Recommendation 6.22: Improved data collection and reporting on met and unmet demand for disability advocacy
- Recommendation 6.35: Legal frameworks for the authorisation, review and oversight of restrictive practices.

The Commonwealth has commenced consultation with people with disability, their families, carers, representative organisations, service providers, unions and the broader community to inform government decision making on reform and change.

3.6.8 NDIS Review

On 18 October 2022, the Minister for the NDIS initiated an independent review of the NDIS. The purpose was to restore trust, confidence and pride in the Scheme. The Review examined:

- the Scheme’s design, operations and sustainability
- how to build a more responsive, supportive and sustainable market and workforce.

The Final Report was published in December 2023 and contains 26 recommendations with supporting actions to guide improvements to the NDIS. Action 25.1 recommends the Department of Social Services, with input from the National Disability Insurance Agency and NDIS Quality and Safeguards Commission, consider the Review’s recommendations and develop a proposed package of legislative reforms. These reforms are likely to increase the demand for legal assistance.

3.6.9 Robodebt Royal Commission (2022)

The Robodebt Royal Commission was established on 18 August 2022 to enquire into: the establishment, design and implementation of the Robodebt scheme; the use of third-party debt collectors under the Robodebt scheme; concerns raised following implementation of the Robodebt scheme; and the intended or actual outcomes of the Robodebt scheme.

The Final Report of the Robodebt Royal Commission was delivered in July 2023. Recommendation 12.4: Regard for funding for legal aid commissions and community legal centres, states:

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. (Robodebt Royal Commission, pg. xiv)

Recommendation 12.4 is addressed by the NLAP Review in section 9.5. The Commonwealth is still considering its response to the Final Report of the Robodebt Royal Commission.

3.6.10 Royal Commission into Defence and Veteran Suicide

The Royal Commission into Defence and Veteran Suicide was established on 8 July 2021 as an inquiry into the overrepresentation of serving and ex-serving Defence members in deaths by suicide in Australia.

The Royal Commission has delivered an Interim Report. The Final Report had not been published at the time this Review Report was completed.

3.6.11 Reform of Australia's system of administrative review

On 16 December 2022, the Commonwealth announced reforms to Australia's system of administrative review, which include abolishing the Administrative Appeals Tribunal (AAT) and establishing a new federal administrative review body. The reform includes a transparent, merit-based system of appointments.

Legislation to establish the Administrative Review Tribunal, the AAT's successor, was introduced into the House of Representatives by the Attorney-General on 7 December 2023.

3.6.12 Family Relationship Services Program

The Family Relationship Services Program (FRSP), consisting of the Family Law Services and Family Law Pathways Networks sub-programs, seeks to enhance the welfare of Australian families, especially those with children, who are facing the risk of separation or have already separated. The FRSP funds a variety of education and support services, including:

- Family Relationship Centres
- Family Relationship Advice Line
- Family Dispute Resolution (including regional FDR and First Nations FDR)
- Family Counselling
- Children's Contact Services
- Parenting Orders Program/Post Separation Cooperative Parenting Program
- Supporting Children after Separation Program

In 2024, a review of the program will be commissioned.

Legal need

4

Box 4.1 Key points

- Legal need occurs when an individual cannot resolve a problem by their own means and a legal remedy to the problem exists.
- Unmet need is defined as a situation where a person is unaware they have a legal right, or where they would like to defend a right but do not because they cannot access legal services for various reasons, such as services being too slow, too expensive or unavailable as a result of inadequate supply of legal representation in the areas of law the matters relate to.
- Previous attempts to measure levels of unmet legal need include those by the NSW Law and Justice Foundation (Legal Australia-Wide Survey in 2014) and the Victoria Law Foundation (Public Understanding of Law Survey 2023), both of which found that there is significant unmet demand for legal assistance services in Australia.
- There is strong, qualitative evidence to indicate unmet legal need in different areas of law and across society. The Reviewer makes corresponding recommendations to address this need in identified regions, areas of law (civil law and disasters), existing priority client groups (prisoners, people experiencing family violence, children and young people, people with a disability or mental illness and older people), and new priority groups (LGBTIQA+ people, veterans and serving personnel, and migrants and refugees).
- Current approaches to conducting means testing to determine eligibility to legal assistance result in many vulnerable Australians experiencing unmet legal need. The Reviewer is confident that if his funding recommendations are implemented, the vast majority of Australians living in poverty will have access to legal assistance services.

This chapter examines the level and nature of legal need in Australia, and key areas of unmet need across jurisdictions, areas of law and client groups.

4.1 Defining legal need

4.1.1 What is legal need?

Understanding the nature and extent of legal need is both an important and challenging step in considering access to justice in Australia. Legal need refers to the requirement for legal services to resolve problems which have a legal dimension (Pleasence, 2016). Interestingly, legal need is not defined in NLAP documentation.

Legal needs vary. Some legal problems have little or no impact on people's lives and may not be important to resolve. Others can be highly disruptive to people's lives. For example, being unable to resolve a low-value consumer dispute is likely to have less of an impact than being unable to resolve a dispute relating to family matters. Unmet legal needs can escalate and further compound disadvantage and inequality for those already experiencing hardship.

4.1.2 How much need should be met?

Not all legal needs require government-funded legal assistance. For example, a very affluent person who has a contractual dispute with a motor vehicle repairer may have a legal need for which they can fund the resolution if they so choose.

There are other legal needs for which private funding arrangements, such as contingency fees, no win no fee agreements, class actions and litigation funding, are more appropriate ways of assisting people of moderate means to assert their rights. These are discussed in a historic context in chapters 18 and 19 of the PC Report but are beyond the scope of this Review. That said, access to civil justice in a range of matters remains out of the reach of many relatively affluent Australians.

A well-founded legal assistance framework would start with an objective assessment of legal need across geographies, population cohorts and legal matter types. This framework would allow governments to assess which legal needs should be met, and to allocate appropriate resources to them with knowledge of the costs of various service types offered by various providers.

In the absence of this necessary statistical base, NLAP inevitably fails to define legal need and offer a framework for measuring it. Funding is therefore allocated under NLAP via an arbitrary multivariate function of:

- disadvantage, measured by eligibility criteria, including financial disadvantage testing
- socio-demographic and economic drivers incorporated in Funding Distribution Models (FDMs)
- priority clients, as determined by NLAP
- areas of law, as determined by political, legislative and regulatory environments.

Current FDMs are discussed in chapters 6 and 7, and the Reviewer observes that for a range of reasons they are unlikely to provide an efficient level of funding for service providers. Most importantly, FDMs seek to distribute an amount of funding that has no basis in the cost of service provision. As such, it is clear that the extent of unmet need for people experiencing disadvantage is primarily an outcome of fiscal choices made by governments.

4.2 Measuring unmet legal need

There is no universally accepted concept of unmet legal need. However, the Organisation for Economic Cooperation and Development/Open Society Foundations (OECD/OSF) (Balmer, 2023) offers a commonly referred to definition:

A legal need is ... unmet if a justiciable issue is inappropriately dealt with as a consequence of the unavailability of (suitable) legal support to make good a deficit of legal capability.

A more comprehensive definition, which supports the OECD/OSF definition, is presented in the form of a 'logic tree' (Figure 4.1) to determine whether or not legal needs have been met. The framework consists of seven components which collectively represent the considerations and conditions required to determine if a legal need exists and has been met. The components are:

- **Duration:** the time taken to resolve the legal problem, delineating between long, medium and short duration problems. Problems that persist for over two years should be considered unmet needs, reflecting the principle that justice delayed is justice denied.
- **Seriousness:** the severity of the legal need, delineating between problems of low, moderate and high seriousness. According to the framework, the most trivial problems never give rise to legal needs, while the most serious problems always raise a need for assistance.
- **Legal awareness/understanding:** the extent to which the individual understands (or came to understand) their legal rights and responsibilities regarding the problems they faced. This relates to the nature of the legal need (rather than standing as a prerequisite for legal need).

- **Legal confidence:** the extent to which the individual is confident they can achieve a fair outcome for the problems they face. This is also not a prerequisite for a legal need to exist, but rather is a component of understanding the nature of the legal need.
- **Process fairness:** the extent to which concluded problems were reached through a process that was 'fair to everybody concerned'. This is distinct from outcome fairness, which broadly relies on fair processes, and is also not a prerequisite for a legal need to exist.
- **Expert help:** refers to expert advice and may include legal advice and/or an independent source of advice. Expert help is required to meet legal need if it arises.
- **Adequacy of support:** the extent to which an individual is able to obtain the expert help they need.

Figure 4.1 OECD/OSF Framework for the Measurement of Legal Need

Duration	Seriousness	Legal awareness/ understanding	Legal confidence	Process fairness	Expert help	Adequacy of support	
Long	High/Moderate/Low	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	
Short/Moderate	High	Yes/No	Yes/No	Yes	Yes	Yes	
				Yes	No	No	
				No	Yes	No	
				No	No	N/A	
	Moderate	Yes	Yes	Yes	Yes/No	N/A	
				No	Yes	N/A	
				No	No	N/A	
				No	No	N/A	
		No	Yes	No	Yes	Yes	Yes
					Yes	No	No
					No	No	N/A
					No	Yes	N/A
	Low	Yes/No	No	Yes/No	Yes	Yes	Yes
					Yes	No	No
					No	No	N/A
					No	Yes	N/A
		Low	Yes/No	Yes/No	Yes/No	Yes/No	N/A

■ No legal need
 ■ Legal need
 ■ Met legal need
 ■ Unmet legal need

Source: Victoria Law Foundation, Public Understanding of Law Survey | Everyday Problems and Legal Need

4.2.1 The Review's approach to measurement

A Technical Reference Group (TRG) was established to assist the Reviewer to reach a considered view regarding what current national data and/or studies confirm about legal assistance services provision, particularly unmet legal need, and about what will be needed in the future.

The TRG comprised representation from ACIL Allen, the Victoria Law Foundation, the NSW Law and Justice Foundation, Australian Bureau of Statistics, the Productivity Commission, and the Data and Behavioural Insights Branch of the Enabling Services Group within the Commonwealth Attorney-General's Department. The TRG specifically focused on providing expert advice on the current state of legal need data and associated analysis, and on helping to interpret any gaps between legal assistance demand and provision.

The conclusions reached by the TRG reflect: the experiences of its members; their previous attempts to collect, analyse and extrapolate legal assistance data as part of their own research; and a series of roundtable discussions conducted throughout this Review. For example, the Victoria Law Foundation has undertaken several data mapping projects aimed at identifying the collection and utility of data on the Victorian legal assistance sector, and therefore was well placed to offer advice on availability and granularity of service data.

The TRG considered use of existing data and studies, including the Public Understanding of Law Survey (PULS) conducted by the Victoria Law Foundation in 2023, to develop a comprehensive national picture of unmet legal need. Ultimately the TRG concluded that the incompleteness of existing data and studies did not permit their extrapolation in any meaningful way. Another issue with available data regarding both met and unmet legal need is that these data are largely service based, and do not indicate whether services delivered have adequately addressed the underlying legal need.

The TRG strongly supported the need for a regular national survey, such as the Legal Australia-Wide (LAW) survey last conducted by the Australian Bureau of Statistics in 2008. This was advocated for in the PC Report a decade ago, and is advocated again by this Review.

The TRG supported greater attention to regular data collection and reporting of national legal assistance delivery. It indicated that data capture design should be driven by policy questions governments are seeking to answer, noting these questions may vary across different levels of government. Consequently, Commonwealth and state and territory governments should co-design data capture as part of a national outcomes framework to ensure their respective data requirements are met.

The TRG highlighted that data capture platforms currently used by legal assistance providers are highly fragmented. Data standardisation will most likely come from consistent application of data recording practices across separate systems, rather than all providers migrating to a single platform. Training should be provided to legal assistance providers to ensure they can implement standardised practices.

Given the above and this Review's timeframes, the Reviewer formed the view that there was little utility in pursuing further technical statistical analysis.

4.3 Recent measures of legal need in Australia

The OECD/OSF framework described in section 4.2 has been adopted and applied in a number of projects, typically involving the development of a survey tool deployed to measure and make an assessment of legal need. These projects include the NSW Law and Justice Foundation's Legal Australia-Wide Survey (2012), and the Victoria Law Foundation's Public Understanding of Law Survey (2023), both of which are discussed in this section.

NSW Law and Justice Foundation – Legal Australia-Wide Survey (2012)

The Legal Australia-Wide Survey (LAW Survey) remains the most comprehensive quantitative assessment of legal needs ever conducted in Australia. It involved interviews with 20,716 people across all states and territories about legal problems they experience, the actions they take, where they go for advice and the outcomes they achieve. It provides evidence of the disadvantaged groups that are particularly vulnerable to legal problems.

The utility of this survey has diminished with the passage of time, with survey field work done several years prior to publication of results, and with methodological challenges such as engagement with participants via a fixed landline. That said, it was a useful reference point for the situation around the time of the PC Report.

The LAW Survey's key findings are presented in Box 4.2.

Box 4.2 Key LAW Survey findings

Prevalence of legal problems: Legal problems were widespread. Fifty per cent of respondents experienced one or more legal problems in the 12 months prior to interview. This prevalence rate translates to an estimated 8,513,000 people aged 15 years or over experiencing a legal problem within a one-year period. Although there were only modest differences in prevalence rates across states/territories (47–55%), these differences were nonetheless statistically significant. The Northern Territory and Western Australia had significantly higher prevalence rates. South Australia and Victoria had significantly lower prevalence rates.

Adverse consequences of legal problems: In all jurisdictions, legal problems often have considerable adverse impacts on a broad range of life circumstances, including health, financial and social circumstances. Just over half the respondents with legal problems (55%) had a 'substantial' legal problem that had a 'severe' or 'moderate' impact on everyday life. The most common adverse consequences resulting from the legal problems experienced were income loss or financial strain (29%), stress-related illness (20%) and physical ill health (19%).

Awareness of legal services: There were sizeable gaps in awareness of not-for-profit legal services. Legal Aid was the only not-for-profit legal service that had high recognition rates in all jurisdictions. Legal services for Aboriginal and Torres Strait Islander peoples usually had more moderate recognition rates. In addition, other not-for-profit legal services, such as CLCs and services provided by court registrars and staff, had even lower recognition rates. Recognition rates were 88% for Legal Aid, 67% for Aboriginal Legal Services, 36% for CLCs and 34% for court services.

Response to legal problems: Seeking legal advice or assistance was one of a broad range of actions taken in response to legal problems. Respondents often used multiple actions. These included seeking advice from legal or non-legal professionals (for 51% of problems), communicating with the other side (38%), consulting relatives or friends (27%), using websites or self-help guides (20%), court or tribunal proceedings (10%) and formal dispute resolution (9%).

Advice for legal problems: A wide variety of non-legal workers is routinely the only point of contact with a professional for many people with legal problems. Across jurisdictions, a legal adviser was consulted for no more than one-third (23–33%) of cases where respondents sought advice from a professional. As respondents did not seek advice in approximately half of all cases, this percentage translates to respondents seeking advice for only 16% of all legal problems.

Finalisation of legal problems: Roughly two-thirds of legal problems in all jurisdictions were reported to be 'now over' or finalised at the time of interview. The LAW Survey asked respondents about the means by which legal problems had been finalised. Across jurisdictions, results demonstrated there was no 'rush to law'. Nationally, 3% of legal problems were finalised via formal legal proceedings in a court or tribunal. A further 3% were finalised via formal dispute resolution or complaint-handling processes. More commonly, legal problems were finalised via agreement with the other side (30%), the respondent not pursuing the matter further (30%) or decisions or actions of other agencies (15%).

Outcome of legal problems: In all jurisdictions, approximately two-thirds (64–70%) of finalised legal problems had 'favourable' outcomes; that is, outcomes that were 'mostly' or 'somewhat' in the respondent's favour. There was no significant difference in these rates between jurisdictions. The characteristics of legal problems were related to whether favourable outcomes were achieved. First, the severity of legal problems was related to outcomes. Substantial legal problems were significantly less likely to have favourable outcomes. The outcome achieved also depended on the type of legal problem experienced. In most jurisdictions, the outcomes of accidents and personal injury problems were more likely to be favourable. The outcomes of crime and government problems were less likely to be favourable. All these findings were significant in Australia at a national level.

A holistic approach to justice: The findings highlight the value of a more holistic approach to justice that provides integrated and multifaceted service delivery across both legal and non-legal services in all jurisdictions.

Source: Law and Justice Foundation of NSW, Legal Australia-Wide Survey (LAW Survey)

Victoria Law Foundation – Public Understanding of Law Survey (2023)

The Victoria Law Foundation published results from its 2023 Public Understanding of Law Survey (PULS), which used the Framework for the Measurement of Legal Need (see Figure 4.1). It should be noted that unlike the nationwide LAW Survey, the PULS was restricted to Victoria.

The Victoria Law Foundation's submission to this Review captures the magnitude of unmet legal need in Victoria, and correspondingly the adequacy of NLAP funding to address this need.

Recently published findings from the PULS demonstrate high rates of unmet legal need in Victoria. Where expert help was sought from legal services (public and private) legal need was unmet for 90% of the legal problems reported by the 6,008 PULS respondents. Where people looked for help from any independent experts (non-lawyers), 78% of the legal problems resulted in unmet need. On either measure, unmet need is the norm and met need the exception.

Submission, Victoria Law Foundation, sub.103, p 2

PULS involved a large-scale face-to-face survey of respondents across Victoria. It explored how people understand, experience and navigate law and everyday life problems with a legal dimension ('justiciable' problems). Key PULS findings are presented in Box 4.3.

Box 4.3 Key PULS findings

Problem prevalence: Forty-two per cent of respondents reported one or more justiciable problems over the past two years. The most common problems were those relating to goods and services, housing, fines, and employment. Problems were socially patterned. Consistent with previous findings from Australia and overseas, some vulnerable populations (such as people reporting high levels of mental distress, Aboriginal and Torres Strait Islanders and single parents) reported problems more frequently.

Multiple problems: Where respondents had justiciable problems, multiple problems were common, with 53% of those facing problems reporting two or more, and 15% five or more. The relationship to disadvantage also becomes evident when looking at multiple problems. Among those more likely to report multiple problems, and large clusters of problems, were Aboriginal and Torres Strait Islander peoples, those not working (but not retired), those reporting a long-term illness or disability, those reporting mental distress, and those unable to heat or cool their homes.

Severity and impact: Some justiciable problems were relatively trivial. Others could be among the most challenging episodes in people's lives. On average, family problems were rated as the most severe, followed by those relating to injury, debt or money, and employment.

Problem resolving behaviour: Respondents independently handled 32% of problems, sought informal help for 14%, obtained non-legal independent help for 29%, and obtained legal assistance for 21% of issues. Only 4% took no action, reflecting a refined classification. Reasons for not seeking independent advice included not knowing where to get advice or finding it challenging to access. Nearly half those taking action obtained information online, surpassing printed sources (13%).

Sources of advice: Thirty per cent sought advice from family, friends, or acquaintances. Twenty-one per cent used legal services, including private lawyers (13%), Legal Aid (6%), and Community Legal Centres (5%).

The patterning of problem-solving behaviour – problem type and demographics: Responses to problems correlated strongly with the types of issues faced. Inaction was prominent for fines and debt-related problems. Goods and services issues saw more independent handling. Government, injury and employment problems led to seeking non-legal independent help. Family problems involved legal assistance. Disadvantaged groups, including Aboriginal and Torres Strait Islander peoples, non-binary individuals, those unemployed but seeking work, and those facing housing challenges, showed relatively high use of legal services.

Processes and activities involved in trying to resolve problems: Eighty-three per cent of problems that were followed up involved communication with the other side, 23% an internal appeal or formal complaint, 15% mediation, conciliation or arbitration, 12% an ombudsman, regulation or enforcement authority, 12% a court or tribunal, 10% the police (or other prosecution authority), 9% a community leader or organisation, 2% a religious authority and 2% an Aboriginal-led meeting.

Problem resolution and manner of conclusion: At the interview, 54% of issues were resolved, 29% ongoing, and 13% persisted with parties giving up; 5% were too early to judge. Conclusions mainly involved party agreements (42%), with a small percentage through court judgment (6%) or formal authority intervention (4%). The manner of conclusion varied by problem type, with goods and services often resolved through agreement, fines through respondent compliance, and family matters through mediation or court judgments. Notably, 40% of employment problems concluded when respondents simply 'moved away'.

Problem duration: Legal needs surveys often overlook the accurate calculation of problem duration. The PULS addresses this, revealing that approximately 40% of justiciable problems conclude within six months, 55% after a year, but around 30% persisting after three years. Duration varies by problem type, with financial, injury, government and family issues lasting longer, while goods and services, and fines tend to resolve more quickly. Demographically, certain groups, including single parents, those in remote areas, and those with health challenges, experience longer-lasting problems. Problem severity aligns with duration, as groups reporting severe problems tend to face prolonged issues.

Perceptions of fairness and happiness with outcomes, process and progress: In 61% of resolved issues, respondents perceived the outcome as fair to all parties, with a 54% satisfaction rate for fairness of the process. Satisfaction with outcomes correlated with perceptions of fair processes. Problem type influenced perceptions, with only 25% satisfied with fairness of employment-related processes or outcomes, compared to over two-thirds for illness, injury, or goods and services issues. Police involvement and court/tribunal cases were linked to lower satisfaction levels. Ongoing problems left over two-thirds dissatisfied with progress. Combining happiness variables revealed 54% overall satisfaction.

Whether legal need existed and whether it was met: Legal need, a complex and contentious term, is challenging to measure directly. The PULS defines and measures legal need based on global guidelines, categorising problems into no legal need, met legal need, and unmet legal need. Notably, 37% of problems had no legal need. When legal needs existed, 90% (narrow definition) and 78% (broad definition) went unmet. Vulnerable groups, such as those facing social disadvantage, reported higher legal needs. Seeking assistance increased legal need presence, but obtaining help did not guarantee fulfillment. Interventions like process reform and education are suggested based on reasons for unmet legal needs.

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

Given material submitted to the Review, and work undertaken by the Review team, the Reviewer is satisfied that PULS survey findings are likely to be broadly representative of metropolitan, rural and regional Australia. The Reviewer is confident that in remote parts of the country, especially where there are relatively large populations of Aboriginal and Torres Strait Islander peoples, levels of met and unmet legal need are significantly higher.

Other endeavours to measure legal need

The Reviewer is aware of other projects that have attempted to measure unmet legal need, some of which are listed below. While each project provides important insights into the nature and level of legal need for its reference population, none provides a comprehensive and contemporary Australia-wide assessment of legal need.

- **Cunneen, C & Schwartz, M. (2009). Civil and Family Law Needs of Indigenous People in New South Wales: The Priority Areas.** This research, commissioned by Legal Aid NSW, involved interviews and focus groups in eight Indigenous communities across NSW. It was the first statewide Indigenous-specific assessment of civil and family law needs. The research identified barriers to accessing legal assistance. It suggests that addressing civil and family law needs is crucial for improving access to justice and preventing escalation of issues into criminal acts within the Indigenous community. The research is proposed as a tool for legal service providers to create targeted services, aiming to redress inequities in access to justice for Indigenous communities.
- **Durbach, A., Edgeworth, B. & Sentas, V. (2018). The Civil and Family Law Needs of Indigenous People Forty Years after Sackville: The Findings of the Indigenous Legal Needs Project.** This research involved examining the priority areas of civil and family law needs, and issues of access to justice, for Indigenous people. The research found that while there were substantial problems of unmet need across the broad range of civil and family law, priority areas were: housing; discrimination; credit, debt and consumer; social security; and child protection. Other key findings include the complexity of Indigenous legal needs, and the way various legal problems intersect and escalate for Indigenous people. Many of these problems are exacerbated by social and economic disadvantage, and highly restricted access to legal advice and legal services. The paper also identified a range of areas where access to justice can be improved.

- **Community Legal Centres Queensland. (2019). Evidence and Analysis of Legal Need.** This research examines key data and facts about legal need for priority client groups across regions of Queensland. The research included analysis of relevant service data (including court data, prison data, and elder abuse statistics), and an overview of relevant risk factors and service barriers for each priority client group. The analysis supported the 2019 procurement process for Community Legal Centres in Queensland.
- **The Legal Services Board and The Law Society. (2020). Legal Needs of Individuals in England and Wales.** The research is based on online research involving 28,663 people from across England and Wales. The study represented one of the largest of its type and provides invaluable insights into thousands of experiences of how people handle legal issues they face. Similar to the law surveys described above, this study leveraged OECD guidance on developing legal needs surveys. The survey results provide detailed understanding of the drivers and shape of the market, and how people’s legal demands and needs can be best met.
- **ACIL Allen. (2022). Assessment on the Current Legal Needs in Western Australia.** This assessment involved analysis of trends in legal assistance service delivery and comparing these to the size and distribution of identified population cohorts across Western Australia. The assessment was based on service provider data, including data on client demographics and the type of service accessed. This methodology enabled per capita service use analysis, and relied on this analysis to develop indications of met and unmet legal need. The Department of Justice will update the project database to monitor legal need in Western Australia and how it is met. Project findings will inform service planning and funding decisions. ACIL Allen is currently engaged to conduct a similar assessment for the South Australian Government. Results in the interim report were provided to this Review.

4.3.2 Estimating unmet legal need with service data

While met legal need is captured to some extent in data on the use of legal services, these data typically do not capture unmet need. The particular challenge with the two measures discussed briefly below is that they identify those people who know they have a legal need and know how to do something about it: either self-represent or approach a service provider even if they are turned away. The groups not captured are those who do not know they have a problem, or do not approach a service provider.

There was widespread acknowledgement of the challenges associated with using service data for assessing legal need, with recognition that data on use of legal services may not distinguish legal problems where a legal solution may not be the most appropriate solution.

Preliminary analysis of data from the 2023 State of the Sector Survey shows 25% of community legal centres have formal methods of tracking unmet need, and 50% of centres have partial or informal methods.

Submission, CLCA, sub.14, p 25

Measurement of legal needs in the 4Rs has received vastly insufficient attention...

Submission, 4Rs Network, sub.1, p 70

Submissions provided an indication of observed unmet need through two measures: unrepresented litigants, and people turned-away from service providers.

Unrepresented litigants

Unrepresented litigants appearing before courts and tribunals is one possible measure of observed unmet need. This is because some people electing to represent themselves may be unable to secure (paid or unpaid) legal assistance, as captured below.

In many instances people do not apply for legal aid where they know that their matter is unlikely to be granted aid due to the narrow funding guidelines that must be applied due to lack of legal aid funding... Data produced by Courts and Tribunals also supports this position, indicating large numbers of unrepresented defendants appearing before our Courts.

Submission, Legal Services Commission South Australia, sub.51, p 6

The Legal Services Commission further noted legal aid is at times only granted for the most serious matters, such as where the applicant is facing a term of imprisonment or the application involves a child. This means very few civil law grants are available, resulting in disadvantaged people appearing without legal representation in courts and tribunals.

The Federal Court of Australia’s 2022-2023 Annual Report includes some statistics about self-represented litigants. In that year, self-represented litigants commenced 413 proceedings in the Federal Court, of which 55% were appeals and related actions, 18% first instance migration matters, 10% administrative law matters and 9% bankruptcy matters. Of those proceedings commenced by self-represented litigants which were appeals and related proceedings, 72% (167 proceedings) were migration appeals. It should be noted that these appeals and related proceedings involve questions of law rather than a redetermination of the merits of the matter. Similar data from the Annual Report of Federal Circuit and Family Court of Australia indicates around 75% of these appeals may require an interpreter.

Similar observations were made through the proportion of self-represented litigants in Family Court of WA, presented in Table 4.1, showing roughly three-quarters of applications for divorce matters in the Family Court of WA had self-representation.

Table 4.1 Applications (%) filed by self-represented litigants in Family Court of WA

		2022	2021
Final Order	Parenting	34%	43%
	Financial	19%	24%
	Parenting and Financial	25%	31%
Consent Orders	Parenting	33%	43%
	Financial	29%	30%
	Parenting and Financial	32%	34%
Divorce		72%	73%

Source: Submission, Legal Aid WA, sub.50, p 25

One should not assume unrepresented parties cannot afford legal assistance. For example, in marital cases where there are no children, the parties may have agreed to a property settlement and can complete the necessary paperwork and court appearance (if required) unaided. Section 14.3 of the PC Report discusses reasons why people self-represent at some length.

Simplification of court procedure can lead to lower costs for both parties and the court system, and stimulate the rate of self-representation. As an aside, during the Productivity Commission Inquiry, a Chief Stipendiary Magistrate observed to the Reviewer that ‘in a perfect world, everyone on the civil list would be self-represented unless they had a mental health issue – it should be that simple.’

People who have been turned away by service providers

Another possible measure of observed unmet need is based on turn-away data due to capacity constraints. The following excerpts from submissions to this Review provide some indication of the magnitude of unmet need based on this measure.

We estimate that 1 in 3 people who receive legal advice need representation services but are turned away due to lack of capacity.

Submission, Caxton Legal Centre, sub.12, p 5

On average, centres that felt able to estimate turn-aways had 23.8 turn-aways per week, or 1237 turn-aways per year per centre. Across all services in our membership network this translates to 200 000 per year

Submission, CLC Australia, sub.14, p 25

On average each year, 10-15% of legal aid applications received are refused. In 2022-23, 12% were refused, with a large proportion not meeting the funding guidelines (50%) or means test (46%).

Submission, Legal Services Commission South Australia, sub.51, p 6

Women's Legal Services are forced to turn away thousands of women each year who would be eligible for their services and are otherwise unable to reach many women who need their services, many of whom are experiencing domestic, family, and sexual violence and would uniquely benefit from specialist, gender-led assistance. New data collected by the 13 Women's Legal Services nationally has found that 1,018 attempts to receive assistance were turned away during a 5-day period, which means we can estimate that more than 52,000 will be turned away by Women's Legal Services per year.

Submission, Women's Legal Services Australia, sub.107, p 5

CLCA provided a detailed assessment of observed unmet legal need, and presented data on the cumulative effect of turn-away practices by one of their members:

Over 5 years Caxton Legal Service

- Received approximately 150,000 calls for assistance and provided 109,690 legal information services. That is, the centre was not able to assist approximately 40,000 people who contacted the centre. This provides a first-tier turnaway figure of almost 30%,*
- Provided legal advice services to 19 284 callers or approximately 13% of all people who called the centre for assistance. This provides a second-tier turnaway figure of 87% of all answered calls,*
- Provided 526 casework services (241 dispute resolution and 285 court/other rep services). This represents just 0.0035% of the initial calls for assistance and represents the third-tier turnaway figure.*

Submission, CLC Australia, sub.14, p 24

The Reviewer notes that while turn-away data provides useful insights, especially about changes over time, it is at best a lower bound on the level of unmet legal need as it does not capture those people with unmet legal need who don't approach a service provider.

4.4 Improving measurement of legal need

While there are many challenges to measuring unmet need, submissions were consistent in the view that the impact of unmet legal need on individuals and communities is severe, is greatest on the most disadvantaged Australians, and has far reaching impacts on life outcomes. The Reviewer considers that effective measurement of legal need is essential to improving access to justice and associated outcomes for the Australian community.

In many locations in the 4Rs the nature and effect of unmet legal needs in the 4Rs are at a humanitarian level and are deepening hardship and poverty. Unmet legal needs contribute to women, children and older people being unsafe... homelessness, child protection interventions, social security problems, disengagement, increased anxiety, and poorer health profiles.

Submission, 4Rs Network, sub.1, p 21

Acknowledging limitations of past approaches, submissions broadly called for a consistent and routine approach to measuring met and unmet legal need in Australia.

Inclusion of all Commonwealth and State and Territory funded legal assistance service delivery in all evidence base work, in order to provide the full picture of national legal assistance service delivery across criminal, family and civil law.

Submission, Australian Legal Assistance Forum, sub.129, p 2

inTouch strongly supports the Review's proposal to establish an expert technical group to analyse and assess legal needs based on available data and the design of a periodic national legal need survey.

Submission, inTouch, sub.122, p 17

[Brimbank Melton CLC recommends that] NLAP funded legal need studies are regularly conducted in all states and territories.

Submission, Brimbank Melton CLC, sub.116, p 6

Reflecting on the degree of unmet need demonstrated by PULS findings, Victoria Law Foundation submitted that the current NLAP funding and service delivery arrangement was insufficient, and that a national legal needs survey must be deployed to address these issues.

[The findings from the PULS] call into question the adequacy of NLAP funding and service provision to meet the strategic aspiration to maintain the rule of law and keep the justice system within reach. We have no reason to believe that this finding would be different for other Australian states and territories, but rather, from what we know of relative legal assistance service infrastructure, the findings for Victoria may well be marginally better. This is something that should be investigated through a national legal needs survey, employing best practice measures and methodology.

Submission, Victoria Law Foundation, sub.103, p 2

The PC Report recommended that the ABS undertake periodic legal needs surveys, including targeted data collection on priority groups. This has not occurred. Without this work being done, governments cannot be certain what legal need exists, let alone what their funding is achieving, or even trying to achieve. The next review of legal assistance arrangements cannot be left in the same place as this one or its predecessors. That said, the Reviewer is of the view that annual changes in legal need and unmet legal need detected by such surveys are unlikely to be useful or timely. A reasonable frequency of the survey should be tied to the review of funding arrangements.

Recommendation 1 – Legal needs survey

The Reviewer recommends, consistent with recommendation 25.1 of the PC Report, the relevant Minister should, pursuant to section 9 of the *Census and Statistics Act 1905* (Cth), direct Australian Bureau of Statistics to undertake a national legal needs survey at five-yearly intervals. The survey should collect data to measure both legal need and unmet legal need.

The surveys must address specific priority groups identified in the A2JP with sufficient granularity to identify jurisdictional and regional variations to support funding decisions.

The results of the first survey should be published by such a time as to be available for the review of A2JP and related matters.

Subject to annual expenditure timing, the Commonwealth should provide a total of \$3 million in 2024-25, \$6 million in 2025-26 and a further \$41 million over the life of A2JP.

4.5 Current unmet need in Australia

Previous reviews and inquiries found that significant unmet demand for legal assistance services in Australia. However, it is challenging to identify with precision where unmet legal need is, its scale, and its drivers. There is a need for longitudinal data that demonstrate how changes to legislation, employment arrangements, and social and economic conditions can affect legal need.

The time available to conduct this Review means it has not been possible to comprehensively scope the level of unmet need across the country. Having said this, there is qualitative evidence pointing to unmet legal need in certain areas of law and within different communities. The remainder of this chapter brings together these disparate qualitative and quantitative studies of legal need to provide an estimate of areas of unmet legal need in Australia.

4.5.1 Unmet legal need – by region

Through visits and submissions, the Reviewer was directed to numerous locations around the country that face high levels of unmet legal need. Drivers for this unmet need vary. They include socio-economic demographics, lack of service coverage and geographic isolation.

It has not been possible during the course of this Review to evaluate the level of unmet need in each of these areas. The ABS survey proposed in recommendation 1 must be directed at providing that information and identifying any other similar areas. That said, many submissions to the Review have drawn attention to areas of the country where legal assistance services are not available at all, involve long journeys to access, or are prohibitively expensive. Not all these areas, such as the south-east of South Australia, can be considered remote. Appendix E sets out those areas identified in submissions to the Review. The Reviewer is confident this is not a complete list.

Governments should consider the service needs of these areas (and any others they are aware of) and engage with service providers to understand the cost of meeting legal need in areas they consider have highest priority. There is sufficient information available to start to fund new services in 2025-26. Both resource and data constraints mean this activity will take several years to implement in full.

The Commonwealth currently funds a number of specialist service providers that do not receive baseline NLAP funding, such as the Environmental Defenders Office and Youth Law Australia. The Commonwealth should review whether these CLCs have adequate resources to service their client cohort across the country.

Recommendation 2 – Addressing unmet geographic need

There are parts of Australia where there are little or no legal assistance services provided to disadvantaged and vulnerable people. Governments should work with service providers and organisations like Victoria Law Foundation and the NSW Law and Justice Foundation to better understand these geographic areas of legal need and the nature and cost of the services needed to efficiently fill these gaps. The agreed cost of these services should be included in the step funding of the A2JP. Given the scale of this task it is likely it will take a number of years and priority should be given to those areas of greatest need and ease of implementation.

For those services funded solely by the Commonwealth (currently outside NLAP, but will become part of A2JP), the Commonwealth should undertake a similar exercise to ensure that services intended to be national in character are adequately funded to service all parts of the country.

While challenges of delivering sufficient levels of legal assistance can vary by region, common themes emerged from submissions, broadly relating to challenges of delivering services in remote locations.

Geographic remoteness

In many locations there may be insufficient demand to sustain a permanent legal presence. Australia's low population density presents a major barrier to reaching clients, many of whom may have unmet legal need, with challenges of scale impacting the ability to provide local services.

Given the extraordinary distances involved in travelling to where services are provided, many potential clients will miss out on accessing the support available.

Submission, Far West CLC, sub.31, p 3

Whilst specialist law services are meant to service the entire state of WA, the funding we receive make this almost impossible. We can only afford to provide very limited face-to-face services out in the regions and to undertake some intrastate travel, perhaps twice a year.

Submission, Consumer Credit Legal Service WA, sub.22, p 5

In addition to long distances, remote locations are often serviced with poor roads, requiring lawyers to travel by charter plane or boat to reach clients. Where this delivery model is deployed, it can be expensive and inefficient, particularly for family matters.

Coupled with the fact that 75% of roads in the NT are unsealed, some of which famously close for large periods of the year due to weather constraints, the costs of delivering resources to communities are only exacerbated by the need to often use charter planes or boats.

Submission, Darwin Community Legal Service, sub.23, p 6

While we have used fly-in-fly-out service model to deliver civil law services in some small regional and remote towns that do not warrant a full-time presence, it is an expensive and inefficient method of service delivery in family law matters. Unfortunately, in some areas it is the only way we can deliver family law services to local clients.

Submission, Legal Aid NSW, sub.47, p 26

The majority of clients in the most remote locations will be Aboriginal and Torres Strait Islander peoples. Consequently, the Reviewer considers it is critical for delivery of client-centred, culturally appropriate services, that clients have face-to-face access to their lawyers. This should be appropriately provided for in baseline funding of ATSIILS and other relevant service providers.

Provider capacity

The Reviewer has heard that LACs and community-based legal assistance providers face significant attraction and retention challenges in many non-metropolitan areas. This is reflected in the submission from SCALES.

While 30% of our population live outside a major capital city, only about 10% of lawyers reside in and service RRR populations. In addition, most law schools are based in metropolitan areas, with very few in RRR areas.

Submission, SCALES, sub.90, p 5

The submission from the 4Rs Network (sub.1) referenced the *National Profile of Solicitors* in examining the difficulties in recruiting and retaining staff in regional and remote offices. The submission made the following observations.

- Overall, about 87% of solicitors were practicing in a city-based or suburban locations, and only 9% were practicing in a country/rural area.
- The number of solicitors employed in the community legal sector reduced between 2020 and 2022.
- Country/rural areas have experienced little growth in the number of solicitors since 2011 with the greatest growth in suburban, city and overseas locations, in that order.
- By practice sector (consisting of private practice, corporate legal, government legal, community legal, and other). Community legal has by far the highest proportion of solicitors located in a country/rural area, at 19%. This compares, for example, with the next two highest being private practice (11%) and other (9%). The proportion for government legal located in country/rural was 6% and corporate legal 4%.

To address these workforce shortages, some providers have resorted to fly-in-fly-out solutions.

As ALSWA cannot recruit to the Regional Offices, it has resorted to flying Lawyers from Perth to Regional Offices, at great cost to the Organisation.

Submission, ALSWA – Workforce Strategy, sub.113, p 4

Another approach may be to have a greater, or exclusive, reliance on the private legal profession to provide legal aid, albeit this is not always possible due to a shortage of lawyers in some regions. As highlighted by Legal Services Commission South Australia, where private lawyers are available, they may be *'focused on delivering privately paid legal services and have insufficient capacity to take on legal aid work.'*

Clients in our region cannot access in-house Legal Aid lawyers largely due to lack of capacity. We have rarely had a successful referral from our centre to the local Legal Aid offices.

Submission, Central Tablelands and Blue Mountains, sub.13, p 1

The mixed model of Legal Aid Commission service provision, consisting of in-house lawyers and private firms, is largely inapplicable for most of the Australian landmass due to unavailability of private lawyers.

Submission, National Regional, Rural, Remote and Very Remote Community Legal Network (4Rs Network), sub.1, p 20

In addition to the absence of lawyers, or absence of lawyers accepting legal aid, Legal Aid NSW (sub.47), also warned of the impending impact in some regions of retiring lawyers who will not be replaced.

Legal Aid NSW is also aware of several regional towns currently serviced by sole practitioners who are reaching retirement age and have been unable to secure succession planning.

Submission, Legal Aid NSW, sub.47, p 26

The Reviewer is confident the availability of legal assistance in rural, regional and remote areas will improve through achieving pay parity for the legal assistance workforce, and dealing with other labour market issues including appropriate remoteness allowances, and dealing with housing and travel issues.

That said, outcomes will not be uniform across the country. It is likely there will remain communities where resident or nearby resident lawyers will not be present. In these cases, government must ensure more distant providers, most likely LACs and ACCOs, have adequate resources to provide timely, culturally appropriate services. This should be reflected in the baseline funding reset.

It is important that as the recommendations of this Review are implemented, the labour market response is monitored, and service provision models adapted over time.

Conflict of interest issues

Conflicts of interest in legal representation arise when a lawyer is in a position where their professional duties and obligations to one client may be compromised by their duties to or interests of another client or a third party. These issues may also present concerns for interpreters and other workers. Conflicts may arise in relation to dual representation, former clients, personal relationships and financial interests. In Aboriginal and Torres Strait Islander communities and services, family and kinship issues may also present challenges beyond professional legal considerations. Conflicts of interest can create ethical dilemmas for lawyers and potentially harm the interests of the clients involved, if only through delaying resolution of the matters concerned.

The Reviewer has heard that conflicts of interest impact small communities, where the potential for conflicts is high. Conflict of interest was noted to be a particular issue where a single provider is the sole provider for a designated area.

Conflicts of interest in legal service provision are a significant issue in the Far West where the population size is small, and the potential for conflicts high.

Submission, Far West CLC, sub.31, p 4

Conflict of interest issues are a substantial problem in the NT. It is essential that this is adequately addressed in the next iteration of the NLAP. When conflicts of interest issues occur for the sole funded ATSILS in the NT, being NAAJA [Northern Aboriginal Alliance Justice Association], there is no other agency in the NT specifically funded under the NLAP to provide legal assistance to Aboriginal and Torres Strait Islander peoples... It is understood that NAAJA refers conflicted clients to NTLAC (as well as other legal assistance providers such as CAWLS and TEWLS).

Submission, Northern Territory's Department of the Attorney-General and Justice, sub.64, p

14

Population demographics

The 4Rs Network (sub.1) drew on the Law and Justice Foundation of NSW assessment of need for legal assistance to submit that people living in regional and remote areas met the criteria for legal assistance at a higher rate than people residing in major cities.

The results indicated that the percentage of people who met the criteria [Need for Legal Assistance Services] was about 13% in major cities and 20.7% in other areas, the latter being about 60% higher.

Submission, National Regional, Rural, Remote and Very Remote Community Legal Network (4Rs Network), sub.1, p 17

Alternatively, the submission from Victoria Law Foundation (sub.103) referenced PULS findings that prevalence of need for legal assistance was highest for those living in inner regional areas (44%) and major cities (43%), and lower for those living in outer regional and remote areas (25%).

Those living in inner regional areas had a higher prevalence of family, government payments, and injury or illness problems. Those living in regional and remote communities had a lower prevalence of legal problems related to goods and services, housing, fines, employment, government or public services, and business or investment property problems.

PULS also found that those in outer regional and remote areas reported longer duration problems.

Geographic design of FVPLS

Australia's 16 FVPLS operate at 31 sites across Australia. FVPLS were originally placed in regional areas of greatest perceived need and not in metropolitan areas. Services have fixed geographic service areas. This means that despite their relative proximity to each other (they are 100km apart), women in Moree have access to the Thiyama-li Family Violence Service, but a woman in Narrabri has no service access.

In its submission to the Review, NFVPLS called for \$41 million in additional funding to deliver essential legal and non-legal frontline family violence prevention services, programs and supports to Aboriginal and Torres Strait Islander women and children.

This would facilitate providing additional services in existing areas, and provide new services to Aboriginal and Torres Strait Islander women and children who currently do not have access to specialised, community-controlled family violence prevention services. Current gaps in service coverage identified were:

- **Northern Territory:** 17 remote communities in Central Australia and Barkly
- **New South Wales:** Narrabri, Tamworth, Armidale, Newcastle and Central Coast
- **Queensland:** Central Queensland
- **South Australia:** Adelaide, the Riverlands and south-eastern SA
- **Western Australia:** WA West Kimberley and Wheatbelt areas
- **Victoria:** Gippsland and northern regional corridor (including Mildura and Shepparton)
- **Tasmania:** North/Northwest Tasmania.

Based on information provided by the NFVPLS, of the \$41 million in additional funding, \$37.5 million will require an ongoing funding commitment from governments, given an additional 273 staff are required to support service expansion. The remaining \$3.7 million is one-off funding to cover start-up costs such as additional computers and company vehicles.

Figure 4.2 Map of new service areas for FVPLS



The Reviewer considers FVPLS should be available to all Aboriginal and Torres Strait Islander peoples irrespective of where they live. In addition to material from the NFVPLS, the Reviewer has received detailed costings from some individual FVPLS. These costings are likely to be affected by recommendations made in this Report and potentially prepared on difference bases. The Commonwealth should work with the FVPLS sector to validate priority sites and develop costings on a consistent basis as a matter of priority.

Recommendation 3 – Complete FVPLS coverage

The Reviewer notes that there are large parts of Australia, metropolitan and non-metropolitan, where the services of FVPLS are not available.

The Reviewer recommends that the Commonwealth should work with the FVPLS Forum, other FVPLS and other ACCOs providing services to Aboriginal and Torres Strait Islander women with a view to ensure complete national geographic coverage of FVPLS. The Reviewer expects this will involve the extension of the service areas of existing FVPLS, the establishment of new FVPLS and potentially the conversion of some existing ACCOs into FVPLS.

As a starting point, focus should be placed on the locations identified by NFVPLS noted in this Report.

4.6 Unmet legal need – by area of law

4.6.1 Civil Law

Submissions to this Review have widely reported a high level of unmet need exists in civil law matters. This section begins with general observations on unmet need in civil law, and highlights some areas of civil law with high levels of reported unmet need, including social security, consumer credit and tenancy.

General observations on civil law

Chapter 3 of this Report discussed the distribution of legal assistance services delivered across the types of legal assistance service providers. Over time, civil and administrative matters have become increasingly underfunded due to the greater focus on criminal and family law matters. Funding has become increasingly constrained, and additional funding has focused on family violence and family law.

However, numerous reports have highlighted the importance of civil law matters. The PULS survey stated that ‘law is all around us...and we live in a law-thick world’ (Balmer et al, 2023). The PC Report stated that civil law ‘promotes social order and communicates civic values and norms...and gives people the confidence to enter into business relationships, enter into contracts, and invest.’

The Review has been presented with a significant volume of evidence about unmet legal need in civil matters, especially in addition to related family issues. PULS survey data analysis found the most common justiciable problems (31.4%) concerned consumer transactions, followed by problems concerning housing (including problems with neighbours, landlords, strata/owners’ corporations, property ownership and homelessness) (Balmer et al, 2023). This is consistent with OECD/OSF (2019) guidance observations that these problems tend to be among the three most prevalent justiciable problems. Further, PULS survey data highlighted that people who were gender diverse, from an LGBTIQ+ background, experienced mental distress, or were unemployed, tended to have a greater experience of justiciable problems.

Submissions indicated there was generally a lack of capacity to address civil matters. This means many clients who had legal needs did not receive information or assistance necessary to resolve their legal issues, or had to participate in court or tribunal proceedings without representation. This issue was highlighted in the 2014 PC Report, where evidence was heard of high turn-away rates for civil law needs. As input to the PC Report, ACROSS (2013) submitted survey evidence that showed:

- 63% of legal service providers were unable to meet demand for services (legal services ranked second highest among community service providers for inability to meet demand)
- 20% of all clients in need of assistance from surveyed community legal services were turned away in 2011-12 (the highest turn-away rate across all service types)
- 85% of legal services reported targeting their services more tightly or limiting service levels to meet demand
- 67% reported being underfunded and 59% said they had increased waiting times for services
- 76% of services asked staff and volunteers to work additional hours in attempting to meet demand.

Evidence put to this Review shows this situation has deteriorated even further.

In 2022-23, Legal Aid WA received 14,310 calls for Civil Law assistance through our telephone Infoline and only 867 (6%) of those calls could be booked in for an appointment with a lawyer in the Civil Law Division, due to the services reaching capacity. A review of some of the clients who were turned away from Legal Aid WA show that 322 clients had a financial hardship/debt problem, and 302 had a guardianship/power of attorney/will issue. There are potentially hundreds of clients who were turned away from Legal Aid WA as the Civil Law Division did not have capacity to provide them with an appointment.

Submission, Legal Aid WA, sub.50, p 36

Very few civil law grants of legal aid are available. That results in disadvantaged people appearing without legal representation in Courts and Tribunals all around the State.

Submission, Legal Services Commission SA, sub.51, p 6

This lack of capacity is greatly exacerbated in regional and remote areas, resulting in unresolved legal need in many areas, with service providers resorting to inefficient methods for meeting these needs.

While we have used fly-in-fly-out service model to deliver civil law services in some small regional and remote towns that do not warrant a full-time presence, it is an expensive and inefficient method of service delivery in family law matters. Unfortunately, in some areas it is the only way we can deliver family law services to local clients.

Submission, Legal Aid NSW, sub.47, p 26

There is a huge unmet need for mediation of civil disputes in rural regional and remote areas and ALRM should be involved in closing that gap.

Aboriginal Legal Rights Movement, sub.3, p 26

Unmet need is most pronounced in regional and remote Australia. Some regional and remote areas of Australia have no funded specialist on-the-ground services providing social security legal advice and assistance. The Northern Territory (NT) is a prime example: none of the non-profit legal services in the NT – neither Aboriginal Legal Services, Community Legal Centres nor the Legal Aid Commission - receives funding that is specifically designated to the purpose of providing social security legal help.

Submission, Economic Justice Australia, sub.28, p 4

The constraint on legal services delivery related to civil and administrative matters is exacerbated by the 'Commonwealth money for Commonwealth matters' principle. Legal Aid Northern Territory noted:

Most civil law assistance provided by Legal Aid NT is confined to advice and legal task assistance. There is very limited ability to provide ongoing court or Tribunal representation for NT Law matters because the NLAP prohibits use of Commonwealth funding for NT Law representation services, and there is insufficient Territory funding to meet demand.

Submission, Legal Aid NT, sub.48, p 23

Reflecting on the extent of unmet need for civil law matters, a number of submissions call for additional funding for this area:

All of the civil law areas of law in which DCLS provides assistance represent major gaps in the NT because the assistance DCLS provides, taken together with that provided by other NT non-profit legal services, is still vastly insufficient to the levels of need.

Submission, Darwin Community Legal Service, sub.23, p 3

Tasmania Legal Aid (sub.96) recommends in its submission that general civil assistance and representation be expanded and included as ongoing core funding under NLAP. The Reviewer agrees.

In view of this, the Reviewer recommends that part of the solution is to increase the number of civil and family grants of legal aid. Even though this section mainly pertains to unmet legal need in civil law matters, these problems tend to cluster with family law matters. Consequently, family grants would also need to increase. As described in the LAW Survey results, individuals with family law problems often presented with disputes in areas of consumer, criminal, government (including benefits), housing and rights.

The Reviewer's approach to estimating the cost of allocating additional grants for civil and family matters is as follows:

- Current allocation of approved grants, by area of law, is 2% for civil matters, 26% for family matters (excluding ICLs), and 72% for criminal matters. These percentages are based on publicly available data from National Legal Aid.
- Target allocation of approved grants, by area of law, is 26% for civil matters, 27% for family matters, and 48% for criminal matters. The PC Report recommended an increase of 40,000 non-family, civil grants, which would have yielded the target allocation of 26%.
- An additional 54,000 civil grants and 13,000 non-ICL, family grants are required to achieve the target allocation. Grant allocation is assumed to be 43% for private practitioners and 57% for in-house LAC staff, in line with current spend data.
- For grants allocated to private practitioners, in 2022-23 the average cost per grant (adjusted to court scales) is estimated to be \$7,161 for civil matters and \$10,295 for family matters.
- For grants delivered by in-house LAC staff, the average cost per grant is \$4,092 for civil law matters, and \$5,883 for family law matters.
- Consistent with the PC Report, estimates presented in this Report estimate additional family grants will be roughly 60% for Commonwealth matters and 40% for state and territory matters. Other civil grants have been split equally between the Commonwealth and states and territories. This is done for illustrative purposes only. It is recommended Commonwealth and state and territory governments share costs of funding service providers under the A2JP, rather than retain individual service lines, with a view to reaching roughly equal shares by the end of A2JP.

Commonwealth administrative law matters

The Reviewer notes the Commonwealth has yet to finalise a suite of administrative law reforms, including successor arrangements for the Administrative Appeal Tribunal, and is yet to respond to public inquiries including Royal Commissions into Robodebt, Disability, and Veterans, and the Independent Review of the National Disability Insurance Scheme. There is also potential for further reform to immigration arrangements.

These matters will have a profound impact on demand for legal assistance services, especially those service providers specialising in these areas of law. In the absence of government decisions on these matters, it is difficult for the Reviewer to make recommendations about funding of services related to Commonwealth administrative law.

Social security is a large area of Commonwealth administrative law which involves the most economically vulnerable in our community. In its submission to the Review, Social Security Rights Victoria identified social security as an area of unmet need for the legal assistance sector.

Legal assistance targeted at social security legal needs fails miserably at meeting the need.

Submission, Social Security Rights Victoria, sub.91, p 26

The submission asserts that social security should be expressly identified as a priority area in the next agreement.

The NLAP should specifically recognise social security as a substantial area of legal need requiring priority and a step-level change in investment.

Submission, Social Security Rights Victoria, sub.91, p 11

In particular, the submission quotes findings from PULS that higher levels of need for social security existed for Aboriginal and Torres Strait Islander peoples.

The Victorian Law Foundation PULS report found that 18% of Aboriginal and/or Torres Strait Islander participants had experienced a government payment problem, compared to only 4.2% of participants that did not so identify. Clearly there is significant social security legal need in this community.

Submission, Social Security Rights Victoria, sub.91, p 24

The seriousness of this finding is amplified by the understanding of the Reviewer that Aboriginal and Torres Strait Islander peoples are underrepresented in the lists of the AAT.

Recommendation 4 – Legal Assistance Impact Assessment for administrative law

The Reviewer considers that there is insufficient certainty around a range of Commonwealth administrative law matters for him to be able to make firm funding recommendations at this time. Once these matters are settled, the Commonwealth should undertake a Legal Assistance Impact Assessment with a view to adjusting the baseline funding of those services who have substantial Commonwealth administrative law caseloads.

Consumer credit

As an area of law, consumer credit encompasses a set of legal regulations and principles that govern borrowing and lending money, and extending credit to consumers. Legal assistance in consumer credit matters involves providing guidance, advice and representation to individuals. It aims to protect consumers' rights and interests in their financial transactions, ensuring fair and transparent dealings with creditors and lenders. Consumer credit was highlighted as an area of unmet need for the legal assistance sector.

CCLS does not believe our current contract and level of funding enables us to adequately provide services to our Priority Client groups.

Submission, Consumer Credit Legal Service WA, sub.22, p 3

Our Legal Needs Analysis shows the value and impact of our casework, but also shows that our frontline services will never meet expressed unmet legal need. We can assume this is the case for all specialist CLCs. Our data suggests that Consumer Action's legal advice service receives up to 10 times the number of calls we can answer. Our services cannot assist those people with latent legal need.

Submission, Consumer Action Law Centre CLC, sub.21, p 3

The submission from Consumer Law Action Centre CLC asserted that challenges associated with the increasing cost-of-living are exacerbating legal need in relation to credit and debt issues.

The cost-of-living crisis is exacerbating credit and debt issues. This is clearly presenting in increased demand and complexity on our frontline services.

Submission, Consumer Action Law Centre CLC, sub.21, p 2

Consumer Credit Legal Service WA stated that areas of highest need for consumer credit assistance in Western Australia were bankruptcy, superannuation, and insurance.

In its submission, Financial Counselling Australia pointed to the lack of assistance available to small businesses in relation to financial hardship (relative to the access to advice individuals have, and the protections afforded by credit laws). The Reviewer considers that assistance for small business should be provided under small business programs and understands assistance is provided by various Commonwealth and state and territory agencies.

The submission also identified that while all agencies are busy, agencies in South Australia and Tasmania are particularly under-resourced and specialist consumer credit agencies do not exist in Queensland and Northern Territory. This disparity was also echoed in Caxton Legal Centre's submission which noted that NLAP fails to address the disparity of investment in some jurisdictions regarding unmet legal need for certain legal areas, including financial rights (consumer credit and debt). Governments should consider how these service gaps might be addressed.

Tenancy and housing

Tenancy law governs the rights and responsibilities of both landlords and tenants in the context of renting or leasing residential properties. These cover areas such as lease agreements, tenant rights and responsibilities, health and safety, rent increases, right to privacy and evictions.

A number of submissions identified tenancy as an area of unmet legal need.

In the Tenants' Union of NSW most recent memo on funding needs, analysis of calls to Tenants' Advice and Advocacy Services in March 2021 suggested that during the original COVID-19 funding boost there was still a level of unmet demand of about 27%, or one in 4 calls. On current baseline funding this would translate to an unmet demand of 52%. An increase in funding should seek to meet this level of unmet demand in the aggregate.

Submission, Tenants' Union of NSW, sub.97, p 3

Darwin Community Legal Service's submission identified that 'the rights of individuals to access tenancy legal help is a major gap in legal assistance in the NT.' A similar sentiment was expressed by Legal Services Commission South Australia, which pointed to insufficient funding for this need.

Due to funding constraints, LSC is unable to provide legal assistance for housing matters, which results in South Australians needing to pay for private representation without many having the means to do so.

There are organisations in place, such as Rent Right SA, JusticeNet SA and Anglicare SA that provide free legal services for housing matters. However, noting that SACAT applications continue to increase (6,833 housing related applications in 2020-21 and 7,107 applications in 2021-22), the organisations currently providing free legal services face capacity and funding issues in trying to meet demand.

Submission, Legal Services Commission South Australia, sub.51, p 17

The need for tenancy and housing assistance was linked to the rising cost of living crisis. In its submission, Street Law Centre WA Inc (sub.94) stated their client group is ever-increasing, due to a rental market they cannot access and the increasing cost of living.

Current cost of living challenges experienced by many Australians will increase demand across the spectrum of civil law services. Setting efficient baseline funding for service providers (recommendation 17), removing from funding arrangement the principle of 'Commonwealth money for Commonwealth matters' (recommendation 34), and addressing workforce issues will improve provision of civil law services.

The need to increase funding of civil law assistance identified by the PC Report in 2014 remains, albeit with a significantly higher implementation cost, as presented in recommendation 5.

Improving access to civil legal assistance

Currently, people are required to satisfy means tests to qualify for government-funded legal assistance. The means tests consider both income and assets of people seeking legal assistance. They are intended to indicate a person's capacity to pay for private legal advice. Means tests can thus contribute to levels of unmet need by excluding some people.

A decade ago, the PC Report noted that 'only 8% of households would likely meet income and asset tests for legal aid, leaving the majority of low- and middle-income earners with limited capacity for managing large and unexpected legal costs,' indicating that the means tests were 'too mean.' At the time of the PC Report an estimated 14% of Australians lived below the ACOSS (and OECD) poverty line of 50% of median incomes. More recent analysis by Impact Economics for National Legal Aid, the validity of which the Reviewer accepts, indicates this situation has remained largely unchanged.

LACs have not had the resources to increase their means tests in line with the recommendation from the Productivity Commission. In fact, since 2014 some LACs have been unable to increase their means tests.

Alongside this, LACs have had to reduce the type of service available to manage resources... 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. These limitations significantly impact who can access legal assistance in Australia.

Submission, National Legal Aid, sub.63, p 14

The PC Report recommended that eligibility for government-funded legal assistance should be consistent and linked to an agreed measure of disadvantage, updated over time, making eligibility requirements transparent and equitable. This recommendation has not been actioned.

This leaves a majority of low- and middle-income earners with limited capacity for managing large and unexpected legal costs and further recommended that the means test limit for Legal Aid services be increased.

Submission, ACT Government, sub.5, p 14

This means that we are unable to meet legal need more broadly, particularly people who are still disadvantaged, but to a lesser extent. As a result, there are currently a group of people who are missing out on free legal services and are also otherwise unable to access paid legal services ...

Submission, Circle Green Community Legal, sub.117, p 5

Reflecting on the restrictive nature of current means testing approaches, submissions called for a broader definition and higher means test threshold.

Current funding guidelines, particularly in the area of summary crime in Victoria, are incredibly tight. The result is that far too many accused persons are ineligible for a grant of legal assistance. This unmet legal need undermines access to justice and the fairness of the criminal justice system. In considering where guidelines should be expanded, the categories of case identified at pages 167 -174 of the VLA Evaluation Report would be an excellent start.

Submission, Private Law Firms Victoria, sub.125, p 13

Financial disadvantage continues to be a barrier for accessing fee for service legal support. A broader definition, including the inability to pay for legal support if service provision is denied, should be considered.

Submission, Circle Green Community Legal, sub.117, p 5

The submission from Tasmania Legal Aid (sub.96) included results from a review of its guidelines for grants of legal aid. The review assessed the impact of increasing the 'assessable income threshold' guideline from the current \$180 per week for a single person to \$415 per week (based on the Henderson poverty line), and noted that:

- *The population of Tasmania who earn less than \$180 per week is approximately 70,000.*
- *The population of Tasmania who earns less than \$415 per week is approximately 164,000.*
- *The current percentage of the eligible population who can apply for a Commonwealth grant of aid is approximately 1.30%.*
- *Assuming the application percentage remains unchanged, this will equate to an estimated 1,180 new applications for Commonwealth grants of aid.*
- *It is estimated the impact of these additional grants of aid will equate to \$4,131,000 per year, plus general increases in line with existing average annual growth rates.*

Submission, Tasmania Legal Aid, sub.96, p 41

There is a degree of inconsistency between jurisdictions in applying means testing. For instance, Legal Aid Queensland (sub.49) reported that:

In Queensland, an applicant for legal assistance can have up to \$146,000 in equity in their home as an excluded asset. This is less than half of the equity allowable in the next highest jurisdiction, Western Australia, where \$362,060 is allowable, followed by \$370,000 in Tasmania.

Submission, Legal Aid Queensland, sub.49, p 8

The Reviewer notes that the PC Report recommendation regarding achieving greater consistency in means tests has not been acted upon, as can be seen from data presented in Appendix D.

The PC Report recommended an increase in funding of \$200 million per annum as a down payment on setting legal assistance funding at appropriate levels. It was estimated at the time 60% of this funding should be provided by the Commonwealth. Data presented in chapter 6 demonstrates this clearly did not happen. The Review team has sought to recalibrate the calculations used by the Productivity Commission (set out in online Appendix H of the PC Report) and an estimate consistent with the recommendation in the PC Report is \$459 million in 2025-26.

Such an increase in funding would enable LACs to significantly relax their means tests. Preliminary analysis by the Review team suggests this level of relaxation of means tests, arising from providing significantly more grants, should go much of the way to ensuring most people living below the ACOSS (and OECD) poverty line can access legal assistance from LACs.

It is important to understand that today the primary purpose of means tests is to provide an objective mechanism to allocate scarce resources to clients most in need. Despite the views expressed by the Productivity Commission in 2014, means tests are not in themselves an expression by service providers or governments of public policy merit in providing services to some people and not to others. As discussed in chapter 7, and restating the Productivity Commission's position, it is the Reviewer's view that governments should embrace the challenge of who should get legal assistance and for what. It should then sustainably fund service providers to meet those objectives by providing efficient, appropriate services. This however is not possible given current data restrictions. Therefore the Reviewer makes no specific recommendation regarding providing

funding to achieve coverage of a cohort of people defined by their relationship to an objective measure (or set of measures) of poverty.

Recommendation 5 – Civil law

To address the persistent gaps in civil law assistance first identified by the Productivity Commission in 2014, and to help Australians experiencing legal issues as a result of cost of living increases, governments should provide additional funding for civil legal assistance services, including early intervention and mediation, to allow legal assistance providers to offer a greater number of services and prevent unresolved civil matters becoming criminal matters.

Particular focus should be placed on supporting statewide and national specialist CLCs (whether currently funded under NLAP or not) and providing resources to ATSILS and FVPLS to develop and implement culturally appropriate services for Aboriginal and Torres Strait Islanders services alone and in partnership with specialist CLCs. This should be done through the baselines process set out in chapter 7.

Further, the Commonwealth, states and territories should increase funding for additional civil and family law funding broadly in line with the recommendation 21.4 of the PC Report. The Reviewer expects this to cost all governments \$459 million in 2025-26.

The Productivity Commission estimated in 2014 that around 60% of the cost associated with this recommendation should be borne by the Commonwealth – the Reviewer has not revisited this estimate.

The principle of 'Commonwealth money for Commonwealth matters' should not apply to Commonwealth funding of these grants.

4.6.2 Disasters

The Review received compelling evidence of increasing legal needs from the greater frequency and severity of natural disasters. The Second National Action Plan to implement the National Disaster Risk Reduction Framework has cautioned about the increasing the frequency and severity of natural hazards and the impact this is having on people with existing vulnerabilities.

Climate change is exacerbating existing vulnerabilities, increasing the frequency and severity of natural hazards, and magnifying their impacts. In the coming years we expect climate change to affect entire communities as extreme weather events impact homes, livelihoods, and the environment.

The Review has received many submissions regarding the level of unmet legal need for people who have experienced disasters:

Disaster services is also an area of unmet legal need. Legal assistance has emerged as a critical element in the recovery of disaster affected communities and is now a specialist area of practice.

Submission, Legal Aid NSW, sub.47, p 20

One area of emerging need is disaster recovery. The PULS findings demonstrate heightened legal need in people with experience of the fires, including all matter types, clusters of legal problems, and longer legal problem duration, and higher rates of unmet legal need.

Submission, Victoria Law Foundation, sub.103, p 4

The LIV also notes that disaster-affected and climate change affected groups are an increasingly vulnerable cohort.

Submission, Law Institute of Victoria, sub.46, p 11

inTouch support the proposal to include ... individuals and communities impacted by disasters, including climate change, to the priority groups considered under the NLAP.

Feedback from the ACT legal assistance sector highlighted additional disadvantaged groups that may require expanded support in a future national partnership agreement [including] individuals impacted by natural disasters.

Submission, ACT Government, sub.5, p 14

In recognition of this growing need, the Commonwealth has provided funding under a number of streams and has announced dedicated funding programs, including:

- \$5.4 million over two years (2021-22 to 2022-23) for additional frontline legal services, to support relief and recovery in communities affected by floods in New South Wales and Queensland in February and March 2022
- \$12 million over four years (2022-23 to 2025-26) to support community legal centres in New South Wales and Queensland with the compounding impacts of recent natural disasters, including bushfires in 2019-20 and floods in 2022
- \$1 million as part of the Central West Recovery and Resilience Package (jointly funded by the Commonwealth and NSW State Government) for the Legal Aid Assistance Program to help NSW Central West region's recovery from flooding in 2022, and build resilience for the future.

However, Legal Aid NSW's Civil Law Division, which received disaster funding, lamented in its submission the lack of future funding certainty for these programs, despite establishing the Disaster Response Legal Service (DRLS) to respond to consecutive bushfire and flood events. The submission posited that sustainable disaster funding should be made available.

Legal Aid NSW strongly supports a national model of disaster funding that includes sustainable ongoing funding for the delivery of core disaster legal services, plus a contingency fund to be accessed as needed.

Submission, Legal Aid NSW, sub.47, p 20

A further concern is the timeliness with which legal assistance funding can be deployed to respond to a disaster. Reflecting on inadequacies of the current approach, Legal Aid NSW submitted that a model allowing immediate access to disaster funding is required.

A proper surge funding mechanism is needed to enable the legal assistance sector to rapidly respond to sudden changes in demand arising from major upheavals such as disasters, pandemics and even international humanitarian crises. The current reactive model is not efficient and generates significant work and administrative costs. A contingency fund that could be immediately accessed to scale up operations is required.

Submission, Legal Aid NSW, sub.47, p 9

The value of ongoing funding to support disaster preparation and mitigation, and organisational capacity to respond to disasters, was also supported by the Law Institute of Victoria.

Currently, funding provided to organisations such as Disaster Legal Help Victoria is insufficient to ensure long-term disaster preparation and mitigation, hindering the development of sufficient organisational capacity to enable appropriate responses to events such as pandemics and disasters that can result in a sudden and unforeseeable increase demand for legal services.

Submission, Law Institute of Victoria, sub.46, p 11

PULS revealed that people affected by the 2019-20 bushfires were more likely to report justiciable problems (57% reporting a problem compared to 41% of those unaffected), far more likely to report multiple problems and problem clusters, less likely to have handled their justiciable problems alone, and far more likely to have obtained legal advice.

Their legal problems lasted longer and they were more likely than others to be unhappy with progress or outcome of their problems. As submitted by Legal Aid NSW (sub.47), areas of need for people impacted by disasters include insurance, credit and debt, housing and tenancy, employment and family violence.

The submission from Legal Aid NSW (sub.47) highlighted that ongoing funding for disaster legal services would deliver a range of benefits, including:

- continuity of disaster legal help without affecting other core services
- support coordination and efficiency of disaster legal assistance through maximising reach, avoiding duplication and streamlining referrals
- increased ability to attract and retain a skilled mobile workforce capable of providing trauma-informed services
- rapid mobilisation of services in the acute crisis phase of disasters to prevent homelessness and further hardship for affected clients and communities, while also meeting the long tail of needs during disaster recovery
- support for targeted community legal education in disaster preparedness, information, and referrals for at risk communities.

The Reviewer does however note that disaster responses in remote areas with high levels of community owned infrastructure, such as Fitzroy Crossing, may look very different to those in the country's south-east where data from PULS and the views of NSW Legal Aid are more relevant. In all cases, however, it is important that legal assistance for Aboriginal and Torres Strait Islander peoples experiencing disaster is planned and delivered in a culturally appropriate way, with involvement of relevant ACCOs.

The Royal Commission into National Natural Disaster Arrangements was established in response to the bushfires of 2019-2020. The Commission investigated strategies for collaboration, readiness, response and recuperation in the face of disasters, along with enhancing resilience, adapting to evolving climate conditions and reducing natural disaster effects. Published in October 2020, one recommendation of the Commission was that:

Australian, state and territory governments should expedite the development of preagreed recovery programs, including those that address social needs, such as legal assistance domestic violence, and also environmental recovery.

Recommendation 22.5, Royal Commission into Natural Disaster Arrangement, 2020

As noted in the Royal Commission into National Natural Disaster Arrangements recommendations and implementation status report:

... Commonwealth, state and territory officials are working collaboratively to develop pre agreed 'off-the-shelf' DRFA Category C and D recovery packages to provide a more consistent approach to recovery support.... In December 2022, the NEMMM agreed to develop three additional 'off-the-shelf' packages covering welfare and mental health, legal recovery assistance, and tourism recovery. The Commonwealth is working collaboratively with the states and territories on these packages.

The Reviewer agrees with the views expressed by the Royal Commission.

Recommendation 6 – Funding for disaster response

The Reviewer recommends that governments include in the baseline funding for the A2JP sufficient funding for legal assistance providers to develop and maintain suitable preparedness to respond to community legal need in the event of natural disasters. By including in baseline funding, service providers will have flexibility in use of funds during disaster periods and other times.

The development of this service response should be led by jurisdictional governments recognising the need to involve LACs and community service providers and the unique geographic and climatic and cultural circumstances of different communities, especially where there are high levels of community property ownership. This funding should support partnering with other service providers, particularly external financial counsellors. It would be expected that some CLCs would be identified as leads for responding to disasters, based on their specialist capabilities.

Governments should develop funding packages for immediate deployment in the event of disasters, noting that these would sit outside baseline funding but would be able to be deployed in a flexible, tailored and responsive fashion. The initial size and scope of these packages should be determined with review mechanisms in place to adapt within weeks of the disaster event. The Commonwealth should share the costs of these packages equally with the states and territories.

4.7 Unmet legal need – by existing priority client groups

The current NLAP Agreement recognises 11 national priority client groups for which legal assistance services should be planned and focussed. The groups are:

1. Aboriginal and Torres Strait Islander peoples
2. Children and young people (up to 24 years)
3. Older people (aged over 65 years, or Aboriginal and Torres Strait Islander peoples aged over 50 years)
4. People experiencing, or at risk of, family violence
5. People experiencing, or at risk of, homelessness
6. People in custody and/or prisoners
7. People residing in rural or remote areas
8. People who are culturally and linguistically diverse
9. People with a disability or mental illness
10. People with low education levels
11. Single parents.

While NLAP acknowledges that legal assistance should not be denied to clients who fall outside these groups, the list of national priority client groups recognises certain cohorts of vulnerable people facing disadvantage are more likely to experience legal problems, less likely to seek assistance, and/or less able to access services for a range of reasons.

The notion that people experiencing numerous vulnerabilities also experience greater and more complex legal needs was strongly supported by submissions to this Review. Numerous submissions shared statistics on the composition of their clients and representation across identified demographic vulnerabilities, such as the following from Legal Aid WA.

Legal Aid WA assists some of the most disadvantaged people in Western Australia. In 2022/23, we assisted 39,119 unique clients. Of these:

- 27% identified as Aboriginal or Torres Strait Islander
- 29% disclosed a disability or mental illness
- 75% disclosed family violence (based on adult family law clients for new grants and duty lawyer services)
- 36% were located in rural and remote areas
- 70% were receiving some form of government benefit.

Submission, Legal Aid WA, sub.50, p 4

The PULS provides some insights into vulnerabilities that make highest contributions to legal needs, as noted in the Law Institute of Victoria’s submission.

In particular, the PULS Report identifies that respondents who are experiencing financial distress, and/or who are of Aboriginal and Torres Strait Islander origin, and/or who are LGBTIQ+, are more likely to experience a comparatively elevated number of justiciable problems, enabling the PULS Report to identify ‘a broad association between justiciable problems and disadvantage’.

Submission, Law Institute of Victoria, sub.46, p 11

The submission also indicates that multiple-problem experience is also concentrated among the most vulnerable. Of the 15% reporting five or more problems, almost 20% also reported having to go without meals or being unable to heat or cool their homes because of a shortage of money. Acknowledging the impact of this phenomenon, which the PULS Report referred to as ‘problem clusters’, the submission asserted this provided further evidence of the need for effective ‘wraparound’ non-legal services. The Reviewer is of the view it is likely that the current cost of living environment is likely to have seen this cohort grow, and the level of complexity of individual and family legal needs will have grown as well.

Submissions widely endorsed the view that there is unmet legal need. However, there was some variance in identified vulnerabilities and priority clients facing highest levels of need. As a sample of the priority areas highlighted, Table 4.2 shares the priority groups highlighted in four submissions.

Table 4.2 Sample of reported groups with the highest levels of unmet legal need

- Aboriginal and Torres Strait Islander peoples	- The unemployed	- Those with low educational achievement
- Those with severe mental distress	- Single parents	- Those on very low incomes
<i>Submission, Victoria Law Foundation, sub.103, p 3</i>		
- People experiencing domestic and family violence	- Culturally and linguistically diverse people	- Older people
		- People with disability or mental illness
<i>Submission, ACT Government, sub.5, p 11</i>		
- CALD Australians	- African Australians	- Aboriginal and Torres Strait Islander peoples
- Young people	- People with a disability	- Unemployed
- families experiencing violence and breakdown	- Homeless	- Aged
<i>Submission, Toongabbie Legal Centre, sub.98, p 3</i>		
- Older women	- People experiencing financial abuse as a result of family violence	- People impacted by climate change

Submission, Consumer Credit Legal Service WA, sub.22, p 5

Source: various

4.7.1 Aboriginal and Torres Strait Islander peoples

Submissions highlighted the greater level of legal need faced by Aboriginal and Torres Strait Islander peoples and indicated that much of this need went unmet by the legal assistance sector.

This need was described as acute in the Northern Territory. Legal Aid NT (sub.48) highlighted that the Northern Territory is home to the highest proportion of Aboriginal and Torres Strait Islander peoples in Australia, making up 32% of the population, compared to the national population average of 3.4%.

The submission from Legal Aid NT also pointed out that income disparity for Aboriginal and Torres Strait Islander peoples was also greatest in the Northern Territory.

In 2016, the median personal income for Aboriginal and Torres Strait Islanders was \$281 per week, just 26% of the \$1,072 received by other Northern Territorians.

Submission, Legal Aid NT, sub.48, p 25

The level of poverty experienced by Aboriginal and Torres Strait Islander peoples is a key contributor to homelessness in the Northern Territory and indeed across the nation. Legal Aid NT (sub.48) shared that in 2021, the Northern Territory had 12 times the national average rate of homelessness equating to 6% of all people in the Territory, and that 88.5% of people experiencing homelessness in the Northern Territory are Aboriginal and Torres Strait Islander peoples. These statistics mean almost half Aboriginal and Torres Strait Islander peoples experiencing homelessness in Australia (24,930) live in the Northern Territory.

Homelessness was also linked to overcrowding. Legal Aid NT's submission (sub.48) revealed that in 2021, the proportion of people living in 'severely' crowded dwellings in the Northern Territory was more than 20 times the national rate (483.5 per 10,000 vs. 21.8 people per 10,000).

In light of these statistics, which are not in dispute, the Reviewer finds it curious that the Northern Territory Government provides the lowest fiscal support of any jurisdiction to its legal assistance ACCOs (see figures 6.11 and 6.14).

In its submission, Aboriginal Legal Rights Movement (sub.65) highlighted statistics on unrepresented litigants to indicate the level of unmet legal need among Aboriginal and Torres Strait Islander peoples in South Australia.

The submission stated that in country courts, Aboriginal and Torres Strait Islander peoples represented roughly a third of finalised case defendants who had a finding or admission of guilt. Of these roughly one in five did not have legal representation. Furthermore, traffic and vehicle regulatory offences were the most prevalent serious offence, with over half these defendants not having legal representation. Overall, one in ten defendants receiving a custodial order did not have legal representation.

Of more concern, in the Magistrates Courts over half finalised case defendants who had a finding or admission of guilt appeared at one of five locations. The percentage appearing without representation ranged from 26.6% in Port Augusta to 32.9% in Port Pirie, 37.0% in Berri, 44.6% in Murray Bridge, and 61.4% in Mount Barker. Again, with reference to figures 6.11 and 6.14, the level of state legal assistance funding for ACCOs is surprisingly low.

These issues are not unique to the Northern Territory or South Australia. Across the country there is a pronounced need for legal assistance among Aboriginal and Torres Strait Islander peoples. Chapter 5 discusses their need in depth, along with barriers to accessing assistance they require.

4.7.2 Children and young people

Children and young people are defined as people under the age of 24. They are a priority client group under NLAP.

Nationally, Youth Law Australia serves almost half of children and young people under the age of 18 who receive help from a community legal centre. Its submission asserted substantial unmet need for this group and shared the following statistics to demonstrate the extent to which they are currently unable to meet need:

Due to funding constraints, from time-to-time we have to take steps to reduce our intake. We estimate that:

- in the last financial year, around 138 clients were unable to access us because we had removed our Get Help Now forms from our website;*
- in this financial year, 312 clients will be unable to access us because since 1 May 2023 we have had to reduce the availability of our phone lines;*
- in the last financial year, 462 clients were unable to access us via live chat because all our operators were busy;*
- in the last financial year, we received 584 offline chats (offline because someone had attempted to contact us outside of the times in which our chat is staffed);*
- in this financial year, we will be unable to help at least another 116 clients because we have had to stop receiving referrals from the Workplace Advisory Service for Queensland and Western Australia*

Submission, Youth Law Australia, sub.109, p 10

Youthlaw (Victoria) expressed a view that

... we are so limited in funding that we are only targeting our resources at the most vulnerable young people. To get assistance from our service young people also need to be in another (or several other) National Priority Groups (usually experiencing homelessness, family violence, drug and or alcohol dependence, and people with a disability or mental illness).

Submission, Youthlaw (Victoria), sub.110, p 6

Legal Aid NT shared statistics on the prevalence of children in out-of-home care and child detention, demonstrating the extent of legal need among children in the Northern Territory, particularly Aboriginal and Torres Strait Islander children.

The Northern Territory has the highest rates of children in out-of-home care (under care and protection orders) at 14.1 children per 1,000 of the population. The national average is 8 per 1,000 children. 91% of these children are Aboriginal and Torres Strait Islander.

In the Northern Territory the rate of children in detention is 7 times the national average. The percentage of children in detention who are Aboriginal and Torres Strait Islander is commonly 96%, and very often 100%

Submission, Legal Aid NT, sub.48, p 24

An anonymous submission identified the need for more independent children's lawyers to adequately represent the interests of many children who are in precarious situations, particularly those in regional and remote areas.

There is significant concern that there will not be sufficient separate representatives and independent children's lawyers to adequately represent the interests of many children who are in precarious situations. It also means that Independent Children's Lawyers and Separate Representatives who are appointed are generally not from the same locality as the child and are not as sensitive to the issues and services available in each area.

This is very important particularly in regional and remote areas where services are not available or if they are available, sufficient to address the concern due to high staff turnover etc.

Submission, Anonymous Individual

Legal Services Commission South Australia (sub.51) stressed the importance of (and appropriate funding for) early and consistent advice from a legal practitioner so as to avoid protracted proceedings via earlier resolution of the prospects for family reunification. The submission noted that many parents of children subject to Care and Protection applications do not qualify for a grant of legal aid to be represented in the proceedings due to current means and merit testing, and that in most care applications the state is successful in removing guardianship of children from their parents. The submission noted that they:

have experienced significant growth in demand in this jurisdiction over the past 10 years and this is expected to continue to grow', that 'Aboriginal children make up a significant percentage (30%) of all children the subject of Care and Protection applications', and the 'need to provide culturally appropriate services for this group is essential.

The Review is aware of the significant legal needs of children and young people and the insufficiency of current assistance. Improving legal outcomes for this group relies on increased funding for Independent Child Lawyers (recommendation 18), and funding for Community Legal Education (CLE), as part of baseline funding for all legal assistance providers.

4.7.3 Older people

Older people, defined as individuals aged 65 years and older, and Aboriginal and Torres Strait Islander peoples aged over 50 years, were identified by Caxton Legal Centre as a group that will face growing need for legal assistance, particularly in the area of elder abuse.

As trillions of dollars pass from one generation to the next, and as people live longer and look for extended employment opportunities, increased social participation, additional health and care services, we are going to need a substantial investment in elder abuse services and other ageing rights services.

Submission, Caxton Legal Centre, sub.12, p 8

In 2019 the Commonwealth funded Elder Abuse Service Trials, with several services throughout Australia providing dedicated support to people experiencing elder abuse. The programs were initially funded for three years. Funding was recently extended until 2026. The services are now known as Specialist Elder Abuse Services. The legal component of the trial is known as Specialist Elder Abuse Units which complemented Health Justice Partnerships, and Case Management and Mediation Services. The Specialist Elder Abuse Units were delivered by Eastern Community Legal Centre (VIC), Kimberly Community Legal Services (WA), Uniting Communities (SA), Legal Aid Commission NSW, and Legal Aid Commission of Tasmania.

Eastern CLC's submission (sub. 27), shared the results of an evaluation into two programs that were supported by this funding, which found:

...both programs have achieved their goals to the highest level possible... The evaluation findings clearly support the adaptation of the ELSA [Engaging and Living Safely and Autonomously] and ROSE (Rights of Seniors in the East) models to other geographical locations and their continuation and expansion...

Submission, Eastern CLC, sub.27, p 55

In June 2021, the Attorney-General's Department commissioned an independent evaluation of the Elder Abuse Service Trials. The evaluation found that, from July 2020 to March 2021, 863 clients were supported, an increase of 264% on the number of clients supported from July 2019 to June 2020. Clients were more likely to be female, aged 65-84, and to have a disability. The evaluation indicated this cohort needs specialist services that would otherwise be unmet by the existing service system. Further, these services should provide client-centred, holistic supports, with legal supports that recognise both legal and social needs for people at risk of experiencing elder abuse.

The Reviewer has not received sufficient evidence to form a considered view on how elder abuse programs might be deployed but does accept these matters are likely to persist well beyond the timeframe envisaged for A2JP. Consequently, the Reviewer recommends this program continues on an ongoing basis. The cost for this is captured in recommendations for baseline funding.

4.7.4 People experiencing or at risk of family domestic violence

Family and domestic violence law refers to violence and abuse within familial or domestic relationships. Submissions provided strong support for unmet need in the area of family and domestic violence.

We are acutely aware that family law is an area of significant unmet legal need, particularly for women experiencing family violence.

Submission, Southside Justice, sub.93, p 2

Family, domestic and sexual violence is a major contributor to incarceration of women in Australia. Intimate partner violence contributes indirectly to incarceration as it is a driver of homelessness, and affects other incarceration risk factors such as unemployment, poor health and lack of economic security (Australia's National Research Organisation for Women's Safety, 2020). In turn, incarceration exacerbates vulnerability upon release to family, domestic and sexual violence. Many incarcerated women face high levels of ongoing family violence connected to their offences and convictions, with 80% of women prisoners in one NSW study stating they believed their offending was a direct consequence of their victimisation (Kilroy, 2016).

In its submission, Legal Aid WA noted increasing demand for grants of aid for Commonwealth family law matters. Between 2020–21 and 2022–23, applications increased 13% and applications granted increased 18%. These rates equate to an increase in application approval rate from 76% in 2020–21 to 79% in 2022–23.

Legal Aid NT included concerning statistics on the risks and prevalence of family and domestic violence in the Northern Territory.

Domestic, family and sexual violence rates in the Northern Territory are higher than in any other jurisdiction in Australia. In 2021, the rates of domestic and family violence related assault were 3 times the national average, and 5 times that of other jurisdictions where data is reported

In 2021, the victimisation rate for assault in the Northern Territory was the highest in the ABS' 27-year time series.

Aboriginal women living in the Northern Territory are more than 8 times more likely to be assaulted than non-Indigenous women or men.

In 2021, the rate of domestic and family violence related homicide in the Northern Territory was 7 times the national average.

Submission, Legal Aid NT, sub.48, p 24

Other submissions pointed to high levels of unmet need in specific catchments around Australia, including Orange (NSW), East Gippsland (Victoria) and Hume Riverina (Victoria and NSW).

In Orange, there is almost one DV incident every day. This equated to about 7.8 incidents per 1000 people, well over double the NSW average. However, the Orange Legal Aid branch office has only one family lawyer who rarely acts for parents due to being conflicted.

Submission, Central Tablelands and Blue Mountains, sub.13, p 1

East Gippsland ranks as the third highest rate of family violence in the state, with 1,563 incidents at a rate of 3,162.3 per 100,000 population in the last police reporting year. GCLS receives funding of \$12,500 per year to provide family violence intervention order duty lawyer services to East Gippsland. In the 2022/2023 financial year, GCLS only had capacity to service Bairnsdale Magistrates' Court in East Gippsland once per fortnight, despite family violence intervention order listings being weekly. GCLS delivered just 85 legal services across 24 attendances for the entirety of the 2022/2023 financial year at Bairnsdale Magistrates' Court. Given the significant family violence numbers and that 15.3% of people living in East Gippsland are either separated or divorced,⁴ GCLS also has concerns about unmet legal needs in family law in the region.

Submission, Gippsland CLS, sub.34, p 7

Data collected on family violence rates in local government areas shows high rates across much of HRCLS' service region, as outlined in the introduction of this submission. Further, HRCLS is aware of significant unmet need in family law and family violence across our region, our own service capacity, and the limited alternate provision of legal services for people experiencing vulnerabilities before the law.

Submission, Hume Riverina CLS, sub.38, p 6

Legal Aid NSW (sub.47) highlighted challenges with the current funding model for specialist domestic violence services, including Family Advocacy and Support Service (FASS) and Domestic Violence Unit (DVU). Its submission states:

the associated funding cliffs for these services, [which] does not enable us to best serve these vulnerable clients. The short-term funding model and release of funding in tranches, rather than upfront, also frustrates effective service delivery and continuity for our vulnerable clients.

Both FASS and the DVU are currently funded under time-limited arrangements that align with NLAP duration. Future funding decisions will be made in the context of the next agreement. The Reviewer has recommended both programs be included in baseline funding in 2025–26.

It was acknowledged that many commercial law firms do not have expertise in family law. Consequently, pro bono services are rarely an effective avenue for these needs.

Like many commercial law firms providing pro bono legal services in Australia, MinterEllison does not have legal expertise in the areas of family law or most areas of domestic violence law. At the same time, there is a significant unmet legal need for people facing domestic and family violence in the community in these areas. In our view, this combination is likely a primary reason that, as noted in APBC's submission, 2 of the top 5 most rejected areas of law by firms with respect to pro bono requests for individual matters are domestic and family violence law and family law.

Submission, MinterEllison, sub.55, p 2

Australian governments are committed to reducing, and ultimately eliminating, family violence. Legal assistance providers have a key role to play. However, as discussed in more length elsewhere in this report, the short-term nature of recent funding programs does not support capacity development, underfunds the real cost of service provision, and adds to administrative burdens.

Further, it is not clear that funding allocation processes have properly allocated additional funding to providers best placed to deliver services in a holistic way, and in particular to Aboriginal and Torres Strait Islander women.

4.7.5 People experiencing/at risk of homelessness

Submissions to the Review noted that people experiencing or at risk of homelessness often face significant barriers in accessing legal assistance. There can be a lack of awareness about their legal rights and available services, compounded by limited literacy or educational backgrounds. Many homeless people grapple with mistrust of legal systems due to past negative experiences. Physical accessibility may be another hurdle as many do not have reliable transportation or the means to reach legal aid offices. The bureaucratic and complex nature of legal processes can be overwhelming, especially for those dealing with mental health issues or substance abuse.

The increasing rate of homelessness is an unanticipated community need. Which is demonstrated through the increased percentage of street present clients Street Law has assisted in the last financial year, which has increased from 23% in the 2021 financial year to 38% in the 2023 financial year.

Submission, Street Law Centre WA Inc, sub. 94, p 8

The Reviewer notes increasing costs of living will contribute to increased risks of homelessness. Increasing funding for grants of aid for civil legal assistance and strengthening the community legal assistance sector will address this issue.

4.7.6 People in custody and/or prisoners

In its submission to the review, Legal Aid NSW (sub.47) identified prisoners as a group facing 'significant difficulties accessing legal assistance and other services', noting that:

Commonwealth crime parolees represent a specific area of unmet legal need. Unlike State and Territory parole systems, the Commonwealth parole scheme is determined by the Commonwealth Attorney-General, not an independent public parole authority.

The submission goes on to note:

Legal Aid NSW is currently the only legal aid service in the country that provides specialist representation and legal assistance to Commonwealth parolees. 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. Of the clients we have assisted, up to 60% were from a culturally and linguistically diverse background and up to 40% required an interpreter.

Submission, Legal Aid NSW, sub.47, p 25

The Reviewer is aware of the high and growing rates of incarceration of Aboriginal and Torres Strait Islanders, especially women. As part of resetting the baseline for ATSIILS, FVPLS and other ACCO legal assistance providers, adequate resources should be provided for prison outreach services delivered by both legal and non-legal staff.

4.7.7 People residing in rural or remote areas

Submissions to the Review provided strong support for the unmet legal needs of those living in regional, rural and remote areas.

The needs of individuals, groups and communities in non-metro areas consisting of regional, rural, remote, and very remote areas are not adequately addressed by NLAP.

Submission, 4Rs Network, sub.1, p 70

A considerable number of submissions highlighted how people in these areas are often further affected by compounding socioeconomic barriers:

In many locations in the 4Rs the nature and effect of unmet legal needs in the 4Rs are at a humanitarian level and are deepening hardship and poverty. Unmet legal needs contribute to women, children and older people being unsafe.

Submission, 4Rs Network, sub.1, p 21

In the context of people who are residing in rural or remote areas of Queensland, these individuals often experience high socio-economic disadvantage and compounded barriers to accessing justice.

Submission, Caxton Legal Centre, sub.12, p 10

The costs of providing legal assistance in regional, rural and remote areas can exacerbate unmet needs, as many submissions noted.

With 96 remote communities, and over 600 homelands, all service delivery (including health, government, and legal) faces added logistical difficulties presented by physically getting to communities and maintaining a continuing presence there. Coupled with the fact that 75% of roads in the NT are unsealed, some of which famously close for large periods of the year due to weather constraints, the costs of delivering resources to communities are only exacerbated by the need to often use charter planes or boats.

Submission, Darwin CLC, sub.23, p 6

Acknowledgment that the pool of candidates available to remote services such as ours is extremely limited. Our budget needs a contingency such that when roles cannot be filled locally, we need to rely on fly-in-fly out solicitors which come at substantial cost and reduced service provision.

Submission, Far West CLC, sub.31, p 6

The costs associated with servicing rural, regional and remote communities must be included in the funding of legal assistance providers. In particular, these costs should be reflected in baseline funding discussed in section 7.2.1. Also, private practitioners working under grants of legal aid should be reasonably compensated for travel time to remote locations to meet with clients and/or to attend court where appropriate.

4.7.8 People who are culturally or linguistically diverse

Individuals from culturally or linguistically diverse backgrounds often encounter substantial challenges when seeking legal assistance. Language gaps are a key barrier which hinders their understanding of legal processes and limits their ability to communicate effectively with legal professionals. This issue is compounded by a shortage of interpreters and bilingual legal staff, leading to miscommunication. Cultural differences also play a role, as differing beliefs and values may affect how individuals perceive and interact with the legal system.

Law Access, in analysing its provision of legal assistance in 2022, found that over 10% of individuals were from culturally or linguistically diverse backgrounds. Community research conducted by Victoria Legal Aid in 2014 (Kellard, Compton, Vickers & Fishman, 2014) found that:

Unprompted, prompted and net awareness were significantly lower among respondents from a culturally or linguistically diverse background (53 percent, 72 percent and 75 percent respectively) as compared to those who do not speak a language other than English at home (68 percent, 84 percent and 85 percent respectively).

Caxton Legal Centre noted in its submission that in 2022–23, 9% of their clients spoke a language other than English, and that this figure rose to 11% for representation services.

Language issues also impact many Aboriginal and Torres Strait Islander peoples encountering the legal system. Recommendation 13 addresses increasing funding of interpreters for these people. For other people, governments provide a range of interpreter services which should be adequately funded.

4.7.9 People with a disability or mental illness

Submissions referred to the legal needs of people with a disability, stating their needs are not sufficiently met. This group is recognised as a priority client group under NLAP.

Legal Aid NSW (sub.47) acknowledged in its submission the *'increasing need to provide more targeted and accessible services to people with disability.'* The submission referenced the Final Report from the Disability Royal Commission which found that people with disability *'continue to experience high rates of violence and abuse, multiple forms of neglect, and sexual and financial exploitation'* and that agreements affecting people with disability, including NLAP, should be reviewed.

Legal Aid NT also references the Final Report from the Disability Royal Commission, and the prevalence of disability among Aboriginal and Torres Strait Islander peoples.

...34.7% of Aboriginal and Torres Strait Islander peoples in the Northern Territory have a disability (estimated 25,200 people), 53.1% have a long-term health condition, and 31.6% have one or more chronic health conditions.

Submission, Legal Aid NT, sub.48, p 26

The Reviewer notes that the Commonwealth has yet to respond to several substantial inquiries into disability. Further, the legal assistance needs of people with disability will be significantly impacted by processes and procedures of the Administrative Review Tribunal, legislation for which was tabled by the Commonwealth Attorney-General on 7 December 2023. In the meantime, these issues should be addressed in baseline A2JP funding for 2025–26. Funding requirements may change following the Legal Assistance Impact Assessment of Commonwealth of administrative law changes (recommendation 4) which must consider specialist legal assistance services that attend to the legal needs of people with disability and people with mental illness.

4.7.10 People with low education levels

Individuals with low educational attainment face distinct challenges in accessing legal assistance. Limited understanding of legal jargon and complex legal procedures can make it difficult to comprehend their rights and the legal processes they are involved in. This lack of understanding can lead to feelings of intimidation and helplessness when interacting with legal professionals or navigating judicial systems. Limited literacy skills may prevent them from effectively communicating their needs or understanding written legal documents. Such individuals are also less likely to be aware of legal aid resources available to them, due to a lack of exposure to information channels that disseminate such knowledge. The cost of legal services poses another significant obstacle, as those with lower educational backgrounds often have lower income levels, making it challenging to afford quality legal representation.

4.7.11 Single parents

Single parents frequently encounter unique difficulties in accessing legal assistance. One of the most pressing challenges is the balancing act between childcare responsibilities and the demands of pursuing legal matters, often leaving little time or energy for the latter.

Financial constraints are another significant issue as single parents typically rely on a single income, making costs associated with legal services a considerable burden. This financial strain can also limit their ability to travel to legal aid offices or courts.

Single parents may lack a support network to assist them with their legal journey, leading to feelings of isolation and overwhelm. The complexity and intimidating nature of legal systems can be particularly daunting for those who must navigate these challenges alone, while also managing the everyday responsibilities of parenthood. Caxton Legal Centre noted in its submission that in 2022–23, 25% of its clients were single parents.

4.8 Unmet need – New priority client groups

In addition to priority client groups recognised in NLAP, the Review has identified a number of additional cohorts experiencing unmet legal needs. As such it is recommended the following groups should be recognised as priority client groups in A2JP.

4.8.1 Women

Women experience unique legal issues as a result of deeply entrenched social attitudes and norms, including those of gender inequality, gender-based violence, and systemic gendered discrimination.

Across the country, specialist women’s legal services have developed to provide women with access to legal assistance services delivered in safe, trauma-informed and supportive ways. Submissions and consultations have highlighted the need for a dedicated focus on women in providing legal assistance, recognising the specific implications for service models and wraparound supports. Despite the existence of specialist services, and targeted funding through NLAP under the ‘vulnerable women’s stream’, stakeholders reported high levels of unmet need.

Women’s Legal Services are forced to turn away thousands of women each year who would be eligible for their services and are otherwise unable to reach many women who need their services, many of whom are experiencing domestic, family, and sexual violence and would uniquely benefit from specialist, gender-led assistance. New data collected by the 13 Women’s Legal Services nationally has found that 1,018 attempts to receive assistance were turned away during a 5-day period, which means we can estimate that more than 52,000 will be turned away by Women’s Legal Services per year.

Submission, Women’s Legal Services Australia, sub.107, p 5

The call for increased focus on women’s legal services aligns with the contemporary policy context, in which the Commonwealth recognises the importance of addressing women’s legal needs. This is evident in the National Plan to End Violence Against Women and Children which articulates the need to explore enhancement of women’s legal services, including capacity building for supporting diverse cohorts such as Aboriginal and Torres Strait Islander peoples.

The Reviewer acknowledges the role many legal assistance providers play in supporting women, often experiencing trauma, who are in legal need. While proposing that specialist women’s CLCs be identified in a separate funding stream, it is not proposed to fragment the funding of other providers in a way contrary to the reasoning set out in section 7.1.2. It would be useful over time, providing reporting burdens are low, to identify the extent that other service providers use funding for activities undertaken by specialist women’s CLCs; but this is not a priority issue.

Recommendation 7 – Women’s funding stream

The Reviewer recommends that funding for women’s legal services be separated from the general CLC stream and quarantined under the A2JP.

Each jurisdiction should establish a women’s legal assistance forum, including FVPLS, ATSILS, LACs and other CLCs, to consider how best to allocate any future women’s specific funding – consideration should be given to develop existing fora to undertake this work. The Commonwealth should be represented on these fora.

Additional funding of \$0.25 million, commencing from 2024–25, should be provided to Women’s’ Legal Services Australia so it can function as the national women’s legal assistance peak.

4.8.2 LGBTIQA+ people

‘LGBTIQA+’ is an evolving acronym that stands for lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual. There are many other terms (such as non-binary and pansexual) that people use to describe their experiences of their gender, sexuality and physiological sex characteristics (La Trobe University, 2023).

Citing growing demand and an absence of sufficient services for LGBTIQA+ people, numerous submissions called for the inclusion of LGBTIQA+ people as a priority client group in the future national partnership agreement. Acknowledging the extent of unmet legal need for this group, a number of jurisdictions have recognised LGBTIQA+ people as state-specific priority client groups in their respective Legal Strategy and Action plans, including South Australia and Western Australia.

It was submitted that currently, no suitable services exist across much of Australia.

For LGBTIQA+ people living in the other 5 States and Territories (ACT, Tasmania, South Australia, Western Australia, and the Northern Territory) there is virtually no access.

Submission, LGBTILS, sub.52, p 6

Furthermore, in locations where specialised services do exist, there is reliance on few providers without dedicated funding to support the function.

The ICLC has become the only specialist provider in NSW, apparently by default and without the support of dedicated funds.

Submission, Inner City LC, sub.39, p 1

It was also noted that the prevalence of sex work is significantly higher among LGBTIQA+ people, and as such legal services should address overlapping vulnerabilities.

The diverse legal needs of sex workers dovetails significantly with those of trans and gender diverse individuals, among whom sex work is much more prevalent than among the general population.

Submission, Southside Justice, sub.93, p 3

Our clients [LGBTQI+ and sex workers] must be included as priority populations in the next phase of NLAP funding if the NLAP Guiding Principles are to be realised.

Submission, Inner City LC, sub.39, p 3

The Reviewer agrees that LGBTIQA+ people should be included in the priority group list. The Reviewer encourages existing providers, governments and community to work together to identify service models that have been shown to be effective and should be funded on an ongoing basis.

4.8.3 Veterans and serving defence personnel experiencing bullying and harassment

The Department of Veterans' Affairs (Australian Government, 2023) defines a veteran as a person (or deceased person) who has either rendered eligible war service or is a member of the defence forces who on or after 31 July 1962 was outside Australia, but not on operational service, who was killed or injured by the action of hostile forces.

Veterans' have unique legal needs that are not sufficiently addressed by existing services.

It has been known for some time that there is a market failure of legal services for veterans across the country, particularly in regional areas.

Submission, Defence and Veterans Legal Service, sub.24, p 3

The RSL suggests that the current legal assistance available to veterans and their families across the country is inadequate and does not meet the urgent needs of this vulnerable group.

Submission, RSL Australia, sub.89, p 5

The Review has heard calls for Veterans to be included as a priority client group in the future national partnership agreement.

The Reviewer acknowledges the ongoing Royal Commission into Defence and Veteran Suicide and its interim report (released 11 August 2022). It is anticipated the final report will be released by June 2024. This report should be monitored for relevant insights into the legal needs of serving and ex-serving members.

The Reviewer is also aware that roughly \$25 million has been allocated through 3 separate programs for legal advisory services supporting the Royal Commission into Defence and Veteran Suicide (including for witnesses) between 2022 – 2027 by AGD, primarily through the LACs.

Submissions have advised that legal assistance to this group should cater to those living in regional and remote locations, and offer online legal assistance.

The RSL recommends consideration be given to increasing the provision of online legal assistance to veterans and their families located in regional, rural and remote locations.

Submission, RSL Australia, sub.89, p 9

The Reviewer notes that the scope of the Royal Commission extends to serving personnel, and is aware that bullying and harassment matters have been raised in the Parliament and the media over many years regarding problems in their workplaces that were not properly dealt with, leading to tragic consequences. While noting that serving personnel have access to internal defence dispute resolution services and the Defence Force Ombudsman, like all other workers the legal assistance system should be in a position to support them subject to relevant national security considerations. Thus, in recommending veterans become a priority group, the Reviewer considers it appropriate to include serving personnel experiencing bullying and harassment as a priority group.

The Reviewer is aware of specialist veterans' services operating around the country, and of trauma-informed services provided by knowmore and others. The outcomes of the Royal Commission should accommodate an expansion of those programs. If not, additional baseline funding should be provided to both LACs and appropriately located CLCs (for example, in Townsville and Darwin).

4.8.4 Recent migrants, refugees and asylum seekers

While NLAP recognises culturally and linguistically diverse people, numerous submissions pointed to distinct needs of migrants and refugees, which require the groups to be expressly prioritised.

People who are seeking asylum as well as people who are refugees have distinct and significant legal needs. While we have specialist legal services to provide migration assistance, the demand significantly outstrips supply.

Submission, South-East Monash Legal Service, sub.92, p 6

In recognition of the diverse needs of the migrant and refugee communities, inTouch support the proposal by the FCLC that the current group of 'culturally and linguistically diverse people' be reframed into sub-groups.

Submission, inTouch, sub.122, p 19

If listed as a priority client group, recent migrants and refugees would receive a more appropriate level of attention in funding and service delivery. Community Legal Centres NSW notes that:

...despite migration issues being listed under the schedule of priority groups, the Refugee Advice and Casework service does not receive funding either for legal services under NLAP, and as a result, they cannot access funded translation and interpreting services.

Circle Green Community Legal (sub.117) observed that support for refugees, asylum seekers and newly arrived migrants remains challenging and that the service is 'seeing increasing numbers of international students requiring support across employment and migration law.'

Recent migrants, refugees and asylum seekers face particular issues given the complex and contested nature of law in areas which impact on them. The Reviewer is satisfied that this cohort should be included as a priority client group.

Recommendation 8 – Priority client groups

The Reviewer recommends A2JP priority groups list expands to include:

- women
- LGBTIQ+ people
- people living below the ACOSS defined poverty line
- recent migrants, refugees and asylum seekers
- veterans and serving personnel.

Closing the Gap

5

Box 5.1 Key points

- Aboriginal and Torres Strait Islander peoples continue to be over-represented in the legal system, especially the criminal justice system. Aboriginal and Torres Strait Islander women experience high rates of domestic violence and sexual abuse, and Aboriginal and Torres Strait Islander children are substantially overrepresented in the child protection system.
- Australian governments have produced a range of policy frameworks in response to high rates of inequity and disadvantage within Aboriginal and Torres Strait Islander communities. The National Agreement on Closing the Gap (National Agreement) provides a whole of government and sectoral framework to address entrenched inequality faced by Aboriginal and Torres Strait Islander peoples in social, economic, political, and cultural spheres. These policies and programs have impacts for justice and the legal assistance sector.
- Current funding for ATSILS and FVPLS is insufficient to service the legal needs of Aboriginal and Torres Strait Islander peoples. Among the drivers identified as barriers to sufficient servicing are workforce barriers, excessive workloads, incapacity to service RRR areas, and lack of capital infrastructure funding.
- The Reviewer considers NLAP has failed to deliver the Priority Reforms and Socio-Economic Outcomes of the National Agreement. Greater alignment with the National Agreement's Priority Reforms is required in A2JP. Funding levels for Aboriginal and Torres Strait Islander services must be increased, and administrative, governance and reporting arrangements made fit for purpose while supporting self-determination. Stronger accountability measures must be put in place to ensure state and territory funding administration adheres to progressing National Agreement Objectives.
- The legal need of Aboriginal and Torres Strait Islander peoples is the highest of NLAP priority groups. ATSILS deliver the highest proportion of services to this cohort, followed by LACs and CLCs. Duty lawyers and Representation are the most frequently accessed services for Aboriginal and Torres Strait Islander peoples, reflecting high levels of engagement with the criminal justice system. Consequently, LACs end up providing higher shares of services to Aboriginal and Torres Strait Islander peoples than would be the case if ATSILS and FVPLS were properly funded.
- Significant issues exist with culturally appropriate service provision. Early intervention and prevention, advocacy and law reform, and community legal education programs receive inadequate core NLAP funding. Core NLAP funding excludes interpreter services, Custody Notification Services and Health Justice Partnerships, impacting capacity for wraparound service provision.

This chapter examines issues related to legal assistance needs of Aboriginal and Torres Strait Islander peoples. Chapter 6 provides funding details for ACCO legal assistance providers.

5.1 Aboriginal and Torres Strait Islander peoples and legal need

Although comprising roughly 3% of the Australian population, Aboriginal and Torres Strait Islander peoples make up 33% of Australia's average daily prisoner population (Australian Bureau of Statistics, 2024). Aboriginal and Torres Strait Islander men are 11 times more likely to be imprisoned than the general male population (Australian Human Rights Commission, 2020).

In 2023 the imprisonment rate of Aboriginal and Torres Strait Islander adult males was 4584 persons per 100,000 adult Aboriginal and Torres Strait Islander population. (Australian Bureau of Statistics, 2023). Similarly, Aboriginal and Torres Strait Islander women constitute 34% of the female prison population (Australian Law Reform Commission, 2017). Many Aboriginal and Torres Strait Islander women in prisons are mothers. Many women in the justice system care for their own children, the children of others, and family who are sick and elderly (Human Rights Law Centre, 2017). Aboriginal and Torres Strait Islander women are also more likely to be charged and convicted for minor, non-violent offences which are essentially 'crimes of poverty'; for example, shoplifting or committing minor fraud to feed themselves and their families due to extreme financial insecurity (Australian Human Rights Commission, 2020). In 2023 the Aboriginal and Torres Strait Islander imprisonment rate for female prisoners was 472 persons per 100,000 adult Aboriginal and Torres Strait Islander females (Australian Bureau of Statistics, 2023).

Over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system is also disproportionate in RRR areas. For example, Aboriginal and Torres Strait Islander peoples in the Northern Territory were 16.5 times more likely to be imprisoned compared to the general population. Over-representation is particularly problematic for Aboriginal and Torres Strait Islander young people. They make up 49% of the youth justice population despite being only 5.8% of the total Australian youth population (Save the Children, 2023).

Rates of family violence and sexual abuse are exceedingly high within this priority group. This is captured in the National Plan to End Violence against Women and Children 2022–2032:

First Nations women report 3.1 times the rate of violence compared to other women in Australia and Aboriginal and Torres Strait Islander women are almost 11 times more likely to die due to assault. Family violence against Aboriginal and Torres Strait Islander women is also recognised as the leading reason for the disproportionately high numbers of Aboriginal and Torres Strait Islander children removed from their families.

Department of Social Services, 2022, p 42

On the basis of these statistics alone it is almost possible to conclude with a high degree of certainty that the legal needs of Aboriginal and Torres Strait Islander peoples are higher than any other group in Australia. The survey material discussed in section 4.3 supports this view and further shows the situation has persisted for a long time.

5.2 Policy objectives and priorities

Recognising over-representation of Aboriginal and Torres Strait Islanders in the justice system, particularly the criminal justice system, governments have implemented policies and strategies to prevent and reduce interactions with the justice system, and to support access to justice.

Timing for finalising this Report has not permitted consideration of the Prime Minister's Closing the Gap speech, made in the House of Representatives on 13 February 2024.

5.2.1 National Agreement on Closing the Gap

In 2005, the Human Rights and Equal Opportunity Commission released the Social Justice Report 2005, documenting significant health and social inequities Aboriginal and Torres Strait Islander peoples face relative to the broader Australian population. The report highlighted the urgency of implementing a whole-of-government framework to support administration of Indigenous affairs and policy to close the gaps between Indigenous and non-Indigenous people (Aboriginal & Torres Strait Islander Social Justice Commissioner, 2005).

In 2007, Commonwealth, state, territory and local governments made a commitment to work together to close the gap on inequalities experienced by Aboriginal and Torres Strait Islander peoples. This led to the National Indigenous Reform Agreement (NIRA), which provided the framework for a more coordinated action plan for all levels of government.

The first Closing the Gap framework outlined targets to reduce inequality in Aboriginal and Torres Strait Islander peoples' life expectancy, child mortality, education and employment. NIRA was underpinned by a set of priority areas that would assist governments to measure and track progress towards targets. Over the years the Closing the Gap framework has served as a national framework to guide Commonwealth investment in whole-of-nation strategies, programs and initiatives to support all Closing the Gap objectives and targets.

In 2020, all Australian governments, along with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (the Coalition of Peaks), signed the National Agreement on Closing the Gap (the National Agreement). The National Agreement marked a commitment to mobilising all avenues available to governments to achieve, in partnership, objectives centred on resolving entrenched inequality faced by Aboriginal and Torres Strait Islander peoples, so improving their outcomes in social, economic, political and cultural spheres.

The National Agreement sets 19 Socio-Economic Outcomes and 4 Priority Reforms. The Priority Reforms and Targets are listed in Table 5.1.

Table 5.1 Closing the Gap Priority Reforms

Priority reform	Target
Priority Reform One of the National Agreement is a commitment for governments to work in partnership with Aboriginal and Torres Strait Islander communities and organisations, empowering them to share in decision-making on policies and programs that have a significant impact on them.	Support Closing the Gap by establishing formal partnership arrangements between Aboriginal and Torres Strait Islander peoples and governments in each state and territory, enshrining agreed joint decision-making roles and responsibilities, with Aboriginal and Torres Strait Islander peoples choosing their representatives
Priority Reform Two is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander peoples across the country. Aboriginal and Torres Strait Islander community-controlled services are acknowledged as usually achieving better results and employing more Aboriginal and Torres Strait Islander peoples who often prefer them to mainstream services.	Increased government funding for programs and services provided by Aboriginal and Torres Strait Islander community-controlled organisations
Priority Reform Three will transform government organisations and institutions. It will keep them accountable for Closing the Gap, and ensure they are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander peoples, including through the services they fund.	Reduced proportion of Aboriginal and Torres Strait Islander peoples who experience racism
Priority Reform Four facilitates access to data and information at a regional level, ensuring Aboriginal and Torres Strait Islander peoples have capability to use data to monitor implementation of priorities, and to drive development.	Increases to number of regional data projects that support Aboriginal and Torres Strait Islander communities to make decisions about Closing the Gap and their development

Source: National Agreement on Closing the Gap, 2020

Under the National Agreement, 19 Socio-Economic Outcomes support improvements across areas that impact on life outcomes for Aboriginal and Torres Strait Islander peoples. Each Socio-Economic Outcome is supported by targets that help all National Agreement parties understand how their efforts contribute to progress over the next ten years. The Productivity Commission monitors progress against targets. Table 5.2 presents targets relevant to this Review.

Table 5.2 Closing the Gap Priority Reforms

Socio-Economic Outcomes	Target
10: Adults are not over-represented in the criminal justice system	15% reduction in Aboriginal and Torres Strait Islander adults held in incarceration by 2031
11: Young people are not over-represented in the criminal justice system	30% reduction in rates of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by 2031
12: Children are not over-represented in the child protection system	45% reduction in rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 2031
13: Families and households are safe	50% reduction in all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by 2031, as progress towards zero

Source: National Agreement on Closing the Gap, 2020

Review of the National Agreement on Closing the Gap (2023)

In July 2023, shortly after this Review commenced, the Productivity Commission released the Draft Report on the Review of the National Agreement on Closing the Gap. Timing for finalising this Report did not permit consideration of the Productivity Commission's final report, released on 7 February 2024. The Reviewer understands the Productivity Commission's views relevant to this Review have not materially changed, if anything they have strengthened.

The Productivity Commission's Draft Report found governments were not adequately prioritising, nor delivering on, their commitments and that implementation efforts were insufficient to address the scale and extent of disadvantage experienced by Aboriginal and Torres Strait Islander communities. In many instances the Productivity Commission found government decision making actually contradicted commitments in the National Agreement.

In relation to the Priority Reforms, the Productivity Commission noted:

- Commitment to shared decision-making has rarely been achieved in practice. Governments were not sufficiently investing in partnerships to facilitate joint decision making. Many governments were leaning on a framework of predetermined solutions to facilitate consultative approaches with Aboriginal and Torres Strait Islander communities, rather than opting for genuine codesign and power-sharing approaches.
- Government policy does not reflect the community-controlled sector's value. Governments had taken limited steps to engage, and to leverage capacities of, ACCOs as critical partners in delivering Priority Reforms. Partnerships had retained qualities of unequal bargaining power between governments and ACCOs. Knowledge and lived experiences of being from and working with Aboriginal and Torres Strait Islander communities has been disregarded. Another limitation was lack of transparency in state and territory funding allocations and expenditure (except NSW and ACT) provided to build ACCOs' capacities and capabilities.

- Transformation of government organisations has barely begun. Little to no consideration has been given to systemic and structural transformations of mainstream government agencies and institutions so they deliver services in more culturally safe and responsive ways. In most jurisdictions, limited efforts had been made at all levels of government to facilitate development of appropriate mechanisms to support, monitor and report on transitions and transformation efforts.
- Lack of focus on enabling Aboriginal and Torres Strait Islander-led data. ACCOs continue to report significant barriers to accessing government-held data, and data has continued to inadequately represent the realities of Aboriginal and Torres Strait Islander communities. It was also found no data was being reported on Priority Reform targets or supporting indicators.

The Reviewer considers these observations offer a fair characterisation of current legal assistance arrangements. The Productivity Commission's Draft Report concluded that stronger mechanisms for government accountability are needed to drive change, including:

- positioning Aboriginal and Torres Strait Islander bodies to identify good and bad practices under the National Agreement, and advocate for improved policies, programs and services
- embedding responsibility for driving action within the public sector
- publishing meaningful implementation plans, reports and documents, with agreed substantive actions critical to achieving National Agreement objectives, and so improving transparency and accountability.

The Reviewer considers governments should embed these arrangements in A2JP.

5.2.2 Justice Policy Partnership

The Justice Policy Partnership (the Partnership) brings together representatives from the Coalition of Peaks, Aboriginal and Torres Strait Islander experts, and Commonwealth, state and territory governments to collaborate on Aboriginal and Torres Strait Islander justice policy. The Partnership is the first of its kind to be implemented under National Agreement Priority Reform One, with the primary function of making recommendations to reduce over-incarceration.

The Partnership came about as recognition of the urgency for joined up national action and leadership to address increasing over-representation of Aboriginal and Torres Strait Islander peoples in prison systems. It also responds to the enduring crisis of Aboriginal and Torres Strait Islander deaths in custody. The primary objectives of the Partnership are to:

- establish a joined-up approach between all governments and Aboriginal and Torres Strait Islander representatives, aimed at addressing over-representation of Aboriginal and Torres Strait Islander adults and youth in incarceration
- give focus to National Agreement Priority Reforms, including developing ways to harness these to make changes that effect sustainable reductions in over-representation, and the number of Aboriginal and Torres Strait Islander peoples dying in custody
- develop specific measures to reduce over-representation of Aboriginal and Torres Strait Islander adults and young people in incarceration
- identify opportunities for more effective collaboration across governments, reduce gaps and duplication and improve outcomes under Closing the Gap
- support National Agreement implementation efforts including meeting targets for Priority Reform areas and socio-economic outcomes
- enhance Aboriginal and Torres Strait Islander community-led outcomes on Closing the Gap, and support community-led development initiatives

- enable Aboriginal and Torres Strait Islander representatives, communities and organisations to negotiate and implement agreements with governments to implement all Priority Reforms, and policy specific and place-based strategies to support Closing the Gap.

Guided by these objectives, the Partnership offers an overarching framework for developing a collective response to progressing:

- **Socio-Economic Outcome 10:** Aboriginal and Torres Strait Islander peoples are not over-represented in the criminal justice system
- **Socio Economic Outcome 11:** Aboriginal and Torres Strait Islander young people are not over-represented in the criminal justice system.

To achieve these objectives, the Partnership oversees activities and priority areas, including assessments of existing partnerships relating to justice and supporting development of new justice-related partnerships. Consideration is also given to reviewing capability of the community-controlled justice-sector, including enhancing pathways to strengthen the sector.

The Partnership is responsible for leading transformation of mainstream agencies such as police and corrections systems, ensuring alignment with culturally sensitive principles of service delivery outlined in the National Agreement. A focus on improving structures and operations within the justice system, and promoting enhanced data collection and governance mechanisms, also come within the Partnership's purview.

In negotiating A2JP, governments should seek greater integration of legal assistance arrangements through the Partnership.

5.3 NLAP's contribution to Closing the Gap objectives

To assess the effectiveness of NLAP, consideration must be given to the extent to which it has supported achievement of relevant Closing the Gap objectives.

The Reviewer has found a range of service barriers generated by current NLAP arrangements significantly impede Aboriginal and Torres Strait Islander peoples' access to justice, and consequently the ability to progress Priority Reforms and related National Agreement outcomes.

5.3.1 Priority Reform One: Formal Partnerships and Decision Making

Outcome: Aboriginal and Torres Strait Islander peoples are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements.

The Reviewer considers NLAP has made little contribution to achieving Priority One Outcomes. Evidence gathered during the Review indicates that ATSILS and FVPLS face barriers to engaging in decision-making and advocacy activities that would inform policy and legislation which directly impacts the lives of Aboriginal and Torres Strait Islander peoples. The Reviewer has heard that ATSILS and FVPLS have on occasion been entirely excluded from policy and legislative consultation processes, or if engaged, were subsequently excluded from programmatic funding emerging from these consultations.

Activities such as advocacy and law reform are not included as core services under the present NLAP arrangement. Growing demand, funding constraints and workforce shortages further impede engagement in decision-making activities as service providers are often required to prioritise client-facing services over bringing their experience, expertise and cultural knowledge to support innovation and law reform.

The Reviewer considers that building ATSILS and FVPLS capacity in law and policy reform is essential to addressing over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice and care and protection systems.

These service providers are well placed to have impact on amending laws that harm and/or discriminate Aboriginal and Torres Strait Islander peoples, and on improving service provision and outcomes that enhance the lives of Aboriginal and Torres Strait Islander peoples.

Consistent with the 2014 PC Report, the Reviewer considers that strategic advocacy and law reform activities undertaken by ATSILS and FVPLS should be recognised and encouraged as core work for the sector. These activities seek to identify and remedy systemic issues and so reduce demand for frontline services. These activities should be provided for within A2JP baseline funding, as discussed in sections 7.2.1 and 9.5.

It is also the Reviewer's view that commitment to supporting ATSILS and FVPLS decision making capacities is a shared responsibility between Commonwealth and states and territories. This would ensure these services join genuine partnerships with governments at all levels. The situation should end where some jurisdictions, as discussed in chapter 6, provide virtually no funding to ACCO legal service providers. This is inconsistent with the National Agreement.

Further, the Reviewer has found significant potential exists in governments supporting legal assistance ACCOs to strengthen partnerships with other ACCOs, including those involved in health service delivery within Aboriginal and Torres Strait Islander communities. The Reviewer considers ATSILS and FVPLS must be properly resourced through their baseline funding to consider, develop, and participate in partnerships with these services.

5.3.2 Priority Reform Two: Building the community-controlled sector

Outcome: There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander peoples across the country.

Much of the evidence gathered through this Review indicates NLAP has not contributed to this outcome.

One of the greatest areas of concern is a lack of fiscal commitment from most government to building on the strengths of the ACCO service delivery model which is premised on holistic and culturally appropriate approaches. The significance of holistic services for Aboriginal and Torres Strait Islander peoples has been strongly emphasised in consultation and submissions to this Review, as has been the lack of adequate funding and administrative arrangements to support their provision.

The Reviewer considers holistic and wraparound service provision, delivered by a workforce that understands the broader systemic issues impacting Aboriginal and Torres Strait Islander peoples, is essential to achieving the commitments outlined in the National Agreement. Lack of funding to strengthen the Aboriginal and Torres Strait Islander workforce, barriers to competitive remuneration, high caseloads and exclusion of preventative and early intervention services from core funding, all significantly compromise potential for strengthening the community-controlled sector through NLAP.

The Reviewer also found that funding anomalies result in a range of organisational, capacity and infrastructure barriers for ATSILS and FVPLS in servicing RRR regions where demand for culturally appropriate services is high. A lack of appropriate funding to meet travel and accommodation expenses continues to impact service delivery in RRR areas. Funding is insufficient to ensure adequate occupational work health and safety that protects staff wellbeing. These factors increase risk of emotional and physical staff burnout, potentially jeopardising long-term sustainability of these services. Funding to address these issues is examined in section 7.2.1.

5.3.3 Priority Reform Three: Transforming Government Organisations

Outcome: Improving mainstream institutions: Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander peoples, including through the services they fund.

The Reviewer found that overall, there is lack of funding committed to support development and delivery of culturally sensitive services under NLAP. Further, the Reviewer notes that accountability mechanisms against the transformative commitments outlined in Priority Reform Three are considerably weak and unestablished.

Factors such as under-resourcing, inappropriate targets and service structures, and increased workloads have resulted in culturally sensitive services being compromised. Lack of funding support for trauma-informed workforce models that take into consideration psychosocial and wellbeing needs of employees also highlight NLAP's limitations in supporting Priority Reform Three.

The Review has found that commitments to fund training pathways that enhance culturally sensitive and holistic service delivery for ATSILS, FVPLS, LACs and CLCs were not prioritised under present NLAP arrangements. This may be because NLAP predates the National Agreement.

The impacts of this are particularly severe for Aboriginal and Torres Strait Islander workforces that continue to experience significant levels of workplace discrimination and harassment. The Review has heard that around 38% of Aboriginal and Torres Strait Islander workforces based in non-ACCO services have personally experienced harassment and/or discrimination in the previous 12 months (Tarwirri Inc, 2023).

Inadequate support for safe and inclusive workplaces has considerable impacts on the wellbeing of workforces, and diminishes service providers' capacities to deliver culturally safe and responsive services to Aboriginal and Torres Strait Islander clients. It is evident to the Reviewer that significant commitment to transforming organisations and workplaces is required in A2JP to ensure workforces can deliver services in safe environments while retaining capacity to deliver services to Aboriginal and Torres Strait Islander communities through culturally informed frameworks.

5.3.4 Priority Reform Four: Shared Access to Data and Information at a Regional Level

Outcome: Aboriginal and Torres Strait Islander peoples have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.

The Reviewer has found that sharing access to Aboriginal and Torres Strait Islander data and information has faced limitations under NLAP, and data outcomes under NLAP have been generally poor. This is a case of a river not being able to rise above its source. It is part a wider data issue in the legal assistance sector discussed in chapter 10.

Complexities in navigating the *National Legal Assistance Data Standards Manual* have been raised across the four legal assistance sectors. Current NLAP reporting obligations place undue burden on frontline staff who are already under extreme workload pressures, resulting in service data obligations detracting from rather than supporting frontline service delivery. Requirements to report against increased number of data points also result in under-reporting service count data, offering inaccurate measures of progress against NLAP objectives. Ad hoc funding has created additional reporting burdens.

The funding regime has also prevented services from developing organisational capacities necessary to effectively meet reporting obligations under NLAP. ATSILS have noted that separate funding has been provided to each ATSILS to implement a database with related software, resulting in multiple systems with different configurations being used among the ATSILS, resulting in significant barriers to data sharing among them.

These factors reaffirm that data gathered under the present arrangements provide an inadequate basis for the legal assistance sector policy development, program improvement and performance enhancements. This is particularly so for servicing Aboriginal and Torres Strait Islander communities.

A commitment to embedding data sovereignty within A2JP is required to ensure Aboriginal and Torres Strait Islander peoples can own, access, control and make decisions about data, as well as delivering on commitments to Priority Reform 4. This requires a shift from reporting on compliance matters to adopting a strengths-based approach that captures successful outcomes for clients. Governments must commit to codevelop an outcomes-based framework in partnership with Aboriginal and Torres Strait communities and services providers.

Building capacity through enhancing data and reporting frameworks can in turn enhance ATSILS and FVPLS capacity to deliver frontline services. The significance of committing to a reformed data collection framework, and its connection to capacity building in the ACCO sector, is captured in the National ATSILS submission:

Aboriginal Data Sovereignty is about our right as Aboriginal peoples to own, access, control and make decisions about our data, this is not just about the data that ATSILS collect – it is about all justice related data that belongs to Aboriginal and Torres Strait Islander peoples. ‘Data’ goes beyond just information and statistics – Aboriginal data can include our Lore, knowledges, stories, customs, art and ways of life.

Submission, National ATSILS, sub.134, p. 46

The Reviewer observes that data sovereignty is a necessary but not sufficient condition for ACCO legal assistance providers to deploy foreshadowed innovations in innovation technologies to the benefit of their staff, clients and community. What is necessary is to ensure service providers have the full suite of modern IT systems to enable digitisation of their current and future service offerings and participation in developing sectorwide technological development, as discussed in sections 7.2.1 and 9.7.

Recommendation 9 – A2JP must address Closing the Gap Priority Reforms

The Reviewer considers there is little evidence that the NLAP framework has materially addressed the Closing the Gap Priority Reforms. To correct this the A2JP in its founding document must:

- recognise the shared responsibility of the Commonwealth, state and territory governments for both achieving those Closing the Gap targets that relate to the legal system and for the provision of legal assistance funding to achieve them.
- ensure legal assistance ACCOs and other representative organisations are involved in all decision making that involves the provision of legal assistance services to Aboriginal and Torres Strait Islander peoples.
- ensure legal assistance ACCOs have adequate funding to develop their organisations and people to enhance the scope, scale, quality and cultural appropriateness of their services. Resourcing in 2024-25 is recommended in recommendation 17 to assist with the implementation of the recommendations of this Review.
- commit governments to continuous improvement of their own engagement practices with legal assistance ACCOs and their clients.
- explicitly recognise Aboriginal and Torres Strait Islander data sovereignty in its data collection and reporting arrangements including in relation to the data held by non-ACCO legal assistance providers.

5.4 Legal assistance arrangements

5.4.1 National Strategic Framework for Legal Assistance

The National Strategic Framework for Legal Assistance outlines principles that should be applied, consistently with the National Agreement. This includes self-determination, referring to ACCOs as the preferred suppliers for culturally appropriate legal assistance services, determining service priorities and locations based on community need, and being actively and meaningfully involved in developing and implementing legal assistance policies and programs.

5.4.2 NLAP

Schedule A of NLAP expressly refers to Aboriginal and Torres Strait Islander peoples as a national priority client group, a group for which states and territories 'will ensure that legal assistance services are planned and focussed.'

NLAP itself speaks to delivering specific legal assistance services for Aboriginal and Torres Strait Islander peoples that support self-determination and improved access to justice outcomes.

To this end, NLAP specifies quarantined funding to ATSILS in the states and territories for the delivery of 'culturally appropriate services in a manner consistent with self-determination.' For the purposes of performance monitoring, and unlike for the administration of CLCs, NLAP does not allow states or territories to delegate its roles and responsibilities about any aspect of funding administration for Aboriginal and Torres Strait Islander specific legal assistance.

5.4.3 FVPLS

The FVPLS sector addresses a range of complex service delivery issues associated with family violence affecting Indigenous and Torres Strait Islander women and children. Collectively, the FVPLS sector and the National FVPLS forum undertake responsibilities such as participating in legislative and court reform, advocating for improvements to police responses to family violence, incarceration of Aboriginal women, improving court and judicial practices, and developing and delivering culturally safe service models. In addition, FVPLS target legal issues prevalent within Aboriginal and Torres Strait Islander communities, such as increasing rates of incarceration preventing child removals, under-reporting and misidentification of women who use resistive violence, and the homicide and disappearance of Aboriginal and Torres Strait Islander women.

5.5 Legal assistance arrangements over time

5.5.1 Historical legal assistance for Aboriginal and Torres Strait Islander peoples

Indigenous Legal Assistance Program 2015-2020

Prior to 2020, there was a separate Indigenous Legal Assistance Program (ILAP) which provided direct grants from the Commonwealth to ATSILS to deliver frontline legal assistance and related services to Aboriginal and Torres Strait Islander clients.

ILAP funded legal advice, non-legal support, referrals, community legal education, duty lawyer assistance, casework and representation across all law types, and prevention and early intervention activities. ILAP also provided funding for sector development, program support activities and support for collaborative service planning.

ILAP funding was \$369 million of the five-year period 2015–2020. Funding support provided to ATSILS was primarily used for criminal legal assistance services. The ILAP review found this focus to be broadly appropriate given the level of need, but acknowledged service gaps for Aboriginal and Torres Strait Islander peoples in relation to civil, family and child protection needs.

Merging of ILAP and NPA

The NPA and ILAP merged to form NLAP. It is not clear that this decision was consistent with the ILAP review which found that Commonwealth funding should continue to support a standalone, specific purpose program for legal assistance for Aboriginal and Torres Strait Islander peoples, so enabling a sustainable, community-controlled legal assistance sector.

ATSILS funding within NLAP accounts for approximately 22% of total NLAP funding, an amount of \$441 million over 2020–2025. This includes both baseline ATSILS funding and Social and Community Sector supplementation in some states.

Baseline ATSILS funding is intended to support delivery of culturally appropriate services, consistent with self-determination as defined under NLAP and Closing the Gap Framework. The funding includes a requirement that \$8.6 million of baseline funding be used towards legal assistance services related to family law and/or family violence related matters.

Family Violence Prevention Legal Services

The FVPLS sector has been subject to numerous administrative changes in the last two decades, notably in 2003, 2004, 2006, 2014, and most recently in 2019 when the FVPLS program was brought under NIAA administration (see Table 5.3).

The Review understands that FVPLS were advised in May 2021 that their funding arrangements would be transferred to NLAP from 30 June 2023. Shortly after being elected, the Albanese government indicated a decision about transition would not be made until after this Review was concluded.

The Reviewer notes views expressed in FVPLS and NFVPLS Forum submissions, that changing administrative arrangements have significantly disrupted day-to-day service delivery and forward planning. Clearly this situation is undesirable, but future arrangements need to be seen in a future context.

Table 5.3 FVPLS program administrative arrangements over the years

Commonwealth department	Year
Aboriginal and Torres Strait Islander Commission	1998 – 2002
Aboriginal and Torres Strait Islander Service	2003
Commonwealth Attorney-General's Department	2004 – 2013
Department of the Prime Minister and Cabinet	2014 – 2018
National Indigenous Australians Agency	2019 – current

Source: ACIL Allen, 2023

As noted in the National FVPLS Forum submission:

Each administrative change has caused significant service disruption, in what is an already challenging service-delivery context assisting vulnerable First Nations women and children affected by family violence, often in isolated geographic locations.

Submission, National FVPLS Forum, sub.135, p 4

Changes to administrative arrangements as well as sourcing multiple short-term funding streams have had significant impacts on maintaining the quality of holistic and culturally appropriate services provided by the FVPLS sector. These changes have also inhibited planning to ensure sustainability of services.

The Reviewer acknowledges he is recommending another change in FVPLS administrative arrangements. However, it is part of a set of recommendations to better involve FVPLS in legal assistance sector planning and decision making, and to provide greater levels and certainty about funding. He is confident these changes will improve outcomes for FVPLS, their employees and most importantly, their clients.

5.5.2 Moving forward – separate ACCO funding arrangements?

A key consideration for this Review is whether National Agreement objectives are best serviced through a single or separate agreement for Aboriginal and Torres Strait Islander legal assistance services (including both ATSILS and FVPLS).

In submissions to this Review, the ATSILS sector has not taken a collective position over whether future funding should be via a single agreement or a separate ILAP. The Reviewer has heard that ATSILS see the next funding agreement as an opportunity to integrate self-determination principles in the National Agreement, thus informing ATSILS funding and administrative arrangements. To support this, ATSILS note that the next national agreement should require a review and redistribution of funding allocations to ensure pay parity between ATSILS and LACs, integrating a host of non-legal services currently delivered by ATSILS under core funded legal services, and embedding mechanisms to ensure data sovereignty of Aboriginal and Torres Strait Islander communities. These propositions are generally supported by the Reviewer and are dealt with in recommendations in this Report.

The Reviewer has heard of the benefits of aligning legal assistance funding arrangements with the National Agreement, including improving the quality of holistic and culturally informed assistance provided to Aboriginal and Torres Strait Islander peoples. ATSILS note that upholding National Agreement principles in the next partnership agreement would also require appropriate funding for early intervention and prevention, law reform and advocacy services, CLEs, HJPs, CNS and the Aboriginal Interpreter Service, ultimately strengthening ATSILS capacity to provide wraparound, end-to-end services and supports. These issues are largely addressed in section 7.2.1.

The Reviewer also notes that if any services are identified for transfer from a LAC to an ATSILS, following recommendation 10, this is likely to be easier if the releasing and receiving assistance providers are part of the same funding and administrative partnership.

FVPLS submissions identify a range of benefits to the FVPLS sector being included in the next agreement, including funding for FVPLS core legal services, access to funding that FVPLS do not have access to under present arrangements, reduced reporting complexities, and improved public transparency and accountability in funding distribution mechanisms.

However, FVPLS note that current NLAP funding arrangements give inequitable weight to legal services, to the exclusion of non-legal services. This raises concerns over sustainability of FVPLS non-legal services and supports if the FVPLS sector is included in the next funding agreement. Additionally, FVPLS have expressed concerns over whether jurisdictional justice departments would commit to funding non-legal family violence services. If funding arrangements are consolidated, FVPLS are uncertain about negotiating and managing siloed departmental portfolios of women's safety policy (managed by DSS), legal assistance (managed by AGD) and First Nations policy (managed by NIAA).

While there is a clear appetite for including FVPLS in the next agreement due to the perceived weight of the benefits highlighted above, FVPLS propose a separate Indigenous agreement that sits within the broader A2JP. FVPLS note such an arrangement would support development of alternative administrative and governance structures, and provide a mechanism to 'quarantine' FVPLS funding within A2JP.

FVPLS sector submissions recommend that these arrangements must be developed in consultation with the sector and the National FVPLS Forum. One FVPLS submission strongly supports the position that the FVPLS sector must not be administered through NLAP, and instead must retain a separate and independent arrangement with the Commonwealth.

The Reviewer has carefully considered the perceived risks and concerns discussed above. The Reviewer considers these are outweighed by the benefits of better collaboration between providers and policy makers and so favours consolidating all legal assistance under one agreement with a clear governance structure and objectives, and adequate funding.

In particular, future legal assistance arrangements should promote shared decision-making responsibilities when developing legislative and policy reforms, and negotiating funding arrangements for Aboriginal and Torres Strait Islander communities' access to justice matters.

ATSILS maintain that a commitment to shared decision-making must embody a tripartite arrangement between Commonwealth, state and territory governments and service providers. The Reviewer makes several recommendations that will ensure greater trilateral engagement and decision making about new future funding. Integrating these arrangements into the next legal assistance partnership will support Commonwealth and state and territory governments' obligations to progress Priority Reforms One and Two of the National Agreement.

Recommendation 10 – All Commonwealth legal assistance provided by ACCOs to be funded through A2JP

The Reviewer believes that better service co-ordination and service, including the appropriate level and scope of service provision by ACCOs, is best achieved by all Commonwealth legal assistance provided to ACCOs being brought together under a single agreement subject to the governance reforms recommended throughout this Report.

The Reviewer recommends the baseline funding for FVPLS be brought into the A2JP. The FVPLS would remain a separate, quarantined funding line administered by the Commonwealth Attorney-General's Department, but the same model of funding be adopted as is set out in section 7.2 of this Report. The administration of ATSILS funding is not affected by this recommendation.

5.6 Self-determination in service provision

Aboriginal and Torres Strait Islander peoples can access legal assistance from all service providers. This provides choice and control for individuals in selecting which service they feel is most appropriate for their needs, and supports management of conflicts in dealing with matters.

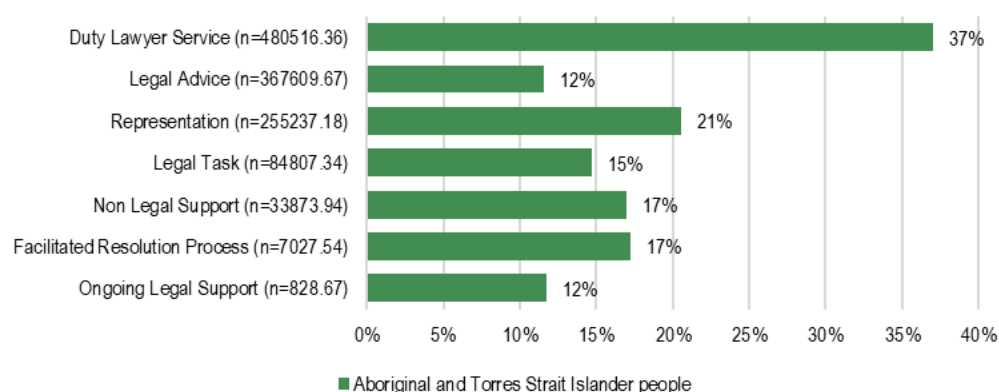
The data presented in this section is based on state and territory NLAP reporting for 2022. It provides an analysis of available service provision for Aboriginal and Torres Strait Islander peoples specifically related to NLAP funded services. There is a potential data limitation as recurrent state funding provided to LACs and CLCs, and subsequent services provided to Aboriginal and Torres Strait Islander peoples, do not inform this analysis.

Figure 5.1 shows allocation of legal assistance services provided to Aboriginal and Torres Strait Islander peoples by service provision type. Across provider types, Aboriginal and Torres Strait Islander peoples receive a greater proportion of duty lawyer services (37% of all duty lawyer services in 2022) and an approximately proportionate volume of representation services (21% of all representation services). Proportionally, Aboriginal and Torres Strait Islander peoples accessed lower levels of service regarding Family Dispute Resolution (FDR) (17% of all FDR), non-legal support (17%), legal task services (15%), legal advice (12%) and ongoing legal support (12%).

Considering individual service provider types, Aboriginal and Torres Strait Islander peoples represented 12% of LAC clients and 9% of CLC clients. In LACs, Aboriginal and Torres Strait Islander peoples received an approximately proportional volume of legal task services (13%), legal advice (11%), and non-legal support (11%). LACs provided FDR services at a greater rate (17%, noting that individuals may be represented in an FDR process by another organisation such as an ATSILS), and proportionally under-represented in duty lawyer services (8%) and representation (5%).

In CLCs, Aboriginal and Torres Strait Islander peoples have accessed legal task services (9%) and non-legal support (9%) at proportionally appropriate rates. This cohort has not accessed to the same extent CLC services in representation (6%), legal advice (6%), ongoing legal support (6%), FDR (5%) and duty lawyer services (5%) to the same extent.

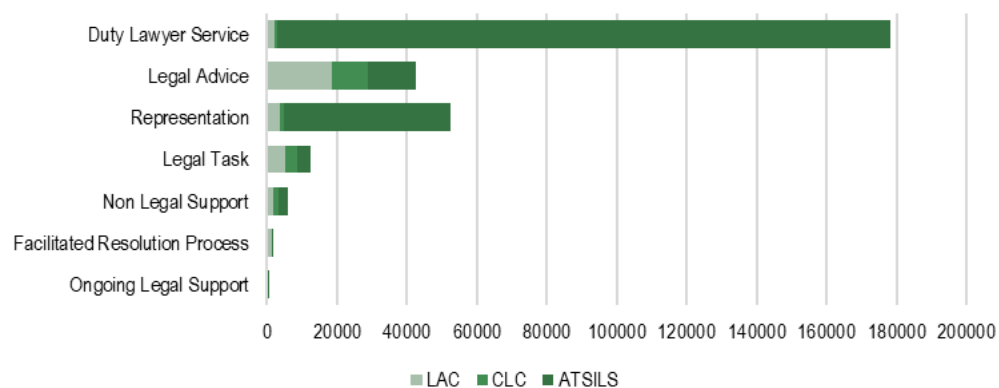
Figure 5.1 Aboriginal and Torres Strait Islander legal assistance services provided as a proportion of service provision type, 2022



Source: State and territory NLAP reporting, 2022.

Service provision differs across provider type. ATSILS provided the majority of service provision to Aboriginal and Torres Strait Islander peoples for duty lawyer services and representation services. Legal advice was more commonly provided by LACs and CLCs, as were legal tasks. An overview of service provision by provider type is shown in Figure 5.2.

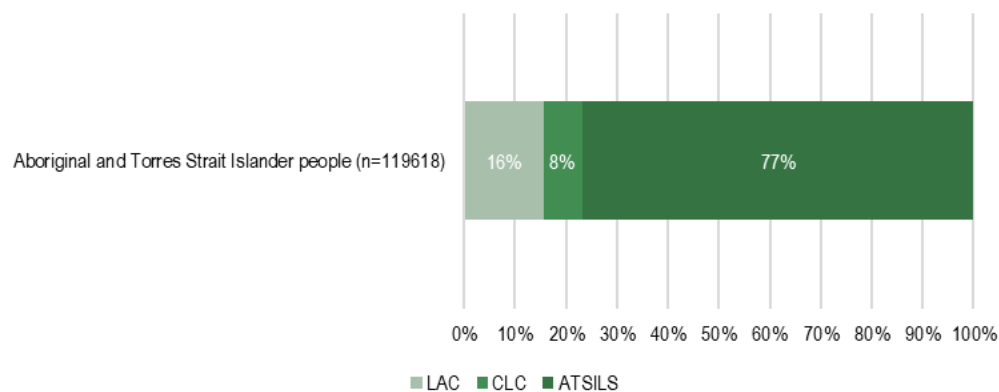
Figure 5.2 Aboriginal and Torres Strait Islander legal assistance services by provider type, 2022



Source: State and territory NLAP reporting, 2022.

For all Aboriginal and Torres Strait Islander peoples' services provided by the legal assistance sector in 2022, ATSILS serviced the greatest proportion of that cohort. ATSILS represented 77% of all Aboriginal and Torres Strait Island peoples (Figure 5.3). LACs provided service to 16%, and CLCs 8%.

Figure 5.3 Aboriginal and Torres Strait Islander legal assistance, proportion by provider, 2022

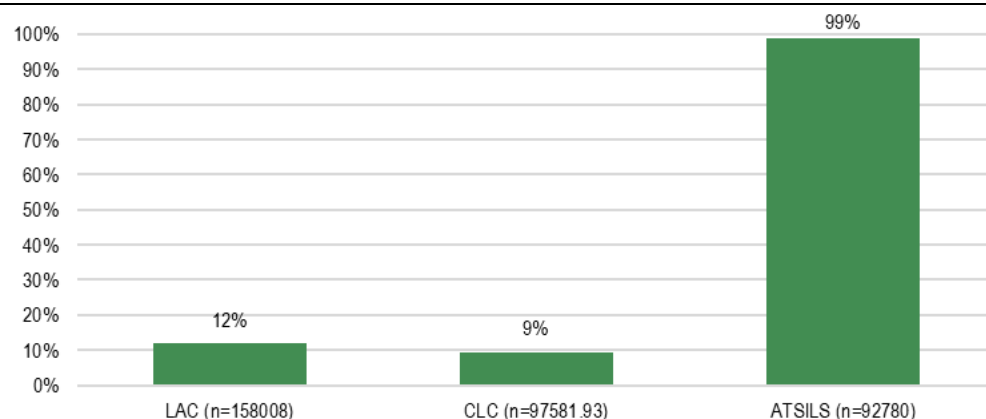


Source: State and territory NLAP reporting, 2022.

The Reviewer would have liked to have considered how these data have changed over time, but apparently lack of data collection over time prevents this. In implementing recommendations in chapter 10, care should be taken that future Reviewers do not face the same data obstacles.

Almost all clients serviced by ATSILS identified as Aboriginal and Torres Strait Islander people (99%, Figure 5.4). The Reviewer understands that around 20% of the workload of LACs (up to 80% in some jurisdictions) relates to Aboriginal and Torres Strait Islander peoples, thus suggesting these clients have more complicated needs than the general client population.

Figure 5.4 Aboriginal and Torres Strait Islander legal assistance as a proportion of each provider type's total clients, 2022



Source: State and territory NLAP reporting, 2022.

This evidence on proportion of services delivered by ATSILS, LACs and CLCs to Aboriginal and Torres Strait Islander peoples indicates clear demand for ATSILS as preferred service providers for this priority group. However, the Reviewer has found funding levels, short-term funding, high workloads, burnout, insecure employment arrangements, and inadequate facilities lead to high staff attrition.

This reduces the organisational capacity of ATSILS and FVPLS, which leads governments to allocate funding for Aboriginal and Torres Strait Islander peoples' service provision to LACs, or (to a much lesser extent) CLCs.

These issues impact the whole legal assistance sector. However, they have specific implications for ATSILS and FVPLS. In a range of circumstances and locations, ATSILS have effectively had to cease service delivery to manage the workload of existing staff and prevent further attrition. In April 2023, Aboriginal Legal Services in NSW, ACT, Victoria, South Australia, Western Australia, Queensland, the Northern Territory and Tasmania called for additional funding to prevent service cuts (*Sydney Morning Herald*, 2023).

The Reviewer accepts 'closing the books' is a legitimate operational response to a crisis of surplus demand driven by inadequate funding. Such steps are undesirable from the perspective of governments as service closure has negative outcomes for clients and community, such as increased risk of having children being removed or being incarcerated.

The Reviewer has heard that service restrictions reduce trust held by government and community in ACCOs providing services to Aboriginal and Torres Strait Islander peoples. There are concerns of insufficient capacity to deliver new programs or additional services when funding is provided. The irony is that any constraint on organisational capacity is a direct result of funding decisions of government. The Reviewer has not been provided with any information on which to base an alternative conclusion.

Further, the Reviewer considers funding inadequacy prevents ACCOs from providing the full range of services to community. Rather, ATSILS focus on crime and FVPLS on the immediate threats to women and their children. Overburdening workloads mean these organisations lack bandwidth to properly develop their existing service offering (including CLE, and prevention and early intervention) and offer new services, particularly for civil and family law matters. This is contrary to the Priority Reforms. Again ironically, poor baseline funding means additional funding must be obtained through competitive processes which are themselves unnecessarily resource intensive.

These circumstances can lead governments to allocate funding to organisations with greater existing capacity, in the belief that leveraging existing scale will ensure funds reach communities in need. A key example referenced throughout the Review was Legal Aid NSW's suite of family and civil law programs offered to Aboriginal communities in areas ATSILS could service if they had appropriate funding. The inability of Aboriginal and Torres Strait Islander peoples to access ACCO services if they so choose is contrary to article 14 paragraph 3 (d) of the *International Covenant on Civil and Political Rights*. The Covenant states that everyone is entitled to defend themselves through legal assistance of their own choosing (United Nations, 2013, p. 5).

While not commenting on the quality or cultural appropriateness of any non-ACCO service offering, the Reviewer notes this is inconsistent with National Agreement principles and the National Framework, under which ACCOs are the preferred provider. The Reviewer also notes that while it is important that Aboriginal and Torres Strait Islander peoples retain their right to seek legal assistance from non-ACCO service providers, inadequate funding allocations are limiting the capacity of ACCOs to provide services to those clients who wish to engage with an Aboriginal controlled organisation.

Recommendation 11 – Self-determination in existing services

Consistent with the Closing the Gap Priority reforms the Reviewer recommends that governments should commission an independent review of specialised services provided by LACs and CLCs to Aboriginal and Torres Strait Islander clients to ensure that the allocation of resources by governments maximises ACCO involvement, while recognising that Aboriginal and Torres Strait Islander peoples have legitimate rights to access culturally appropriate services across the sector, and that there is a need to provide appropriate resources to deal with conflicts and service coverage issues.

This review should be co-designed with relevant ACCOs and consider the costs and benefits of reallocation of resources between existing service providers (including the transfer of funding, staff and premises and transitional costs where relevant), and any additional funding reasonably necessary for the ACCO to provide the relevant services.

Recommendation 12 – Self-determination in new services

The Reviewer is of the view that there is sufficient evidence to conclude that on occasions when new funding is provided for services with particular relevance to Aboriginal and Torres Strait Islander peoples, there has been inadequate consultation with relevant ACCOs regarding the deployment of such funding.

The Reviewer recommends that the A2JP requires each jurisdiction to establish a consultative forum to discuss and where possible agree how future funding for services for Aboriginal and Torres Strait Islander peoples is to be distributed between the relevant ACCOs and other service providers. Membership of these forums should include all relevant ACCOs in the jurisdiction plus a representative of the Commonwealth. Governments should consider how existing fora might be adapted to perform this task

5.7 Culturally appropriate service provision

Culturally appropriate service provision is identified as a fundamental requirement to improving legal outcomes for Aboriginal and Torres Strait Islander peoples. A key aspect of culturally appropriate service provision is the holistic or wraparound service model which recognises that engagement with the legal system is impacted by socio-economic determinants. These determinants include undiagnosed or untreated disability, mental health, alcohol and other drug related issues, insecure housing, poor access to social security and financial hardship.

First Nations experiences and culture must be at the centre of the provision of legal assistance services in all jurisdictions. Reducing contact with the justice system requires community-driven, holistic, trauma informed approaches that prioritise cultural healing and strengthen First Nations families and communities.

Preventative and early intervention initiatives promote the wellbeing of First Nations people and build resilience, including for those most at risk of coming into contact with the justice system. Whole-of-government strategies that target disadvantage, and address the social and cultural determinants of health – particularly through wrap-around support – are most likely to improve justice outcomes in the long term..

Submission, National Indigenous Australians Agency, sub.56, p 10

Holistic service delivery is underpinned by the recognition that interactions with the justice system are rarely driven by legal issues alone. This experience is not unique to Aboriginal and Torres Strait Islander peoples, and the importance of holistic service provision for the wider community is discussed in section 9.3. However, Aboriginal and Torres Strait Islander peoples continue to experience exacerbated levels of entrenched disadvantage relative to other population groups which contributes significantly to interaction with the justice system.

Holistic service provision recognises the need to embed non-legal supports that address socio-economic determinants within legal assistance service delivery. Holistic service provision acknowledges the cultural practices, structures, and histories of the contexts in which legal assistance services are delivered.

This service model strengthens cultural identity, connection to Country and leadership capacity for Aboriginal and Torres Strait Islander peoples and children. The model also addresses underlying needs and trauma resulting from colonisation. The model recognises that communities engage more effectively with services that have been designed for them and by them.

First Nations experiences and culture must be at the centre of the provision of legal assistance services in all jurisdictions. Reducing contact with the justice system requires community-driven, holistic, trauma informed approaches that prioritise cultural healing and strengthen First Nations families and communities.

Submission, National Indigenous Australians Agency, sub.56, p 8

The Reviewer has heard that holistic service provision also improves chances of offenders' rehabilitation and reintegration into community, increases access to education, training and employment, improves mental health and wellbeing, and offers and enhances stability with accommodation and finances. Holistic services also contribute to strengthening referral pathways to specialist services such as trauma counselling, alcohol and other drug services, and NDIS support.

Box 5.2 The FVPLS model

The FVPLS service model combines legal services with a suite of non-legal family violence prevention services and programs provided solely to Aboriginal and Torres Strait Islander peoples. The service model is underpinned by principles of addressing holistic needs of victim-survivors within the justice system and strengthening early intervention and primary prevention responses. Holistic services aim to divert clients from encounters with the justice system, and reduce the occurrence of future encounters.

Through this positioning, the FVPLS service model upholds a framework for legal assistance in line with the Aboriginal and Torres Strait Islander Action Plan arising from the National Plan to End Violence against Women and Children (2022). Particularly, FVPLS services delivery acknowledges that:

... solutions to family violence lie in culturally appropriate strategies that support safety and healing, and prevention and accountability of offenders. Punitive responses focused on the criminal justice system alone do not work and can endanger women and children. (p. 52)

A core function of FVPLS involves building trust and relationships with Aboriginal and Torres Strait Islander communities within which services operate. This requires delivering face-to-face support within communities and through a primarily Aboriginal and Torres Strait Islander workforce. Culturally appropriate and trauma-informed approaches to engagement are also considered a core aspect of the FVPLS service delivery model. To ensure delivery of holistic and wraparound support, FVPLS services frequently partner with other local ACCO and non-ACCO services, particularly in RRR areas where service provision is sparse and demand for legal assistance high.

The Reviewer accepts that holistic and wraparound service provision, delivered by a workforce that understands the broader systemic issues impacting Aboriginal and Torres Strait Islander peoples, is essential to achieving National Agreement commitments. These frameworks promote intersectionality and inclusivity. They leverage a whole-of-sector and whole-of-government collaborative approach to identifying and meeting legal needs of Aboriginal and Torres Strait Islander peoples.

An emphasis on providing legal assistance at the intersections of Aboriginal and Torres Strait Islander peoples' legal and non-legal needs recognises the interconnectivity of social and legal determinants impacting these communities. It also offers services embedded in culture, community and kinship aimed at building client agency and addressing the cyclical nature of Aboriginal and Torres Strait Islander peoples' engagement within the justice system. The Reviewer agrees with this statement made in the Victorian Aboriginal Legal Service (VALS) submission:

Access to culturally safe services is a key measure to enliven the rights expressed by several Articles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and essential to overcoming the generational impacts of colonisation.

Submission, Victorian Aboriginal Legal Service, sub.138, p 10

5.7.1 Early intervention and prevention services

Early intervention and prevention services are significant mechanisms that support Aboriginal and Torres Strait Islander peoples to avoid the justice system or exit from it as soon as possible. These services address systemic issues of harm and trauma experienced by Aboriginal and Torres Strait Islander peoples engaging with the criminal justice system, child protection system, and youth detention system. Early resolution of civil matters, particularly about bills and debts, reduce cost and avoid escalation to criminal matters.

Submissions provided evidence that early intervention and prevention services constitute useful pathways for ATSILS and FVPLS services to build partnerships with other ACCOs, ACCHOs and non-ACCO organisations. All can respond to the complex legal and non-legal needs of Aboriginal and Torres Strait Islander peoples.

Early intervention and prevention service provision is significant for improving legal outcomes, especially for Aboriginal and Torres Strait Islander peoples. The Review has heard, as did the Productivity Commission, that these activities help secure less severe penalties, reduce reoffending, and reduce bail breaches of court orders. The Reviewer recognises barriers to accessing early intervention and prevention services increase potential of legal issues escalating, and raise chances of drawing Aboriginal and Torres Strait Islander peoples into criminal justice and child protection legal systems. These costs are born by both the individual and community.

Early intervention and prevention services are an integral component of ACCO's wraparound and holistic service delivery model. However, like other non-legal supports provided by ACCOs, these are either excluded from core funding or receive short-term ad hoc funding. Funding limitations impact the capacity to recruit and retain non-legal staff, such as mental health case workers or Aboriginal Community Engagement (ACE) workers, who are integral to sustaining wraparound support. Poor investment in early intervention and prevention services additionally impedes ACCOs' capacity to forge and sustain beneficial cross-sector partnerships with other ACCOs, ACCHOS and non-ACCO services. This leads to weakening quality of services delivered to Aboriginal and Torres Strait Islander peoples.

The Reviewer has recommended that in establishing new baseline funding for 2025–26, early intervention and prevention be properly funded.

5.7.2 Advocacy and law reform

Advocacy and law reform offer crucial pathways for the legal assistance sector to understand how laws may be negatively impacting Australian society, particularly for Aboriginal and Torres Strait Islander communities who have historically been disadvantaged by legislative and policy processes.

Service providers have a clear view of the importance of advocacy and law reform

We note and endorse the comments of the Productivity Commission in their Access to Justice Arrangements Report from 2014, in which they stated that legal assistance providers play a key role in law reform, policy and advocacy, that it should be a core activity...and that in many cases, strategic advocacy and law reform can reduce demand for legal assistance services.

Submission, Aboriginal Family Legal Services Western Australia, sub.2, p 16

Advocacy and law reform includes participation in campaigns, research activities examining Aboriginal and Torres Strait Islander peoples' legal needs, running test cases and class actions, and drafting submissions to inform government and parliamentary policy consultation processes. In many instances law reform and advocacy directly impact existing legislation, leading to law reforms that provide greater protection within, and greater access to, the justice system. As highlighted in the VALS submission:

Our Wirraway Practice represents clients who are next of kin in Coronial Inquests into deaths in custody and support the advocacy of those clients. Notably, they represented Uncle Percy Lovett, the partner of Veronica Nelson. That advocacy has led to bail reforms that are intended to reduce the overincarceration of Aboriginal people, and healthcare in women's prisons being returned to public health providers.

Submission, Victorian Aboriginal Legal Service, sub.138, p 28

Law reform and advocacy work can directly impact on addressing legal and non-legal needs of Aboriginal and Torres Strait Islander peoples. This work additionally offers a pertinent platform to inform legislative change through direct community input. As noted in the Aboriginal Legal Rights Movement submission:

Another example of early intervention is the successful legal work ALRM did between about 1992 and 2013 in the Licensing Court of South Australia. By seeking and obtaining orders of the Licensing Court as to the licence conditions of rural and remote hotels there was some success in limiting the availability of takeaway liquor to remote communities. This work was done at the behest of those communities. By having these conditions imposed, ALRM was able to some degree to limit the amount of alcohol-related violence that occurred, as well as the ruinous health consequences of takeaway liquor. Due to that ALRM advocacy, and due to amendments to the Liquor Licensing Act, the present South Australian Liquor And Gambling Commissioner has been much more proactive in imposing limitations on takeaway liquor outlets near or more relevantly, within driving distance of remote Aboriginal communities.

Submission, Aboriginal Legal Rights Movement, sub.3, p 2

The Reviewer has heard advocacy and law reform offer important early intervention and preventative services to address harmful laws and policies impacting the lives of Aboriginal and Torres Strait Islander peoples. Benefits of advocacy and law reform include opportunities to challenge, as well as directly inform, policy and legislation on prevalence and impact of legal issues impacting Aboriginal and Torres Strait Islander communities. A key benefit of advocacy and law reform is that they strengthen direct links between frontline service providers, community experience, and policy makers and legislators. This supports delivery of National Agreement Priority Reform One, ensuring Aboriginal and Torres Strait Islander peoples have a voice in the laws and systems that directly impact their community.

ALRM has always taken the view concerning law reform and legal policy advocacy that practice without theory is impotent, but that theory without practice is blind.

Submission, Aboriginal Legal Rights Movement, sub.3, p 36

The Reviewer has heard that as a result of inadequate funding and the high workloads, ATSILS and FVPLS cannot perform these services to the extent required. On occasion, ATSILS and FVPLS are excluded from policy or legislation consultations as they do not sit within government. The Reviewer believes this is a missed opportunity to strengthen alignment of the legal assistance sector with the National Agreement Priority Reforms One and Two. This must be addressed in A2JP. As discussed in chapter 7, advocacy and law reform work should be funded in 2025–26 as part of the baseline for FVPLS and ATSILS.

5.7.3 Community legal education

Community legal education (CLE) programs respond to legal assistance needs of Aboriginal and Torres Strait Islander peoples. CLE programs are often delivered as community workshops. They improve understanding and knowledge of legal and non-legal issues, and barriers faced by Aboriginal and Torres Strait Islander communities. CLE provides opportunities to raise awareness about legal needs and who to call on for assistance.

CLE can take several forms and comprise of topics ranging from driver's licences, fines, police relations and complaints, the court system, compliance with court and parole orders, and domestic violence laws, including how to obtain and comply with a restraining order. A large component of CLE involves school programs for young Aboriginal and Torres Strait Islander peoples about safe and respectful relationships.

CLE can have significant downstream effects such as changing attitudes and behaviours, potentially resulting in reduced contact with the justice system. However, CLE does not receive core service funding under NLAP, nor is specific funding for CLE allocated under any present funding arrangements. This puts significant human resource and financial strain on service providers when it comes to delivering these vital programs within community.

When the Reviewer visited Wadeye with the Attorney-General of the Northern Territory, he heard from the old men of that community how they felt their young people would benefit from having a better understanding of the law, especially if CLE could be provided in language. They saw CLE as likely to help 'keep young fellas out of the big house in Darwin.' They felt CLE would give all young people a greater sense that the law is there to help them when they have disputes with companies, and to help young women if they are threatened with, or experience, violence.

The Reviewer believes CLE is an essential service in communities. It reduces Aboriginal and Torres Strait Islander peoples' engagement with the criminal justice system, and thus has a significant role in progressing Socio-Economic Outcomes 10 and 11. CLE funding is incorporated in the baselining process for 2025–26, as set out in section 7.2.1.

5.7.4 Health justice partnerships

Health Justice Partnerships (HJPs) integrate health care services with legal assistance services to improve clients' legal, health and wellbeing outcomes. HJPs recognise that clients engaged with the legal system often face multiple levels of disadvantage, including poor health and wellbeing outcomes. HJPs offer a vital integrated service system alternative that improves effectiveness of legal assistance services in responding to complex and intersecting client needs.

HJPs emerged from the evidence that there are people experiencing unmet legal need who may never seek existing or available legal help, but who are likely to talk about their legal problems in a setting of trust, such as a health or social service.

HJPs typically support populations that are at particular risk of poor health and justice outcomes, like people experiencing domestic and family violence, people at risk of elder abuse, Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse communities, and people experiencing poverty.

HJPs are broadly supported within the submissions as critical services to improve access to justice outcomes for Aboriginal and Torres Strait Islander peoples. HJPs address coalescing health, social and emotional wellbeing issues impacting Aboriginal and Torres Strait Islander peoples' access to justice. Of the 100 HJPs, 14 involve Aboriginal and Torres Strait Islander community-controlled health, social and/or legal services. The Reviewer supports the statement made in National ATSILS submission that:

...there is enormous potential for ATSILS to further develop health justice partnerships across Aboriginal Community Controlled Health Organisations (ACCHOs) and the huge network of Aboriginal Medical Services across Australia.

Submission, National ATSILS, sub.134, p 64

The role of HJPs in improving culturally appropriate and holistic service delivery outcomes is evident. However, the Reviewer found that service providers struggle to establish and maintain these cross-sector partnerships due to staffing and resourcing constraints. Partnering effectively with other services requires establishing relational foundations through which mutual trust and respect can be nurtured and sustained between services. Lack of funding to support non-legal workforces, and weak organisational capacity, particularly for RRR regions, impede ATSILS and FVPLS from truly leveraging the benefits of the HJPs. The Reviewer agrees with the position taken in Health Justice Australia's submission that:

The structure and administration of funding for Aboriginal and Torres Strait Islander legal services (ATSILS) has restricted the capacity for ATSILS to engage in partnership-based work and innovation in service approaches, compared to the rest of the legal assistance sector. The result has been structural disadvantage for ATSILS to explore approaches that improve early support and prevention of crisis.

Submission, Health Justice Australia, sub.15 p 120

The Reviewer is of the opinion that ensuring and strengthening ACCO capacity to develop and sustain cross-sector partnerships can address underlying issues driving Aboriginal and Torres Strait Islander clients into criminal and child protection systems.

Capacity building in this area requires investment in building ACCO staff competency and organisational capacity, particularly in RRR regions where clients' needs may be more complex. HJPs offer pathways for ATSILS and FVPLS to establish strong and sustainable cross-sector partnerships with other ACCOs to address legal needs of Aboriginal and Torres Strait Islander communities, ultimately progressing National Agreement Priority Reform Two.

It is the Reviewer's expectation that baseline funding of ACCOs, determined in accordance with section 7.2.1, will enable them to actively invest in exploring HJPs with Aboriginal Medical Services, non-ACCO health service providers, and other forms of collaboration.

5.7.5 Aboriginal Interpreter Service

Aboriginal and Torres Strait Islander peoples are often multilingual, particularly in remote and regional areas where English may be a second or third language. In the Northern Territory alone more than 100 Aboriginal languages are spoken, with significant variation in vocabulary, concepts, and grammatical structure. In many remote Northern Territory communities over 70% of people speak at least one Aboriginal or Torres Strait Islander language.

Almost all those appearing before bush courts are Aboriginal and Torres Strait Islander peoples with an Aboriginal or Torres Strait Islander language as their first language.

Access to interpreter services ensures Aboriginal and Torres Strait Islander peoples receive equitable and timely access to justice, make informed decisions within legal processes, and can effectively engage with the justice system when need arises. Interpreter services also ensure Aboriginal and Torres Strait Islander peoples' engagement with the legal system occurs in a culturally safe way.

There are different funding arrangements for different interpreter services. NIAA funds broader Indigenous interpreting services, and training and accreditation services to improve Aboriginal and Torres Strait Islander access to qualified interpreters. There are also specific services, like the Aboriginal Interpreter Service (AIS) which offers interpreter support in all major towns and remote bush court circuits in the Northern Territory. The AIS has multiple sources of funding. These are:

- Commonwealth funding of \$3.8 million annually through the National Partnership on NT Remote Aboriginal Investment
- \$2.4 million annually from the National Indigenous Australians Agency for services in the Northern Territory, the Kimberly region of Western Australia, and the cross-border region of the Aangu Pitjantjatjara Yankunytjatjara (APY) and Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) lands in Western Australia, South Australia and the Northern Territory
- \$1.2 million annually distributed through Commonwealth funded legal centres in the Northern Territory.

Consistent with recommendation 22.3 of the PC Report, the Reviewer has found that interpreter services for Aboriginal and Torres Strait Islander peoples are chronically underfunded. This is so despite the broadly recognised significance of these services in improving access to justice outcomes for Aboriginal and Torres Strait Islander peoples. Lack of funding has contributed to persistent shortages of qualified and culturally appropriate interpreters across Aboriginal and Torres Strait Islander communities, particularly in RRR regions.

Interpreter shortages also result in existing workforces being unable to meet client demands. This is apparent in both capacity issues or lack of training in a particular Aboriginal or Torres Strait Islander language, and inability to deal with complex court matters. Impacts of interpreter service shortages result in Supreme Court hearings being vacated and daily adjournments of matters in local courts. This is particularly the case in the Northern Territory where:

Available interpreters often have limited training, particularly when required to interpret complex legal issues and to interpret in proceedings accurately and comprehensively. The use of interpreters also means that explaining legal concepts, taking instructions from clients and the proceedings themselves take additional time. Where interpreters are not available for court proceedings, matters must be adjourned. This causes delay in finalising court matters and adds to the backlog of pending proceedings. The use of interpreters adds to the cost of delivering services and must be factored into the cost of regional, remote, and very remote service provision.

Submission, Legal Aid NT, sub.48, p 31

Similar concerns are observed with legal service delivery for Aboriginal and Torres Strait Islander peoples in South Australia's RRR communities. The South Australia Supreme Court case of *Frank v Police (2007)* made interpreter services a mandatory requirement in courts cases involving Aboriginal and Torres Strait Islander clients. Despite this decision, the Reviewer observes that this commitment remains unfulfilled.

This is due to shortages of qualified interpreters trained in the Pitjantjatjara language, and lack of clearly defined criteria to guide lawyers in determining when interpreter services may be required in courts. The Reviewer has heard that in some circumstances ATSILS lawyers undertake Pitjantjatjara language courses at their own expense.

While the Reviewer has not undertaken a specific analysis of these cases, he observes that one of the principal benefits from the provision of assistance is reduction of delay costs in court processes and is confident in these cases, this would be the case and yield an acceptable cost benefit ratio, especially if incarceration is reduced or avoided.

The Reviewer is aware that interpreters for Aboriginal and Torres Strait Islander peoples provide services beyond the legal system, such as learn to swim programs. The Reviewer believes interpreter services should be provided by ACCOs. However, conflict issues and competing non-legal demands militate against ATSILS providing these services. There are important governance and organisational design issues to resolve which are beyond the scope of this Review.

Recommendation 13 – Aboriginal interpreters

The Reviewer considers that access to interpreter services is essential for Aboriginal and Torres Strait Islander Australians to have proper access to justice and that funding is currently inadequate.

The Commonwealth together with the relevant jurisdictional governments and service providers should determine an adequate level of interpreter funding for legal assistance purposes as soon as practicable.

5.7.6 Custody Notification Service

The Custody Notification Service (CNS) was established in response to the 1987 Royal Commission into Aboriginal Deaths in Custody (Recommendations 223 and 224) and the Australian Law Reform Commission's 2018 Pathways to Justice Report. These reports recommended that police should notify ATSILS or equivalent services if an Aboriginal and Torres Strait Islander person is taken into custody for any reason.

The CNS model offers a 24/7 telephone service. Dedicated CNS staff provide culturally appropriate health and wellbeing checks, and provide legal information to clients via direct verbal exchanges. As noted in the ALS (NSW/ACT) submission (p.13), CNS improves access to justice for Aboriginal and Torres Strait Islander peoples through:

- providing timely and effective advice about a person's legal rights, including an accused person's right to silence
- improving prospects of bail for persons under arrest in relation to criminal charges
- improving support for diversion, pursuant to the *Young Offenders Act 1997*
- improving the professionalism of police in custody management and detention practices.

The Reviewer observes that the CNS service is vital to ensuring Aboriginal and Torres Strait Islander people have access to culturally informed legal advice when in contact with the criminal justice system. CNS also supports delivery of holistic care and support to clients in custody, enabling ATSILS to identify and respond to issues or threats such as self-harm, unmet medical needs or injuries, and injuries sustained during arrest. CNS is a useful mechanism through which ATSILS can anticipate and assess demand for criminal law matters and highlight policing trends in specific communities and across states. This in turn benefits ATSILS service design and advocacy work.

The Reviewer notes that short-term funding contracts are one of the main barriers to efficient and sustainable CNS delivery. This impacts on designing and offering services, forward planning, and job security within CNSs.

Across all jurisdictions, funding for the CNS has been through short-term arrangements resulting in uncertainty in relation to the ongoing viability of the services. Since the first injection of Commonwealth funding for CNS in 2016 for a 3-year period, Commonwealth funding arrangements have continued to be for a limited period, with the most recent 2023-24 Federal Budget providing funding for only one year.

Submission, National ATSILS, sub.134, p 43

While NLAP funding provides for baseline services in the criminal, care and protection and family practice, the Custody Notification Service (CNS) and Early Appropriate Guilty Plea (EAGP) services are funded by the National Indigenous Australians Agency (NIAA) and Legal Aid Commission NSW respectively. Consequently, ALS (NSW/ACT) faces challenges in planning for the future and offering job security to teams delivering the CNS and EAGP services.

Submission, Aboriginal Legal Services (NSW/ACT), sub.140, p 8

Another barrier to CNS delivery is significant variation in CNS funding arrangements across states and territories. Tasmania uses NLAP baseline funding for CNS services. CNS services in Victoria and Western Australia are supported through joint Commonwealth and state funding. In New South Wales, South Australia, ACT and Northern Territory, CNS services are funded through the Commonwealth. Queensland currently receives no CNS funding. Variations in funding arrangements result in inconsistencies in holistic service delivery in criminal matters across states and territories, and leads to inconsistent reporting.

The Reviewer considers baseline funding for each ATSILS should include adequate resourcing to operate a CNS appropriate for criminal justice arrangements in each jurisdiction. This is included in the baseline exercise discussed in section 7.2.1.

Funding facts

6

Box 6.1 Key points – Funding legal assistance

- It is estimated that in 2022–23, the legal assistance sector received \$1,513 million in funding. State and territory governments provide 56% of this amount, mostly to LACs which are statutory agencies of jurisdictional governments.
- In 2022–23, LACs received \$1,060 million in funding (31% from the Commonwealth), CLCs \$243 million (55% from the Commonwealth), ATSILS \$172 million (81% from the Commonwealth), and FVPLS \$38 million (83% from the Commonwealth).
- Over three-quarters (78%) of Commonwealth funding is provide through NLAP. This is largely distributed to state and territory governments to allocate to service providers in their jurisdictions, in accordance with NLAP.
- NLAP and most other Commonwealth legal assistance funding programs are administered by AGD. The legal assistance sector also receives funding from other Commonwealth sources, which are typically for distinct purposes related to the portfolio agency’s area of responsibility.
- States and territories provide funding directly to legal assistance providers, often for short-term or pilot projects. These are administered by various departments, often without central oversight. This creates complexities in understanding total state and territory funding.
- Between 2013–14 and 2022–23, Commonwealth funding has increased across all subsectors: LACs from \$201 million to \$328 million, CLCs from \$31 million to \$134 million, ATSILS from \$74 million to \$140 million, and FVPLS from \$20 million to \$31 million.
- The Reviewer considers NLAP indexation arrangements and predecessor agreements have not properly funded cost increases service providers have faced. Between 2013–14 and 2022–23, the cumulative funding shortfall (from the absence of appropriate indexation as set out in recommendation 21) is \$143 million for the LACs and \$82 million for ATSILS. The Reviewer is unable to replicate this analysis for CLCs and FVPLS, though the expectation is that these subsectors are plagued with similar funding shortfalls.

This chapter provides a detailed analysis of legal assistance sector funding and discusses why the current level of funding is inadequate.

6.1 Access to, and use of, funding data

As was the experience of the Productivity Commission in 2013–14, significant effort has been made by the Review team to put together a picture of the current state of legal assistance funding in Australia. Outside reported funding under NLAP, there is no central national data source for funding, nor for any jurisdiction including the Commonwealth. As a result, focus was placed on describing the funding position in 2022–23 and Commonwealth funding since 2013–14. This matter is addressed in recommendation 31.

The Reviewer acknowledges data presented in this chapter in particular are likely to exclude some funding provided by governments. These data have been collated from a range of sources: government and provider reports, disaggregated budgetary data provided by government agencies, ministerial press releases, and submissions and private discussions with service providers. As a result of the use of multiple data sources to provide as complete a picture as possible, states and territories have not been able to verify the full accuracy of the information presented. Where possible sources were compared to improve accuracy.

Feedback received indicates that the estimates presented below are higher than the funding visible to individual state and territory officials, which highlights the often-siloed nature of funding and the lack of comprehensive oversight. State and territory officials also noted the different methodologies used across jurisdictions, highlighting that caution should be taken in comparing results.

The Reviewer is confident the data presented is adequate for the purposes for which it is used. Noting these limitations, it is not considered necessary to provide caveats to this when each data point is presented.

In commenting on the Draft Report, officials in a minority of states questioned whether the Reviewer has gone beyond his Terms of Reference in presenting and discussing estimates of state and territory legal assistance funding. The Reviewer rejects this proposition. First, the Reviewer considers to do so is in the public interest, and is consistent with the general preference of governments for transparency. To the best of the Reviewer's knowledge, such material has not been presented since the PC Report in 2014. Second, the Terms of Reference require 'a holistic assessment of legal need and all Commonwealth legal assistance funding', and in particular 'funding allocated across jurisdictions and within each jurisdiction.' It is simply not possible to do this without considering state and territory funding to the same set of organisations providing services to the same groups of disadvantaged clients. Third, previous reviews' Terms of Reference specifically precluded consideration of the adequacy of funding. The Reviewer observes that if he was not to consider state and territory funding the Terms of Reference would have explicitly indicated this.

In any event, these concerns make a mountain out of a mole hill. Specific details of state and territory funding are primarily presented in this chapter, and largely to place Commonwealth expenditure in the context of total legal assistance expenditure. Further, in discussing the adequacy of funding to address legal need, the Reviewer has focused on providing adequate funding in total, rather than by level of government, the exception being the failure of some state and territory governments to provide meaningful funding to ATSILS and FVPLS.

6.2 Existing funding arrangements

6.2.1 Commonwealth funding

AGD currently administers most Commonwealth funding to the legal assistance sector through NLAP. This funding is distributed to state and territory governments, and then to service providers, in accordance with NLAP provisions. Administration is undertaken by either state and territory justice departments or LACs, at the discretion of the relevant government, as discussed further in chapter 10.

The legal assistance sector also receives additional funding from AGD and other Commonwealth departments. These funding streams are typically for distinct purposes related to the portfolio agency's area of responsibility. An example is the NDIS Appeals Program, where the Commonwealth Department of Social Services funds the costs incurred by legal assistance providers in providing representation in disputes before the Administrative Appeals Tribunal. A number of legal assistance providers have suggested to the Review this funding stream is inadequate.

NLAP is a Federal Funding Agreement (FFA) Schedule. It is comprised of a multilateral agreement (between the Commonwealth and all states and territories) and bilateral agreements (between the Commonwealth and each state and territory). In establishing NLAP as an FFA, states and territories are afforded greater autonomy and flexibility to allocate funds as they see fit across the legal assistance sector, so long as the funding progresses mutually agreed objectives under the agreement.

Under NLAP there are stipulations on the law matters for which Commonwealth funding should be prioritised. This includes family law, Commonwealth civil law, and Commonwealth criminal law matters. Generally, funding provided by the Commonwealth to LACs can only be used for 'Commonwealth matters'. The principal exception is state matters relating to families. This issue is explored further in chapter 10.

Baseline funding

NLAP provides quarantined baseline funding for LACs, CLCs and ATSILS. In 2022–23, LACs received the highest amount of baseline funding at \$241 million, followed by ATSILS at \$88 million and CLCs at \$57 million.

These amounts are specified by the Commonwealth. Indexation of total baseline funding has historically been set at around 1.5% to 2.3%, in line with forecast wage-price growth. The Reviewer notes that changes in demand are not being reflected in funding growth over time. It is also unclear how amounts to be distributed were determined in the first place.

Funding distribution to states and territories is facilitated by three Funding Distribution Models (FDMs), one FDM for each subsector. These models were developed by an independent third-party consultant in 2014. The Reviewer notes the methodology has not been shared with legal assistance providers until its inclusion within the Issues Paper for this Review.

Development of these models was guided by several principles:

- ensuring funding allocation aligns with the need for services in each jurisdiction
- accounting for jurisdictional variations in service costs, including cost of service infrastructure
- ensuring the model is readily understood without compromising the first two principles.

To support these principles, each FDM contains four components: (1) operational component, (2) population component, (3) needs component, and (4) cost factor component.

The amount of funding allocated to each jurisdiction is determined by adding their respective population, needs, and operational components, and multiplying it by the cost factor component.

The operational component accounts for the operational cost of delivering legal assistance services, such as rent and overheads. While these costs are higher for larger populations (from servicing a broader client base), this increase is moderated for 'economies of scale' in recognition of the cost advantages linked with operating larger organisations. Consequently, smaller jurisdictions receive a larger proportion of this funding, relative to their population share.

The population component allocates a share of funding to each jurisdiction, based on its share of national population. Population estimates are based on Need for Legal Assistance Services (NLAS) indicators developed by Law and Justice Foundation of New South Wales. NLAS indicators are used since it is considered a more accurate estimation of vulnerability in each jurisdiction. NLAS(CLC) is used for the LAC and CLC models, whereas NLAS(ATSILS) is used for the ATSILS model. NLAS(CLC) provides a count of people aged 15 and over with low educational attainment and low household income. On the other hand, NLAS(ATSILS) provides a count of: (1) people aged 10 to 17 who identify as Aboriginal and/or Torres Strait Islander, and (2) people aged 18 and over with low personal income who identify as Aboriginal and/or Torres Strait Islander.

These populations are not static and FDMs assume they grow over time. For LAC and CLC models, the growth rate is based on the year-on-year change in the general population in each jurisdiction. For the ATSILS model, growth is based on the year-on-year change in Aboriginal and Torres Strait Islander population in each jurisdiction. If a jurisdiction's population is growing faster than others, it will capture a progressively larger share of funding allocated through the population component.

The needs component distributes funding based on the number of people in specific high-need groups, in recognition of the differences in the relative cost of delivering services. Each high-need group is assigned a population weighting. However, the same weighting is applied to each high-need group, which means that no adjustment is made for relative need between high-need groups. If a jurisdiction has a relatively higher proportion of its population within these high-need groups, it will receive a higher proportion of available funding, and vice versa.

The cost factor component accounts for differences in the cost of delivering legal assistance across jurisdictions. Inputs into this component include three Commonwealth Grant Commission (CGC) input cost factors which capture variations in:

- wages across jurisdictions (interstate wage levels factor)
- diseconomies from providing services to small, isolated communities (CGC service delivery scale factor)
- remoteness of service location (CGC regional factor).

In recognition of the costs borne by LACs associated with granting legal aid to residents of other jurisdictions for Commonwealth law matters, there is an additional input into the LAC model: cross-border factor. Table 6.1 presents the cost factors for each jurisdiction. These cost factors are relative to a national average factor of 1. For example, a regional factor of 1.019 for Western Australia suggests the cost difference between Western Australia and the national average is 0.19%.

Table 6.1 Cost factors within the FDMs

Jurisdiction	Interstate wages levels factor	Service delivery scale factor	Regional factor	Cross-border factor
New South Wales	1.006	0.999	0.987	0.98
Victoria	1.004	0.998	0.981	1.013
Queensland	0.996	1.001	1.017	1.004
South Australia	0.972	1.002	1.007	1.003
Western Australia	0.992	1.003	1.019	0.994
Tasmania	0.967	1.003	1.063	0.951
Northern Territory	1.033	1.024	1.238	0.989
Australian Capital Territory	1.054	0.997	0.964	1.188

Source: Commonwealth AGD

In allocating baseline funding, a 'no state or territory loses' principle was adopted from the first year, meaning each subsector across every jurisdiction received, at a minimum, their baseline funding levels from the preceding year. In line with this principle, each jurisdiction was provided with their base amount from 2019–20 (first year preceding the NLAP agreement) and FDMs were applied using the difference in total funding between 2019–20 and 2020–21. The same calculation was performed for each forward year of the NLAP agreement.

AGD notes that following the model application, there was a redistribution for CLC and LAC subsectors to address minor funding anomalies. These adjustments were relatively small across all components and years, ranging from a reduction of 1.7% to an increase of 0.4%.

Bilateral schedules and specific funding streams

In addition to baseline funding, NLAP includes multiple funding streams for specific purposes. These include:

- additional Domestic Violence Unit (DVU) funding. Funding is estimated to be \$14 million in 2022–23
- expanded Family Advocacy and Support Service (FASS) funding. Funding is estimated to be \$27 million in 2022–23
- legal assistance for vulnerable women. Funding is estimated to be \$32 million in 2022–23
- frontline support to address workplace sexual harassment. Funding is estimated to be \$12 million in 2022–23
- supporting increased child sexual abuse protections. Funding is estimated to be \$2 million in 2022–23
- supporting people with mental health conditions to access the justice system. Funding is estimated to be \$15 million in 2022–23.
- expensive complex cases and coronial inquiries. Funding is estimated to be \$3 million in 2022–23
- Justice Policy Partnership. Funding is estimated to be \$0.7 million in 2022–23.
- Family Law Pilot Program (South Australia only). Funding is estimated to be \$3.6 million in 2022–23.

Other FFA Schedules

In addition to NLAP, FFA Schedules are also used for one-off specific purpose payments that sit outside NLAP. Historically, these schedules were mainly used to support service providers responding to the acute increase in legal need arising from natural disasters, including:

- \$2 million over two years, to provide expanded capacity for legal assistance provision to those impacted by the 2023 floods in Kimberley, Western Australia
- \$5 million over two years, for additional frontline legal assistance services to support communities affected by floods in New South Wales and Queensland in February and March 2022 (Commonwealth AGD, 2023)
- \$12 million over four years, to assist CLCs in New South Wales and Queensland with the compounding impacts of recent natural disasters such as 2019-20 bushfires and 2022 floods (Commonwealth AGD, 2023).

In response to the COVID-19 pandemic, the Commonwealth provided \$59 million over two years to help the sector cope with increased service demand prompted by the transition to virtual service delivery (Commonwealth AGD, 2020).

Aside from supporting disaster and emergency responses, the Commonwealth has also injected one-off funding to support the sector in dealing with heightened service demand from sector reform activities. In 2022, supplementary funding of \$17 million was provided to LACs to expand their capacity to support implementation of, and transition to, the new case management approach in the Federal Circuit and Family Court of Australia (Commonwealth AGD, 2022).

In MYEFO 2023–24, the Commonwealth announced funding of \$17.1 million in 2023–24 to support LACs to provide legal representation in family law proceedings, including independent children’s lawyers, as ordered by the Federal Circuit and Family Court of Australia. This funding is an extension of \$17 million provided in 2022–23 to support additional workload arising from the new case management approach in the Federal Circuit and Family Court of Australia. This funding will be delivered through amendments to the FFA Schedule, Supplementary funding for legal aid commissions, to support responses to demand arising from case management transition in the Federal Circuit and Family Court of Australia.

Community Legal Service Program

The Community Legal Service Program is a nationally focused, discretionary grants program that aims to support improved delivery of legal assistance to the community by funding national service delivery projects, peak bodies, innovative pilot programs and program support activities that complement services delivery under NLAP. Community Legal Service Program is administered by AGD, providing funding over five years through direct grant agreements with service providers.

In the latest funding round, the Commonwealth committed \$39 million from 2020–21 to 2024–25. Major initiatives include:

- \$24 million for NATSILS to provide sector support and coordination activities to ATSIILS
- \$4 million for Financial Rights Legal Centre to set up a national Insurance Law service for vulnerable and/or disadvantaged individuals to resolve their disputes with insurers
- \$3 million for Justice Connect to operate a self-representation service in the registries of the Federal Courts and the Federal Circuit Courts in jurisdictions across Australia
- \$2 million for Australian Pro Bono Centre to promote pro bono work in legal matters, administer the national pro bono target, and elevate pro bono work
- \$2 million for Community Legal Centres Australia to support an integrated, efficient and effective national community legal assistance sector.

Expensive Commonwealth Criminal Cases Fund

Expensive Commonwealth Criminal Cases Fund (ECCCF) is a grant program administered by AGD to reimburse LACs for costs incurred defending clients in serious, high cost (greater than \$40,000) Commonwealth criminal matters, and in Commonwealth post-sentence orders. ECCCF ensures 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.

This funding prevents matters from being adjourned, postponed or stayed in accordance with the principle established by the High Court’s decision in *Dietrich v The Queen*. The funding ensures LACs do not need to reallocate funding away from other Commonwealth service priorities, such as family law matters.

In 2022–23, ECCCF funding is estimated at \$13 million (AGD, 2023).

Indigenous Advancement Strategy

The Indigenous Advancement Strategy is administered by the National Indigenous Australians Agency (NIAA), and is the main way the Commonwealth funds and delivers a range of programs for Aboriginal and Torres Strait Islander peoples.

In recognition of the specific legal assistance needs of Aboriginal and Torres Strait Islander peoples, NIAA also supports via IAS legal assistance programs that work directly with Aboriginal and Torres Strait Islander peoples. These programs include, but are not limited to:

- FVPLS, which address the legal needs and facilitates non-legal wraparound support for Aboriginal and Torres Strait Islander victim-survivors' of family violence and sexual assault. Funding is estimated at \$29 million in 2022–23.
- Custody Notification Services, which provides 24/7 basic legal information and culturally appropriate health and wellbeing checks for Aboriginal and Torres Strait Islander peoples who are taken into custody. Funding is estimated at \$5 million in 2022–23.
- Through Care programs, which bring together intensive case management services and coordinated targeted support to assist Aboriginal and Torres Strait Islander peoples previously in custody to successfully reintegrate into community. Funding is estimated at \$10 million in 2022–23.
- Indigenous Women's Program, which supplements core funding provided through NLAP to select service providers across Australia, to ensure they have additional capacity to meet the needs of Aboriginal and Torres Strait Islander women. Funding is estimated at \$1 million in 2022–23.
- Supplementary Legal Assistance, which supplements core funding provided through the NLAP to legal assistance providers in the NT to meet additional demand for legal services. Funding is estimated at \$4 million in 2022–23.

It is recommended in chapter 7 that these programs are included in baseline funding.

In addition, NIAA provides funding for community-led activities like these:

- Youth Engagement Program, which involves Aboriginal and Torres Strait Islander diversion officers supporting young people appearing in Perth Children's Court to comply with court orders and improve their wellbeing. Funding is estimated at \$1 million in 2022–23.
- True Justice: Deep Listening Initiative, which seeks to transform legal education and continuing professional development and learning through facilitating on-country, immersive experiences. Funding is estimated at \$0.1 million in 2022–23.
- Youth Justice Advocacy Coordinator, which supports young people who engage with the youth justice system by minimising trauma and reducing the risk of recidivism. Funding is estimated at \$0.1 million in 2022–23.
- Community Night Patrol Legal Training and Support Activities, which delivers specialised training to organisations the Commonwealth has engaged to deliver community night patrol projects. Funding is estimated at \$0.2 million in 2022–23.
- Kunga Stopping Violence Program, which is a prisoner through care initiative to Aboriginal and Torres Strait Islander women in the Alice Springs Correctional Centre and communities surrounding Alice Springs. Funding is estimated at \$0.6 million in 2022–23.

6.2.2 State and territory funding

State and territory governments provide legal assistance sector funding, estimated at \$880 million in 2022–23. Much like the Commonwealth, the bulk of this funding is provided through state and territory justice departments.

Funding from states and territories is intended primarily to enable legal assistance providers to support clients with state and territory legal matters. These include the bulk of criminal matters. However, Commonwealth and state and territory matters can be entwined. For example, a person may be charged with a drug importation crime (a Commonwealth matter) and firearms offence (a state or territory matter) in relation to the same activity.

Commonwealth, state and territory governments are providing funding to enable a timely response to emerging legal needs in areas affected by natural disasters.

For example, in response to 2020 bushfires in East Gippsland and North-East Victoria, the Victorian Government provided \$8 million in additional funding from 2019–20 to 2022–23. Local providers were funded to provide surge capacity for legal assistance and additional specialist capability in areas such as family violence, tenancy, social security, and credit card and financial stress (Victorian DJCS, 2022).

In the aftermath of the 2019-20 bushfires, the Commonwealth provided \$8.5 million from 2019–20 to 2020–21 to support delivery of legal assistance services in New South Wales, Queensland, Victoria and South Australia. In addition, the Commonwealth provided \$5.5 million from 2021–22 to 2022–23, and a further \$12 million from 2022–23 to 2025–26, to support delivery of legal assistance in the aftermath bushfires in 2020 and floods in 2022 in New South Wales and Queensland. These funds were delivered to the states through Federation Funding Agreements, separate from NLAP.

In addition to justice departments, other state and territory departments fund legal assistance providers, albeit relatively small and fairly targeted amount. An example is Western Australian Department of Energy, Mines, Industry Regulatory and Safety, funding of \$0.3 million in 2022–23 for Circle Green Community Legal to provide a triage service and social work support for people who have experienced workplace sexual harassment in the mining industry (WA DMIRS, 2022).

With the exception of Queensland, funding from state and territory governments is typically supplemented by income from public purpose funds (PPFs). In 2022–23, income from PPF is estimated to be \$80 million. These funds hold money on behalf of private sector clients in connection with providing legal services, typically conveyancing. Interest accrued from these deposits can be used for a variety of purposes, including funding the legal assistance sector, legal research and regulating the legal profession.

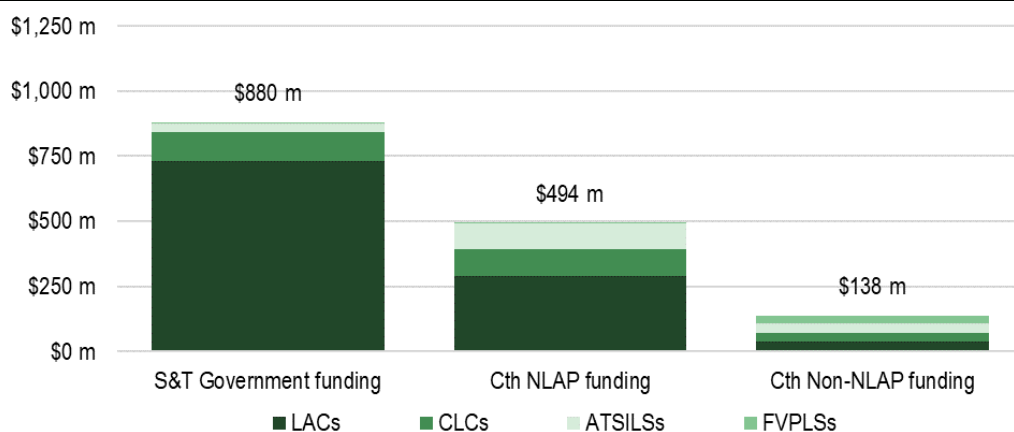
Income from PPFs increased between 2020-21 and 2022-23, largely as a result of rising interest rates. However, with stabilising interest rates, the Reviewer notes PPF income will likely revert to its long-term trend of gradual decline. This decline is mostly on the account of the growth in electronic conveyancing across the legal services industry, which results in lower levels of PPF balances and hence lower earnings. The Reviewer shares the view expressed in the PC Report that core funding of legal assistance providers should not depend on revenues PPFs and notes that, for similar reasons, the Queensland Government ceased using PPFs prior to the PC Report.

6.3 Funding breakdown, by subsector and funder

Significant effort has been made in attempting to compile a comprehensive picture of funding by subsector and over time. This challenge was also confronted by the Productivity Commission in 2013. The Review team requested data from Commonwealth state and territory governments, service providers and peaks to populate the 2022–23 funding snapshot presented in the sections below. In addition, budget papers and other relevant documentation were collated to source funding estimates. Analysis has drawn on sources deemed to be the most accurate, including submissions from state and territory governments and Commonwealth government agencies, and may therefore not represent estimates held by any single government agency. The information presented in this section is thus an estimate at best (most likely an underestimate), and highlights issues discussed in subsequent chapters regarding fragmented funding. Future reviews will not be so hampered if governments agree to implement recommendation 32.

In 2022–23, it is estimated the sector received \$1,513 million in funding. An analysis of funding by source shows most funding came from state and territory governments (\$880 million, or 58% of total funding), followed by Commonwealth NLAP funding (\$494 million, 33%), and Commonwealth non-NLAP funding (\$138 million, 9%).

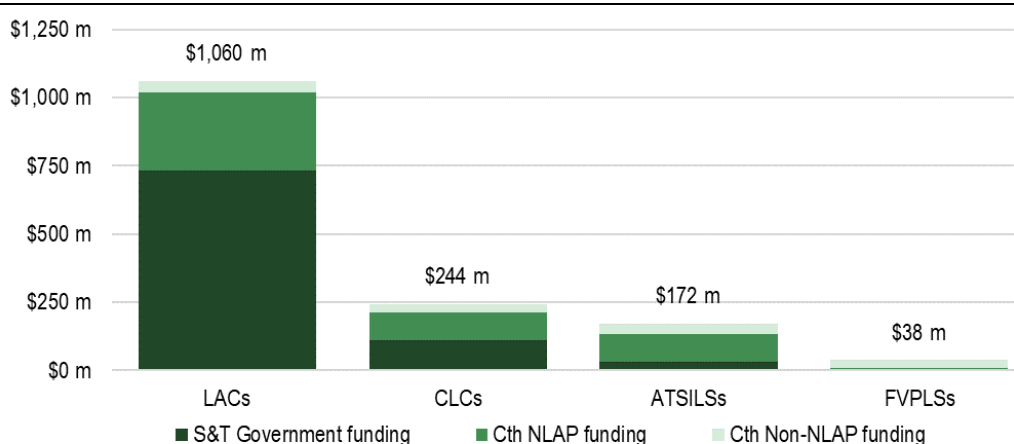
Figure 6.1 Legal assistance funding in 2022–23, by source



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

An analysis of funding by subsector shows most funding was directed to LACs (\$1,060 million, 70%), followed by CLCs (\$244 million, 16%), ATSILS (\$172 million, 11%) and FVPLS (\$38 million, 2%).

Figure 6.2 Legal assistance funding in 2022–23, by subsector

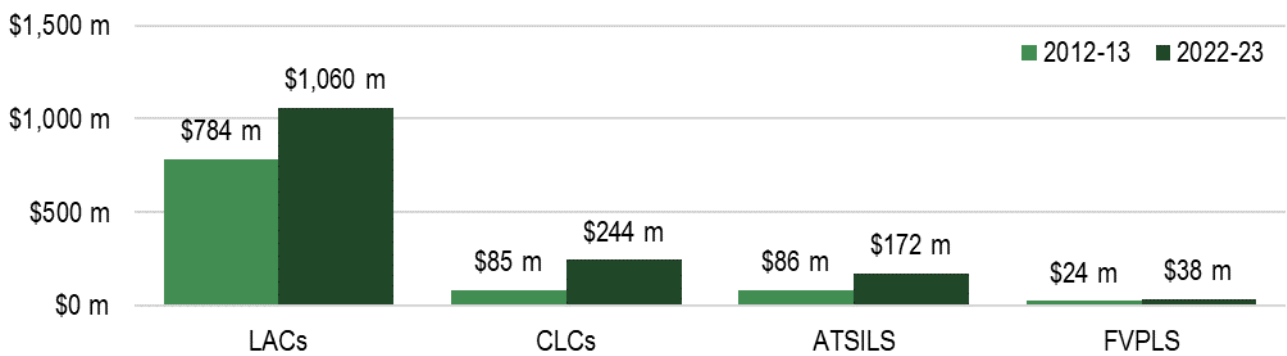


Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

From 2012–13 to 2022–23, overall sector funding has increased \$914 million to \$1,513 million in real terms. Funding growth has been broad-based, albeit at different rates:

- Funding for LACs grew from \$784 million to \$1,060 million, at a CAGR (compound annual growth rate) of 3%. Over this period, LACs' share of total funding fell from 80% to 70%.
- Funding for CLCs grew from \$85 million to \$244 million, at a CAGR of 11%. Over this period, CLCs' share of total funding increased from 9% to 16%.
- Funding for ATSILS grew from \$86 million to \$172 million, at a CAGR of 7%. Over this period, ATSILS' share of total funding increased from 9% to 11%.
- Funding for FVPLS grew from \$24 million to \$38 million, at a CAGR of 5%. Over this period, FVPLS' share of total funding remained unchanged at 5%.

Figure 6.3 Ten-year funding comparison (2022–23 prices)



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports; Access to Justice Arrangements Inquiry Report by the Productivity Commission

Figure 6.4 shows the funding breakdown for 2022–23 by jurisdiction and source. The ranked order of each jurisdiction’s share of total funding is as follows:

- New South Wales (\$493 million, 33% of total funding)
- Victoria (\$369 million, 24%)
- Queensland (\$276 million, 18%)
- Western Australia (\$168 million, 11%)
- South Australia (\$79 million, 5%)
- Northern Territory (\$60 million, 4%)
- Tasmania (\$34 million, 2%)
- Australian Capital Territory (\$29 million, 2%).

When compared against their population shares, Northern Territory received disproportionately more funding compared to other jurisdictions (4% of funding while only accounting for 1% of the national population). Alternatively, South Australia received 5% of funding, while accounting for 7% of the national population. For completeness, the share of national population (as at 30 June 2022) for each jurisdiction is listed below:

- New South Wales (31% of the overall population)
- Victoria (25%)
- Queensland (20%)
- Western Australia (11%)
- South Australia (7%)
- Tasmania (2%)
- Australian Capital Territory (2%)
- Northern Territory (1%).

Funding from state and territory governments makes up most sector funding in Victoria (68%), New South Wales (66% of total funding), Western Australia (55%), Australian Capital Territory (55%) and Queensland (51%).

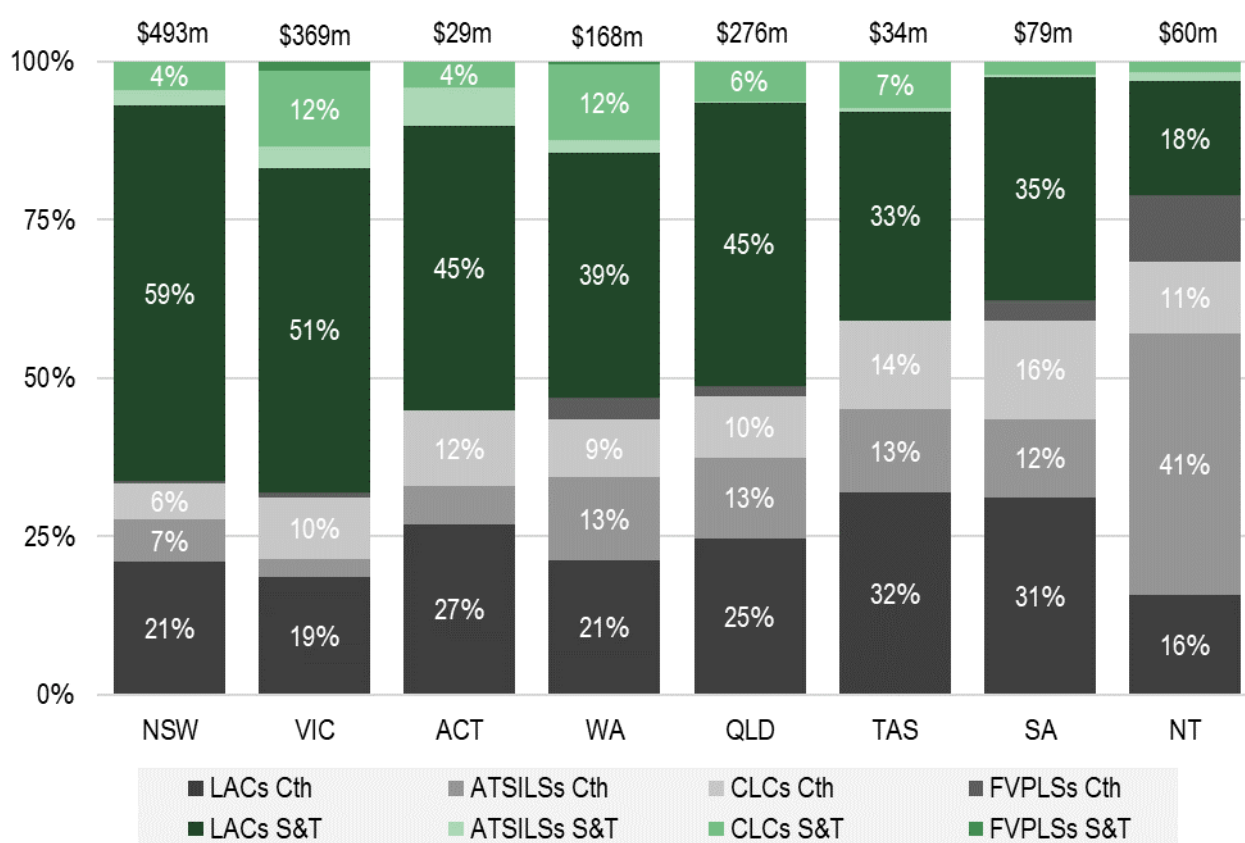
Conversely, Commonwealth funding accounts for most sector funding in Tasmania (59% of total funding%), South Australia (62%), and the Northern Territory (79%).

With the exception of Northern Territory, LACs account for the largest share of funding across all jurisdictions, representing between 60% (Western Australia) and 80% (New South Wales) of total funding. CLCs and ATSILS represent the second and third largest share of funding, respectively. Funding for CLCs can range between 10% (New South Wales) and 22% (Victoria) of total funding. Funding for ATSILS can range between 6% (Victoria) and 43% (Northern Territory).

Even though most FVPLS funding is directed to standalone FVPLS providers, it can also be provided to:

- *ATSILS*: ALS (NSW/ACT) in the Australian Capital Territory and TALS in Tasmania.
- *CLCs*: Far West CLC in New South Wales.
- *other ACCOs*: Yoorana Gunya Family Healing Centre Aboriginal Corporation and Gurehlgam Corporation Limited in New South Wales; Ngaanyatjarra Pitjantjatjara Yakunytjatjara Women's Council in the Northern Territory, Western Australia and South Australia; and Ngaanyatjarra Pitjantjatjara Yakunytjatjara Women's Council and Southern Aboriginal Corporation in Western Australia.

Figure 6.4 Legal assistance funding 2022–23, by jurisdiction and source



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

6.3.1 Funding for LACs

In 2022–23, LACs received \$1,060 million in funding. The Commonwealth contributed \$328 million (31%). The remaining \$732 million (69%) came from state and territory governments.

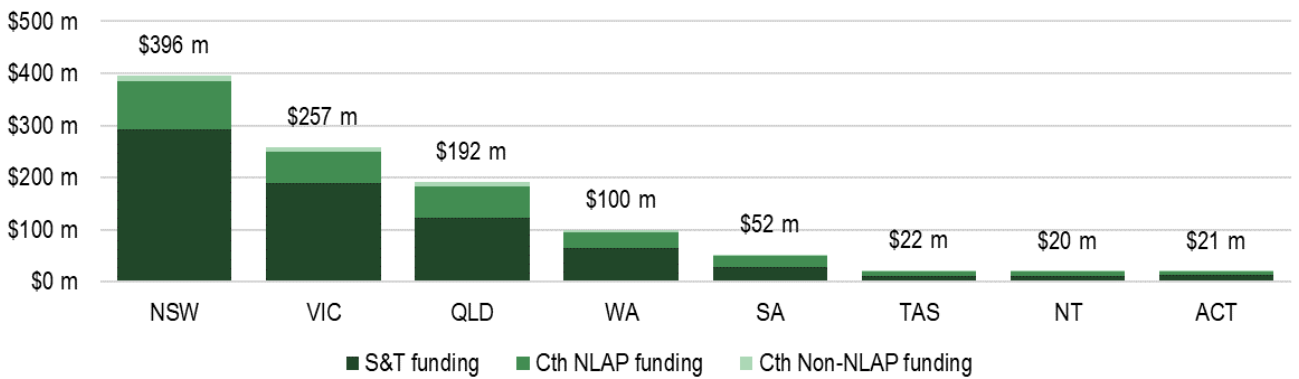
Of the \$328 million in Commonwealth funding in 2022–23, \$288 million was provided through the NLAP agreement and \$40 million through non-NLAP programs. Some larger non-NLAP programs include:

- Cross-Examination of Parties Scheme (\$15.0 million)
- National Disability Insurance Scheme (NDIS) Appeals Program (\$6.9 million)
- Afghanistan Inquiry Legal Assistance Scheme (\$5.5 million).

The breakdown of total LAC funding by state and territory is as follows:

- New South Wales (\$396 million, 37%)
- Victoria (\$257 million, 24%)
- Queensland (\$192 million, 18%)
- Western Australia (\$100 million, 9%)
- South Australia (\$52 million, 5%)
- Tasmania (\$22 million, 2%)
- Northern Territory (21 million, 2%)
- Australian Capital Territory (\$21 million, 2%).

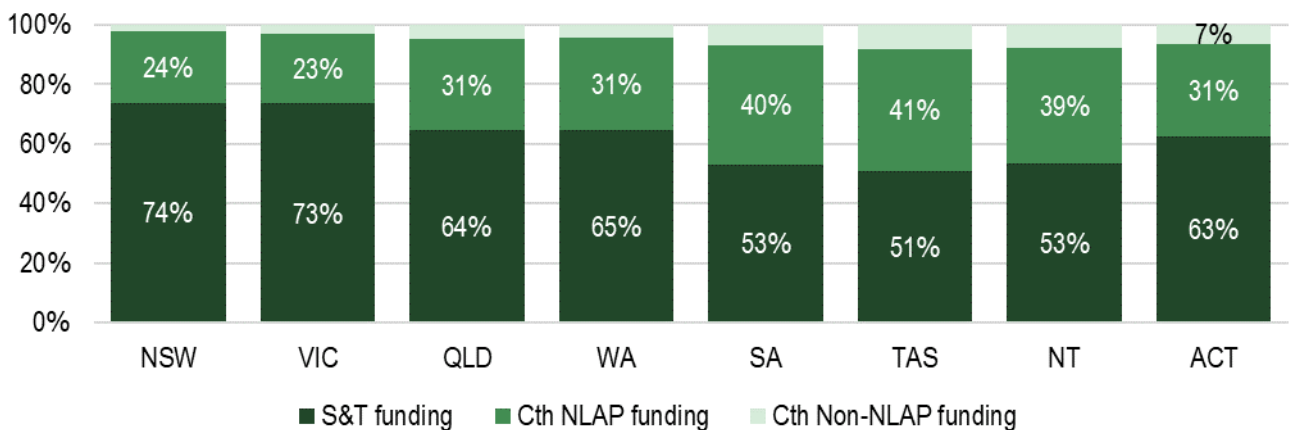
Figure 6.5 Funding for LACs in 2022–23, by jurisdiction



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

An analysis of funding by composition shows that, relative to Commonwealth government funding, the governments of New South Wales (74%) and Victoria (73%) contributed the highest share to LAC funding. Governments of Tasmania (51%), South Australia (53%) and Northern Territory (53%) made the lowest contributions relative to Commonwealth government funding.

Figure 6.6 Composition of funding for LACs in 2022–23, by jurisdiction



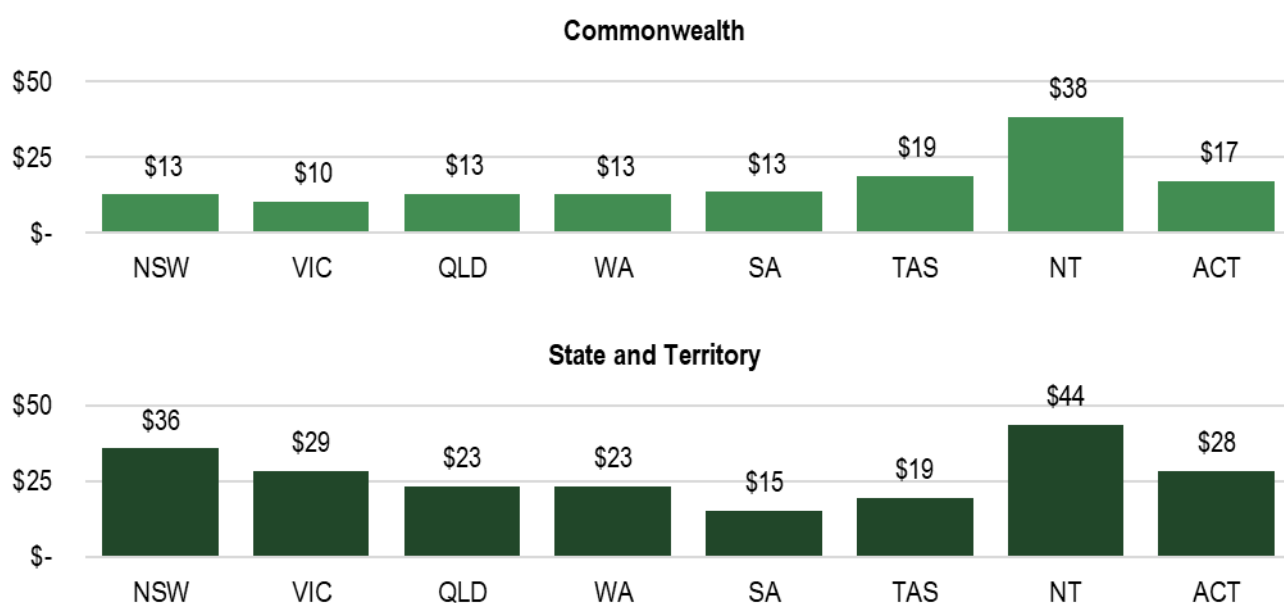
Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

Nationally, Commonwealth funding per capita to LACs is estimated at \$13 per person, whereas state and territory funding is \$28 per person.

The Northern Territory has the highest Commonwealth funding per capita at \$38 per person, double that of the next largest jurisdiction, Tasmania at \$19 per person. LACs in other jurisdictions received roughly the same amount of Commonwealth funding on a per capita basis, ranging between \$10 per person (Victoria) and \$17 per person (Australian Capital Territory).

The Northern Territory also has the highest state and territory funding per capita at \$44 per person. This is followed by New South Wales at \$36 per person and Victoria at \$29 per person. Conversely, South Australia has the lowest state and territory funding per capita at \$15 per person, followed by Tasmania at \$19 per person.

Figure 6.7 Funding for LACs per capita, by jurisdiction



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports; population estimates by the Australian Bureau of Statistics as at 30 June 2022

In addition to government funding, each person who receives legal representation may be required to pay an initial contribution toward their legal expenses. The amount of contribution, and whether it is applicable in the first place, is determined based on the person's means and the expected cost of the services (LANSW, 2023; VLA, 2023; LAQ, 2022; LAWA, 2018; LSCSA, 2023; TLA, 2023; NTLA, 2023; LAACT, 2023).

In certain situations, some people are required to make further additional payments or even fully repay the cost incurred. These circumstances include the recovery of large sums of funds or a substantial improvement in financial circumstances at the conclusion of the case.

These contributions are commonly referred to as 'self-generated income', and amounted to \$68 million in 2022–23 (or 6% of LACs revenue in that year).

6.3.2 Funding for CLCs

In 2022–23, CLCs received \$244 million in funding. The Commonwealth contributed \$135 million (48%), and the remaining \$147 million (55%) came from state and territory governments.

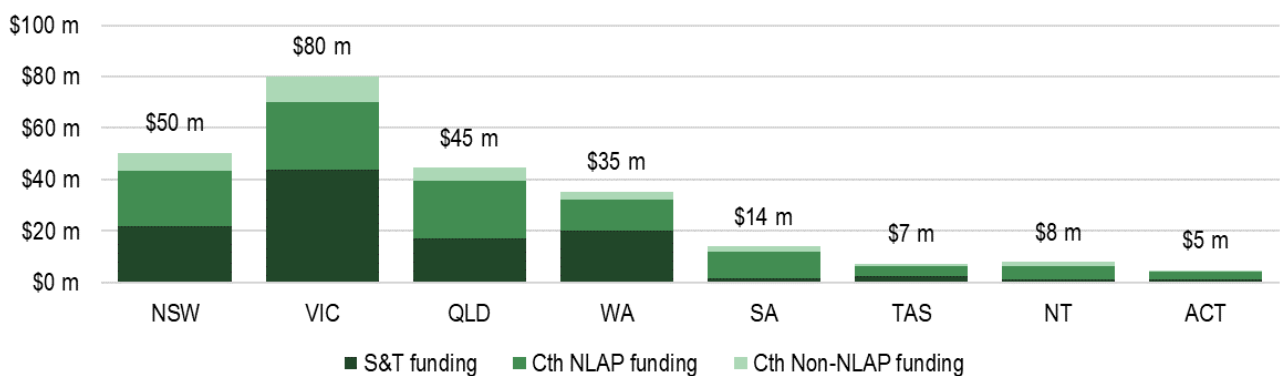
Of \$135 million in Commonwealth funding in 2022–23, \$105 million was provided through the NLAP agreement, and \$30 million through non-NLAP programs. Key non-NLAP programs include:

- Funding for Working Women’s Centres (\$7.3 million)
- Community Legal Services Program (\$3.1 million)
- Environmental Defenders Office and Environmental Justice Australia Program (\$2.0 million).

The breakdown of CLC funding by state and territory is as follows:

- New South Wales (\$50 million, 21%)
- Victoria (\$80 million, 33%)
- Queensland (\$45 million, 18%)
- Western Australia (\$35 million, 14%)
- South Australia (\$14 million, 6%)
- Northern Territory (\$8 million, 3%)
- Tasmania (\$7 million, 3%)
- Australian Capital Territory (\$5 million, 2%).

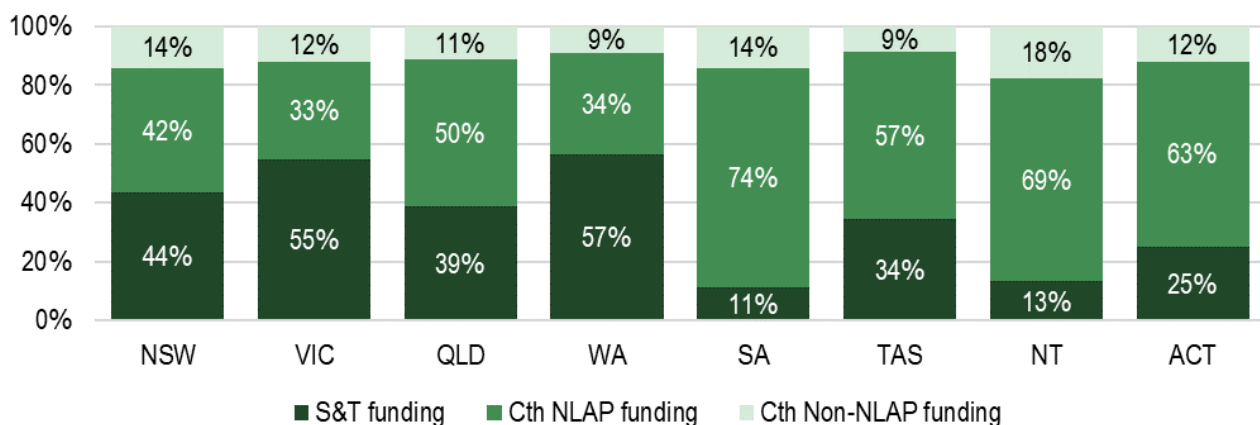
Figure 6.8 Funding for CLCs in 2022–23, by jurisdiction



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

An analysis of funding by composition shows that state and territory governments in Western Australia (57%) and Victoria (55%) made up a large proportion of funding. Governments in South Australia (11%) and Northern Territory (13%) made the lowest contributions relative to Commonwealth government funding.

Figure 6.9 Composition of funding for CLCs in 2022–23, by jurisdiction



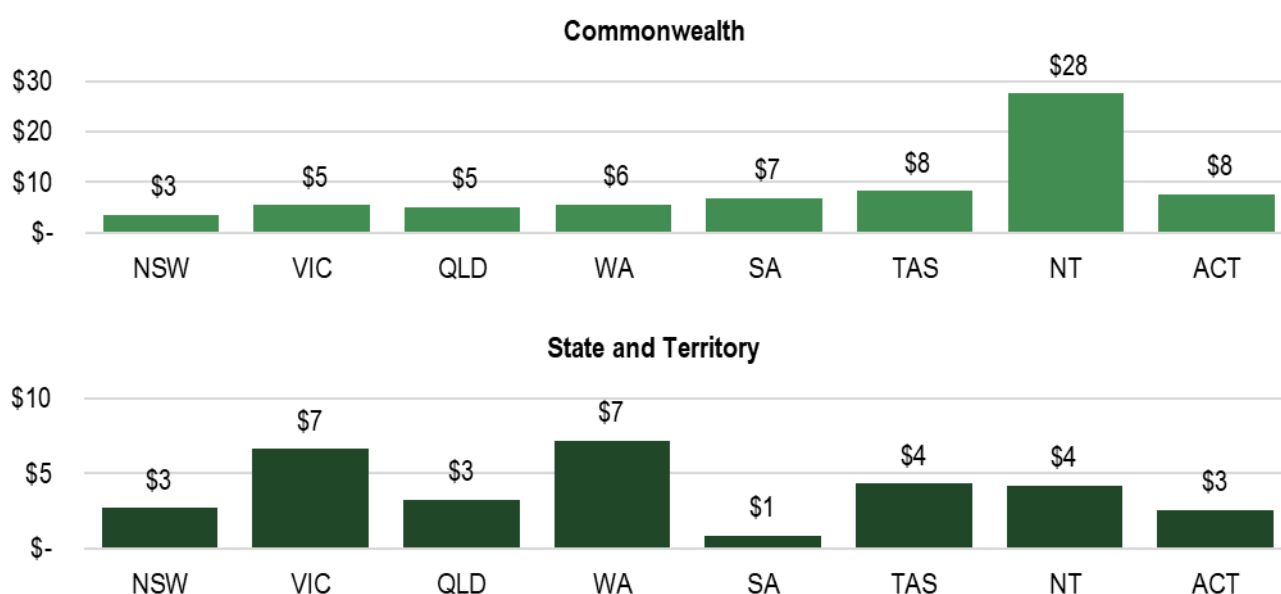
Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

Nationally, Commonwealth funding per capita to CLCs is estimated at \$5 per person, whereas state and territory funding per capita is \$4 per person.

The Northern Territory has the highest Commonwealth funding per capita at \$28 per person, 3.5 times that of the next largest jurisdictions, Tasmania and Australian Capital Territory. CLCs in the remaining jurisdictions received roughly the same amount of Commonwealth funding on a per capita basis, ranging between \$3 per person (New South Wales) and \$8 per person (Tasmania and Australian Capital Territory).

Victoria and Western Australia are tied for the highest state and territory funding per capita at \$7 per person, respectively. Conversely, South Australia has the lowest state and territory funding per capita at \$1 per person. This is followed by Queensland, New South Wales and the Australian Capital Territory, each at \$3 per person.

Figure 6.10 Funding for CLCs per capita, by jurisdiction



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports population estimates by the Australian Bureau of Statistics as at 30 June 2022

Aside from government funding, CLCs also receive philanthropic funding, though it is relatively small for most service providers. The Reviewer estimates that in 2021–22, philanthropic funding amounted to 3% of total revenue for CLCs.

There are however, select CLCs where philanthropic funding accounts for a large share of their funding. Examples of the upper end of the range include Environmental Defenders' Office (41% of revenue), Arts Law Centre (7% of revenue), and Refugee and Immigration Legal Service (6% of revenue). It is observed that CLCs that can attract significant philanthropic funding are mostly specialist centres as the targeted nature of their work provides a compelling case for prospective donors to invest. The Reviewer would observe there is a reasonable degree of correlation between those CLCs receiving significant philanthropic funding and those with significant (law firm) pro bono support, the value of which has not been costed on a sector-wide basis.

6.3.3 Funding for ATSILS

In 2022–23, ATSILS received \$172 million in funding. The Commonwealth contributed \$140 million (81%). The remaining \$32 million (19%) came from state and territory governments, primarily New South Wales and Victoria.

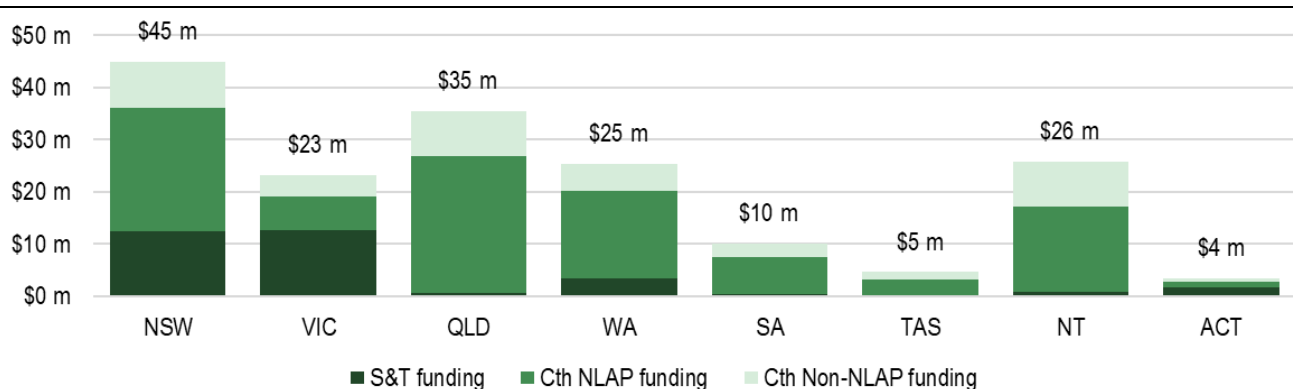
Of \$140 million in Commonwealth funding, \$100 million was provided through the NLAP agreement and \$40 million through non-NLAP funding sources. Key non-NLAP programs include:

- Community Legal Services Program (\$21.6 million in 2022–23)
- Adult Through Care (ATC) and Youth Through Care (YTC) (\$9.6 million in 2022–23)
- Custody Notification Services (\$4.5 million in 2022–23).

The breakdown of ATSILS funding by state and territory is as follows:

- New South Wales (\$45 million, 26%)
- Queensland (\$35 million, 21%)
- Northern Territory (\$26 million, 15%)
- Western Australia (\$25 million, 15%)
- Victoria (\$23 million, 14%)
- South Australia (\$10 million, 6%)
- Tasmania (\$5 million, 3%)
- Australian Capital Territory (\$4 million, 2%).

Figure 6.11 Funding for ATSILS in 2022–23, by jurisdiction

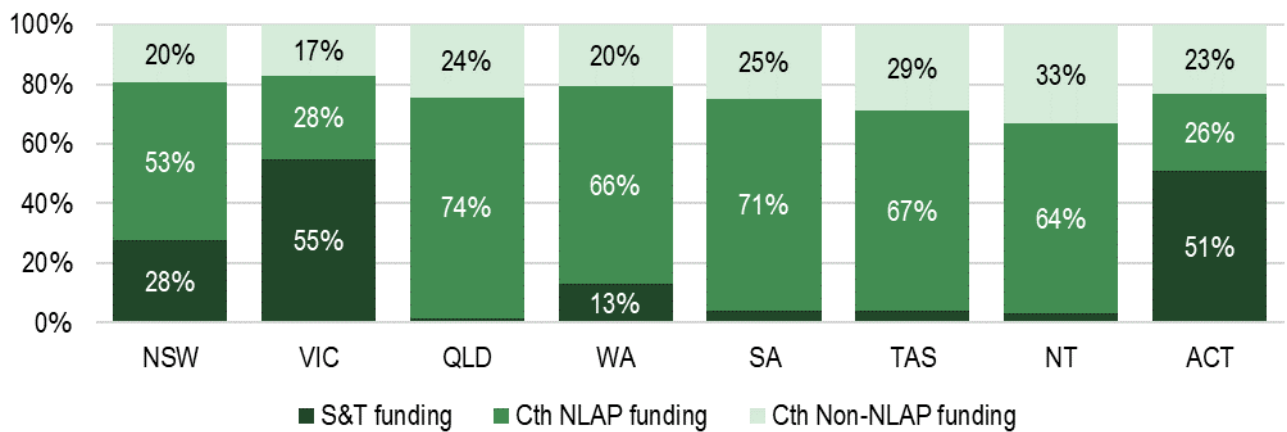


Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

An analysis of funding by composition shows state and territory governments in Victoria (55%), Australian Capital Territory (51%), New South Wales (28%) and Western Australia (13%) contributed the highest share to ATSILS funding. Governments in Queensland (2%), Northern Territory (3%), South Australia (4%) and Tasmania (4%) made *de minimus* contributions relative to Commonwealth government funding and those of other jurisdiction governments. The Reviewer struggles to see how such small contributions can be seen as consistent with those governments' commitments under the National Agreement on Closing the Gap.

The Reviewer notes these proportions can change significantly from year to year. For example, the 2023–24 Queensland State Budget will provide \$9.2 million in funding (up from \$0.6 million in 2022–23) to 'increase service delivery capacity and to implement a more competitive salary structure across every position within the business' (ATSILS (QLD), 2023). The remuneration of ATSILS staff is addressed at length in chapter 8.

Figure 6.12 Composition of funding for ATSILS in 2022-23, by jurisdiction



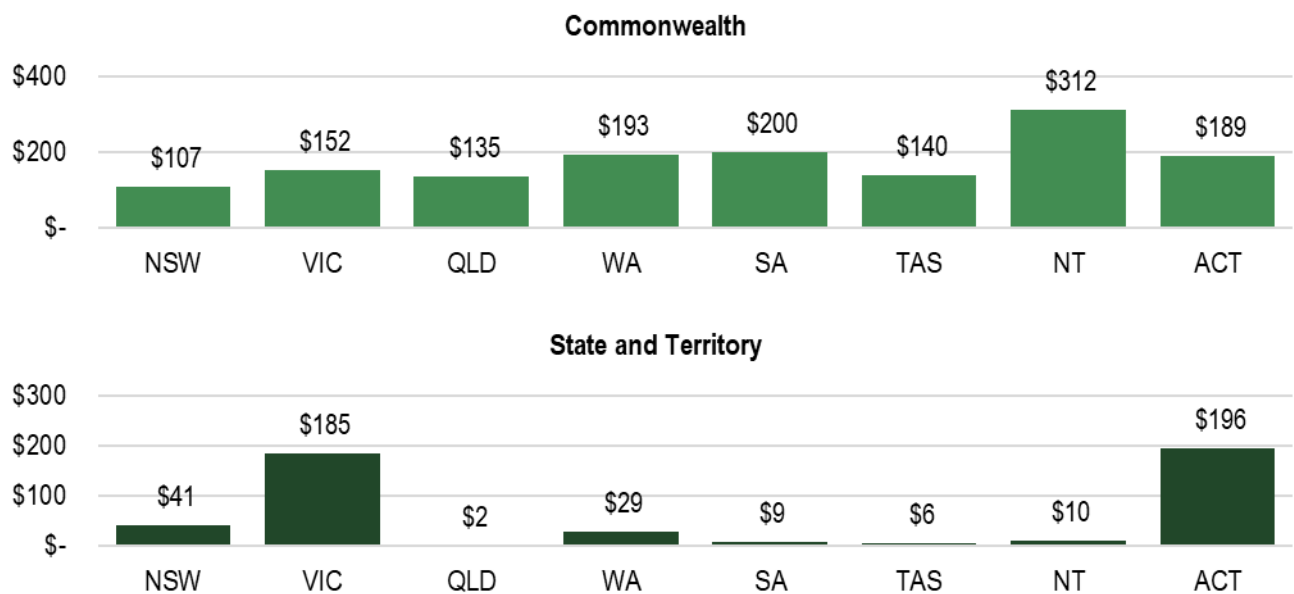
Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

Nationally, Commonwealth funding per capita to ATSILS is estimated at \$154 per Aboriginal and Torres Strait Islander person. State and territory funding per capita is \$35 per Aboriginal and Torres Strait Islander person.

Northern Territory has the highest Commonwealth funding per capita at \$312 per Aboriginal and Torres Strait Islander person, followed by South Australia at \$200 per person and Western Australia at \$193 per person. Conversely, New South Wales has the lowest Commonwealth ATSILS funding per capita at \$107 per Aboriginal and Torres Strait Islander person with Queensland being funded by the Commonwealth at \$135 per Aboriginal and Torres Strait Islander person, and Tasmania at \$140 per Aboriginal and Torres Strait Islander person.

Australian Capital Territory and Victoria had the highest state and territory funding per capita (\$193 and \$185 per Aboriginal and Torres Strait Islander person, respectively). This is significantly higher than the next two largest jurisdictions: New South Wales at \$41 per Aboriginal and Torres Strait Islander person and Western Australia at \$29 per Aboriginal and Torres Strait Islander person. The remaining jurisdictions provide less than \$10 per Aboriginal and Torres Strait Islander person.

Figure 6.13 Funding for ATSILS per Aboriginal and Torres Strait Islander person in 2022–23, by jurisdiction



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports; population estimates by the Australian Bureau of Statistics as at 30 June 2022

ATSILS report that some state governments have backtracked on amounts of allocated funding, even when funding allocations have been contractually agreed upon. As noted in the Victorian Aboriginal Legal Service submission:

We have been discussing expanding our place-based services... Over the last 6 years, we have had signed letters from the current Attorney-General of Victoria and their predecessor signalling that they supported our plan and would look to fund it imminently. We had initially funded the expansion of our local offices at about \$5 million up front, plus \$6 million per annum over the 4 years forward estimates...However, in Victoria's 2020-21 budget, VALS was given just \$2 million over 2 years to trial new office sites. In Victoria's 2021-22 budget we were again given \$2 million over 2 years to trial new sites. There was no funding provided for our place-based services in Victoria's 2022-23 budget, although the Victorian Government agreed to find funding out of the budget cycle through DJCS' budget.

Submission, Victorian Aboriginal Legal Service, sub.138, p 30

While some ATSILS receive state and territory funding for non-core legal services, including Closing the Gap programs, current funding arrangements in most jurisdictions highlight the fact that most jurisdictions see ATSILS funding as a Commonwealth responsibility. It is not – this issue is discussed further in section 10.3.2.

6.3.4 Funding for FVPLS

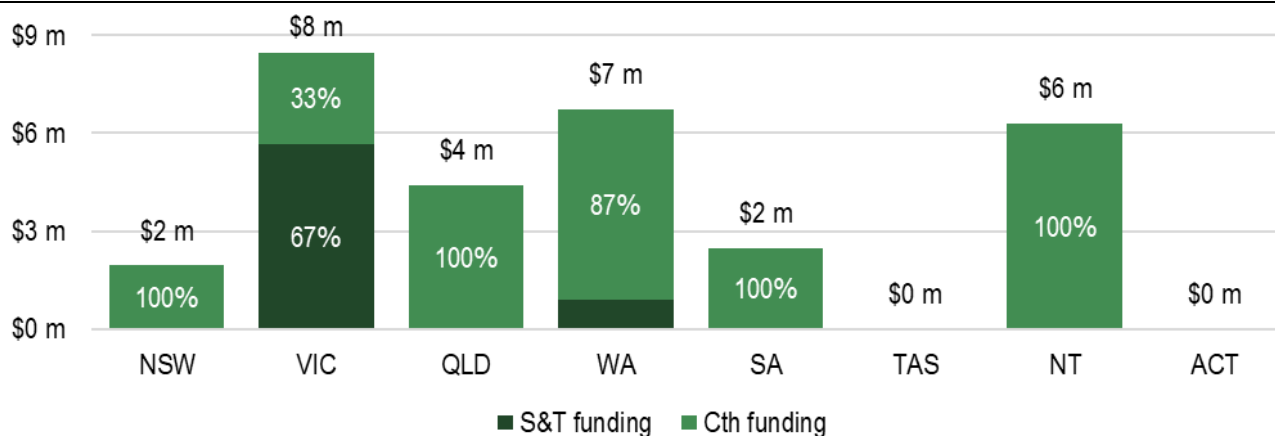
In 2022–23, FVPLS received \$31 million in funding. The Commonwealth contributed \$24 million (78%). The remaining \$7 million (22%) came from state and territory governments.

The breakdown of FVPLS funding by state and territory is as follows:

- Victoria (\$8 million, 28%)
- Western Australia (\$7 million, 22%)
- Northern Territory (\$6 million, 21%)
- Queensland (\$4 million, 15%)

- South Australia (\$3 million, 8%)
- New South Wales (\$2 million, 6%).

Figure 6.14 Funding for FVPLS in 2022-23, by jurisdiction



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports

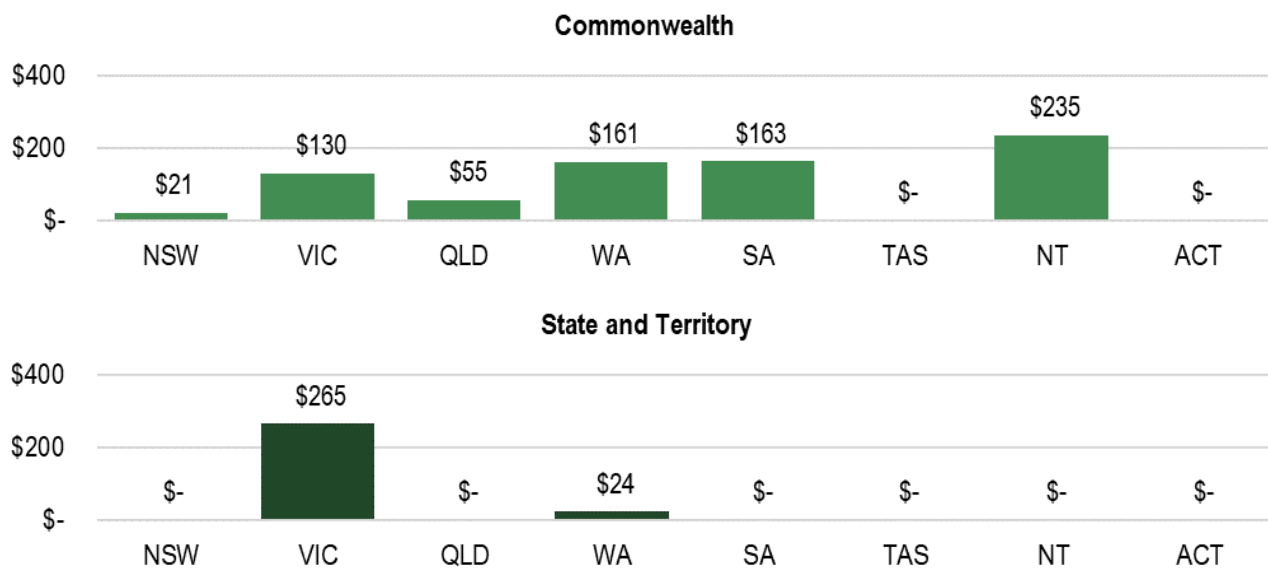
Note: This chart only presents funding data pertaining to standalone FVPLS providers. For example, while Tasmania and Australia Capital Territory do receive FVPLS funding, this is through their local ATSILS and as such is omitted from this chart.

When considered by jurisdiction, except for Victoria and Western Australia, FVPLS is wholly funded by the Commonwealth. State and territory funding accounts for 67% of FVPLS funding in Victoria and 13% in Western Australia.

Nationally, Commonwealth funding per capita to FVPLS is estimated at \$83 per person. The Northern Territory has the highest funding per capita at \$235 per Aboriginal and Torres Strait Islander woman, followed by South Australia at \$163 per Aboriginal and Torres Strait Islander woman, and Western Australia at \$161 per Aboriginal and Torres Strait Islander woman. Conversely, New South Wales and Queensland had the lowest Commonwealth funding per capita at \$21 per Aboriginal and Torres Strait Islander woman and \$55 per Aboriginal and Torres Strait Islander woman, respectively.

State and territory funding per capita is \$23 per Aboriginal and Torres Strait Islander woman. This is only relevant for two jurisdictions: Victoria at \$265 per Aboriginal and Torres Strait Islander woman and Western Australia at \$24 per Aboriginal and Torres Strait Islander woman.

Figure 6.15 Funding for FVPLS per Aboriginal and Torres Strait Islander women, by jurisdiction



Source: Confidential data held by Commonwealth and state and territory departments; budget documents; service provider annual reports; population estimates by the Australian Bureau of Statistics as at 30 June 2022

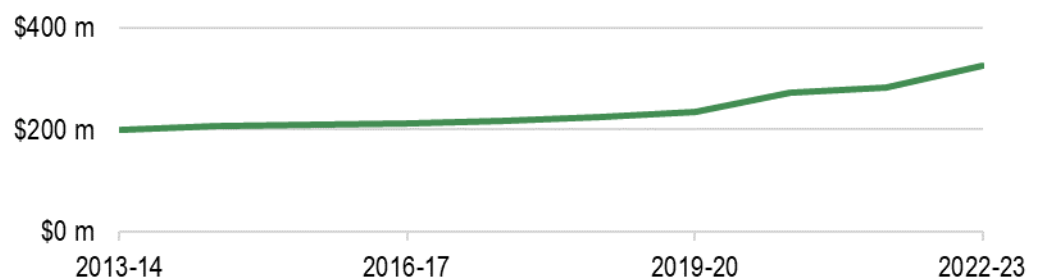
Note: This chart only presents funding data pertaining to standalone FVPLS providers. For example, while Tasmania and Australia Capital Territory do receive FVPLS funding, this is through their local ATSILS and as such, omitted from this chart.

6.4 Commonwealth funding levels over time

6.4.1 Funding levels for LACs

Over the past decade, Commonwealth funding for LACs has increased from \$201 million in 2013–14, to \$328 million in 2022–23. Between 2013–14 and 2019–20, Commonwealth funding grew steadily at a CAGR of roughly 3%. However, growth in Commonwealth funding has since accelerated, increasing at a CAGR of 11% from 2020–21 onwards. This rapid increase is mostly on the back of NLAP funding, though in 2022–23, there was a spike in Commonwealth non-NLAP funding, specifically the Cross-Examination of Parties Scheme.

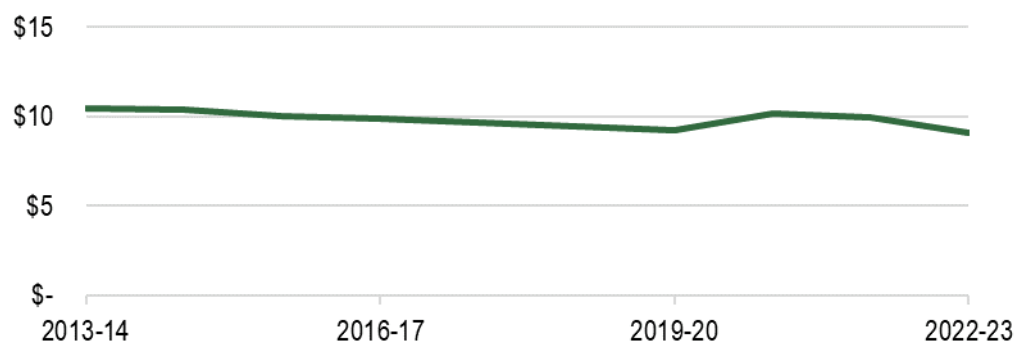
Figure 6.16 Commonwealth funding for LACs (current prices)



Source: Confidential data held by Commonwealth departments; service provider annual reports

Nationally, LAC funding per capita is estimated at \$9.10 per person. From 2013–14 to 2022–23, real Commonwealth baseline funding to LACs has decreased from \$10.40 to \$9.10 per person. Given the overall Australian population has grown over this period, this decline is mostly on account of stagnant real Commonwealth baseline funding.

Figure 6.17 Commonwealth baseline funding for LACs per person (2022–23 prices)



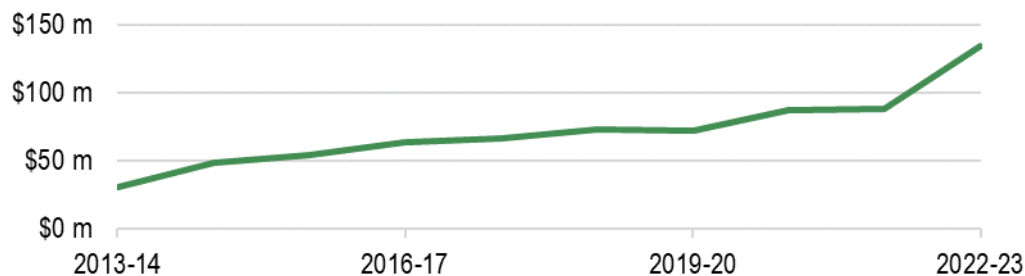
Source: Confidential data held by Commonwealth departments; population estimates by the Australian Bureau of Statistics as at 30 June 2022.

Note: Commonwealth baseline funding is a subset of total Commonwealth funding; hence, the results presented here are not comparable to those in Figure 6.7.

6.4.2 Funding levels for CLCs

Over the past decade, Commonwealth funding for CLCs has increased from \$31 million in 2013–14, to \$135 million in 2022–23. Between 2013–14 and 2019–20, Commonwealth funding grew steadily at a CAGR of roughly 15%. However, growth in Commonwealth funding has since accelerated, increasing at a CAGR of 23% from 2020–21 onwards. Changes in funding from 2020–21 onwards mostly reflect movements in NLAP funding.

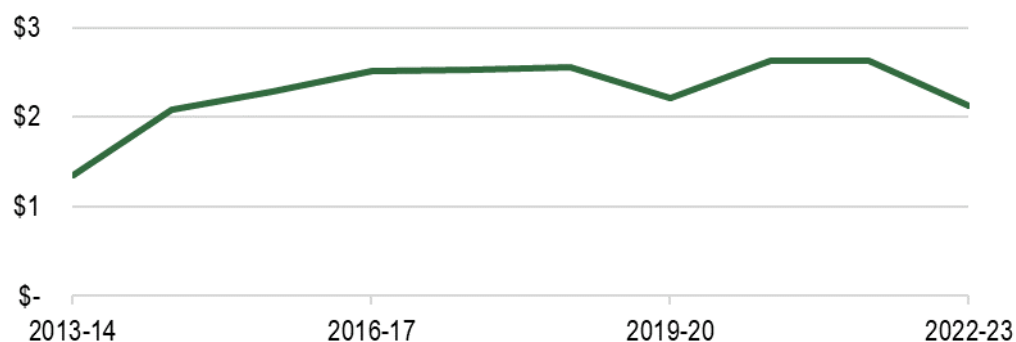
Figure 6.18 Commonwealth funding for CLCs (current prices)



Source: Confidential data held by Commonwealth and state and territory departments; service provider annual reports

Nationally, CLC funding per capita is estimated at \$2.10 per person. Since rapid growth in 2014–15, real Commonwealth baseline funding to CLCs has been largely stable, fluctuating around an average \$2.40 per person. This suggests the increase in real Commonwealth baseline funding has mostly kept pace with the overall Australian population over this period.

Figure 6.19 Commonwealth baseline funding for CLCs per person (2022–23 prices)



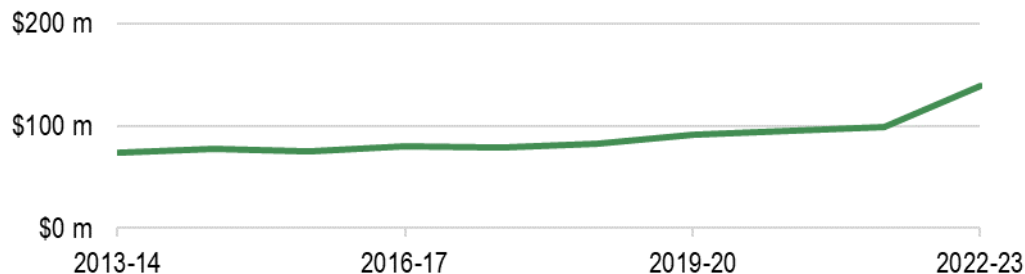
Source: Confidential data held by Commonwealth departments; population estimates by the Australian Bureau of Statistics as at 30 June 2022

Note: Commonwealth baseline funding is a subset of total Commonwealth funding; hence, the results presented here are not comparable to those in Figure 6.10.

6.4.3 Funding levels for ATSILS

Over the past decade, Commonwealth funding for ATSILS has increased from \$74 million in 2013–14, to \$140 million in 2022–23. Between 2013–14 and 2021–22, Commonwealth funding has steadily increased at a CAGR of 4%. However, Commonwealth funding spiked in 2022–23, mostly due to non-NLAP funding, specifically the Community Legal Services Program through which NATSILS was funded to perform sector coordination and support activities.

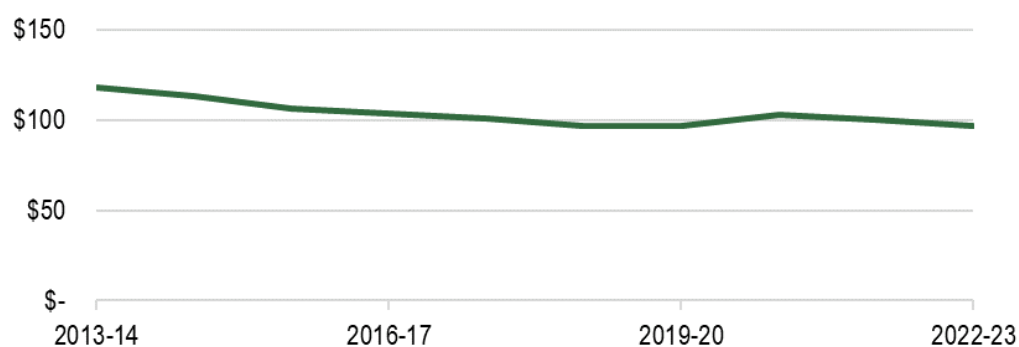
Figure 6.20 Commonwealth funding for ATSILS (current prices)



Source: Confidential data held by Commonwealth departments; service provider annual reports

Nationally, ATSILS funding per capita is estimated at \$190 per person. From 2013–14 to 2022–23, real Commonwealth baseline funding to ATSILS has decreased from \$118 to \$97 per Aboriginal and Torres Strait Islander person. Given the Aboriginal and Torres Strait Islander population has grown over this period, this decline is mostly on account of stagnant real Commonwealth baseline funding.

Figure 6.21 Commonwealth baseline funding for ATSILS per Aboriginal and Torres Strait Islander person (2022–23 prices)



Source: Confidential data held by Commonwealth departments; population estimates by the Australian Bureau of Statistics as at 30 June 2022

Note: Commonwealth baseline funding is a subset of total Commonwealth funding; hence, the results presented here are not comparable to those in Figure 6.13.

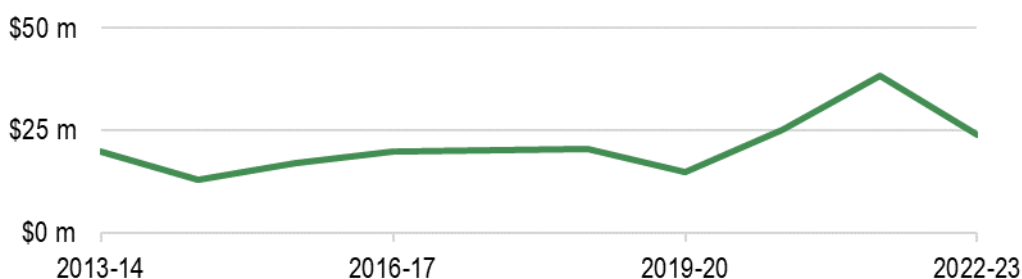
The Reviewer has found negligible increases to NLAP core funding for ATSILS have been insufficient to keep up with inflation and increased operational costs. As an example, the ALS (NSW/ACT) submission noted that for financial year 2024–2025, annual funding increase is benchmarked at 2.5%. This has raised significant concerns about organisational and operational viability of ALS (NSW/ACT), particularly given high rates of inflation and increasing service demand (ALS (NSW/ACT), sub.140 p. 7). Increased annual funding for Northern Aboriginal Alliance Justice Association has accounted for growth in costs of just over 1% per year, while rates of inflation reached 6% in 2023. Inadequate annual indexation compounds ATSILS ability to manage their cost base.

ATSILS funding over time has been static and unresponsive to the dynamic nature of legal assistance needs and ATSILS service provision. Variables such as increased travel costs associated with greater demand for legal assistance in RRR regions, sudden policy or legislative changes driving demand for legal assistance, and other economic, policy and demographic variables over time, are not considered in current ATSILS funding arrangements.

6.4.4 Funding levels for FVPLS

From 2013–14 to 2022–23, Commonwealth funding for FVPLS increased from \$19 million to \$24 million. From 2013–14 to 2014–15, Commonwealth funding decreased significantly from \$19 million to \$13 million. However, this decline was short-lived. From 2015–16 to 2018–29, Commonwealth funding steadily increased from \$13 million to \$21 million, or a CAGR of 12%. There was another funding decrease in 2019–20, but again the reduction in funding was temporary as Commonwealth funding rebounded over the next three years to reach record levels.

Figure 6.22 Commonwealth funding for FVPLS (current prices)

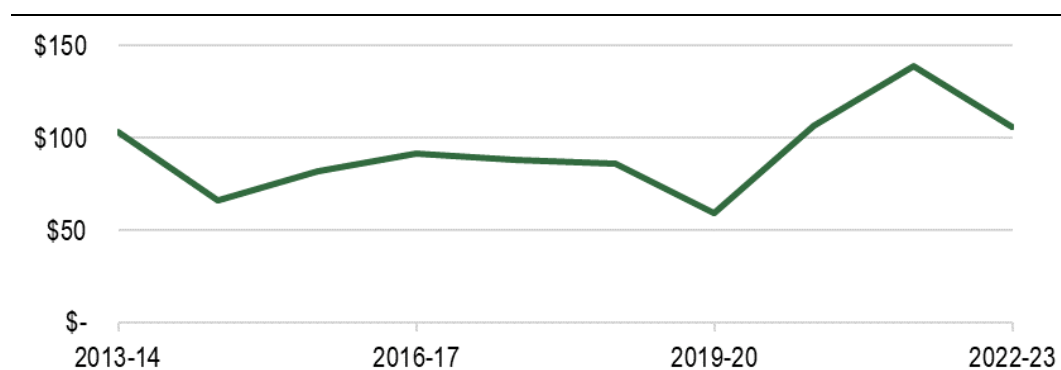


Source: Confidential data held by Commonwealth departments; service provider annual reports

From 2013–14 to 2014–15, real Commonwealth funding to FVPLS decreased from \$103 to \$66 per Aboriginal and Torres Strait Islander women. This decline proved transient, as real per capita funding rebounded over the next two years, reaching \$92 per Aboriginal and Torres Strait Islander woman in 2016–17.

Real per capita funding then gradually declined, and by 2019–20 it had fallen to a new low of \$59 per Aboriginal and Torres Strait Islander women. However, real per capita funding has since recovered, even reaching a new record of \$139 per Aboriginal and Torres Strait Islander woman in 2021–22 then falling back to the same real per capita level as it was in 2013–14. This was a result of additional funding provided by the Commonwealth in recognition of the demands placed on FVPLS due to the rising cost of providing critical frontline services, and the need to increase capacity to provide culturally appropriate legal assistance in coronial inquiries.

Figure 6.23 Commonwealth funding for FVPLS per Aboriginal and Torres Strait Islander woman (2022–23 prices)



Source: Confidential data held by Commonwealth departments; population estimates by the Australian Bureau of Statistics

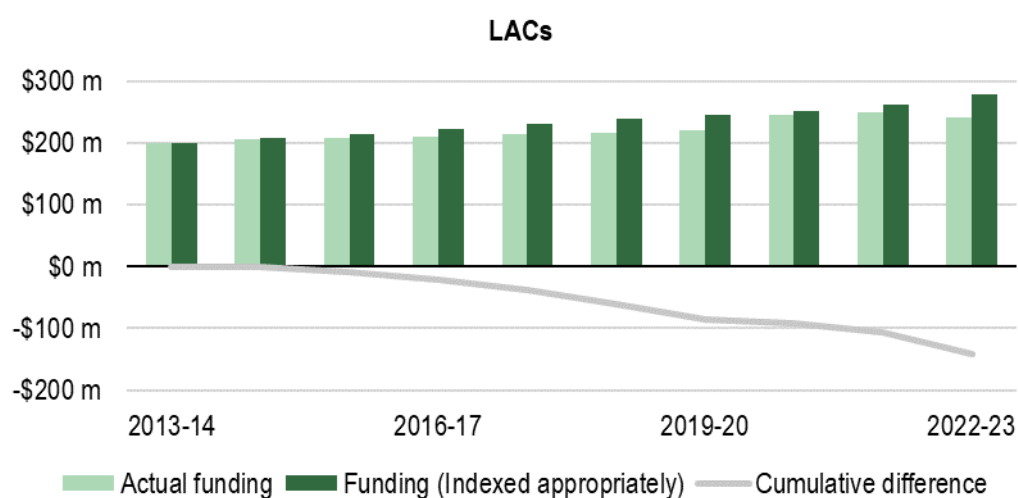
6.5 Funding adequacy over time

The Reviewer considers indexation arrangements in NLAP and its predecessor agreements have not properly funded cost increases that service providers have faced. This is in part due to a generally unforeseen macroeconomic environment impacting on prices, but also a failure to provide for increases in demand.

Consistent with recommendation 21, actual expenditure in 2013–14 has been indexed at the sum of historical growth in demand and prices. In doing this, consistent with the PC Report, the Reviewer does not consider that funding provided in 2013–14 was adequate. Growth in demand is based on historical general population growth for LACs, and Aboriginal and Torres Strait Islander population growth for ATSILS. Meanwhile, the change in prices is determined with a weighting of 80% on historical growth in the Wage Price Index (WPI) and 20% on Consumer Price Index (CPI).

For LACs, the Reviewer estimates that from 2013–14 to 2022–23, service providers received on average \$16 million per annum less than necessary to cover cost of service delivery. This is equivalent to a cumulative shortfall of \$143 million over the period.

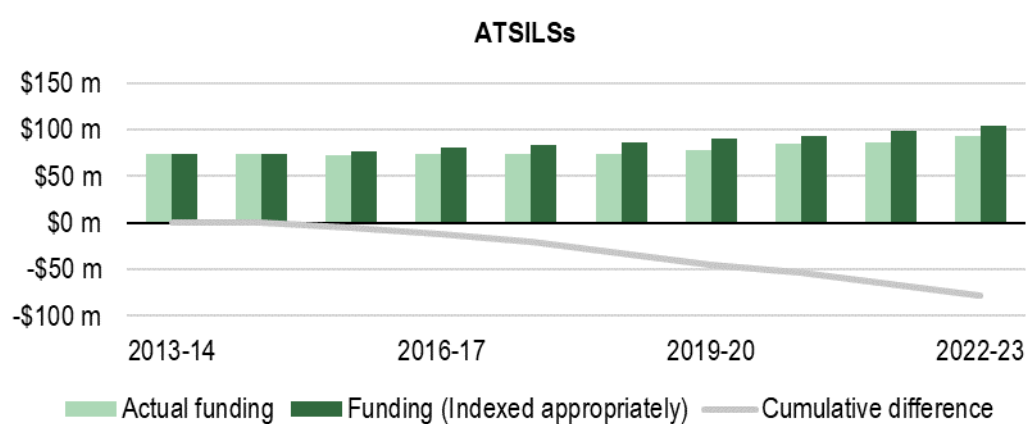
Figure 6.24 Commonwealth baseline funding for LACs



Source: Confidential data held by Commonwealth and state and territory departments; service provider annual reports; population estimates by the Australian Bureau of Statistics as at 30 June 2022.

Similarly, for ATSILS, the Reviewer estimates that from 2013–14 to 2022–23, service providers received on average \$9 million per annum less than necessary to cover cost of service delivery. This is equivalent to a cumulative shortfall of \$82 million over the period.

Figure 6.25 Commonwealth baseline funding for ATSILS



Source: Confidential data held by Commonwealth and state and territory departments; service provider annual reports; population estimates by the Australian Bureau of Statistics

The Reviewer has been unable to undertake a similar analysis for CLCs and FVPLS given significant funding spikes at various points over the past decade making it difficult to distinguish between growth in funding associated with indexation and step changes.

Despite this, the Reviewer is still inclined to the view that current indexation arrangements for these subsectors are also insufficient. The Reviewer has heard that the general approach to indexation for the sector only captures price changes (and does not include population growth) over time. This is corroborated by the submissions.

Funding models

7

Box 7.1 Key points

- The NLAP funding model is broken and should be abandoned. It lacks adequate estimates of the legal need governments wish to address, and the efficient costs service providers must incur to provide services in safe, holistic and culturally appropriate ways.
- All legal assistance providers have experienced significant funding fragmentation. This has created problems in attracting and retaining staff, community engagement and investment in systems. Consolidating the majority of funding streams into baseline funding will assist in addressing these issues.
- Competitive tendering has done harm to Australia's legal assistance sector. It has undermined collaboration, incurred unnecessary costs and created inefficiencies. Governments should revert to more focussed, collaborative administrative processes for future distribution of new funding.
- A 'base, step, trend' approach commonly used by utilities regulators should be adopted for A2JP:
 - *Base* involves determining the funding each service provider needs to efficiently provide their current expected service offering in safe, holistic and culturally appropriate ways
 - *Step* involves providing funding for additional services recommended by the Reviewer that governments choose to provide
 - *Trend* provides funding over the life of A2JP to ensure funding maintains real unit costs of services contained in the base and step. This involves indexation at the sum of expected rate of growth in cohort population and a blended price index.
- The demand for services of legal assistance providers is often not considered, let alone funded, when governments and courts change laws and procedures. The proposed Legal Assistance Impact Assessment will ensure providers are funded to respond to such changes.

This chapter discusses current funding approaches under NLAP and proposes an alternative model more likely to deliver access to justice for Australians in need.

7.1 Current funding model

Submissions received by the Review are replete with evidence that current funding of the legal assistance sector is inadequate for the sector to deal with mounting cost pressures and increased demand and complexity.

This is not a new issue. In 2014 the PC Report made the following recommendation:

For the medium and longer term, the Australian, State and Territory Governments should agree on priorities for legal assistance services and should provide adequate funding so that these priorities can be broadly realised. Such funding should be stable enough to allow for longer term planning, and flexible enough to accommodate the anticipated reduction in other sources of funding (particularly Public Purpose Funds or equivalents) in coming years.

Submissions and evidence presented in chapter 6 demonstrate conclusively that this recommendation has not been implemented. Notwithstanding a lack of precision in priorities and desired outcomes, current levels of funding are not adequate to meet service expectations that governments and communities have of the legal assistance sector.

7.1.1 Funding distribution models

As the name suggests, Funding Distribution Models (FDMs) distribute funding between jurisdictions. The distribution should, as set out in clause 62 and 71 of the NLAP agreement, be 'evidence based'.

Regrettably, there is no evidence before the Reviewer about how total funding to be distributed was determined in the first place, nor what semblance it bears towards the underlying costs faced by legal assistance providers, nor about the level and types of legal need they seek to address. It is likely total available Commonwealth funding provided to service providers, in many cases via the states and territories, ultimately reflects competing Commonwealth fiscal priorities. The same can be said of state and territory funding. A better approach would be for the Commonwealth to explicitly identify what legal need it seeks to address and commit to fund that in the long-term. But as discussed in chapter 4, the state of knowledge about legal need in Australia cannot support that level of analysis.

What is clear is that if total funding provided by governments is inadequate, then funding for individual providers will only be adequate by chance. The vast majority of service providers will receive inadequate funding.

Even if total funding was sufficient at the start of NLAP in 2020, lack of proper indexation means funding has inevitably eroded over time. At present, funding indexation is largely based on forecast changes in price indices determined at the start of NLAP. Changes in demand are not being reflected in funding growth over time, giving rise to funding shortfalls observed in section 6.5. As discussed in section 7.2.3, the Reviewer considers baseline funding should, at a minimum, grow by expected growth in demand and prices.

The Reviewer notes that prior to its inclusion in the Issues Paper, the methodology underpinning the funding distribution had never been communicated to the legal assistance sector. While the sector is acutely aware of the funding inadequacy, the lack of transparency about the underlying mechanisms has meant constructive feedback could not be provided. It goes without saying that it is impossible to critique something when it is not clear how it operates. This, coupled with the chronic inability to address rising legal need and/or rising service costs, has meant sectoral trust and confidence in the current methodology has significantly eroded over time.

The Reviewer observes that these models bear a strong resemblance to models used by the Commonwealth Grants Commission to distribute Commonwealth GST revenues between the states and territories. Even if these models distribute available funding between states and territories on a 'fair' basis (and many stakeholders do not believe this is the case), these are not models designed to ensure place-based services have adequate resources to deliver services to vulnerable people. This particularly so once other distribution processes, such as those administered by states and territories, have been applied.

Though FDM components include consideration of need and cost, they are more concerned with relativities between jurisdictions, given the primary objective of these models is to draw on these differences to divide available GST funding. These models by no means indicate appropriate levels of resourcing. In a sector where available funding is highly constrained, these models will inadvertently create competition between different needs. This is an outcome governments should studiously avoid, especially when these needs pertain to vulnerable cohorts.

It has become apparent to the Reviewer that tinkering with these models will not drive meaningful change for the legal assistance sector. There are no viable pathways to pivot these models to ones that better reflect underlying needs and costs. The limitations of current models are inextricably linked to their purpose; that is, to allocate funds not to deliver adequate funding.

In light of these findings, the Reviewer concludes these models are not fit for purpose.

Recommendation 14 – NLAP funding model to be abandoned

The existing funding distribution models that inform the distribution of NLAP funding should not be used for the development of the funding of the A2JP. The Reviewer's alternative approach is set out in subsequent recommendations.

7.1.2 Funding fragmentation

It is entirely legitimate for governments to respond to changing circumstances by funding legal assistance providers to deliver new or expanded services. However, over the life of NLAP, the amount of funding received by providers for new, usually term-limited, programs has grown. There are limited data available that provide an accurate picture of the level and extent of funding fragmentation, but submissions to the Review certainly substantiate this:

In recent years, an increasing proportion of our funding is short-term special purpose funding tied to particular projects, pilots or initiatives. In 2022-23, non-recurrent funding was \$7.892 million (15%) of our baseline funding from State and Commonwealth Governments.

This included \$1.645 million for State initiatives and \$6.246 million for Commonwealth. In terms of baseline funding, this represents a significant proportion of non-recurrent funding of 8% (State) and 25% (Commonwealth).

Submission, Legal Services Commission SA, sub.51, p 19

Rather than increasing baseline funding to meet legal need, the Commonwealth has introduced funding streams through bilateral or standalone agreements, tied to specific issues such as mental health, women experiencing violence, COVID, and disasters.

Submission, Community Legal Centres NSW, sub.15, p 5

In its study into the utility of administrative data collected by the Victorian legal assistance sector, the Victoria Law Foundation found that service providers on average received funding from nine funding streams, and 36% of service providers reported ten or more funding streams.

The consequences of funding fragmentation

The fragmentation of funding is an area of significant concern for all types of legal assistance providers. The consequences identified through submissions and consultations include:

- excessive reporting burdens, both in data reporting and cost relative to funding provided
- funding of finite and often short duration presents service providers with significant difficulties in staff attraction and retention, and does not provide adequate resources or incentives to invest in human and capital development
- service providers not properly funded to fully recognise overhead costs associated with provision, especially given most legal assistance providers operate at or above the full and efficient capacity of their fixed-cost base.

The Reviewer has heard examples of new programs being 'piloted', found to be successful, then having the pilot extended for another fixed term, perhaps multiple times. This aggravates problems mentioned above. It leads to wasteful, repeated evaluation costs. It disrupts the service provider's orderly corporate development and professional development of its staff.

While relating to state funding, the submission from Victorian Aboriginal Legal Service attests to this. VALS details its experience seeking ongoing funding for expanded place-based services across their offices, only to receive a revolving door of pilot funding to trial these services at different sites:

Over the last 6 years, we have had signed letters from the current Attorney-General of Victoria and their predecessor signalling that they supported our plan and would look to fund it imminently. We had initially funded the expansion of our local offices at about \$5 million up front, plus \$6 million per annum over the 4 years forward estimates. While the figures have shifted a little bit due to alterations to the plan and changes in the economy such as the surge of inflation driven by the COVID pandemic, the funding required remains within the ballpark of the initial bid.

However, in Victoria's 2020-21 budget, VALS was given just \$2 million over 2 years to trial new office sites. In Victoria's 2021-22 budget we were again given \$2 million over 2 years to trial new sites. There was no funding provided for our place-based services in Victoria's 2022-23 budget, although the Victorian Government agreed to find funding out of the budget cycle through DJCS' budget. That agreement was ultimately not delivered on, but VALS received \$7 million over 2 years for expanding our local office network in Victoria's 2023-24 budget. During this time, we received funding for a new office in Bendigo as part of the funding allocated for the building of the new Bendigo Law Courts Development.

Submission, Victorian Aboriginal Legal Service, sub.138, p 30

The Reviewer considers the process of incorporating successful pilots into baseline funding to date has been less than satisfactory. An example is the national Family Property Mediation Pilot, where legal aid lawyers were funded to support clients with small property pools – net assets of \$500,000 or less excluding superannuation – through the mediation process. The intent of this pilot was to increase access to mechanisms for resolving post-separation property matters for parties, particularly women, for whom the value of the property pool may make it uneconomic to pursue an outcome through family law system services, such as mediation or a court process.

This pilot was initially scheduled to run from 1 January 2020 to 31 December 2021. The end date was later extended to 30 June 2023. The evaluation of the pilot by the Australian Institute of Family Studies concluded in late 2022. Its key finding was that the pilot was 'an efficient way of assisting parties with modest property tools to resolve post separation financial matters.' More importantly, the evaluation also 'supported the implementation of the LAC Trial on an ongoing basis' (Australian Institute of Family Studies, 2022).

Despite its apparent success, the Reviewer has heard from Legal Aid WA that the process of integrating the pilot into baseline funding was unnecessarily protracted:

...the Commonwealth Government could not provide any commitment that the funding would continue beyond June 2023. Like many other Legal Aid Commissions, we therefore had to wind the program down in April 2023 and did not receive confirmation that funding would be extended until June 2023. Actual funding was not received until October 2023, following the schedule to the NLAP being signed.

Submission, Legal Aid WA, sub.50, p 12

The Reviewer is also concerned about the proliferation of programs directed at similar and overlapping client groups and legal matters, family law and family violence being cases in point. Often, these multiple programs can involve multiple Commonwealth and state and territory agencies. This leads to additional, and slightly different, acquittal and data requirements and usually issues associated with competitive tendering discussed in section 7.1.3.

Women’s Legal Services Australia, peak body for specialist Women’s Legal Services, indicated that while their members appreciate funding from different governments, these funding streams often come with varying reporting requirements. This compounds the administrative burden on providers:

The multiple funding streams under the NLAP, particularly the bilateral schedules, along with separate funding sources, mean Women’s Legal Services can have more than 10 different sets of reporting obligations each year. This is a significant administrative burden and expends resources that could be more efficiently allocated to supporting service delivery.

Submission, Women’s Legal Services Australia, sub.107, p 11

More efficacious and efficient outcomes can be achieved through supplementing existing funding, preferably baseline, and better engagement by governments with service providers and community, especially where Aboriginal and Torres Strait Islander peoples are a substantial client group.

It is legitimate for governments to validate new programs. However, they should operate on the basis that where a program is assessed to be successful, it will be deployed across their jurisdiction where appropriate. Obviously, programs dealing with remoteness need not be deployed in cities. Indeed, governments should have sufficient confidence in their policy propositions to expect them to be successful and plan fiscally for their wider deployment once a pilot’s efficacy is confirmed. Such an approach would provide greater incentives for service providers to invest and incorporate pilots into their business-as-usual models, the learnings from which will assist further roll-out. Assuming new programs are well considered, the risk of service providers having to write-off investment should be small.

The Review has identified the following programs for inclusion in baseline funding. The list is likely to be incomplete because as discussed elsewhere, there is a lack of robust data on Commonwealth, state and territory funding programs, included their evaluation status. Inclusion should only occur if governments are satisfied the programs are operating effectively.

Table 7.1 Programs for inclusion of baseline funding

Initiatives under the Indigenous Advancement Strategy:	Bilateral schedules and specific funding streams:
– Custody Notification System (ATSILS)	– Domestic Violence Unit (LACs and CLCs)
– Throughcare programs (ATSILS)	– Family Advocacy and Support Service (LACs)
– Indigenous Women’s Program (CLCs)	– Legal assistance for vulnerable women (LACs, CLCs, ATSILS and FVPLS)
– Supplementary Legal Assistance (ATSILS)	– NDIS Appeals program (LACs)
– Youth Engagement Program (ATSILS)	– Frontline support to address workplace sexual harassment (LACs, CLCs, ATSILS, and FVPLS)
– True Justice: Deep Listening Initiative (ATSILS)	– Supporting people with mental health conditions to access the justice system (LACs, CLCs, and ATSILS)
– Youth Justice Advocacy Coordinator (ATSILS)	– Expensive complex cases and coronial inquiries (ATSILS)
– Community Night Patrol Legal Training and Support Activities (ATSILS)	– Justice Policy Partnership (ATSILS)
– Kunga Stopping Violence Program (ATSILS)	– Community Legal Support Program (CLCs and ATSILS)
	– Family Property Mediation Pilot (LACs)
	– Elder Abuse Service Trials (LACs and CLCs)
	– Ongoing Health Justice Partnerships that have received positive evaluations (see section 9.3.1)

Recommendation 15 – Reduction in fragmentation

The Reviewer considers that there is an inefficiently high level of fragmentation in the current funding base.

In the setting of the baseline funding for 2025-26, all existing programs that have been favourably evaluated should be included in baseline funding unless there are particular policy circumstances where the program will terminate.

If pilots commenced before the commencement of the A2JP are subsequently positively evaluated, they should similarly be included in baseline funding.

In the future where governments undertake pilots, they should be undertaken on the basis that if successful, they will be deployed to all other relevant providers in the jurisdiction and included in ongoing baseline funding.

7.1.3 Competitive tendering

The economics of competitive tendering – some theory

Competitive grants are used in many policy contexts to allocate scarce funding to potential recipients based on proposals submitted by those potential recipients. They are also used as an alternative to administrative processes that allocate to known service providers resources tied to addressing new policy needs.

Those who favour competitive tendering say that it has positive effects, such as:

- **A market composition effect:** by growing efficient service providers and shrinking inefficient ones, the sector as a whole is made more efficient.
- **A disciplining effect:** pressure is placed on institutional bloat to remain competitive.

The latter effect is particularly impactful where service providers are inefficient. Managers who would otherwise seek to increase their budget are increasingly pressured to cut costs to protect the overall revenue stream (Feigenbaum, 1987; Hughes & Luksetich, 2010).

Competitive grants have significant overhead costs, including cost of tendering among all parties, cost of reviewing tenders, costs of acquittal, and the time cost of delay. Unless the sector grows alongside additional reporting burdens, these costs come at the expense regular operations and decrease the sector's maximum theoretical output (Bolli, et al., 2016). Put more simply, resources for tendering, responding and acquitting are used at the expense of additional services which could be provided if the funding was given by rights.

Competitive grants can lead to a net increase in the output of a sector only when the disciplining effect outweighs the additional administrative burden of the competitive process. Where market participants would otherwise be efficient, competitive grant funding is less efficient than distributing funding on an administrative basis.

That said, legal assistance providers cannot be analysed through a profit-maximising framework. Researchers have not yet reached a consensus on an appropriate alternative model or framework through which behaviour can be analysed and modelled into the future, particularly as the motivations for legal assistance providers may differ from organisation to organisation. In the literature, flow on impacts are often derived through interviews and case studies rather than predicted ex ante by a model (Faulk, 2011).

Particularly adverse outcomes include, but are not limited to:

- Grant application and acquittal processes typically specify the output and outcome metrics that performance should be measured against. In response to this, organisations may focus their efforts on activities that contribute to those metrics at the expense of other activities that may be important (Gewurtz, Cott, Rush, & Kirsh, 2015).
- Service providers respond to the competitive environment by ‘conforming to industry or market standards and must behave most similarly to other organisations and match normative expectations in their environment to survive’ (Faulk, 2011). In the literature, this effect is called ‘institutional or structural isomorphism’. Such behaviour is likely to stifle innovation.
- By providing more funding for specific activities, funders drive service providers to orient their activities towards funded activities. This pulls internal resources away from other ongoing operations. One study highlighted the impact of competitive grants on the culture of organisations, stating that grants can pull them away from their mission. (Dolnicar, Irvine, & Lazarevski, 2008).
- Funders will pressure service providers to develop professional practices beyond grant administration, including strategic planning and program evaluation (Froelich, 1999).

Outcomes of competitive tendering in the Australian legal assistance sector

There is little to no evidence that competitive allocation of legal assistance funding in Australia has improved efficiency. Certainly none has been put to this Review.

To some extent this is not surprising. In the legal assistance sector, these processes typically are location focused and largely involve provision of labour. Given locational fixed entry costs are high and most community service providers have a common pay scale, it is difficult to see how a competitive process would reveal efficiency gains or encourage innovation. As set out in the Australian Services Union’s submission:

Competitive tendering is pointless. Community legal centres are labour-intensive operations, so competitive tenders can only mean undercutting each other on labour costs.

Submission, Australian Services Union, sub.115, p 9

It has been suggested to the Reviewer that the preference of officials for competitive tendering over administrative allocation reflects risk aversion to the scrutiny of auditors-general and parliaments.

The evidence before the Review is that the current competitive processes tend to allocate funding to existing providers. This outcome could have been achieved by a cheaper administrative process. Given long-term underfunding of the sector, and noting its surprising ability to still innovate with largely static funding, there is no evidence before the Review that suggests any material level of productive inefficiency exists within Australian legal assistance providers, other than that attributable to underinvestment, particularly in information technology and unnecessary regulatory and compliance burdens. Further, the discussion above suggests negative outcomes, each one of which is well represented in the experiences set out in submissions to the Review:

- competitive tendering is expensive
- compliance is expensive
- competitive tendering has led to misallocation of resources
- meeting grant outcomes distracts from service outcomes
- competitive funding stifled diversity and innovation in the sector.

The Reviewer is satisfied that the current competitive system has discouraged efficiency and innovation, is costly, and has on occasions misallocated resources between service providers.

The Reviewer has heard that competitive tendering has placed an unnecessary administrative burden on the legal assistance sector. The Reviewer also observes that these processes tend to disproportionately affect smaller providers, who often have limited funding sources and are already under significant financial strain. Ironically, the effect of these transaction costs may be to eliminate potential suppliers from tendering processes, thereby inhibiting competition and its assumed benefits. The resources these organisations can devote to participating in competitive tendering are highly constrained. Yet it is these very organisations that are most in need of this funding to sustain their operations. Given the relatively modest level of funding often offered in these processes, it seems to the Reviewer that the costs of competitive tendering are likely to exceed the benefits it brings in many instances.

The merits of competitive tendering depend on achieving value for money when allocating government funding by compelling the marketplace to deliver the best possible good or service at the lowest possible cost. However, in the absence of an outcomes-based framework for legal assistance services, it is difficult for providers to articulate how their services contribute to improved outcomes. This inadvertently leads to an overemphasis on cost minimisation to demonstrate value for money. This is not necessarily in the best interests of society, let alone disadvantaged clients.

Australia's legal assistance sector is inhabited by skilled, committed professionals who are keen to collaborate. What the system has done is place inherently collaborative people in competition with each other, and afterwards expect strong collaboration to continue. The Reviewer considers this approach has created unnecessary friction between services providers, which negatively impacts collaboration.

In 2018 closed tendering took place in NSW. Unfortunately, there was so little money in the pool that community legal centres agreed to bid to existing funding amounts. This caused division in the sector and significant time, effort, and money (some centres used professional tender writers) was spent on merely trying to survive.

Submission, Australian Services Union, sub. 115, p 10

... [Competitive tendering] creates incentives for CLCs to compete with each other, rather than collaborating with each other.

Submission, Brimbank Melton Community Legal Centre, sub.116, p 7

The Reviewer acknowledges there may be circumstance where competitive tendering may be appropriate. For example, there may be circumstances where governments wish for a service to be provided on a jurisdictional basis and there are multiple suitable providers. Alternatively, a service may be significantly novel and no existing service provider has the necessary capability to deliver it.

As discussed in section 4.5.1, some geographical areas have little or no service provision. In some areas, the most appropriate provider will be a nearby LAC or ATSILS. In other locations a CLC may be more appropriate. The Reviewer is aware that new CLCs can emerge organically from communities, or in response to changing economic and/or social circumstances. In such circumstances governments should primarily focus on addressing unmet legal needs and use processes similar to those used for unsolicited infrastructure proposals. These processes can also be used when a community group comes forward. Where no group volunteers, governments can look at limited tenders involving existing CLCs and organisations with experience in auspicing CLCs, such as Anglicare.

Recommendation 16 – Reduce competitive tendering for legal assistance

The Commonwealth, state and territory governments should abandon competitive tendering as the preferred means of allocating new funding for legal assistance services, moving away from funding individual services and programs. This will reduce compliance burdens, provide greater funding certainty, improve efficiency, and encourage greater collaboration and holistic service provision.

Competitive tendering should only be used where it is clearly the case that it will generate significant benefits over administrative allocation of funding.

7.2 A new approach – base, step, trend and pass through

Ideally, the total amount of legal assistance funding should be amassed from the ground-up. It should be guided by an assessment of legal need on a demographic and geographic basis, and what and how the need is being met without government intervention. This is a superior evidence base approach to that currently being used, and it is ‘fairer’ for both providers and jurisdictions as it more precisely allocates resources to address particular legal needs.

Governments should then consider regulatory and other policy actions to reduce or address need, leaving a set of unmet needs that would be either addressed by the legal assistance sector or would be left unmet. The costs of addressing the need through legal assistance could then be established and resources distributed between legal assistance providers having regard to universality, efficiency and cultural appropriateness of their service provision.

In light of these observations, the Reviewer considers the most appropriate action for governments is to reconsider their approach to determining and allocating legal assistance funding. It must be more closely aligned to the sector’s financial sustainability needs and identified areas of legal need.

Considerable effort has been dedicated to considering how the Review might best approach a service costing exercise in order to understand the funding required to appropriately deliver legal assistance services. That effort attempted to consider how the amount of funding required changes based on location, scale, client groups and areas of law. This effort was ultimately unsuccessful due to the lack of robust data on legal need, and the cost structure of service providers, as discussed in appendix E. The Reviewer notes that if recommendation 21.6 of the PC Report had been implemented, these data would have been available for this Review.

Given these challenges, the Review adopted a hybrid costing approach to inform recommendations that improve the appropriateness of funding for the legal assistance sector in A2JP. The Reviewer is confident that if these proposals are implemented in full they will significantly reduce unmet legal need, ensure legal assistance workers are safe in their employment, and enable the sector to meet future challenges and opportunities.

Australian economic regulators use a methodology referred to as ‘base, step and trend’ to determine the efficient revenues a regulated business can collect over a regulatory period. The process broadly involves:

- **Base:** *Determining the efficient cost for providing existing services.* It is clear that current funding levels are inadequate to deliver, effectively and efficiently, the services governments and communities expect. Funding must be adjusted to provide, among a range of things, proper remuneration, workplace arrangements that support positive employee wellbeing and appropriate IT systems.
- **Step:** *Increasing the base to reflect efficient costs of new services, new regulatory requirements or changes in input costs.* It is clear that there are currently service gaps in geography, legal matters and delivery methods.

- **Trend:** Establish a mechanism to roll forward the sum of the base and step over the life of the arrangement. The funding available through the life of A2JP should grow to reflect increases in demand and increases in prices faced by service providers.
- **Pass through mechanisms:** These allow additional funding for changes in demand or costs unforeseen at the time baseline funding was set. Legal assistance providers have faced significant challenges meeting changes in demand caused by changes in law, government policy priorities, court procedures. They have faced input cost pressures resulting from macroeconomic developments beyond their control.

Figure 7.1 Key components of the new funding model



The Reviewer acknowledges that implementation of these arrangements will involve significant increases in funding by all governments. The Reviewer is confident there is sufficient analytical and qualitative evidence to be satisfied that benefits of this funding will exceed these costs.

The Review's recommendations involve significant increases in the legal assistance workforce, the establishment and renovation of workplaces, and deployment of new technology. Practical limitations in recruitment and procurement will defer a proportion of both baseline adjustments (and their indexation consequences) and the step changes, particularly those involved with increasing the volume of resourcing provided for civil matters. This issue is discussed further in chapter 12.

7.2.1 Base

Despite the absence of a clear articulation of what legal need governments wish to address through the legal assistance system, the Reviewer is satisfied that current resourcing level is inadequate to address current activities.

During the course of the Review, a number of service providers submitted detailed 'ground up' estimates of the funding they consider necessary to provide well specified service offerings. Despite this, due to the limited time and resources available to the Reviewer, and diversity across the community legal assistance sector, it is simply not possible to provide estimates of the funding required.

Below the Reviewer has identified matters that should be addressed in the baselining exercise. The Reviewer stresses this is not a 'blank cheque' process. Service providers will need to justify the need for the expenditure. They must demonstrate that costs are efficient, namely value for money in the circumstances (including appropriate consideration of physical, geographic and cultural circumstances). This does not necessarily mean the lowest cost must be demonstrated. Once proper assessments are made and agreed by providers and governments, an implementation plan will be required, likely to run over several years. This plan must be cognisant of any expanded service offering from the step process outlined in section 7.2.2.

Community legal service providers

The Reviewer considers the levels of funding for each community sector provider (ATSILS, CLCs including those currently solely Commonwealth funded, FVPLS) should be reset, having regard to:

- rolling all terminating programs (some of which are set out in Table 7.1) into baseline funding unless the legal need they address is no longer relevant. If programs still being evaluated fail in their assessment, they should be removed from baseline funding
- appropriate funding to undertake community legal education and law reform and advocacy
- adjusting remuneration and other terms and conditions of employment so they are equivalent with the jurisdictional LAC, as set out in recommendation 25
- providing appropriate levels of support and casework staff to ensure lawyers and other professional staff do not have excessive administrative workloads
- ensuring all staff can access their leave entitlements every year, enjoy industry standard levels of professional and personal development, and undertake appropriate levels of law reform and advocacy work (including potentially running test cases)
- expanding funding so that staff numbers are sufficient to ensure workloads, especially in criminal law and other trauma related matters, are sustainable from a worker wellbeing perspective, and also to ensure clients have adequate preparation time with their lawyer
- providing adequate funding so workers can travel safely to clients and courts in appropriate and properly equipped vehicle. Adequately fund travel time for non-metropolitan private lawyers funded by grants of legal aid. This funding should ensure professionally and culturally appropriate face-to-face engagement with clients
- providing adequate funding to sustain appropriate case management, office and administrative systems and other equipment. Such funding should ensure systems are adequate to facilitate appropriate digitisation and innovation now and in the future
- providing accommodation and/or appropriate allowances, equivalent to LAC staff, if staff live or work in regional and remote areas. This includes travel home for remote workers and relocation costs
- ensuring workplaces are physically safe to engage with trauma affected clients and compliant with all relevant workplace standards. This may require provision for appropriate rents and building maintenance, utilities and one-off payment to upgrade existing premises or acquire new ones
- providing workplace and mental health support appropriate for the level of exposure to trauma-exposed clients
- ensuring a service provider that has suitably qualified staff can elect to be funded to allow continued support to clients until matters are concluded, including through appeals, and providers are adequately resourced to brief counsel at legal aid rates as necessary. Funding should be provided to develop collaborative service provision arrangements with other providers to ensure continuity of services if that is what clients desire and it is efficient to do so.

Further, the following items should be included for ATSILS:

- adequate resourcing to operate a CNS appropriate for criminal justice arrangements in their jurisdiction
- sufficient resources for prison outreach services delivered by both legal and non-legal staff
- sufficient funding to support prevention and early intervention activity.

Recommendation 17 – Rebasing community service providers

The Reviewer recommends that the levels of funding for each community sector provider be reset to reflect the true costs of operating sustainable organisations.

This should be done on trilateral basis between the Commonwealth, state or territory governments and service providers.

Priority should be given to ATSILS and FVPLS followed by CLCs then LACs.

The Reviewer recommends in 2024-25 that \$12 million be allocated to ATSILS and \$4 million to FVPLS to ensure they have the capacity to develop their organisations and for other matters discussed in chapter 12.

Legal Aid Commissions

The Reviewer recognises LACs face a range of challenges, including recruitment and retention in some regional areas. These challenges are not as acute as those faced by the community legal sector. However, when time and resources permit, governments should undertake for LACs a similar exercise to that described above. The Reviewer notes additional funding for grants of legal aid for civil and family matters (recommendation 5) and addressing geographic need (recommendation 2) will significantly increase LAC funding. But within this framework these issues, and geographic service absence, are best addressed in the 'step' part of the funding model for A2JP.

However, there are two LAC funding matters the Reviewer considers require urgent attention and should be seen as part of fixing baseline funding.

Increase current rate of grants of legal aid

My organisation pays funds in grants of aid which work out to be about \$140 per hour for a certain number of hours however the amount of time is grossly underestimated. If a practitioner goes over the amount of time allocated for a matter, they are generally not compensated for any additional work. By way of comparison, in private practice the same amount of work would be charged at anywhere from \$300 to \$550 per hour.

Submission, Anonymous Individual

To be eligible to deliver legal aid work, private lawyers must apply to be listed on a LAC-approved panel. Under a grant of aid, LACs pay a private sector lawyer to provide ongoing legal services to help with a client's legal problem. These funds are released in stages to coincide with the amount of legal assistance delivered. Normally, the first stage of a grant of aid pays for initial advice, investigation, and negotiation for a client's case. However, it can be extended to cover more work (for example, going to trial) if there is legal merit in taking the case to the next stage.

Private practitioners are integral to the legal assistance sector, accounting for 43% of all LAC expenses in 2021–22 (NLA, 2023). Historically, LACs have allocated some grants of aid to private lawyers to fill their resourcing gaps, and/or to procure legal assistance services in specialised areas of law. In recent years the Reviewer has heard these allocations have grown significantly.

LACs have increasingly relied on private practitioners as successive state and territory governments capped public sector growth; a practice the Productivity Commission in 2014 recommended should end, in part because it is likely that incremental cost of a legal aid solicitor is likely to be less than that of a private practitioner. For a sector grappling with relatively high staff attrition, restrictions on staff recruitment have meant LACs inevitably brief out more work to private lawyers.

A key issue is that remuneration of private lawyers for legal aid is simply insufficient in comparison to work undertaken privately. Even when LACs would like to appoint a private lawyer, under-remuneration means private practitioners may not be available. There is growing evidence that LACs increasingly struggle to engage private lawyers to provide legal aid.

The size of grants of legal aid are dependent on the jurisdiction, the court where representation is required, the type of legal matter, and seniority of the solicitor or barrister representing the client.

Table 7.2 provides data on the average grant of legal aid across jurisdictions, the type of legal matter requiring representation, and the type of lawyer representing the client. For criminal law, the average hourly fee for a private solicitor was \$161. This increases to \$206 for counsel and to \$321 for senior counsel. In family law, the average hourly rate was \$154 for a solicitor, \$192 for counsel, and \$278 for senior counsel.

Table 7.2 LAC – Scale of fees per hour for externally provided legal assistance services, 30 June 2023

Seniority	Criminal Law			Family Law		
	Magistrate's Court/Local Court	Supreme/High Court	Average Criminal Law	Family Court	Child Protection	Average Family Law
Solicitor	\$151	\$171	\$161	\$157	\$151	\$154
Counsel	\$184	\$228	\$206	\$201	\$183	\$192
Senior Counsel	\$327	\$314	\$321	\$278	–	\$278

Source: National Legal Aid (2023)

These rates are significantly lower than rates for which private legal practitioners on government legal panels provide their services. In each jurisdiction reviewed, legal aid fees paid to private solicitors providing legal assistance were consistently less than half the rate paid to private solicitors on government legal service panels.

For example, in New South Wales rates of grants of legal aid for Commonwealth matters are 48% of fees paid to members of the NSW Attorney General's Legal Services Panel. On state matters this percentage increases to 57%, due to additional New South Wales government funding. In South Australia the variance is greater. Private solicitors providing legal assistance on behalf of the Legal Services Commission South Australia are paid between 39% and 46% of rates paid to private solicitors providing services to the Crown Solicitor's Office or to a South Australian public authority.

The Reviewer has heard from several LACs that the pipeline has dried up for new lawyers joining legal aid panels. A 2022 private legal practitioner supply analysis by Victoria Legal Aid found grant fees were the main reason practitioners were not on these panels (NLA, 2023).

For a similar reason, the Reviewer has heard a growing number of private practitioners are leaving these panels. Private practitioners can formally withdraw from the panel, or they can remain on the panel and indicate they are unavailable to take on new grants.

Problems of this nature seem acute in the Northern Territory:

The Legal Aid NT base rate fee paid to private practitioners in Territory law matters is \$125 per hour, which is the lowest LAC rate in Australia. In Commonwealth matters the base rate is \$165. It is therefore not surprising that in all areas of law, there is a very thin market of private practitioners who prepared to do legal aid work. Only 74 practitioners are on Legal Aid NT private practitioner panels. There are 6 Independent Children's Lawyers in the Northern Territory, 4 of whom are private practitioners with 3 based in Darwin and 1 in Alice Springs, who do very little ICL work. Only one private practitioner in Katherine is prepared to do legal aid work. There are no private practitioners in Tennant Creek who are prepared to do legal aid work. Legal Aid NT must pay for private practitioners to travel from Alice Springs or Darwin to Katherine and Tennant Creek.

Submission, Legal Aid NT, sub.48, p 38

This situation in the Northern Territory is likely to be representative of other non-metropolitan areas.

Insufficient private lawyers in 4Rs areas to act on grants of aid from Legal Aid Commissions and insufficient Legal Aid Commission staff based in 4Rs areas. This compounds levels of unmet legal need, including unmet legal needs that other non-profit legal sectors in 4Rs areas are also under-resourced to address.

Submission, National Regional, Rural, Remote and Very Remote Community Legal Network 4Rs Network, sub.1, p 82

Fees currently paid to private practitioners are inflexible and often result in under-reporting of hours spent on a particular case. Fees often do not reflect the complexity of cases, clients' needs or travel time to remote locations. The Reviewer has heard that even if remuneration increased, the current structuring of grants at various stages of a matter discourages private practitioners, especially in more complex matters such as practitioner led alternative dispute resolution.

The hours included in the grant are unrealistic when considering the requirements of lawyers to discharge their professional obligations, leading to an unacceptable increase in risk to the practitioner.

Submission, Family Law Practitioners' Association of Western Australia, sub.30, p 2

The Reviewer is satisfied that concerns expressed by the Productivity Commission in 2014 regarding under-remuneration of private lawyers leading to inadequate supply have become reality, particularly in non-metropolitan areas. The Reviewer is also satisfied that the structure of grants of legal aid may not be supporting early dispute resolution, especially for family law matters.

The Reviewer recommends grants fees should be set at prevailing court scales. Court scales regulate charges a law practice, including a barrister, is entitled to charge for legal services in the absence of a written costs agreement made under the relevant provisions of the Uniform Law or relevant state and territory law. Costs scales function as the basis upon which taxations (or assessments) of costs are undertaken by taxing officers of the various courts on a party/party basis. They are set periodically (annually or biannually), objectively (on the basis of prevailing market data held by the courts, professions and practitioners, and on a consultative basis), and independently (by courts and independent committees). Where a jurisdiction does not have a formal court scale, similar frameworks exist under regulation and/or are provided by legal profession regulators. Importantly, it is clear these are prices which, at least at the margin, lawyers appear happy to be paid and which do not restrict supply.

The Reviewer has compared grant fees and court scales across various settings and found grant fees would need to double, on average, to achieve parity with court scales. The Reviewer understands that scale rates are often about two-thirds of prevailing market rates.

It is important that the rate for grants of legal aid is roughly the same across all types of legal matters: civil, family and criminal. If this is not the case, then supply of private practitioners will drift to the best remunerated. For example, if rates for criminal matters are significantly lower than for other matters, matters in the criminal court will be delayed and innocent people charged with indictable offences may spend longer on remand than would have otherwise been the case.

The Reviewer is cognisant that upon receipt of this additional funding, LACs may be incentivised to minimise cost and/or expand service provision by employing more lawyers as a substitute for providing grants of legal aid to private practitioners. The Reviewer sees no problem in this market driven efficient allocation of resources. That said, the Reviewer still expects a significant increase in the volume of grants of legal aid *ceteris paribus*, given the supply of in-house lawyers is likely more inelastic compared to private lawyers. The Reviewer considers LACs are best placed to arrive at the efficient allocation between in-house lawyers and grants of aid. That said, governments should agree with NLA and the Law Council of Australia on an appropriate framework to monitor market developments.

The shrinking number of private practitioners means there are growing levels of unmet legal need. It is axiomatic that clients who would otherwise be supported via grants of legal aid are among the most disadvantaged. The Reviewer considers this gravely concerning. Under-remuneration must be addressed as a priority. It is recommended that for Commonwealth matters LACs be funded by the Commonwealth in 2024–25, at a cost of \$44m, to provide grants on the basis of court scales.

Recommendation 18 – Rates of grants of legal aid

The Reviewer recommends:

- For the period of A2JP grants of legal aid to private practitioners should be set at the same level as provided in the court scales (or some other relevant standard) where the matter is heard.
- The Commonwealth should provide \$44m in 2024-25 and \$46 million in 2025-26 for this purpose in relation to matters is funds under NLAP (apportioned 91% family matters, 7% criminal matters and 2% civil matters and excluding funding of ICLs which is the subject of as separate recommendation)
- State and territory Governments should provide \$337 million in 2025-26 for this purpose in relation to matters it funds under NLAP (apportioned 85% criminal matters, 13% family matters and 2% civil matters).
- LAC baseline funding for 2025-26 should reflect this level of grants of legal aid across all categories of matters.
- LACs should be allowed to determine whether this additional funding is used for private practitioners or internal lawyers.
- A working group should be established with an independent chair, supported by independent consultants, to develop a framework for the future of the levels and structure of grants of legal aid, including for lawyer assisted alternative dispute resolution. This should include consideration of the cost of delivering culturally appropriate approaches. SCAG should consider these recommendations with a view to varying baseline funding in 2027-28.

Independent Children’s Lawyers

Legal assistance is traditionally reserved for individuals who cannot afford legal services. However, Independent Children’s Lawyers (ICLs) serve a distinct purpose to ensure that the best interests of a child are adequately represented and protected throughout family law proceedings. Appointment of an ICL gives effect to Objects of Part 7 of the *Family Law Act 1975*, which is rooted in principles enshrined in the *United Nations Convention on the Rights of the Child* (Federal Circuit and Family Court of Australia, 2023).

The Convention emphasises that, in all actions concerning children, their best interests must be a primary consideration. It also asserts the right of a child capable of forming views to be able to freely express those views, with due weight being given to them based on the child's age and maturity. Accordingly, the Convention stipulates that children should have the opportunity to be heard in judicial and administrative proceedings affecting them, either directly or through a representative or an appropriate body, in accordance with national procedural rules.

The Reviewer is satisfied that the passage of the *Family Law Amendment Act 2023* and procedural changes by the Family Courts have created a circumstance where demand for ICLs is in excess of supply. It is in the interests of children, their parents and efficiency of the courts that this situation is urgently addressed.

The Reviewer is aware that grants for ICLs are not currently funded at court scales. This means the supply of ICLs is also susceptible to the current exodus of private practitioners discussed above. Further ICLs must undertake specialist training and have a level of seniority. Given this, the Reviewer recommends these grants be set at court scales, having regard to seniority. In setting the scales, the Reviewer encourages courts to have regard to the skills and responsibilities of ICLs.

The Reviewer has been told it is often necessary, in the interests of children, for ICLs to obtain expert reports on a range of domestic, mental health and physical health issues. These should be appropriately funded.

ICLs services are provided via grants of legal aid and by internal LAC staff. As with increased funding for general grants of legal aid, how these services are provided is best determined by the LAC responsible for providing the service.

ICLs are appointed where children come from well-resourced families. Family Courts can make orders requiring parents to pay some, or all, the costs of the ICL. The Reviewer considers the proceeds of such orders should be used to offset the wider costs of this recommendation.

The Reviewer is concerned about the consequences for children of underestimating the resourcing required for this task, and so recommends that funding be provided on a demand driven basis in 2024–25 under A2JP. When adequate demand estimates are available the Commonwealth should end demand-based funding and fund on a forecast basis for the remainder of A2JP.

The Reviewer considers both availability and rates of ICL grants of legal aid are sufficiently serious that additional funding in 2024–25 is required. This is estimated at \$84 million, although this may be an overestimate given demand uncertainty.

Recommendation 19 – Rates of grants for Independent Childrens Lawyers

The Reviewer recommends that:

- For the duration of the A2JP, the Commonwealth should fund LACs to provide ICLs appointed by the Family Courts at the relevant levels of the courts' scales prevailing at the time the service is provided.
- LACs should be allowed to determine whether this additional funding is used for private practitioners or internal lawyers.
- If a court orders an ICL to procure expert reports or other material, those disbursements should also be funded at scale rates.
- The Commonwealth should provide \$84 million in 2024-25 and \$88 million in 2025-26 in this regard.
- Any cost orders made to the benefit of LACs for the provision of ICLs should be offset against the cost of providing ICLs. An annual reconciliation arrangement should be put in place to carry forward any over/under recoveries.
- For the duration of A2JP, where lawyers are appointed to independently represent children under state or territory laws (such as in some care and protection matters) state and territory governments should fund LACs to remunerate these lawyers in accordance with the relevant jurisdictional court scales. This should support adequate supply lawyers for state and territory matters and avoid them showing a preference for matters in the Family Courts.
- To the extent that ATSILS, FVPLS or CLCs are ordered by the relevant courts to provide ICLs as set out above, funding should be provided the relevant LAC on a pass-through basis – the order of the Court should be the sole criteria for provision of funding.

7.2.2 Step

Many participants in the Review identified areas of unmet legal need, both in terms of client cohort, geography and legal matters. In some cases, these needs will be addressed by ensuring adequate baseline funding. However, others needs require additional funding. These include new priority groups, addressing specific areas of geographic need, providing adequate funding for additional grants for civil and family law matters, funding for disaster preparedness and response, and new services successfully piloted by other providers where appropriate (for example, some remote community pilots may inappropriate for deployment in inner city areas).

At the earliest opportunity, governments should decide whether to pursue these matters to avoid unnecessary costing and policy related activities.

Recommendation 20 – Step

The Reviewer recommends that Governments should provide additional substantial funding in relation to a number of priorities matters the addition of new priority groups, addressing specific areas of geographic need, providing additional grants of aid in civil and family law matters and funding for disaster preparedness and response. These are captured in recommendations 2, 3, 4, 5 and 7.

As part of the step process, consideration should be given to providing additional funding for services that have been successfully piloted by other service providers where provided.

7.2.3 Trend

Appropriate indexation arrangements

The Reviewer considers indexation arrangements in NLAP have not properly funded cost increases service providers have faced. This is an observation widely shared across the legal assistance sector, in part due to a generally unforeseen macroeconomic environment impacting on prices, but also a failure to provide for increases in demand.

In its submission to the Review, Consumer Credit Legal Service WA highlighted how funding indexation has not grown in line with the rising cost of labour arising from the new SCHADS award. This experience would be encountered across the CLC sector given most CLCs pay their staff at SCHADS award rates.

Poor indexation rates that have not met increased costs year on year, for example salaries through the SCHADS award have increased by over 10% in the last two years but indexation has been at a considerably lower rate.

Submission, Consumer Credit Legal Service WA, sub.22, p 3

Victorian Aboriginal Legal Service shares a similar struggle to keep pace with rising wage costs, as their submission posits:

Current wage costs for VALS increased by 12.9% across the last financial year. Some of this is due to expansion based off funding for new staff. However, the costs of the new EBA [enterprise bargaining agreement] and labour market pressures mean that a significant portion of that increase is an increase in wages that is not covered by the indexation of our funding streams.

Submission, Victorian Aboriginal Legal Services, sub.138, p 35

Funding indexation has also failed to reflect changes in demand. Many submissions reiterated the disjunction between funding increases and population growth.

... no increase to core funding to respond to population growth – Brisbane had the largest national population increase in 2021-2022 but with no commensurate increase in funding to CLCs who service this area.

Submission, Caxton Legal Centre, sub.12, p 4

Melton, one of the two main LGAs that we [Brimbank Melton CLC] service, is the fastest growing LGA in Australia, and population growth is projected to continue strongly across our catchment area in the future.

Despite this rapidly increasing need for legal services in the communities that we work with, BMCLC's NLAP funding has not expanded to properly meet these increasing needs. We believe that these challenges mean that the communities that we work with are experiencing higher growth in legal demand than services in other areas, and that the lack of NLAP funding growth to account for this means that these communities are being underserved and left behind by current NLAP funding when compared to other areas of Australia not experiencing this level of growth in demand.

Submission, Brimbank Melton CLC, sub.116, p 8

In the absence of proper indexation it is possible providers could maintain existing service provision for a short while by drawing on reserves. However, given the financial strain providers already face, and restrictions imposed by funders on cash accumulation, the more likely outcome is that providers are forced to constrain availability of their services. Either arrangement undermines the sector's financial sustainability.

In the absence of robust data on demand, forecasting is at best an assumptive process. Noting that the Reviewer has proposed a mechanism to deal with policy induced changes in demand, it is recommended that the expected rate of growth in demand be estimated as the expected growth rate for the relevant population cohort. This is set out in Table 7.3.

Table 7.3 Indexation arrangements

Subsector	Indexation
LACs and general CLCs	Forecast population growth
Women's CLCs	Forecast rate of female population growth
ATSILS	Forecast rate of Aboriginal and Torres Strait Islander population growth
FVPLS	Forecast rate of female Aboriginal and Torres Strait Islander population growth

For the general population and female population, jurisdictional forecasts developed by the Centre for Population should be adopted. These forecasts are published annually, and Commonwealth Treasury currently uses them for Federal Budget purposes. These reliable, jurisdictional population forecasts should be used to index funding over time.

For the Aboriginal and Torres Strait Islander population, and female Aboriginal and Torres Strait Islander population, jurisdictional forecasts developed by the Australian Bureau of Statistics should be adopted. These forecasts are published every five years. The next release is due in 2024.

The Reviewer's attention has been drawn to how price indexation is dealt with in other social services contexts, in particular as an alternative to using CPI. This seems a sensible approach and using may reduce administrative costs for service providers.

Therefore, the Reviewer recommends that the relevant price index should be 80% of forecast growth in the Wage Price Index (WPI) and 20% of forecast Consumer Price Index (CPI). The Reviewer also considers this should be based on forecast WPI and CPI developed by state and territory Treasury departments for their annual budgets.

The Reviewer emphasises that all indexation arrangements should be based on jurisdictional forecasts where possible. These indexation rates would be generally fixed for the life of A2JP, safeguarding the sector against the downside risk of divergence between national and jurisdictional estimates. Legal Aid Queensland's submission illustrates an example of how such a divergence may arise within the legal assistance sector:

Another difficulty is that Commonwealth and state salary indexation does not align. While the Commonwealth indexation is averaged at 1.7 percent, the most recent Queensland Enterprise Bargaining Agreement provided for indexation at four percent as well as a cost-of-living adjustment payment. This presents a cumulative impact over time for Commonwealth funded programs and positions as the original Commonwealth funding agreements do not keep pace with state funded wage increases. This then requires LAQ to find the shortfall for its Commonwealth-funded roles from other revenue sources.

Submission, Legal Aid Queensland, sub.49, p 18

The Reviewer considers it is in the interests of both funders and recipients that funding amounts, to the greatest extent possible, be known over the life of the agreement. The Reviewer does not support demand-based funding, other than for ICLs for a short time. However, recent unexpected inflationary conditions have clearly placed significant pressure on service providers. The Reviewer considers governments are better placed than service providers to absorb such shocks given their greater fiscal means, and the fact that their revenues are generally nominally based and so increase with inflation. Consequently, governments should supplement funding of legal assistance providers when actual price changes are substantially different to forecast growth.

The Reviewer is aware that recommendations 18 and 19 lead to rates of grants of legal aid growing in accordance with rates in court scales. The costs of private practitioners are largely labour costs, as is the case with legal assistance providers. Any differences in rates of price growth should be small and manageable within the budgets of LACs. Similarly, subject to law reforms dealt with in recommendation 22, the number of grants of legal aid are likely to grow at the same rate as the general rate of demand growth discussed above.

Recommendation 21 – Indexation

The Reviewer recommends that, once the funding for the base year 2025-26 is determined, subsequent years funding should be indexed each year by the sum of the expected growth in demand and the expected rate of growth in prices in the jurisdiction concerned.

In the event that the growth in the price index in any year exceeds forecast by more than 2%, then the forecast price index increase should be replaced with the actual price index increase.

In the event that agreement can't be reached between governments about a new funding sharing approach, indexation as described in this section should be applied to all Commonwealth, state and territory funding streams.

7.2.4 Pass through mechanisms

Unforeseen cost changes

Changes in laws or general economic conditions can impact input costs faced by service providers. Examples are changes in compulsory superannuation contributions and general market-based movements in insurance premiums. Such changes cannot be controlled by service providers but can impact their financial stability. Where changes affect the sector as a whole, consistent with the general approach of economic regulators, government should provide additional funding to ensure service providers do not reduce their service provision.

Dealing with policy induced demand changes

The Reviewer is satisfied that governments do not properly, fully or transparently consider impacts on demand for, or cost of, legal assistance when they make changes to the law or policies. The Reviewer also notes changes in the procedures or rules of courts may impact on demand for legal assistance services, leading to additional costs.

Tasmania Legal Aid's submission reflected on how new processes and procedures resulting from the 2021 merger of the Family Court of Australia and the Federal Circuit Court of Australia rendered their existing fee schedule inadequate given the expanded scope of work.

In recognition of these flow-on effects, an additional \$700,000 was disbursed to Tasmania Legal Aid over the 2021–22 and 2022–23 financial years. With this funding, new fee items were introduced for court ordered dispute resolution, additional court mentions that occur due to the new system, and additional ICL appointments.

While this funding was initially intended to be one-off, the Commonwealth announced in MYEFO an additional \$17.1 million for 2023–24 in recognition of the ongoing impacts on LACs. Prior to the extension of funding, the newly introduced fee items remained applicable, and the associated costs were borne by Tasmania Legal Aid.

Victorian Aboriginal Legal Service's submission provided various examples of their involvement in reform implementation, typically not accompanied by additional funding to deliver these functions:

In recent years we [Victorian Aboriginal Legal Service] have also been part of reform implementation, like providing a legal service for community members wishing to give evidence to the Yoorrook Justice Commission (in partnership with VLA), providing support to community members applying to the Stolen Generations Reparation Scheme, as well as similar roles relating to Victoria's Spent Convictions Scheme, anti-vilification reforms and Royal Commission into Victoria's Mental Health System.

However, we are often not funded for these functions and, if we are, it is often well below the cost that we have estimated it would take to do the job in a way that met the communities' expectations and truly empowered them.

Submission, Victorian Aboriginal Legal Service, sub.138, p 14

Consideration of flow-on effects should be limited to changes stemming from the federal level, and from state and territory level. In 2019, the Queensland Government introduced the *Human Rights Act 2019* (Qld) to enshrine protections for disadvantaged and vulnerable communities, and to ensure public entities exercise their powers in accordance with human rights. This reform was broadly welcomed. However, there was no additional funding allocated to provide legal assistance relating to these new protections and processes.

In its submission to the Review, Community Legal Centres Queensland provided a case study of one of its members, Caxton Legal Centre, to illustrate the adverse effects of not considering the funding impacts of law reforms:

Caxton Legal Centre recognised the importance of direct assistance with the HRA [Human Rights Act 2019], regardless of additional funding to do so. Caxton undertook extensive work to redevelop their resources and programs to a human rights approach, and to provide support to those exercising their rights under the HRA.

However, without additional funding to make these changes, Caxton needed to reduce service delivery in other areas, and ceased support in fencing and neighbourhood disputes despite years of providing this advice.

Submission, Community Legal Centres Queensland, sub.17, p 13

Similar challenges may arise as states and territories roll out foreshadowed coercive control laws.

As discussed in section 4.6.1, the Commonwealth has yet to finalise a suite of administrative law reforms, including successor arrangements for the Administrative Appeal Tribunal, and to respond to public inquiries (including Royal Commissions into Robodebt, Disability, and Defence and Veteran Suicide, and the Independent Review of the National Disability Insurance Scheme), and potential further reform of immigration arrangements.

These matters will have a profound impact on the demand for legal assistance services and especially those service providers who specialise in these areas of law.

Consideration of the impacts of legal and policy reform on legal assistance is essential to provision of appropriate funding and effective service provision. Legal Assistance Impact Assessments (LAIA) should be prepared for any reform to ensure consequent impacts on demand funding for legal assistance services are identified, irrespective of funding arrangements pertaining to relevant service providers.

Irrespective of which service provider type is impacted, the government causing the change in demand must provide funding to meet that need on an ongoing basis by altering its contribution to baseline funding. For example, if changes in state bail laws lead to increased demand for criminal services from ATSILS, the state should provide the relevant additional funding.

LAIAs should be undertaken by the relevant jurisdictional department after consultation with the relevant jurisdictional consultation body. Where Commonwealth law is involved, irrespective of whether the law is the responsibility of the Attorney-General or some other Minister, AGD should conduct the assessment. If participants in a consultative body object to the assessment, their objections should be included as an addendum to the LAIA.

To the extent possible, where a change in law is involved the LAIA should be provided to the relevant parliament when the relevant bill is introduced. Where court procedures or government policy not involving legislation are involved, such as pilots for new initiatives, the LAIA should accompany the relevant policy announcement. The Attorney General should table the LAIA in parliament at the earliest opportunity.

The LAIA should set out the expected change in demand for each type of legal assistance provider and the full cost of meeting that demand in each of the remaining years of A2JP. Consideration should also be given to synergies with existing activities and potential to transfer activities between service provider types, especially if that improves cultural appropriateness and A2JP preference for Aboriginal and Torres Strait Islander services to be provided by ACCOs.

Where a policy measure that reduces demand is introduced, it should lead to funding reductions. However, these measures should be deferred until two years after implementing the measure or the end of A2JP, whichever is earlier. This lag is to ensure that removing funding should occur over a timeframe that does not unnecessarily disrupt the service provider's normal operations.

The Reviewer acknowledges this approach is similar to the Justice Impact Test the Law Council of Australia has advocated for a decade or so. The Reviewer is also aware the Commonwealth and New South Wales governments have models that assess fiscal costs of law reform. The Reviewer sees no issue in using these models, and any models used by other jurisdictions, providing they recognise impacts on all legal assistance providers, including those not funded by the government operating the model.

Recommendation 22 – Legal Assistance Impact Assessment

The Reviewer recommends that when a government undertakes law reform (including but not limited to changes in law, policy or court procedure) that can be expected to change demand for legal assistance service it should undertake a Legal Assistance Impact Assessment (LAIA). The LAIA should consider the impacts for each affected legal assistance provider and determine what funding is required to provide appropriate services to affected clients irrespective of what the funding arrangements of services providers is.

Where significant impacts are found, the government of the jurisdiction making the changes should ensure that relevant legal assistance providers are properly resourced to deal with such impacts through an immediate and ongoing increase in baseline funding.

For the avoidance of doubt, a policy measure that reduces demand should lead to funding reductions, but these should be deferred until two years after the implementation of the measure or the end of the A2JP, whichever comes earlier.

Same job, same pay

8

Box 8.1 Key points

- There is no single data set on the size, composition and demographics of the legal assistance workforce. This makes it challenging to provide concrete assessments on supply of legal assistance workers and ability to meet future demand.
- Remuneration across the legal assistance sector is significantly below that provided by the private sector and some public sector employers, particularly in senior practitioner and managerial roles.
- Further, in both legal and non-legal roles, there are large differences in pay between LACs and community-based providers for equivalent roles. The lack of pay parity results in distribution of the workforce across the sector that does not necessarily serve the greatest legal need first. Differences in remuneration and other employment conditions must be addressed to ensure legal need is met across Australian communities.
- The large financial and time costs associated with studying law are pushing recent graduates towards higher paying roles in the legal profession that enable them to pay off their HECS-HELP debts more quickly. This is helping to create a supply problem for mid-career lawyers, particularly in the community sector's legal workforce.
- Staff retention is a consistent issue experienced across the sector. It limits the quantity and efficiency of legal assistance provided by the sector. Difficulties stem from uncompetitive remuneration, an overworked workforce, short-term fixed contracts, a lack of opportunities for career progression, workplace infrastructure and regional locations of many jobs in the sector.

This chapter examines the impact on the delivery of legal assistance resulting from the employment conditions of the legal assistance workforce and challenges to workforce attraction and retention.

8.1 The legal assistance workforce

A suitably skilled, sized and located legal assistance workforce is a prerequisite for effective access to justice. The legal assistance workforce must be available in sufficient numbers, in the right places and appropriately trained, if it is to fulfil this critical role to the standard required. There are two key categories of the legal assistance workforce: legal professionals, and non-legal workers.

Legal professionals work in all legal assistance providers. They offer advice, prepare court and other legal documents, and appear in and support court proceedings. They provide CLE and undertake advocacy and law reform work.

The legal assistance sector employs workers who do not have legal training, generally as part of prevention and early intervention work, or to undertake administrative tasks. These roles are involved in community legal education, client and stakeholder engagement, referrals, legal support tasks, dispute resolution, and advocacy and law reform.

Non-legal client facing roles include financial counsellors, social workers, community engagement officers and allied health staff. These roles have their own distinct education and training pathways, practising requirements (where regulated) and employment arrangements. Entry pathways for these roles are listed in section 8.3, highlighting diversified roles in workforce.

There is no single data source on the legal assistance workforce. This presents significant challenges for workforce development, planning and analysis. The Review has consistently heard there is a lack of an appropriately skilled workforce able to deliver legal assistance where, when and how the community needs it. The drivers of workforce supply are discussed in detail in subsequent sections of this chapter.

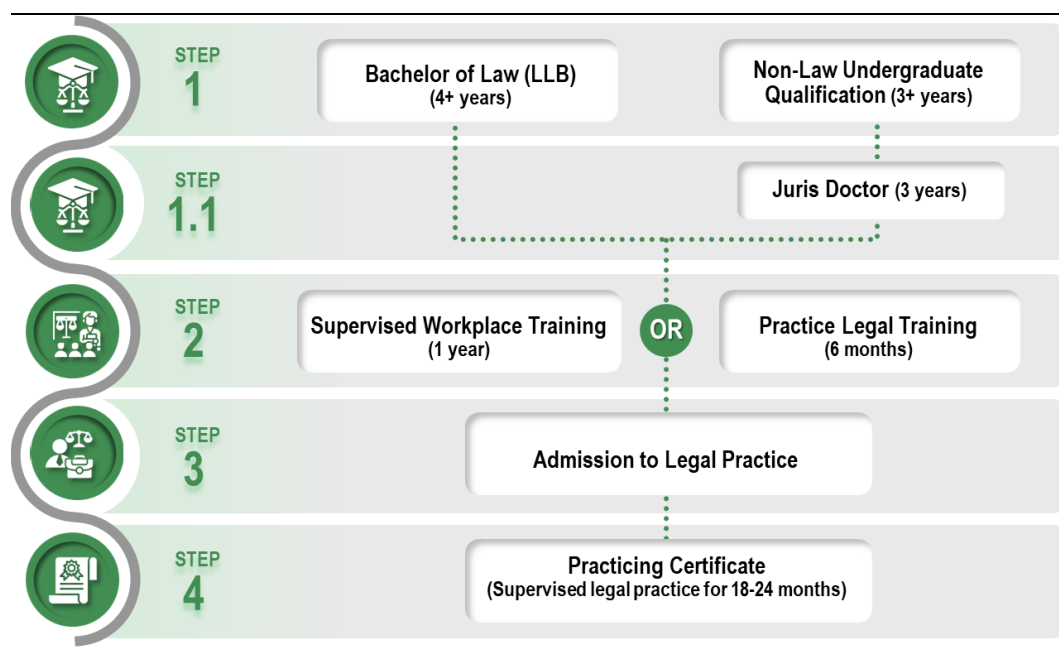
8.2 Legal professionals

8.2.1 Entry pathways

Entry to the legal profession requires three steps:

- higher education qualification (law degree)
- practical legal training (PLT), which on successful completion secures a Graduate Diploma of Legal Practice
- a practising certificate from the relevant professional body (a law society or bar association) which requires continuing professional development.

Figure 8.1 Entry pathways to legal practice



8.2.2 Supply of legal professionals

Australian universities operate on a demand driven funding model for all courses except medicine. Universities decide how many places they will offer in their courses based on demand from students and industry.

The number of law schools in Australia has plateaued in recent years, following significant growth since the 1990s. In 1985, there were 12 law schools. By 1995 this number had more than doubled to 26 (Council of Australian Law Deans). In 2023, 38 Australian universities had law schools.

Most law degrees are taught face-to-face (95% of LLB degrees and 83% of JD degrees). Around one-third of law degrees are offered online (29% of LLB degrees and 39% of JD degrees). As a majority of law schools are located in capital cities, access and choice for regional students is limited. Many students in regional areas relocate to major cities to undertake their degrees, and once there they are unlikely to return. The Grattan Institute reported that of regional students who moved to the city for university in 2011, fewer than one in five were living in regional areas in 2016 (Mackey, 2019).

Table 8.1 Law schools in Australia

State/Territory	Law schools	Offer a Bachelor of Laws	Offer a Juris Doctor
New South Wales	12	12	6
Victoria	8	7	5
Queensland	8	8	3
South Australia	3	3	1
Western Australia	5	4	1
Tasmania	1	1	0
Australian Capital Territory	2	2	2
Northern Territory	1	1	0
Total	40	38	18

Note: Total law schools equal 40 in the table, not 38. This is because Australian Catholic University and University of Notre Dame each have law schools that span two states. For the same reason the number of law schools that offer a Bachelor of Laws is 38 in the table, as opposed to 36.

Source: ACIL Allen analysis of multiple data sources including Council of Australian Law Deans

In 2019, the Council of Australian Law Deans reported that 8,499 students had graduated from Australian Law Schools in the previous year (2018). Between the 2016 and 2021 Census, the number of people in Australia with an LLB, JD or higher qualification attainment in law increased at a CAGR of 5.9%. This was 1.6 percentage points higher than the annualised CAGR between 2011 and 2016 of 4.3%.

While there has been growth across Australia, growth across jurisdictions was uneven. The Northern Territory in particular lags other jurisdictions for graduate growth (Table 8.2).

Table 8.2 People with an LLB, JD or higher degree in law

State/Territory	People with an LLB, or higher degree in law (2021)	Growth from 2016 and 2021 (%)
New South Wales	67,700	30.0%
Victoria	47,700	36.4%
Queensland	31,300	35.9%
South Australia	9,500	31.7%
Western Australia	14,200	28.8%
Tasmania	2,700	40.9%
Australian Capital Territory	8,400	34.6%
Northern Territory	1,200	20.7%
Total	182,700	32.9%

Source: ABS Census Table Builder (2016 and 2021), by place of usual residence

While there were 182,700 people in Australia with an LLB, JD or higher qualification in law in 2021, only 160,100 were of working age. The CAGR for this subset of working age people was also slightly lower at 5.3% growth per annum, with some variances across jurisdictions.

Despite growth in LLB and JD graduates, it is estimated only around half go on to practice law following graduation. Table 8.3 is derived from applying these growth rates to the 2021 working age population with an LLB, JD or higher qualification in Law. It is estimated that 54.3% of all law graduates in Australia currently hold a practising certificate. The proportion without a practising certificate (45.7%) is indicative of a large, qualified, yet untapped potential legal workforce in Australia.

The Review has heard many legal graduates go on to take non-practising roles, for example policy officer positions within the public sector, or roles in investment banking and management consulting. The Reviewer notes that many government legal officers do not require a practising certificate to perform their roles. In the 2021 Census, around 26% of the working age population with an LLB, JD, or higher qualification in law worked in Commonwealth, state and territory, or local government public services. These policy roles include police prosecution, public prosecution, child protection litigation, crown law and in-house legal counsel.

Table 8.3 Practising lawyers as a percentage of the graduate workforce

State/territory	Working age population with an LLB, JD or higher qualification in Law		Lawyers with a current practising certificate (2023 estimate)	Percentage of all law graduates with a practising certificate (2023)
	2021	2023 (estimate)		
New South Wales	58,600	64,400	36,100	56.1%
Victoria	41,800	47,000	27,600	58.7%
Queensland	28,000	31,400	15,400	49.1%
South Australia	8,100	8,900	4,800	53.5%
Western Australia	12,600	13,800	8,000	58.3%
Tasmania	2,200	2,500	800	31.8%
Australian Capital Territory	7,200	8,500	3,200	37.1%
Northern Territory	1,100	1,200	700	57.1%
Total	160,100	177,600	96,500	54.3%

Note: Numbers are rounded to the nearest 100; totals may not equal sum of columns due to rounding.

Source: ABS Census Table Builder, 2021. Various data sources.

Initiatives such as the Legal Profession Uniform Law are aimed at reducing barriers to legal practitioners operating between and within different states and territories. This facilitates improved workforce mobility in the sector and broadens the recruitment market for law firms. Not all jurisdictions have adopted the Uniform Law. The Reviewer has heard South Australia's failure to do so has led to significant issues for one lawyer trained in regional New South Wales and commencing practice in regional South Australia. Further adoption of the Legal Profession Uniform Law may help to ease workforce shortages in jurisdictions such as the Northern Territory where growth in people with an LLB, JD or higher qualification in law is lower than other jurisdictions.

Box 8.2 Legal Profession Uniform Law

The Legal Profession Uniform Law (Uniform Law) was introduced to create a common market for legal services across Australian states and territories. Uniform Law commenced, under local application acts, in New South Wales and Victoria on 1 July 2015, and in Western Australia on 1 July 2022. As of 2023, no other jurisdiction has commenced.

The Uniform Law's objectives are to promote the administration of justice and an efficient and effective Australian legal profession through:

- consistency between states and territories in the law applying to the Australian legal profession
- ensuring legal practitioners are competent and maintain high ethical and professional standards
- enhancing the protection of clients and the public
- empowering clients to make informed choices about their legal options
- efficient, effective, targeted and proportionate regulation
- a co-regulatory framework with appropriate independence for the legal profession.

For legal practitioners, the Uniform Law simplifies the legal framework for the profession. It enables practitioners in states under uniform regulatory standards to seamlessly practise between those states. This facilitates improved workforce mobility between jurisdictions, allows professionals to access a larger job market, improves job matching and alignment of jobs and skills, and increases efficiency and effectiveness of the legal sector workforce.

Source: Legal Services Council, 2022.

8.3 Non-legal workforce

8.3.1 Entry pathways for the non-legal workforce

Financial counsellor

To work as a financial counsellor, a person is required to hold a Diploma of Financial Counselling. The Diploma of Financial Counselling typically takes 12 months of full-time study to complete. In addition to holding the Diploma, a financial counsellor must be eligible for membership of their state-based financial counselling association, must receive professional supervision and must complete annual professional development requirements as stipulated by their relevant association.

Social worker

To become a social worker, a person must first complete an Australian Association of Social Workers (AASW) accredited Bachelor of Social Work degree or Master of Social Work degree. A Bachelor of Social Work requires three or four years of full-time study. A Master of Social Work typically takes two years of full-time study. Following graduation, an aspiring social worker must register with the AASW. Registration must be renewed each year and members must adhere to annual professional development requirements.

Community engagement officers

There is no specific degree or qualification required to be eligible to work as a community engagement officer. However, job advertisements from ATSILS and LACs for these positions refer to skills similar to those attained through a university degree. Selection criteria for advertised positions also seek applicants with lived experience in the community identified for engagement, and experience in the legal sector workforce.

Allied health staff (psychologist)

To become a registered psychologist, a person must complete a minimum six-year sequence of education and training. Upon completion of an Australian Psychology Accreditation Council (APAC) accredited undergraduate degree, graduates have a choice of two pathways to become a registered psychologist:

- the higher degree pathway, comprised of an approved postgraduate degree, such as a two-year Master of Psychology degree or a four-year Doctor of Psychology degree
- the 5+1 internship pathway, which is available for students undertaking a five-year degree, as opposed to the typical four-year degree. Upon completing their five-year degree a student undertakes an additional year of supervised practice. They must then pass the national psychology exam before they can apply for general registration.

Pathways to legal practice for non-legal workers

Some jurisdictions provide pathway programs for non-legal workers to become suitably qualified to undertake legal work. These often involve collaboration between LACs and a vocational education provider and/or a local university.

Box 8.3 Pathways to law – TAFE SA

TAFE SA provides a Certificate IV in Legal Services. This course is for those interested in working, or already working, as a legal support officer in legal services. It covers the Australian legal system, court process, legal research, the law and professional rules that apply to support staff, legal computing, communication, contract law and torts.

South Australian stakeholders reported that this qualification had been successful in supporting the non-legal workforce to transition into LLB programs, providing an effective pathway to increase workforce supply.

The Certificate IV is also offered in other jurisdictions through public and private Registered Training Organisations.

Box 8.4 First Nations workforce initiatives – Legal Aid NSW (LANSW)

In 2022, Legal Aid NSW, 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. It will run over four years and recruit 200 Aboriginal people to be employed by LANSW. LANSW is supporting those staff to complete a Certificate III in Legal Services, a Certificate IV in Legal Services Administration, and/or a Diploma of Paralegal Services. The Program offers progression to a Diploma of Paralegal Services if desired. In collaboration with Macquarie Law School, the Program offers a pathway from the Diploma of Paralegal Services to the Juris Doctor.

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

Source: National Legal Aid, sub. 63, p 51

The Reviewer considers such pathways should be part of the terms of reference for developing the Legal Assistance Workforce Strategy (see recommendation 24).

8.3.2 Supply of non-legal workers

Given the breadth of entry pathways and diversity of roles in the non-legal workforce, there is no coherent data set on projected supply of non-legal workers in Australia. Data on students from the breadth of relevant qualifications are not presented here as graduates pursue employment in many sectors.

8.4 Size of the workforce

There is no single data set on the size, composition and demographics of the legal assistance workforce, including both legal and non-legal workers. This makes it challenging to provide concrete assessments of the current and future workforce.

Based on data gathered through submissions, the Review estimates the legal assistance workforce has approximately 9,400 FTE positions. This includes both legal professionals and non-legal workers. Around half of workers in the sector are employed by LACs. The remainder is split between CLCs, ATSILS and FVPLS. These positions exclude solicitors and barristers in private practice who receive grants of legal aid, provide services for low fees, or work pro bono.

Legal professionals

In 2022, over 90,000 solicitors were practising as part of the Australian legal profession, an increase of 57% since 2011 (Urbis, 2022). Distribution of legal professionals across states and territories varies, as outlined in Table 8.4.

Table 8.4 2022 solicitor workforce – summary statistics

Jurisdiction	Number of solicitors	% of solicitors	Population	Ratio of solicitors to population
NSW	38,265	42%	8,193,500	1:214
VIC	22,847	25%	6,656,300	1:291
QLD	14,016	16%	5,354,800	1:382
WA	6,737	7%	2,805,000	1:416
SA	3,960	4%	1,828,700	1:462
ACT	2,980	3%	459,000	1:154
NT	633	1%	250,600	1:396
TAS	891	1%	571,900	1:642
Total	90,329		26,119,800	1:289

Source: 2022 National Profile of Solicitors

Legal professionals operate in many sectors. In 2022, over two-thirds of solicitors in Australia were working in private practice (67%), followed by lawyers working for businesses (17%) and the government legal sector (13%), which includes legal professionals working for Legal Aid. Only 3% of solicitors worked in the community legal sector (Urbis, 2022 National Profile of Solicitors). As of 2022, those representing the community legal workforce number approximately 2,200.

Table 8.5 Solicitors working in the government and community legal sectors

	Proportion working in government legal sector	Proportion working in community legal sector
NSW	11%	3%
VIC	14%	3%
QLD	5%	3%
SA	20%	3%
WA	8%	1%
TAS	20%	8%
NT	30%	18%
ACT	49%	1%
Total	13%	3%

Source: Urbis, 2022 National Profile of Solicitors

Non-legal workers

Non-legal roles in the legal assistance sector include, but are not limited to, social workers, allied health staff, financial counsellors and administration support services.

While data is not currently available, it is likely the legal assistance sector is a very minor player in these labour markets.

Financial counsellors

In 2022, Financial Counselling Australia estimated there were 1,100 FTE financial counsellors operating across Australia.

Social workers

In February 2023, there were around 35,000 social workers employed in Australia (Labour Market Insights, Australian Government). The largest professional body for social workers is the Australian Association of Social Workers, which has a membership of 17,000.

Allied health staff

Most allied health staff in the legal assistance sector are members of the mental health workforce. In 2021, the Australian Institute of Health and Welfare (AIHW) reported that the mental health workforce comprised around 65,600 people. Of these, 31,400 were psychologists, 2,600 were mental health occupational therapists and 2,600 were accredited mental health social workers.

8.5 Distribution across providers

LACs

NLA estimates there are 4,600 FTE roles in LACs across Australia. Of these, approximately 38% are solicitors (1,750 FTE positions). The remaining staffing profile of approximately 2,850 FTE roles includes non-legal professionals and administrative workers. NLA estimates 83% of this workforce is primarily involved in service delivery.

CLCs

CLCs are the second largest workforce in the sector with an estimated 3,500 FTE positions across 179 CLCs (an average of 19 FTE per CLC, as estimated by CLCA). In NSW, around 52% of the CLC workforce are solicitors. In Victoria an estimated 49% of CLC employees hold a legal practising certificate.

The extent to which CLCs employ staff with practising certificates varies considerably based upon the legal services they provide. Refugee legal services, for example, reported a high proportion of staff were solicitors, as high as 83%. Other CLCs focused on family law incorporate more holistic supports, with more diverse staffing profiles.

The Review estimates at least 1,700 FTE CLC employees nationally are not lawyers. Roles included administration, client intake, community education, engagement, financial counselling, case work, migration agents, policy and advocacy.

The Reviewer notes CLCs rely significantly on volunteers for non-legal activities and pro-bono lawyers for legal assistance services. These roles are not accounted for in FTE estimates above. A survey of Victorian CLCs estimated the median number of volunteers was 22 per CLC. There is large variance in the number of volunteers engaged by CLCs. Larger CLCs, and those located nearer CBDs or regional hubs, tend to have larger volunteer bases. The Reviewer has heard of volunteer bases in mid-sized to large CLCs ranging from 50 to 600 volunteers. As an indication of overall scale, Victorian CLCs make up just over 25% of all CLCs in Australia and in 2022 an estimated 2,081 people volunteered with Victorian CLCs (Victoria Law Foundation, 2022).

ATSILS

The ATSILS workforce is estimated to consist of 1,100 FTE positions. Approximately 52% of staff in ATSILS are solicitors, with the remaining staff being a part of the non-legal workforce.

Workforce distribution across legal and non-legal client services roles and operational roles can differ considerably across jurisdictions. In New South Wales/Australian Capital Territory and Queensland, between 42% and 47% of FTE are attributed to legal roles, and approximately 18% to administrative positions. In New South Wales/Australian Capital Territory, almost 25% of the workforce worked in community programs, with approximately 6.6% supporting litigation (paralegals). In Queensland, these proportions were reversed, with 24% of the workforce in litigation support roles and 7% in non-legal client services roles. In Tasmania, 58% work in legal practice, a quarter in administration and 17% in specific Aboriginal Liaison office roles.

FVPLS

A rough estimate of the FVPLS workforce, based on available data, suggests there are between 150 and 200 staff employed by FVPLS across Australia. FVPLS reports a relatively even split of staff between legal and non-legal roles, with around 55% of the workforce in non-legal roles and the remaining 45% in legal roles.

8.6 Demographics

Geography

In 2022, the majority of Australia's solicitors (87%) worked in city or suburban locations. Some 9% of solicitors worked in country or rural areas, and others located overseas. In the community legal sector, a greater proportion of solicitors was located in rural or regional areas (19%). However, most solicitors still worked in metropolitan areas (81%) (Urbis, 2022).

Gender

The legal assistance sector has a highly feminised workforce. Low wages in the sector exacerbate gender pay gaps in the legal profession more broadly as wages are lower than legal workforce salaries for private practice and government roles (see section 8.7).

NLA estimates 78% of the LAC workforce identify as female. This proportion is slightly lower in legal positions (74%) and in management positions (71%).

Seventy per cent of the CLC workforce identify as female, with approximately 2.2 female solicitors in the sector for every male solicitor. This is the highest rate of female participation compared to other sectors (Victoria Law Foundation, 2022).

The legal assistance sector is highly gender-segregated, with CLCs being female-dominated. At Caxton over 90% of our lawyers identify as female. This pattern in CLCs has persisted for decades. The pay gap is disproportionately affecting females and must be addressed with policies aimed at gender pay equity in mind.

Submission, Caxton Legal Centre, sub.12, p 14

The feminised nature of the workforce applies in ACCOs. NIAA reports the majority of staff in ATSILS identify as female. Similarly, the FVPLS workforce has an extremely high representation of women, with 80-90% of staff identifying as female.

Female participation is significantly higher than the broader Australian labour force and the Australian solicitor workforce, of which women make up 48% and 55% respectively (Labour Force Australia, 2023 and Urbis, 2022). Data from the College of Law's PLT program shows that between 2018 and 2022 more than 60% of students completing their PLT identified as female, indicating that the pipeline of lawyers is also female skewed (College of Law, 2022).

Data were not available on distribution across employment levels, disaggregated by gender, for the legal assistance sector. In the legal profession more broadly, despite females making up over half the solicitor workforce, less than a third of female solicitors were partners or principals (Urbis, 2022). This points to a wider issue of pay gaps in the legal sector, with women being both under-represented in leadership positions and over-represented in lower paying roles. The experience of the Reviewer is this may not be such an issue for the legal assistance sector where all but one of the LAC CEOs were women in February 2024. Leadership teams in LACs appear to comprise of a significant majority of women. CLCs and FVPLS have similar leadership profiles.

The Commonwealth is developing the National Strategy to Achieve Gender Equality. The intent is to guide whole-of-community action to make Australia one of the best ranked nations for gender equality. The Strategy will be an important mechanism for elevating and prioritising actions that achieve gender equality.

Given the highly feminised nature of the legal assistance workforce, addressing pay parity will contribute to improving the gender pay gap in Australia. The Reviewer recognises the importance of workplace gender equality and equal access, rewards, resources and opportunities regardless of gender. Standardising remuneration across the legal assistance sector will provide equal pay for work of equal or comparable value, in turn supporting gender equality.

Age and experience

Over half (57%) of the legal assistance workforce are under the age of 40. This proportion is higher than that of other workers in the legal sector. The average age of Australian solicitors in 2022 was 42, with just under half (49%) of all solicitors younger than 40. Female solicitors tend to be younger than males with an average age of 39 compared to 46 for their male counterparts. In 2016, the median age of barristers was 46, and the median age of judicial and other legal professionals was 45.

Sixty-five per cent of lawyers working in the legal assistance workforce have been admitted for ten years or less. This proportion is also higher than that of other sectors. Over half the entire solicitor workforce has been admitted for more than 10 years (52%) (Urbis, 2022).

These data are consistent with the view expressed on by several participants in the Review that younger lawyers (say with three to five years' experience) are leaving the sector as a result of poor terms and conditions of employment, and excessive workloads.

Representation of Aboriginal and Torres Strait Islander peoples

Aboriginal and Torres Strait Island peoples make up 3.2% of Australia's population. Given this they are under-represented in the solicitor workforce, with only 1% of Australian solicitors identifying as Aboriginal and/or Torres Strait Islander in 2022. Across the legal assistance workforce there are varying proportions of Aboriginal and Torres Strait Islander peoples. Unsurprisingly representation is highest among ATSILS and FVPLS.

National Legal Aid estimates around 4% of the legal aid workforce identify as Aboriginal and Torres Strait Islander, though this varies across states and territories.

Available data points to the average CLC having between 4% and 10% of staff who identify as Aboriginal and Torres Strait Islander. The Reviewer notes this is an average range. There are numerous CLCs that exceed this proportion.

Data from ATSILS indicate just over 40% of the total ATSILS workforce identify as Aboriginal and Torres Strait Islander. Representation ranges between 36% and 43% across states and territories.

Within the FVPLS non-legal workforce around 55% of staff identify as Aboriginal and Torres Strait Islander. However, the Reviewer understands this percentage is much lower in legal roles.

8.7 Remuneration and other employment conditions

8.7.1 Legal professionals

Salary

Remuneration varies across the sector and within jurisdictions. However FVPLS, CLCs and ATSILS generally pay legal staff significantly less than LACs and other government lawyers. Submissions point to the median income for CLC employees being consistently 15-20% lower than their LAC counterparts. A similar, though often wider gap is observed for staff in ATSILS. The largest gaps in pay are for staff in FVPLS, who reportedly earn between 20% and 30% less than their LAC counterparts. The Reviewer detects little change since the work of the Productivity Commission in 2013-2014.

Despite LAC pay being higher than other legal assistance providers, it remains behind comparative private practice salaries. A graduate starting at Victoria Legal Aid (VLA) reportedly earns \$85,000 per annum. The equivalent at the Victorian Aboriginal Legal Service (VALS) is reported to earn around \$78,000 per annum (8.2% lower VLA). In contrast, a graduate solicitor in a mid-tier law firm in Melbourne can expect to earn, on average, \$94,500, with top-tier firms offering average salaries of \$115,500 (Beacon Legal, 2023). These starting salaries are, respectively, 10% and 26% above those offered by VLA, and 17% and 32% above those offered by VALS. As a lawyer's years of post-qualification experience (PQE) increase, this gap widens.

A senior lawyer in a non-management position at VLA can expect to earn between \$97,000 and \$123,000. In VALS the salary ranges for senior lawyers in these positions top out at \$97,000. In the Victorian Government senior lawyers can earn between \$106,000 and \$129,000. In private practice, after five years PQE, lawyers in mid-tier firms earn \$147,000 on average, and in top-tier firms this figure rises to around \$166,000.

The Reviewer has heard that, in addition to movement between providers, many staff leave the legal assistance sector relatively early in their careers to work for police prosecution and Crown Law or equivalent agencies. These salaries are broadly equivalent to LACs for individuals with less than five years PQE; however, senior lawyers in LACs earn around 5-10% less.

Police prosecutors and crown law staff are paid more than legal staff in CLCs, ATSILS and FVPLS. After two years PQE, legal staff in ATSILS earn around 5-10% less. For senior lawyers in CLCs and ATSILS, the difference in salaries is around 20-25% of senior police prosecutors and senior crown lawyers. These calculations do not account for other benefits as discussed in section 8.7.3. It is legitimate to be asked whether risks of miscarriages of justice are posed by the substantial differential between the remuneration of prosecutors and that of lawyers defending the most disadvantaged in the community.

Public prosecutors are mostly paid under the same enterprise bargaining agreements (EBA) as other public servants. In some jurisdictions such as Western Australia and Australian Capital Territory there are elevated pay points for prosecutors. In these jurisdictions prosecutors are likely to earn more than legal staff in the relevant LAC. However, in other states, legal staff employed by the Office of the Director of Public Prosecutions (ODPP) are paid as legal professionals under the jurisdiction's EBA. In these regions there is no variability between LAC and the ODPP salaries.

Table 8.6 Public prosecutor salaries

State/Territory	Graduate/Junior Lawyer	Experienced Lawyer (3-5 years)	Senior Lawyer (5-7 years)	Senior Lawyer (7+ years)	Principal Lawyer/Director
NSW	\$73,000-\$85,000	\$91,000-\$111,000	\$117,000-\$125,000	\$134,000-\$147,000	\$154,000-\$158,000
VIC	\$69,000-\$83,000	\$84,000-\$105,000	\$106,000-\$129,000		\$130,000-\$175,000
QLD	\$71,000-\$90,000	\$94,000-\$103,000	\$109,000-\$117,000	\$122,000-\$132,000	\$135,000-\$144,000
SA	\$70,000-\$77,000	\$85,000-\$92,000	\$100,000-\$111,000	\$120,000-\$132,000	\$142,000-\$156,000
WA	\$95,000-\$102,000	\$102,000-\$123,000	\$134,000-\$144,000		\$151,000-\$195,000
TAS	\$75,000-\$98,000	\$102,000-\$119,000	\$127,000-\$149,000		\$157,000-\$178,000
NT	\$66,000-\$86,000	\$88,000-\$106,000	\$108,000-\$122,000	\$126,000-\$141,000	\$145,000-\$159,000
ACT	\$76,000-\$94,000	\$106,000-\$130,000	\$135,000-\$149,000	\$155,000-\$167,000	\$182,000-\$194,000
Commonwealth	\$69,000-\$79,000	\$85,000-\$96,000	\$107,000-\$132,000	\$141,000-\$151,000	
Average	\$74,000-\$88,000	\$93,000-\$109,000	\$116,000-\$126,000	\$133,000-\$143,000	\$150,000-\$168,000

Note: Salary estimates have been calculated using the latest publicly available Enterprise Bargaining Agreements and current advertised salaries.

Source: Publicly available enterprise bargaining agreement

Table 8.7 provides the average salary ranges within the legal assistance sector given a lawyer's experience. These figures are based on submissions and publicly available EBAs. It should be noted that these ranges are estimates based on the eligibility requirements of a position.

Table 8.7 Legal Assistance Sector – Average salary range

Provider	Graduate/Junior Lawyer	Experienced Lawyer	Senior Lawyer (5-7 years)	Senior Lawyer (7+ years)	Principal Lawyer/Director
LACs	\$72,000-\$93,000	\$96,000-\$111,000	\$116,000-\$127,000	\$132,000-\$147,000	\$152,000-\$165,000
CLCs (SCHADS)	\$76,000-\$89,000	\$94,000-\$98,000	\$102,000-\$107,000	\$111,000-\$116,000	\$120,000-\$126,000
ATSILS	\$72,000-\$81,000	\$82,000-\$90,000	\$91,000-\$102,000	\$105,000-\$123,000	\$126,000-\$147,000

Source: ACIL Allen analysis of awards and a sample of job advertisements.

Within the legal assistance sector, salaries tend to begin in similar ranges regardless of employer. As a lawyer progresses through their career, salaries for CLCs, ATSILS and FVPLS decrease relative to people employed by LACs. This is a significant issue given LACs already pay less than private law firms, meaning the gap between private law firms and CLCs, ATSILS and FVPLS is even greater. Remuneration gaps can result in employees moving away from these vital positions in favour of higher paying roles, creating a net drain on the legal assistance workforce, particularly as employees progress through their careers.

Table 8.8 CLC and ATSILS Salaries as a percentage of LAC salaries

Provider	Graduate/Junior Lawyer	Experienced Lawyer	Senior Lawyer (5-7 years)	Senior Lawyer (7+ years)	Principal Lawyer/Director
CLCs (SCHADS)	100%	93%	86%	81%	78%
ATSILS	93%	83%	79%	82%	86%

Note: FVPLS salary variances are excluded from this table due to misalignments of available data skewing comparisons.

Source: ACIL Allen analysis of awards and a sample of job advertisements.

LACs

Salaries in LACs are dependent on an individual's experience and seniority. Salaries vary across LACs as indicated in Table 8.9. It is important to note that the roles compared do not precisely match up across LACs. Table 8.9 presents a best estimate of the expected wage bands given a lawyer's experience.

Table 8.9 Legal Aid Commissions – Salary ranges

State/territory	Graduate/Junior Lawyer	Experienced Lawyer (3-5 years)	Senior Lawyer (5-7 years)	Senior Lawyer (7+ years)	Principal Lawyer/Director
NSW	\$73,000-\$85,000	\$91,000-\$111,000	\$117,000-\$125,000	\$134,000-\$147,000	\$154,000-\$158,000
VIC	\$75,000-\$98,000	\$98,000-\$123,000		\$123,000-\$156,000	\$156,000-\$180,000
QLD	\$71,000-\$87,000	\$90,000-\$99,000	\$104,000-\$113,000	\$117,000-\$126,000	\$130,000-\$138,000
SA	\$69,000-\$91,000	\$98,000-\$109,000	\$115,000-\$126,000	\$136,000-\$149,000	
WA	\$76,000-\$101,000	\$102,000-\$113,000	\$118,000-\$131,000	\$134,000-\$144,000	\$151,000-\$186,000
TAS	\$75,000-\$98,000	\$102,000-\$119,000	\$127,000-\$149,000		\$157,000-\$178,000
NT	\$66,000-\$86,000	\$88,000-\$106,000	\$109,000-\$123,000	\$126,000-\$141,000	\$145,000-\$159,000
ACT	\$71,000-\$98,000	\$103,000-\$121,000	\$126,000-\$148,000	\$154,000-\$166,000	\$170,000-\$171,000
TOTAL	\$72,000-\$93,000	\$96,000-\$111,000	\$116,000-\$127,000	\$132,000-\$147,000	\$152,000-\$165,000

Note: Salary estimates have been calculated using the latest publicly available Enterprise Bargaining Agreements and current advertised salaries.

Source: Submissions and publicly available Enterprise Bargaining Agreements

CLCs

Most CLCs pay their employees at Social, Community, Home Care and Disability Services (SCHADS) Award rates. A minority, but a substantial number, have their own enterprise agreements. For example, the Review estimates 30% of CLCs in New South Wales have enterprise agreements. Table 8.10 provides salary ranges for lawyers at CLCs, as determined by the July 2023 SCHADS Award. As a point of reference, salary ranges are also provided for CLCs which pay employees at SCHADS Award rates. From available data, the median legal professional employed by a CLC was a solicitor with an income of around \$95,500 per annum.

Table 8.10 Community Legal Centre – Salary ranges

Award	Graduate/Junior Lawyer	Experienced Lawyer	Senior Lawyer (5-7 years)	Senior Lawyer (7+ years)	Principal Lawyer/Director
SCHADS (2023)	\$76,000-\$89,000	\$94,000-\$98,000	\$102,000-\$107,000	\$111,000-\$116,000	\$120,000-\$126,000
CLC example A	\$77,000-\$84,000	\$88,000-\$93,000	\$93,000-\$102,000	\$104,000-\$110,000	\$113,000-\$119,000

Source: Submissions and SCHADS

ATSILS

ATSILS legal workforce is paid consistently lower salaries relative to their peers in the sector. Submissions indicate a majority of legal staff in ATSILS have less than seven years post-admission experience. Available data suggests the median legal staff member would be earning in the realm of \$90,000 to \$102,000 (a similar range to CLC employees). The Reviewer has consistently heard that ATSILS salaries are well below those provided by LACs and the severity of these differences are more pronounced in some jurisdictions than in others. While these facts and their consequences are clearly understood by some jurisdictional governments, little action appears to have been taken by them or the Commonwealth to address them.

One Attorney-General observed to the Reviewer:

the pay disparity between staff employed by Legal Aid ...and the Aboriginal Legal Service ...is particularly severe....

As noted in the Issues Paper, a suitably skilled, sized and located legal profession is a pre-requisite for effective access to justice. I consider the remuneration and entitlement disparity to be a significant barrier in achieving this pre-requisite.

These sentiments were reflected in discussions the Reviewer had with other Attorneys-General and Ministers.

Table 8.11 provides salary ranges for legal staff in ATSILS by jurisdiction.

Table 8.11 Aboriginal and Torres Strait Islander Legal Services

State/Territory	Graduate/Junior Lawyer	Experienced Lawyer	Senior Lawyer (5-7 years)	Senior Lawyer (7+ years)	Principal Lawyer/Director
NSW/ACT	\$64,000-\$91,000		\$92,000-\$107,000	\$102,000-\$126,000	\$132,000-\$169,000
VIC	\$78,000-\$81,000	\$83,000-\$88,000	\$91,000-\$97,000	\$112,000-\$123,000	
QLD	\$86,000-\$91,000	\$94,000-\$104,000		\$109,000-\$131,000	\$135,000-\$163,000
SA	\$71,000-\$80,000	\$81,000-\$88,000	\$90,000-\$95,000	\$96,000-\$109,000	\$112,000
WA	\$62,000-\$73,000	\$73,000-\$86,000	\$90,000-\$101,000	\$101,000-\$120,000	\$120,000-\$164,000
TAS	\$76,000-\$79,000	\$84,000-\$104,000		\$114,000-\$122,000	\$127,000-\$145,000
NT	\$71,000-\$78,000	\$80,000-\$94,000	\$95,000-\$105,000	\$107,000-\$126,000	\$130,000-\$141,000
TOTAL	\$72,000-\$81,000	\$82,000-\$90,000	\$91,000-\$102,000	\$105,000-\$123,000	\$126,000-\$147,000

Note: Salary estimates have been calculated using the latest publicly available Enterprise Bargaining Agreements and current advertised salaries.

Source: Submissions and publicly available Enterprise Bargaining Agreements

FVPLS

Staff in FVPLS have the lowest salaries in the sector. Submissions indicate that in some jurisdictions lawyers in FVPLS are paid around 8-10% less than their peers in ATSILS (the second lowest paid workforce in the sector). FVPLS roles are highly demanding and remuneration is by no means commensurate with the vital work FVPLS undertake.

Table 8.12 Family Violence Prevention Legal Services – Salary ranges

	Junior/Graduate Lawyer	Lawyer (3-7 years)	Senior Lawyer (7+ years)	Principal Lawyer
FVPLS average	\$68,000-\$95,000	\$78,000-\$93,000	\$85,000-\$102,000	\$95,000-\$128,000

Note: Table is not comparable to other services, due to misalignments of available data skewing comparisons.
Source: NFVPLS

8.7.2 Non-legal workers

Considerable ranges exist in remuneration of the non-legal workforce. While some roles, such as social workers and psychologists, are guided by state and territory based awards, other positions are not, such as financial counsellors and community engagement workers. Table 8.13 outlines the expected ranges of pay for non-legal roles in the broader workforce.

Table 8.13 Overview of expected pay for non-legal workforce

	National awards
Social workers	\$56,373 - \$125,054
Financial counsellors	\$47,367 - \$96,804*
Psychologists	\$56,373 - \$125,054
Community engagement officers	\$51,740 - \$86,252

*The minimum is set by the Banking, Finance and Insurance Award 2020. The maximum presented here is drawn from the Victorian Financial Counselling Sector Pay Guide.
Source: National awards rates are sourced from the Fair Work Ombudsman.

Additionally, the Legal Services Award 2020 outlines a minimum salary for legal, clerical and administrative employees of between \$49,608.00 and \$59,716.80.

LACs

LAC pay rates for their non-legal workforce members are largely aligned to national awards.

Table 8.14 Estimated salary bands in LACs

	LAC salary bands
Social workers	up to \$130,458
Financial counsellors	\$68,414 - \$75,915
Psychologists	up to \$130,458
Community engagement officers	\$73,091 - \$105,254

NOTE: These are estimates only and may not reflect all LACs.
Source: Various sources.

ATSILS

ATSILS pay client support services at a relatively lower rate than LACs. While the ceiling for a community engagement worker in ATSILS was higher than in LACs, the lower bound for that role was below that for LACs.

Table 8.15 Estimated salary bands in ATSILS

ATSILS salary bands	
Social workers	Unknown
Financial counsellors	\$56,046 - \$66,763
Psychologists	Unknown
Community engagement officers	\$50,945 - \$168,243

Source: Pay bands provided by ATSILS via submissions.

CLCs

CLCs pay rates for their non-legal workforce members are typically below those offered by LACs. The ceiling for senior positions in these roles pushes the bands beyond those offered by LACs in some instances, but on average salaries are lower in the CLC sector.

Table 8.16 Estimated salary bands in CLCs

LAC salary bands	
Social workers	\$70,000 - \$105,000
Financial counsellors	\$75,000 - \$85,000
Psychologists	Unknown
Community engagement officers	\$80,000 - \$105,000

NOTE: These are estimates only and may not reflect all CLCs.

Source: Various sources.

FVPLS

There is limited data available for non-legal salaries in FVPLS. NFVPLS reports the remuneration range for non-legal workers in FVPLS was between \$53,000 and \$78,000 (excluding CEOs and managers who are not lawyers). The Reviewer has heard that the discrepancy in salaries observed for legal professionals extends to non-legal workers. ATSILS (Qld) reported that while a Field Officer in its service receives a salary of around \$75,000, a Case Management Officer in Queensland Indigenous Family Violence Legal Service receives a salary of around \$65,000, or 13% less. The Reviewer notes that both roles provide a culturally informed service to clients who are more often than not experiencing trauma.

8.7.3 Entitlements and benefits of the legal assistance sector

In addition to base salaries, staff at LACs are afforded additional benefits. Gaps in remuneration are compounded by additional entitlements afforded to LAC staff under their EBAs.

Benefits received by LACs are commensurate with other government organisations and can include relocation allowances, overtime, rest relief (a continuous break of at least 8 hours away from work after working overtime), motor vehicle allowances, on-call allowances and access to family care arrangements.

In addition to financial allowances, staff in LACs can access Employee Assistance Packages, pursue professional development opportunities through formal learning and training programs, receive financial support for further education or study, access salary packaging and work under flexible arrangements.

Some jurisdictions' LACs offer their employees superannuation beyond minimum contribution requirements of 11%. The compounding nature of superannuation means these variances can lead to substantial differences in accrued superannuation come retirement age. With employees in CLCs, ATSILS and FVPLS already earning less than their LAC counterparts, the difference in superannuation worsens an already significant gap in financial benefits between LACs and the rest of the legal assistance sector.

Relocation allowances reduce financial barriers to mobility and are an important incentive to facilitate movement to regions. As an example, Legal Aid ACT can assist with relocation expenses to a new employee moving to Canberra of up to \$12,000 for a single person with no dependents, with an additional \$2,000 for each of the first six dependents. The Reviewer understands some community sector providers offer much less generous relocation assistance, but many do not offer it all. However, community providers are not funded to provide this assistance. This should be addressed in rebasing 2024-25 funding, as set out in section 7.2.1, having regard to the geographic nature of providers and the types of workers they are likely to need.

A submission made by a FVPLS also highlights that FVPLS are not eligible for travel and accommodation allowances that public sector legal services have access to.

We are aware that organisations such as Victoria Legal Aid provide short-term accommodation and relocation costs for staff recruited to work in RRR areas. Such allowances, available to public sector employees such as Legal Aid, should also be replicated and supported across the Legal Assistance sector so that we can recruit and retain our staff in our communities.

Submission, Anonymous

Benefits, including long service leave, are intended to be available for all workers but are often impacted by movement between employers. In the legal assistance sector, the Reviewer has heard staff often miss out on benefits, such as long service leave and other entitlements, as a result of frequent movement driven by both short-term contracts and pursuit of adequate remuneration.

These entitlements provide benefits to both workers and employers. A portable entitlements scheme enables employees to transfer from employer to employer in an industry without losing the service they have accrued. A range of portable entitlement schemes operate across the country. For example, all community services workers have portable long service leave in the Northern Territory, Australian Capital Territory, Victoria, and Queensland. This based on years worked in the sector, not years worked for a particular employer.

From an equity perspective, government has an objective to ensure Australians have fair access to the relevant employment standard. The Reviewer thus recommends a portable entitlements scheme be established for the legal assistance sector at a national level. This may require establishment of a governing board and administering body to oversee the scheme, with responsibility for:

- identifying and registering employers and employees
- ensuring employers provide regular returns and levy payments
- maintaining records of workers service and employers' contributions/payments to the scheme
- identifying and monitoring the scheme's liabilities
- investing funds to cover administration costs, and current and future liabilities

- assessing workers' claims and making payments as required, and
- publicly reporting in accordance with legislative requirements.

Recommendation 23 – Portability of entitlements

The Reviewer recommends that governments work with peaks and the relevant unions to develop a portable entitlement scheme for all workers in the legal assistance sector, including LACs. At a minimum this scheme should address long service leave but consideration should be given to including others, such as sick and parental leave, where appropriate and when the benefits of increased labour market mobility outweigh the incremental costs to the scheme.

8.8 Retention

Staff attrition is a significant issue across the legal assistance sector. High attrition rates reduce the sector's efficacy in service delivery to clients and place further strain on an already overburdened workforce. High attrition also discourages employers from investing in their employees. Submissions indicate high attrition rates in the workforce are attributable to inadequate remuneration, unrealistic workloads, short fixed-term contracts, burnout, stress and vicarious trauma.

Staff turnover rates are very high and have been increasing for some time. Submissions highlighted increased rates of turnover in regional and remote areas compared with metropolitan areas, despite turnover being an issue in metropolitan areas as well.

Reported rates of staff turnover within the sector are discussed below. For comparison, ABS reported the national job mobility rate (the percentage of employed people changing jobs within a single year) for all people as being 9.5% for the year ending February 2023.

LACs

Rates of staff turnover within LACs, where reported, range between 14% and 44%. The median attrition rate was around 23%, roughly 2.5 times higher than the national job mobility rate. Some LACs' rates of attrition are increasing. NTLAC's turnover rate for criminal practice legal staff has increased from 26% in 2019-20 to 44% in 2022-23. Attrition within LACs was also attributed to expiry fixed-term contracts; for instance, in Tasmania 82% of staff turnover occurred due to expiry of fixed-term contracts.

CLCs

The rate of staff turnover in CLCs was around 20% in 2022-23. CLCA indicated that more than two-thirds of surveyed CLCs reported having either the same, or a higher, rate of turnover relative to the previous year. Turnover was highest in the Northern Territory, with an average annual turnover rate of 28% for CLC staff. New South Wales, Western Australia and Queensland each had a turnover rate of 23%.

The median time taken for a CLC to fill a vacancy was between one and three months. The Reviewer is aware that some CLCs have an average vacancy duration far longer than this. Some CLCs report that it takes, on average, between six and 12 months to fill a vacant position.

ATSILS

Where reported, the rates of staff turnover in ATSILS are above those in LACs, with an annual rate of staff turnover of between 30% and 40%. This around 3–4 times higher than the national job mobility rate.

FVPLS

The Reviewer has heard of consistent recruitment and retention issues across the FVPLS workforce. FVPLS report regularly having vacancies unfilled for anywhere between three and 12 months.

8.9 Impact of workforce shortages

Reduced capacity to meet demand

Issues of attrition and recruitment have compounding negative impacts on the ability of the sector to meet growing legal need in the community. These impacts are most keenly felt through the loss of human capital as experienced staff move away from the sector. This has adverse impacts on both the communities and individuals serviced by the sector, and the organisational development of service providers.

Submissions highlight growing demand for legal advice, representation and general services; however, workforce shortages are reducing the sector's capacity to meet demand, leading to the curtailment of CLE, and advocacy and law reform work. Services are having to turn away people who require representation, or refer them to other services, as their solicitors lack the capacity required to take on their case.

In some instances, this has led to ATSILS ceasing to take on any new clients, as the caseloads for their solicitors are too high to be sustainable. Most recently, in November 2023, NAAJA announced it was suspending new criminal matters in Alice Springs until the end of 2023 due to significant staffing shortages and excessive workloads (Allison, 2023). It is understood services are now planned to resume around the end of February 2024.

In a similar vein, ATSILS (QLD) withdrew court-based support for Aboriginal and Torres Strait Islanders across ten locations in May 2023 (Allison, 2023). In the same month, ALS (NSW/ACT) froze criminal law services at 13 Local Courts across NSW due to a workload crisis caused by inadequate government funding (ALS (NSW/ACT)).

Caseload data has been an ongoing cause of poor staff wellbeing outcomes. Some of our staff regularly have 100 or more open files, particularly in the Criminal Law Practice. In recent years we have taken difficult decisions to freeze new client intake until caseloads reduce to safer levels.

Submission, Victorian Aboriginal Legal Services, sub.138, p 38

In a similar vein, some CLCs have also closed their books to new clients as current resourcing is insufficient to meet high and rising demand from the communities they service. For instance, in 2021, as a result of prolonged funding insufficiency, the Hobart office of the Women's Legal Service Tasmania was forced to cease taking new referrals for representation or support work. Across its other offices, people contacting the Service waited weeks, and sometimes months, before accessing assistance (Maloney, 2021). Similar situations have arisen in Melbourne in the Northern Community Legal Centre (Bucci, 2022), and Inner Melbourne Community Legal Centre (Bucci, 2022), both of which temporarily closed certain service offerings in 2022 due to unsustainable caseloads and insecure funding arrangements.

The effectiveness of the sector is highly reliant on human capital to service the needs of the community. The loss of human capital resulting from an underpaid, overworked and burnt-out workforce has significant impacts on the quantity and quality of services the sector provides. Vacancies are commonly reported to remain unfilled for more than 12 months. New recruits are typically unable to match caseloads sustained by experienced solicitors they replace.

One CLC noted that an outgoing experienced solicitor can provide up to twice as many services as a new recruit. This CLC highlighted that this was not a reflection of the quality of the recruit, rather a reflection of the impact experience in the sector has on service output.

Poor remuneration of solicitors results in a continual loss of expertise and experience from CLC's with a common pathway of CLC lawyers moving to Legal Aid Commissions, Government, or private practice. Inability to attract experienced solicitors to the profession and loss of resources in perpetually recruiting and training new staff is inevitably and keenly felt by our clients. Trust and expertise are integral to securing client engagement in our work and meeting unmet legal need in the community.

Submission, Anonymous individual

Lack of culturally appropriate provision

During meetings with service providers and other stakeholders, the Reviewer heard that the movement of many staff from ATSILS to higher paying roles in LACs, prosecutors and policy roles is impacting the ability of ATSILS to provide culturally appropriate services. The loss of staff damages community trust and connection, reducing the likelihood of these communities feeling comfortable accessing the tailored legal supports and services ATSILS and FVPLS provide.

... recognises the invaluable contribution of Aboriginal and Torres Strait Islander staff in providing culturally safe services. However, ATSILS are losing these crucial team members to other legal assistance providers. These organisations, with their superior resources and ability to offer higher salaries, are enticing our staff away. This loss not only affects the individuals who leave but also weakens the foundation of ATSILS' culturally safe service delivery model.

Submission, Anonymous

Increased costs to providers

In addition to efficiency losses, legal centres face significant financial costs and investments of time to train new staff to adequately meet clients' needs. These factors reduce the sector's ability to meet legal needs.

Costs include financial resources for advertising, staff resources in advertising and recruitment processes, lost productivity because staff cannot be replaced prior to departure, and lost productivity due to general onboarding and training costs for new staff. Data from NLA points to around 10% of all LAC job advertising campaigns resulting in no successful appointment. Evidence from the rest of the sector points to this percentage being larger for CLCs, ATSILS and FVPLS.

NAAJA estimated if staff turnover fell from 30% to 15% for 50 staff, lost productivity from training new staff would reduce from (approximately) 1,815 hours to 907 hours per year. Other submissions highlight substantial time costs associated with recruitment, and the detrimental impact this has on service delivery.

The constant loss of expertise and knowledge impacts both the remaining staff and the level of service provided to clients and is an ongoing and unnecessary burden across the organisation. As well as the administrative burden on the corporate services team, practice staff spend a significant amount of time in the recruitment cycle, taking them away from delivering services to clients.

Submission, Aboriginal Legal Services (NSW/ACT), sub. 140, p 20

8.10 Barriers to attraction and retention

The Reviewer acknowledges significant challenges impeding staff attraction to, and retention, in the legal assistance workforce. These challenges stem from comparatively low rates of pay compared to equivalent roles in private and government sectors, reduced job security resulting from short-term contracts, high workloads, exposure to vicarious trauma, and staff burnout.

The Reviewer notes that recruitment and retention issues in the legal assistance workforce are longstanding problems. These issues were previously identified and discussed in the PC Report. Since that report there has been no improvement in the problems plaguing the workforce.

The Reviewer is satisfied these recruitment and retention difficulties have had detrimental effects on service delivery, client relationships and connecting legal assistance organisations to their communities. Each of these effects inhibit the sector's effectiveness in delivering legal services to those in need and access to justice. These complex issues require an integrated approach beyond the scope of this Review. Given the urgency of these issues, a workforce strategy must be developed.

Recommendation 24 – Workforce Strategy

The Reviewer recommends that the Commonwealth Government, in collaboration with unions, state and territory governments and peak bodies, develop a national workforce development strategy for the legal assistance sector to attract and retain a skilled, well supported, and diverse workforce. This strategy should address:

- development of a robust data set on the legal assistance workforce as part of the improved approach to data discussed in chapter 10
- attraction and retention strategies
- remuneration and entitlements, including portable entitlement schemes
- continuing professional development and supervision
- career pathways and progression.

It is recommended that \$5m be provided by the Commonwealth for these purposes in 2024-25 with a view that ongoing funding of the strategy be shared by the states and territories during the A2JP.

Remuneration

Remuneration is a key issue when attempting to recruit and retain staff. Employment conditions in the legal assistance sector are significantly inferior to those offered in equivalent roles by both the private sector and government sector, as discussed in section 8.8. Again, these issues are known to jurisdictional governments.

... the ACT notes the current challenges in recruiting staff given the discrepancies in remuneration between community sector funding and private practitioners.

Submission, ACT Government, sub. 5, p 20

Submissions point to this large pay disparity. They also note many junior lawyers who begin their careers in the legal assistance sector feel pulled to the private sector as they seek higher remuneration to reduce their high HECS-HELP debts more quickly. This problem is even more pronounced when labour demand outstrips supply. In that context wages typically rise as higher salaries are required to attract talent. Due to limited funding increases, the legal assistance sector's capacity to match and compete with rising wages is curtailed, further hindering the sector's competitiveness in the labour market.

Community legal centres need to be competitive employers in a tight labour market. As noted by CLCQ and CLCA, community legal centres struggle to recruit appropriately qualified solicitors. YFS Legal plays a key role in developing law students' skills and experience through our student clinics. Our funding needs to be adequate to attract staff.

Submission, YFS Legal, sub. 108, p 7

Pay discrepancies are largest for mid-to-late career lawyers. Available data indicates most solicitors in the legal assistance workforce have less than five years PQE. Mid-career solicitors, who would be expected to fill senior lawyer roles, are largely missing from the legal assistance workforce for reasons relating to salaries, employment conditions and workload.

Recruitment and retention difficulties are felt most significantly that the PAE5+ years senior lawyer roles and PAE10+ years principal lawyer roles. At this point the person is an attractive option to both Legal Aid Commissions and private practice who can offer higher paid positions to exercise these responsibilities.

Submission, Caxton Legal Centre, sub. 12, p 14

Many Review participants identified the same obstacles to staff attraction and retention. One obstacle is differential employment conditions between community sector providers (CLCs, ATSILS, FVPLS), the private legal sector and the government sector (LACs, police prosecutors, crown law officers). The other major obstacle is the short-term nature of many contracts in the legal assistance sector. The Reviewer accepts these obstacles severely impair the legal assistance sector's ability to attract and retain staff.

The Reviewer considers increasing remuneration and improving conditions of employment will improve staff retention across the sector, and improve the sector's attraction as an employment destination. Improved salary and conditions should enable better recruitment outcomes, thus boosting the sector's capacity to meet legal need. This would hopefully reduce instances of burnout in the currently overworked workforce. Non-remuneration employment condition issues are to be addressed through the baselining process for 2025-26, as set out in section 7.2.1.

Officials have questioned whether necessary changes could be made to workplace arrangements by 30 June 2025. After consulting union officials and labour lawyers who advise employers, the Reviewer is satisfied the recommendation can be implemented in the proposed timeframes.

Recommendation 25 – Remuneration of community legal assistance workers

The Reviewer recommends the Commonwealth Government should provide additional funding in last year of NLAP (2024-25) to increase the remuneration of both legal and non-legal staff working in CLCs, ATSILS and FVPLS to equivalent pay as that of the LAC in the respective jurisdiction. The estimated cost of this in 2024-25 is estimated to be \$66 million - \$35 million for CLCs, \$25 million for ATSILS and \$6 million for FVPLS. The estimated cost of this in 2025-26 is estimated to be \$69 million - \$36 million for CLCs, \$26 million for ATSILS and \$7 million for FVPLS.

To access this funding, which can be back dated to 1 July 2024, the relevant service providers must demonstrate employment conditions have been varied and approved through the relevant industrial processes. No funding is to be provided to service providers for 2024-25 who fail to have necessary workplace arrangements in place by 30 June 2025.

This funding should be embedded in the baseline funding moving forward.

Workload

Observations of under-resourcing and overwork, particularly in FVPLS, CLCs and ATSILS, make legal assistance roles unappealing when other employers offer better conditions. Workplace culture is consistently identified as a challenge, with fatigue, burnout and vicarious trauma reportedly high. These factors contribute to attrition across the board. They impact even more sharply on regional and remote workforces where these issues are often exacerbated.

High vacancy rates are increasing caseloads of an already stretched workforce. Submissions have highlighted the additional unpaid hours of work the sector is taking on to meet demand for their services. Many CLCs stated their lawyers are servicing around 600 cases annually. Despite there being no established benchmark for caseloads, the Reviewer understands from a number of stakeholders that a sustainable caseload would be around 400 cases per annum, meaning current caseloads for many community organisations are 50% above sustainable levels. Establishing acceptable caseloads for different types of legal assistance work will be necessary to objectively undertake the baselining exercise discussed in section 7.2.1.

Caseloads are not evenly distributed among subsectors. As an example, available data from regional magistrates' courts point to solicitors from ATSILS representing over three times as many clients as their LAC counterparts.

Our lawyers typically have higher caseloads than lawyers at Community Legal Centres (CLCs) or Victoria Legal Aid. Our executive believe that their teams would need increase anywhere from 100% to 300% to meet demand for our services and keep caseloads at industry standards.

Submission, Victorian Aboriginal Legal Services, sub. 138, p 12

Both Aboriginal Legal Rights Movement and Victorian Aboriginal Legal Services report staff juggling in excess of 100 clients at one time. During consultations, the Reviewer asked a number of stakeholders, including managers and on-the-ground solicitors, their views on what a sustainable case load would be. The range of responses was 35-60 open files.

Caseloads at VALS have pushed the service to stop taking on new clients to ease staff caseloads. It is the opinion of both the Reviewer and the legal assistance sector that without targeted intervention to increase employment and retain staff, more ATSILS and CLCs will be pushed to the point where they have to freeze services to new clients, exacerbating unmet legal need.

Lawyers at the Aboriginal Legal Rights Movements are juggling over 150 clients each at one time.

Submission, Australian Services Union, sub. 115, p 14

Some of our staff regularly have 100 or more open files, particularly in the Criminal Law Practice. In recent years we have taken difficult decisions to freeze new client intake until caseloads reduce to safer levels.

Submission, Victorian Aboriginal Legal Services, sub. 138, p 38

Addressing rates of pay, through recommendation 25, is likely to attract new workers to the sector which should contribute to a reduction in the workload for legal assistance staff. However, the additional funding for these new workers will need to be provided through the 2025-26 baselining exercise. All that said, the impact of workloads will need to be monitored in the future to ensure that risks of burnout are mitigated.

Short-term contracts

There is a high proportion of short-term contract positions in the legal assistance sector. This is a result of short funding timeframes which drive funding uncertainty, particularly for smaller legal assistance providers. The Review heard numerous examples of CLCs having to include termination clauses in employment contracts in case funding was not renewed. It is unsurprising that this makes it more difficult for providers to attract staff to short-term positions.

Short term funding has contributed to FVPLS services being unable to effectively plan for long term interventions, to retain staff who experience uncertainty and insecurity to long term employment and communities to provide commitment to communities that long term support is available.

Submission, National Family Violence Prevention and Legal Services Forum, sub. 135, p 7

When funding uncertainty means we are unable to offer ongoing roles and can only offer contract positions, staff have an even greater incentive to move on. These issues also create challenges for recruitment of new staff.

Submission, Consumer Action Law Centre, sub. 21, p 6

The impacts of short-term contracts have been substantiated by workforce surveys completed by the legal assistance sector. The Victoria Law Foundation's 2022 survey of Victoria's community legal assistance sector workforce indicated that a person's intention to continue working in their community legal centre was significantly influenced by whether they were a casual employee with a fixed term contract, or they had ongoing or permanent position. Around 44% of employees on casual contracts expressed an intention to stay in their current position for two or more years. For employees on fixed-term contracts, 42% intended to stay in their current role for two or more years. This percentage increases to around 68% of staff who are on ongoing or permanent contracts.

Many community legal centre staff are on rolling fixed term contracts. This compounds the workforce problem because skilled workers leave for secure employment in other sectors.

Submission, Australian Services Union, sub. 115, p 3

To manage the associated risks, some employers within the sector have rolled staff over from one contract to another to provide some surety. However, there are concerns in the sector that this practice will be jeopardised by the *Fair Work Amendment (Secure Jobs and Better Pay) Act 2022* (Cth), (the Act). The Act, which came into effect in December 2023, converts into a permanent position any fixed-term contract staff member who had worked in their role for two years or more. The implication for legal assistance service providers is that the current practice of offering fixed-term contracts, with a provision to roll over should NLAP funding be continued, will lead to these workers becoming permanent employees. The sector is concerned that with no certainty of funding these permanent positions would become a liability for providers. If a centre's funding was reduced or ceased it would be liable to pay for staff redundancies. The process of valuing redundancies would be a complex task, which would impose additional administrative costs on top of redundancy payments, which of course service providers are not funded for.

The Reviewer notes the detrimental impact of short-term contracts on workforce attraction, recruitment, retention and, ultimately, continuity of service for members of the community. Recommendations to increase the duration of funding agreements and substantially reduce short-term funding arrangements, discussed in section 7.1.2, address this issue.

Career progression

Access to opportunities for progression in level, role and responsibility are important contributors to career satisfaction and retention. Lack of career progression opportunities decreases the attractiveness of employment and levels of staff retention. This is most prevalent in CLCs and ATSILS, compared to LACs which often have more structured career pathways due to their size and relationship with the wider public service. Submissions indicate that the sector's non-legal workforce has even fewer opportunities for career progression than their colleagues in legal roles.

... while legal practitioners continue to leave public legal assistance due to the uncertain, and often short-term nature of their employment contract, as well as relatively poorer salary, and lack of career opportunity and progression.

Submission, Victoria Law Foundation, sub.103, p 6

As well as employing legal staff, community legal centres employ workers in client service roles including case workers, social workers, financial counsellors, Aboriginal engagement officers, policy workers, administrative and management workers, and community development workers. A recent report and survey of Victorian community legal centre staff found those employed in client service roles thought there were less opportunities to build a career within their community legal centre.

Submission, Australian Services Union, sub.115, p 6

Many employers in the legal assistance sector are small. It is likely that many workers may need to change employers to advance in their careers. This, in many cases, will involve loss of a range of entitlements. Providing a portable entitlements scheme will assist both career development and labour mobility and retention. Career progression is an important issue for the workforce strategy proposed in recommendation 24.

Workplace safety

In addition to high caseloads, the nature of work undertaken by the legal assistance workforce exposes staff to vicarious trauma, further compounding the issue of burnout. Legal assistance workers regularly engage with clients with complex needs. These are complex and challenging work environments. Despite that, current funding levels are inadequate to enable supply of support services which are vital to combatting the psychological pressures, vicarious trauma and burnout experienced by staff. Submissions have highlighted that current funding arrangements are insufficient and inflexible to provide staff with psychological counselling and treatment, despite the complex and often-traumatising nature of the work performed by these staff.

Occupational work, health and safety legislation is being changed in South Australia to refer to psychosocial safety, yet no provision is made, as far as we are aware in the budgets of any ATSILS for meeting these requirements. Yet it may be anticipated that they will become the more acute and the experiences of our staff at ALRM confirm this.

Submission, Aboriginal Legal Rights Movement, sub. 3, p. 40

Resources need to be flexibly available for providers to invest in employee safety and wellbeing due to the high demand and often complex and traumatic case work they undertake. For example, due to the nature of the work, FVPLS providers have identified the need for external professional de-briefing and counselling to staff (both legal and non-legal staff). This is often out of reach for providers whose funding contracts are tied to direct service delivery.

Submission, National Indigenous Australians Agency, sub. 56, p 9

Our team, like many other underfunded CLC's that will be making a submission to this review, experience high levels of staff turnover as a result of burnout, unrealistic workloads, vicarious trauma and stress.

Submission, Inner City Legal Centre, sub. 39, p 1

Member feedback also supports the Issues Paper's suggestion that practitioners working in the legal assistance sector experience challenging workplace conditions, including vicarious trauma resulting from work with complex needs clients, and high file numbers.

Submission, Law Institute Victoria, sub. 46, p 14

In some cases, ATSILS reported that services had been forced to freeze service delivery to prioritise staff physical and mental wellbeing. This has significant consequences for Aboriginal and Torres Strait Islander people's access to culturally and trauma informed legal services and supports.

...due to the high number of resignations by solicitors who faced an unsustainable workload and underpaid wages, the Criminal Section had faced a significant shortage of staff, which had led to the decision of the Board to cease servicing key locations: Whyalla, Port Pirie, Murray Bridge, Berri, Kadina and to put in place a limit on the number of new matters to be taken on by the ALRM Criminal section. This decision was temporary but has dramatically increased the unmet legal needs.

Submission, Aboriginal Legal Rights Movement, sub. 3, p 8

...the doubling of services over the last five years together with constraints on pay has contributed to the inability to recruit and retain staff. The wellbeing of ALS (NSW/ACT) staff is of utmost concern. It was wellbeing considerations, ensuring the ALS (NSW/ACT) is protecting the physical and mental health of all our dedicated staff in the face of unprecedented demand, while maintaining the quality of service for our clients and the communities we serve, that led to the decision to freeze services at 13 local courts in May 2023.

Submission, Aboriginal Legal Services (NSW /ACT), sub. 140, p 23

The Reviewer recognises the importance of psychologically safe workplaces. Recommendations to increase baseline funding in the first year of A2JP, discussed in section 7.2.1, include provision for funding to support both reduced workload and access to appropriate supports to manage the associated risks.

Premises and IT systems

The Reviewer visited a number of service locations in metropolitan and non-metropolitan areas which operated in buildings that did not meet contemporary WHS requirements. Some buildings are over 20 years old with limited or no capital investment since the time of acquisition. Sustained underinvestment in workplace premises can lead to higher operational costs and pressures, reduced business efficiencies, low staff satisfaction, exposure to cybersecurity threats, and serious occupational, health and safety risks.

The offices in Port Adelaide and Elizabeth are located on the premises of the Magistrates Court and provided by the court itself. Those offices are so small that they cannot accommodate the number of lawyers based on those courts and they do not satisfy the work health and safety regulations. ALRM will need to obtain its own premises in the vicinity of suburban courts with the additional costs associated.

Submission, Aboriginal Legal Rights Movement, sub. 3, p 14

Many community legal centres use premises that are no longer fit-for-purpose. This is particularly the case for regional and rural community legal centres that do not have adequate funding for infrastructure improvements. Our members report serious safety concerns due to building infrastructure failures, including old unmaintained buildings that are falling apart, along with physical premises that are not suitable for the line of work being conducted.

Submission, Australian Services Union, sub. 115, p 12

Over the past 12 months, independent condition inspections have been arranged for all ALS (NSW/ACT) owned properties in Moree, Dubbo, Wagga Wagga, Bourke, Broken Hill, St Marys and Walgett. The preliminary independent assessments estimated remediation works between \$576.5k and \$1.5m and this estimate did not take into account potential professional and statutory advice, which may be required prior to any remedial works. Additionally, once engineers and consultants are engaged, additional costs may be identified above these ranges for the remedial work.

The independent building condition reports indicate the need for urgent capital injection to remedy issues identified including:

- Structural concerns*
- Upgrades required to electrical distribution*
- Inadequate security*
- Water ingress into offices*
- Carpets and vinyl flooring long overdue for replacement, stained and damaged*
- Carpentry work required to fix broken doors and frames,*
- Air Conditioning units in poor condition requiring replacement*
- Inadequate storage units.*

Submission, Aboriginal Legal Services (NSW /ACT), sub. 140, p 25

Lack of capital investment has hindered providers' ability to adapt to and use fit-for-purpose and best practice technologies for case-management, client-management and data collection, storage and reporting obligations. It has also been highlighted that to date most ATSILS use legacy corporate service applications for finance and human resources systems that are not compatible with contemporary IT environments. This puts added pressure on already stretched back-office services such as managing reporting, compliance and regulatory responsibilities.

...lack of investment impacts both service delivery and corporate services. ATSILSs are using Client Management Systems (CMS) that were established many years ago when the ATSILSs were smaller, managed less programs and had fewer and less onerous reporting requirements.

Submission, National ATSILS, sub. 134, p 72

The Reviewer met with a former ATSILS lawyer who explained that after a substantial uplift in remuneration, her equally important motivations for moving to a LAC were reduced workload and having adequate systems to support her work.

The Reviewer recognises the importance of physically safe facilities that meet WHS requirements, including for psychologically safe workplaces. Recommendations to increase baseline funding, provided in section 7.2.1, include provision for funding to support infrastructure works required to deliver facilities and systems that meet contemporary standards.

8.11 Regional, rural and remote (RRR) challenges

Recruitment into the legal assistance sector in RRR locations poses additional challenges. Though the ideal solution to developing the local workforce is to attract and train local people, place-based approaches are limited due to the unavailability of training opportunities. Housing was identified as a key barrier to supporting RRR workforce development, with limitations in accessing safe and appropriate housing. The Review heard an example of a senior LAC employee residing indefinitely in a caravan park, after relocating from a metropolitan area, due housing supply shortages.

As ALSWA cannot recruit to the Regional Offices, it has resorted to flying Lawyers from Perth to Regional Offices, at great cost to the Organisation.

Submission, Aboriginal Legal Service WA, sub. 111, p 3

In regional WA, mining sector developments, along with general inflationary pressures, have driven up costs of providing services. Legal Aid WA reported it cost, on average, 24% more to employ a lawyer in a regional office than to employ one in a metropolitan area. These costs include district allowances, air conditioning subsidies, relocation costs, travel costs, and Government Regional Officer Housing program payments. These funding streams are not currently incorporated in baseline funding for community legal services providers, further exacerbating labour market issues related to remuneration.

ATSILS and FVPLS workforces are often required to travel vast geographical distances to attend remote or very remote Aboriginal circuit courts. For some ATSILS, private solicitors are only funded by the relevant LAC to attend remote communities on scheduled court days. This leaves limited time to engage with clients, seek instructions and provide advice on legal matters in a culturally safe way. For ATSILS offices in RRR locations there is a constant challenge to recruit or retain workforces due to higher costs of living (particularly for accommodation), relocation costs and lower remuneration rates. ATSILS and FVPLS note that funding levels provided through NLAP are insufficient to accommodate cost of travelling to remote and rural locations, including costs to maintain vehicles. This is demonstrated in the Victorian Aboriginal Legal Services submission:

Given the high usage of our fleet, we need to replace cars every two to three years. We currently operate about 30 vehicles. The annual running cost of the fleet in 2022-23 was a little over \$80,000 (although this was on the low side due to lower usage resulting from COVID pandemic effects). This year we are replacing 12 vehicles and that will cost about \$350,000 (not including trade-in costs).

Submission, Victorian Aboriginal Legal Services, sub. 138, p 22

The Reviewer acknowledges significant additional challenges and costs associated with operating in RRR areas of Australia. These costs and challenges significantly hamper the ability of the legal assistance sector to meet legal need in rural, regional and remote Australia. Recommendations to increase baseline funding (see section 7.2.1) include provisions for accommodation, appropriate allowances when staff live or work in rural, regional and remote areas, and adequate funding for travel to clients and courts.

HECS-HELP Forgiveness Scheme

To bolster the regional legal assistance workforce, a HECS-HELP Forgiveness Scheme is recommended for remote and regional lawyers who work in the community legal sector, or who work as private lawyers and can demonstrate grants of legal aid constituted 45% or more of their work.

Existing literature suggests financial incentives, such as loan forgiveness schemes, can be effective tools for attracting new entrants to the workforce in regional and remote areas (Yong, J, et al. 2018). This is not a new proposition for bolstering key workforces in regional and remote Australia. The Commonwealth currently supports two similar initiatives: HELP for Rural Doctors and Nurse Practitioners, and Reduction of HELP debts for teachers in very remote areas.

These two initiatives provide assistance for eligible recipients through two mechanisms. The first is a waiver of indexation on accumulated HELP debt, and the second is a reduction of accumulated HELP debt. The aim of the schemes is to increase the number of people in these roles living and working in rural, regional and remote Australia. The Reviewer recommends a scheme be introduced for remote and regional lawyers working in the community legal sector, as a means to induce movement of the workforce to the regions. To the greatest extent possible, the financial and administrative arrangement for this scheme should replicate the existing schemes.

The scheme should be flexible. The scheme should require five years of regional community legal assistance work over a seven-year period to allow time out for caring and parenting responsibilities and personal development. The five years 'to be served' can be with any community legal assistance provider in Australia.

Consistent with similar schemes for the medical and teaching workforces, the Reviewer considers the number of scheme participants should not be capped, though participation rates should be monitored periodically to ensure the scheme's objectives are being met.

The Reviewer also recommends this scheme applies also to private lawyers in regional and remote areas who can demonstrate that, over a five-year period, 45% or more of their work was on grants of legal aid. This addition would help to bolster dwindling panels of lawyers currently willing to undertake legal assistance work assist in improving of legal services provision in RRR areas.

In addition to this scheme for community sector lawyers in regional and remote Australia, states and territories should fund similar incentive schemes for LACs. LACs play an important role in servicing regional Australia through regionally located offices. The Reviewer has heard repeatedly that regional services struggle with recruitment, which hampers their ability to meet legal need in the regions. State and territory governments should engage with the Commonwealth about funding an extension of the recommended HECS-HELP Forgiveness Scheme to cover regional LAC staff.

Recommendation 26 – HECS-HELP Forgiveness Scheme

Commencing in 2025-26, the Australian Government should establish a HECS-HELP forgiveness scheme for rural, regional and remote community sector lawyers and those in private practice doing substantial legal assistance work, and should leverage the learnings of similar schemes currently administered for the medical and teaching workforces.

Under the assumption that HECS-HELP balances are only forgiven after 5-years of continuous service, the cost of the first cohort (commencing in 2026-27) will be realised in 2030-31, estimated to be \$6 million.

States and territories should fund an extension to the scheme to cover LAC lawyers working in regional areas to avoid distortions in the legal assistance labour market.

Delivering legal assistance

9

Box 9.1 Key points

- Prevention and early intervention activities are very valuable, but under current arrangements they are not well funded or properly valued from a reporting perspective.
- Community legal education has decreased over time as legal assistance service providers have focused limited resources on providing advice and representational services.
- The legal assistance sector recognises the importance and effectiveness of collaborative service planning and wraparound service delivery. These services, including integrated service delivery, have resulted in more positive outcomes for clients and service users.
- Formalising collaborative service planning requirements, following recommendations from previous reviews, has not delivered the intended outcomes due to a lack of resourcing that would enable legal assistance service providers to participate.
- Wraparound services provision is essential for providing effective support to disadvantaged people and preventing further legal need. Wraparound service provision models have been hindered by restrictions on use of funding, with a misperception on the part of a small number of state and territory officials that NLAP funds can only be used for legal roles and their direct supports.
- There is significant variation in the extent to which service providers focus on law reform and advocacy. Most service providers report current levels are lower than is desirable due to the need to prioritise direct client service delivery. Current funding arrangements are not considered adequate to support delivery of law reform and advocacy. Beyond the obvious, there are additional benefits to the legal assistance workforce through law reform and advocacy work: it can provide respite, reduce burnout support workforce retention, support professional development and contribute to broader outcomes.
- Alternative Dispute Resolution (ADR) constitutes a relatively small proportion of legal assistance services, ranging from 1% to 3% across the sector. ADR has been shown to be effective at diverting cases from the courts, with approximately 80% of cases reaching a resolution.
- All governments should review and adopt best practice regulation principles, including specific approaches to dealing with small businesses.

This chapter explores key aspects of service provision in the legal assistance sector, including community legal education, collaborative service planning, alternative dispute resolution, and law reform and advocacy.

9.1 Community Legal Education

An expected outcome of NLAP is that 'legal assistance services empower people and communities to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems.' Community Legal Education (CLE) is a key mechanism for delivering on this.

NLAP does not specifically require legal assistance service providers to undertake CLE. However, national performance indicators specified in Part 4 of the agreement (items 33(e)(i) and 33(e)(ii)) include the number of CLE activities undertaken and the number of CLE resources developed respectively, indicating they are core elements of legal assistance service delivery.

CLE benefits people, communities and governments. It assists people to recognise their legal problems as early as possible, makes them aware of free, local services that can assist them, and empowers them to seek support to resolve legal problems before they escalate.

Community legal education (CLE) is a core function of legal assistance services. Partnership across sectors, which enables non-legal services to be the recipients of CLE, increases the reach and impact of CLE beyond individuals. CLE supports the capacity of non-legal services to better recognise and more effectively respond to legal need.

Submission, Health Justice Australia, sub. 37, p 16

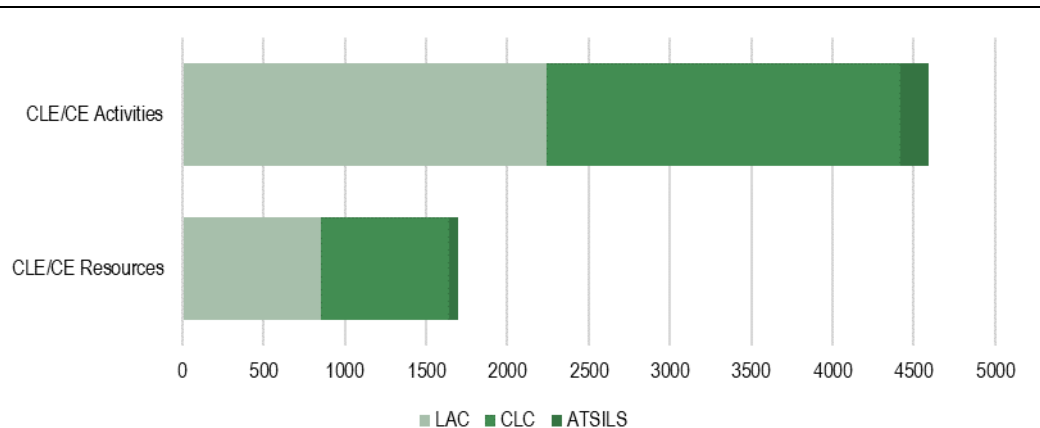
The Reviewer has heard of significant gaps in CLE, particularly in Aboriginal and Torres Strait Islander communities in rural, regional and remote areas, and communities where English is not the first language. The Reviewer has elsewhere expressed concerns about CLE being provided by non-ACCOs largely as a result of the appropriate ACCO lacking the capacity to do so.

It is difficult to ascertain the level or amount of CLE undertaken across the legal assistance sector. Overall, based on counts of CLE activities and resources compared to counts of discrete legal service provision, CLE activities and resources are a miniscule proportion of the work of legal assistance service providers, ranging from 0% to 1% of each jurisdiction's service delivery. The Reviewer doubts current CLE data collection informs policy development.

CLE activities are any activities delivered to raise awareness and educate other service providers, community groups, organisations, schools or the general community about the law and how to recognise and deal with legal problems. These activities may be delivered in-person through workshops or meetings, and electronically via web-based or online media. CLE resources involve developing or substantial amending publications or resources that provide information about the law, legal system, and legal supports. Resources can be pamphlets, booklets and self-help kits. Development of a CLE activity can also be counted as a CLE resource.

Figure 9.1 presents the number of CLE activities and resources provided in 2022.

Figure 9.1 Number of CLE Activities and Resources, 2022



Source: NLAP Performance Reporting 2022

There is evidence of CLE activity, such as forums or information sessions delivered by legal assistance providers on major pieces of legislation or law reform. However, little else is known about the how much CLE is delivered, or about its effectiveness in increasing understanding of legal issues and what downstream impact this can have on demand for legal assistance services.

The current data set is not particularly useful. The number of CLE activities does not necessarily represent reach; for example, workshops for 20 or 200 attendees are both counted as one activity. For resources, each new resource developed counts as one resource, and many resources developed in previous years remain relevant and continue to be used.

While legal assistance service providers appreciate the importance of CLE, there is a concern that CLE can drive increased demand for community legal centre services. As people's knowledge of their rights and legal remedies grows, they can better recognise their legal problems and seek assistance to resolve them. In the current constrained funding environment, many CLCs reported actively limiting the amount of CLE they deliver as they do not have resources to meet additional demand that flows from CLE activity. CLC funding for vital CLE work must therefore be matched by funding that meet increased demand for services that CLE generates.

What we find is that legal education does not prevent legal need. It helps to identify legal issues and increase demand for legal services. We receive significant increase in requests for legal assistance following our legal education programs because clients and service providers, sometimes for the first time, become aware that the issues they are facing are of a legal character and can be addressed through legal mechanisms.

Submission, Anonymous

While the Reviewer well understands the financial constraints faced by legal assistance providers, this quote misunderstands the definition of legal need. Consistent with the definitions discussed in section 4.1, making someone aware they have a legal issue does not create legal need. Rather it creates a pathway through which that need might be addressed. CLE helps people avoid disputes and reduce their severity, and through potential earlier resolution mitigates the risk of escalation of minor civil matters.

The recent COVID-19 pandemic highlighted a heightened need for CLE. Rapidly changing laws and policies impacted individuals' freedom of movement, rentals and tenancies, employment and government payments. This meant an increase in CLE was necessary to keep members of the community informed about what these changes meant for them and how their rights and responsibilities changed. A recent report by Community Legal Centres Australia about the impact of COVID-19 on the community legal sector stated that increasing CLE can 'improve people's capacity to solve their own legal problems, enhance community resilience and reduce disadvantage, thus alleviating the strain on other government services' (CLCA, 2022:22).

The need for CLE has risen significantly as natural disasters give rise to sharp increases in both the level of legal need and the need for CLE. Following natural disasters many community members are unaware of their rights and entitlements, of how to make complex insurance claims and to deal with an evolving legal and administrative framework governing recovery, especially in relation to planning, building and construction laws.

Some stakeholders indicate that during and after natural disasters, flexible funding rules are needed so the sector can deliver through the spectrum of legal assistance service providers the right balance and mix of services in different geographical areas.

Legal service providers need to have flexibility in funding allocations to determine the composition of roles needed for service delivery. This includes the type, for example, legal, allied professionals, policy, education or engagement, and seniority of roles required.

Submission, National Joint Submission on Disaster Response, sub. 57, p 6

The funding model should also not limit an organisation's ability to undertake legal education and advocacy.

Submission, InTouch, sub. 122, p 23

Based on evidence provided, the Reviewer recommends funding for CLE forms part of baseline funding for all legal assistance providers, as discussed in section 7.2.1. A legally educated community will be more adaptive and resilient, which is central to ensuring the legal needs of the Australian community are met. The current funding environment does not support delivery of coherent, coordinated CLE coverage across the country.

9.2 Collaborative service planning

Collaborative service planning describes the ways legal assistance providers coordinate their efforts to maximise outcomes for clients and communities. It aims to avoid unnecessary duplication and help service providers use limited resources in the most efficient and effective ways.

The overarching objective of collaborative service planning is to provide vulnerable people who require legal assistance services with a range of services to meet their needs, both legal and non-legal. Specifically, it requires legal assistance service providers to develop collaborative partnerships that deliver holistic services which:

- address a range of legal and other social needs
- inform legal assistance policy development, program design and service delivery, and
- better coordinate existing services to maximise efficiency and effectiveness.

Under the previous NPA from 2015-2020, guidance on collaborative service planning was less prescriptive and restricted to two clauses. This resulted in significant variability in implementation of collaborative service planning across states and territories (Urbis, 2018). In 2014, the Productivity Commission and most stakeholders supported the notion of area-based, evidence-driven planning that involved key players in the legal assistance sector. However, the NPA Review found implementation was slower than expected. This was due to the pre-existing relationships and infrastructure that could be relied upon, jurisdictions and local areas undertaking preliminary baselining work, and the lack of effective data sets to inform the sector of unmet legal need.

In response to the NPA Review, NLAP includes specific references to collaborative service planning. Schedule B of NLAP provides guidance on collaborative service planning using a tiered approach of national, jurisdictional, and local levels. The guidance addresses how collaborative service planning should be undertaken, including the agency or organisation with responsibility, potential committee or group membership, and focus areas at each level. Collaborative service planning was also intended to inform each state's legal assistance strategy and action plan.

The Reviewer has heard that including collaborative service planning in NLAP has not led to the collaborative outcomes that were intended. Several reasons provided for this outcome reflected barriers found in previous reviews. The current funding model is a key driver as short-term and uncertain funding, along with competitive tendering processes, inhibits genuine collaboration. This leads to a lack of resourcing for legal assistance service providers to engage.

Short-term funding and associated uncertainties make it more difficult to collaborate and service plan with external stakeholders. Local CSP under the NLAP is not functioning as intended. Responsibility for CSP should be retained by the State, and organisations funded in a way that facilitates their contribution. For example, genuine collaborative service planning could be applied to designing the response to gaps in service delivery, or in response to emerging need.

Submission, Legal Aid NSW, submission 47, p 7-8

There is confusion about respective roles and responsibilities for collaborative service planning, given states and territories can delegate functions. Service providers reported a lack of capacity among state and territory departments to coordinate collaborative service planning effectively.

The Northern Territory has not conducted Jurisdictional Collaborative Service Planning. Jurisdictional Collaborative Service Planning meetings were arranged in Alice Spring in July 2023 and Darwin in August 2023 to prioritise and progress actions under the Legal Assistance Action Plan, but Legal Aid NT was advised that the Department did not have the resources to progress the actions under the Action Plan. We have not yet observed progress towards implementation of the Legal Assistance Action Plan.

Submission, Legal Aid NT, submission 48, p 28

If A2JP is to be a true partnership directed at the interests of the community then all governments, via their relevant justice departments, must commit adequate resources to continuous collaborative service planning, as set out by the PC Report and in the NLAP agreement.

The principles underlying collaborative service planning are sound, but currently a range of issues prevent effective collaborative service planning from occurring. These barriers need to be addressed to allow the sector to collaborate in a genuine and effective manner. The PC Report highlighted the need for collaborative service planning, particularly to develop areas of service where multiple areas of expertise are needed, such as culturally appropriate ADR or FDR processes. For this to be effective, there should be adequate opportunities for collaboration through provision of sufficient and ongoing funding, reliable and consistent data that illustrates unmet legal need, and practitioner-led and community-led collaborative practice.

The Reviewer fundamentally believes much more can be achieved with collaborative service provision and that Australia's legal assistance providers are willing and able to deliver that if a blockage can be removed. To this end he makes a number of recommendations:

- significantly curtail competitive tendering to stop collaborators being competitors
- in those jurisdictions where relevant, remove the power imbalance between CLCs and LACs caused by LACs having administrative responsibilities for CLCs
- establish jurisdictional fora on women's and Aboriginal and Torres Strait Islander service provision
- provide adequate baseline funding for all service providers to plan for their own organisational development.

9.3 Integrated and wraparound services

People accessing legal assistance services often face multiple vulnerabilities and have intersectional identities which can lead to complex and multifaceted legal needs. Intersectionality refers to the ways in which aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation, such as gender, sexual orientation, ethnicity, refugee background, disability, mental health, and socio-economic status. When these aspects combine, there is a greater risk of systemic barriers that prevent individuals from getting the help they need.

Meeting these legal needs often requires legal assistance and other services provided in-house or in partnership with other agencies. For example, a non-legal issue such as housing may need to be addressed before (or in conjunction with) addressing a legal issue. This requires additional work from legal assistance providers to ensure clients are appropriately supported. These challenges particularly impact Aboriginal and Torres Strait Islander women and children, where access to legal assistance occurs most effectively through non-legal services and trusted connections.

Schedule A of NLAP, Clause 11, states that as a general principle, the legal assistance sector should consider whether other services, both legal and non-legal, may be relevant to a client's needs and make referrals to these services where appropriate. Consistent with this has been the employment of non-legal professionals to enable these referrals to be made in-house where it is appropriate and efficient to do so.

Box 9.2 outlines the extent to which CLCs employ persons with non-legal expertise or partner with other organisations to deliver wraparound services for their clients.

Box 9.2 Extent of wraparound services in CLCs

- 76.8% of surveyed CLCs employ people across a range of community service roles:
- 50% of centres employ social workers, case workers or counsellors
 - 32.1% of centres employ identified Aboriginal community engagement or support workers
 - 26.8% of centres employ community development/engagement workers
 - 21.4% of centres employ financial counsellors
 - 23.2% of centres employ a range of other workers, including client services and support officers, disability justice liaison officers, financial, industrial, disability, and tenants' advocates, mental health clinicians, partnership co-ordinators and policy officers.
- 71.4% of surveyed CLCs engage in partnerships with other service providers to deliver holistic services to their communities:
- 46.4% partner with domestic violence services or shelters
 - 33.9% partner with hospitals or health services
 - 26.8% partner with Aboriginal community-controlled organisations
 - 17.9% partner with mental health services
 - 14.3% partner with youth services
 - 33.9% partner with other services including homelessness services, neighbourhood centres, refugee services, schools and universities, and LACs.

Source: Submission, CLCs Australia

There is strong evidence that holistic service provision improves outcomes for clients. Across the country, service innovations that include multidisciplinary approaches or integrated service provision have been reviewed and found to deliver significant benefits. These include helping clients better navigate services to meet their needs, helping clients communicate and explain their complex issues to other professionals (including legal professionals), and improved outcomes in non-legal domains. Research on wraparound service models, including evaluations of the FVPLS model, and of the pilot program of specialist domestic violence units and health justice partnerships, have shown the effectiveness of these approaches.

Interdisciplinary practice generates service delivery efficiencies and better outcomes for our clients. Interdisciplinary practice and embedding non-legal staff in the provision of legal services has been positively evaluated through several internal project reviews. The Family Law Priority Client Project review found that social workers: were described as 'translators' or 'navigators', helping clients understand the progress of their legal case and cutting out the need for lawyers to explain complex issues to clients multiple times and to deal with non-legal issues. The review of the CCLS found evidence ... that the unique, holistic approach taken in the CCLS is extremely effective in delivering outcomes in civil law and social needs for young people with complex needs. ... Legal Aid NSW should assess which other client groups may benefit from this service model and replicate this model where applicable within Legal Aid NSW.

Submission, Legal Aid NSW, sub. 47, p 30

Clients can be referred to and access programs that address their needs. People with mental ill health, intellectual disability and acquired brain injury, and those impacted by substance abuse, are over-represented in the criminal justice system. Providing them with access to services that address health and substance abuse issues provides a much better prospect of rehabilitation, reduces recidivism, and reduces long-term costs to the community.

With respect to the improvement of outcomes for clients, the LIV notes that the provision of holistic, wraparound services in conjunction with legal services can have a powerfully rehabilitative effect for those caught up in the criminal justice system. For example, First Step Legal, a community legal centre established in 2008, provides pro bono legal advice and representation to clients of First Step Health who are engaged in treatment programs. Working together, First Step Legal and First Step Health provide an integrated service delivery model through the co-location of services that emphasise identifying and addressing the issues experienced by clients that can have criminogenic effects, such as mental health issues and/or substance abuse issues. Providing integrated legal and health services allows relevant professionals to work together to achieve legal outcomes that promote clients' wellbeing and prospects of rehabilitation, which, in turn, reduces overall costs to the state in administering the justice system.

Submission, Law Institute of Victoria, sub. 46, p 11

Holistic service delivery also assists clients to identify problems that may require a legal solution. The PULS survey (Balmer et al 2023) found a majority of people with legal problems do not recognise the legal nature of the problem and so are far less likely to seek legal advice. Non-legal staff who work within a legal assistance setting can provide sufficient understanding of legal assistance to help clients identify which of their needs have a legal basis or remedy, in turn supporting access to justice.

Independent help provided by a wide variety of non-legal services feature as an important aspect of community legal problem-solving behaviour. From a client's point of view, they might present with a problem, not recognising it has a legal aspect, and they receive useful information and/or referral. This goes to 2 important findings in the PULS. First, that 66% of respondents do not recognise their justiciable problem as legal. If you don't see your problem as legal you are much less likely to seek legal advice. This is a fundamental and critical access to justice barrier. Secondly, even if people understand their problem to be legal, 29% seek advice from independent sources (i.e., non-legal sources like community organisations, health services, councils, unions etc). This number is even higher in regional areas.

Balmer et al, 2023, p 9

Addressing non-legal issues early also prevents issues from escalating and prevents problems from growing and costing more to address. A common theme in submissions and consultations was tenancy issues which, when unresolved, lead to homelessness. These issues are becoming more acute during the cost of living crisis.

Financial hardship is also increasing in the current cost of living environment. Financial counsellors working with, and indeed in, legal assistance providers play crucial roles in helping clients deal with financial hardship problems, reduce potential for them becoming legal problems, and mitigate the severity of those that do. Preventing more severe long-term financial hardship can lessen prospects of lower levels of physical and mental health, homelessness, marriage breakdown and criminal activity.

The relationship between financial hardship and legal assistance is significant. Many people in financial distress may be in such a situation due to a failure to exercise their legal rights in a civil matter, such as receiving government payments they are entitled to.

Targeted, multi-disciplinary and collaborative models...have proven impact and downstream cost savings in preventing further legal need by stopping homelessness before it starts for people facing disadvantage, keeping women and children safely housed, and avoiding financial abuse for older Australians.

Submission, Justice Connect, sub. 40, p 4

The Reviewer has heard that interpretations of NLAP by officials in some state and territories presents barriers to using core NLAP funding for wraparound service delivery. Some service providers noted that some state and territory officials interpret references in NLAP to prioritising frontline services as meaning funding could not be used to employ non-legal workers or support non-legal activities.

In Victoria, there are restrictions on applying NLAP funding to non-legal roles, which limits its use for integrated legal services (unless a CLC receives a specific stream of NLAP funding as highlighted in the Issues Paper). NLAP acknowledges (Clause 13 Objective, and Clause 14(c) Outcomes), the value of integrated or wraparound services, but funding of these effective service models has historically been limited to the Domestic Violence Units/Health Justice Partnerships funding stream, or must be sought through other arrangements, including from state governments. As a result, the intentions espoused in NLAP are not being adequately supported through ongoing or sustained funding.

Submission, Federation of CLCs Victoria, sub. 32, p 51

The Reviewer has had feedback from some states and territories about the interpretation of this provision of the NLAP agreement and has consulted with AGD. There may have been discussions around the time of the commencement of the NLAP that led some officials to hold this view. It seems a view may have been expressed that non-legal services were better provided through funding streams from other sources. Nevertheless, the Reviewer considers such requirements are not conducive to service providers having the flexibility they need to provide wraparound services. These requirements should not be part of A2JP and A2JP should provide clarity on this issue.

That said, the Reviewer is satisfied that inadequate baseline funding is the primary obstruction to properly supporting the activities required to effectively deliver wraparound services. Funding for legal assistance service providers to engage in integrated practice or to develop formal partnerships tends to be available through short-term project or grant funding. Consequently, staff who develop these relationships and expertise in providing integrated and wraparound services are not retained for the longer term, compromising client outcomes.

Limited or short-term funding for integrated practice programs or partnerships can jeopardise client outcomes.

Submission, Eastern Community Legal Centre, sub. 27, p 3

In the ACT, prevention and early intervention has also taken the form of strengthening collaboration, coordination and/or partnerships with non-legal services, such as financial counselling, health, mental health, family support and AOD services. However, such cross-sector collaboration and engagement is usually resource intensive and difficult to maintain in the context of limited (and often time-limited) funding for the legal assistance sector.

Submission, ACT Government, sub. 5, p 18

As was the case with previous reviews that have considered the issue, the evidence provided to the Reviewer supports the conclusion that wraparound services are effective and an important mechanism to achieve positive client outcomes. The legal assistance sector strongly supports holistic service provision. Mechanisms it has developed to achieve this include hiring non-legal staff trained in related areas, developing formal partnerships and referral pathways, and co-location of legal and other social services.

Funding mechanisms should support developing and retaining such partnerships by removing barriers such as funding rules that inhibit such collaboration and short-term or limited funding arrangements.

Recommendation 27 – Use of baseline funding

The Reviewer considers current interpretations restricting baseline funding to the provision of legal services inhibits service provider flexibility and the development of holistic wrap-around services.

The Reviewer recommends that the A2JP make clear that funding provided under it may be used in pursuit of all of its outcomes and is not limited to the employment of lawyers and their direct support staff. Such a provision should be included in service contracts.

9.3.1 Health Justice Partnerships

Health Justice Partnerships (HJPs) embed legal help into health care services and teams to improve health and wellbeing. The effectiveness of HJPs is reflected in their significant growth over recent years. There are more than 100 HJPs at the time of drafting this Report (Dreyfus, 2023). Several key success factors apply to collaborative service planning and wraparound service delivery across the legal assistance sector:

- partnerships are unique as they are developed through collaboration between local partners, focused on local needs and contexts, and use existing infrastructure and relationships
- there is continuous learning among HJPs through effective collection and use of data, as well as sharing lessons, enablers and barriers at state and national conferences
- HJPs are supported by dedicated research and advocacy from their peak body, Health Justice Australia.

The experiences of HJPs are similar to those of integrated services highlighted above, where fragmented and time-limited funding are barriers to effective service delivery. One example is Invisible Hurdles HJP which involves four agencies: Hume Riverina Community Legal Service, Albury Wodonga Aboriginal Health Service, North East Support and Action for Youth, and Wodonga Flexible Learning Centre. This HJP has operated since 2015. To continue its work has required five funding applications over eight years. A program for young people, it was evaluated in 2022 under five impact measures: reach, capacity, engagement, empowerment, reciprocity and collaboration. Despite funding barriers, the evaluation found that:

...by involving lawyers in sorting out problems alongside other support people, significant inroads can be made into improving the lives of young people. For example, young people got support with housing, and prevented eviction, got out of irresponsible loans, understood their rights in terms of family violence, and found pathways to employment through understanding their legal position by having the lawyers negotiate in tricky situations.

Submission, Hume Riverina Community Legal Service, sub. 38, p 11

As an aside, this program is a living example of the problems with short-term funding discussed in section 7.1.2. It should be rolled into this CLC's baseline funding in accordance with the discussion in section 7.2.1. It is certain others require similar treatment. The Reviewer encourages officials to commence identifying all such instances across all four service provider types, as soon as possible.

Potential areas for expanding such partnerships include social and legal services delivery, such as integrating ACCHOs and ATSILS. This was discussed in section 5.10 in relation to specific needs of Aboriginal and Torres Strait Islander peoples.

Given likely overlap in the target population, such integration could be beneficial for clients in offering a single point of service access that meets their multiple needs. ATSILS should explore opportunities to co-locate and collaborate with ACCHOs if this is appropriate for their local community. The overall uplift in baseline funding should provide ATSILS with the capacity to explore and undertake this collaboration.

9.4 End-to-end service provision

An intended outcome of NLAP is that legal assistance services are delivered in a client-centric manner that better responds to people's legal needs and capabilities. Within the social and human services sectors, continuity of care is accepted as a core tenet of client-centric service delivery (Haggerty, 2003). This term originated in the healthcare sector and has been adopted progressively in other areas of social and human service provision. Client-centric care avoids frustration and disengagement with services by achieving positive outcomes through providing coordinated and coherent services by multiple organisations and disciplines.

Within the legal services context, continuity of care means a legal assistance provider's client should reasonably expect the provider will meet their needs or address their matter from start to finish. There will be no need to refer the client to another organisation, especially in circumstances where substantial advice is given or litigation commenced, save perhaps for the provision of counsel or expert advice.

However, the Reviewer heard of significant barriers to end-to-end service provision. A provider's workforce profile may be designed to offer the capabilities required to meet a person's needs, but it does not have the capability on hand to match demand and so refers the person to other providers.

Redfern Legal Centre reports that for every 2 employment law advices they provide, they refer approximately one client away. They refer away 54% of callers because they cannot meet demand.

Submission, Migrant Justice Institute, sub. 54, p 6

The Reviewer heard of an instance where a woman had been assisted by a CLC in a large regional centre on a complex family law matter. The matter went on appeal. The CLC's lawyers were capable of providing further assistance, and of briefing Counsel, but it was not resourced to do so. The matter was referred to the LAC.

In addition to retraumatising the client by asking her to repeat her story to a different solicitor, the whole process is inefficient. Time is spent by the referring solicitor briefing a new solicitor. The new solicitor must become familiar with the matter. There is opportunity cost for both solicitors' time.

The Chief Justice of the Federal Court raised a situation like this with the Reviewer. Her Honour discussed legal representation in appeals commenced by the NDIA where an individual has been successful at the AAT on merits review. NDIA then sought judicial review of the AAT's decision in the Federal Court. An example is *National Disability Insurance Agency v Karen Davis* [2022] FCA 1002. At the AAT, Ms Davis was granted her access request to become an NDIS participant. She was represented by a CLC and Counsel. The NDIA appealed the AAT's decision. On appeal at the Federal Court, the Court made a pro bono referral. Ms Davis was represented on that basis. The Court made findings about the NDIA's role at the AAT, including its conduct in providing dense submissions and a deluge of contentions.

This, in the Reviewer's mind, is an absurdity. There is no discredit to the pro bono lawyers, nor the Federal Court's pro bono scheme. Simply, Ms Davis should have been provided legal assistance for both counsel and instructing solicitors in the appeal, and desirably those who assisted her in the AAT.

A lack of funding also means clients may not receive the service they truly need. They may have an issue that requires representation but only receive legal advice. In addition, the ‘juniorisation’ of the workforce, particularly for CLCs and ATSILS compared to LACs, may also contribute to the need for CLCs to refer to LACs for more complex forms of legal assistance.

EJA hears repeatedly from our members across the country that clients of member services are frequently provided with a service that does not meet the full extent of their legal need – for example, a legal advice rather than legal representation – because of insufficient resources.

Submission, Economic Justice Australia, sub. 28, p 3

This can disrupt the continuity of service for clients. Having to deal with multiple legal assistance services adds to the complexity of dealing with legal problems. In addition, for clients who experience trauma, this is a barrier to effective engagement as they must repeat their problems or stories to multiple organisations, exposing them to retraumatisation.

Time is required to build trust with clients, particularly clients who experience trauma, and to ensure that they remain engaged with the legal process.

Federation of CLCs Victoria, sub. 32, p 58

In some instances referral between providers is beneficial and appropriate. This is evident when clients are referred to specialist services to access specialist advice they need while still being managed primarily by the mainstream service. This results in relationship continuity. Such referrals ensure clients can access the right capability or expertise, which increases the likelihood of a positive outcome for them.

Our colleagues in other community legal centres often refer to us, and we believe this is appropriate, given our expertise, and the challenges of secondary consultation which can often take significant time, and present ethical dilemmas in terms of legal responsibility.

Submission, Disability Discrimination Legal Service, sub. 26, p 6

The Reviewer acknowledges not all legal assistance providers have the scale or skills to deal with all matters for all clients, nor to take all matters to conclusion for all clients. But it is clear some providers do have the requisite capacity and capability, and for them to provide end-to-end service is in the best interests of clients. For others, the resolution of matters is best done through collaborative service models between providers, including LACs.

The Reviewer considers it important that funding is available to suitably capable providers to remain with clients until the conclusion of matters. This will improve the client experience and minimise retraumatisation. It is an alternative to, not a replacement of, collaborative service arrangements between providers. This is addressed by baseline funding recommendations in section 7.2.1.

9.5 Law reform and advocacy

As explained in the PC Report, strategic advocacy and law reform activities that seek to identify and remedy systemic issues reduce demand for legal assistance services. They also better inform public policy making via Reviews such as this, the PC Report and parliamentary inquiries.

The legal assistance sector is in a unique position to understand how laws can be inefficient, unjust, harmful, or negatively impact some parts of the community, particularly those who are more vulnerable or suffering from disadvantage. By identifying these laws and advocating for law reform, legal assistance advocacy provides important benefits by making sure laws are just and fair and reduces legal needs in the longer-term.

Legal assistance providers have a unique and important perspective on access to justice and equity issues... to be effective advocates for access to justice and equity in application of our laws, the legal assistance sector needs core funding for these activities.

Submission, Law Access, sub. 43, p 2

Legal assistance providers play a crucial role in advocating for the unique circumstances of their clientele and advocating for law reform to establish a fairer and more equitable system. It is critical that this remains a component of any future funding arrangements.

Submission, Far West CLC, sub.31, p 7

Under the previous NPA from 2015-2020, Clause B7 prohibited funded legal assistance services from lobbying or publicly campaigning against government. Advocacy was permitted to the extent of providing factual information in submissions (Urbis, 2019). The 2018 NPA Review (Urbis, 2018) found this clause impeded law reform and advocacy activity among legal assistance service providers. The Commonwealth provided further clarification that the sector's interpretation of this clause was too narrow. It was not intended to constrain all law reform and advocacy activity.

Box 9.3 sets out relevant NLAP provisions put in place in 2020.

Box 9.3 NLAP Schedule A (clauses A18 to A23) – law reform and advocacy:

- A18 The NLAP does not prohibit legal assistance providers from engaging in lobbying activities. Legal assistance providers, funded under the NLAP, are not to use Commonwealth resources or funding provided under the NLAP to undertake lobbying activities, except as specified in Clause A23.
- A19 The NLAP does not restrict what legal assistance providers can do with their State or pro bono funding and resources. The manner in which legal assistance providers use non Commonwealth funding and resources is a matter for those organisations.
- A20 Legal assistance peak bodies, rather than legal assistance providers, should undertake public campaigns with respect to any administrative, legislative or policy decisions, including undertaking strategic policy, law reform and related activities.
- A21 Under the NLAP, the following activities do not constitute lobbying and can be conducted by legal assistance providers with Commonwealth funding provided under the NLAP:
- a. community legal education activities;
 - b. communications with a committee of the Parliament;
 - c. communications with a Minister or Parliamentary Secretary, unless that communication is intended to unduly influence the outcome of a grant or procurement process or unduly influence a Commonwealth administrative, legislative or policy decision;
 - d. making a submission or providing factual information and/or advice to an inquiry, Royal Commission, government, parliamentary or other relevant body, Minister, Parliamentary Secretary, Committee of a Parliament, or Member of a Parliament on systemic factors affecting justice issues;
 - e. identifying and raising awareness of systemic or structural issues affecting the legal and justice system, or that impact the outcome for one or more clients, or affect the delivery of legal assistance services with a legal assistance peak body, inquiry, Royal Commission, government, parliamentary or other relevant body, Minister, Parliamentary Secretary, Committee of a Parliament, or Member of a Parliament;
 - f. communications in response to a call for submissions;
 - g. communications in response to a request for tender or similar processes; or
 - h. responses to requests by government representatives for information or policy development.
- A22 Legal assistance providers funded under the NLAP must prioritise the use of Commonwealth funding for the delivery of frontline legal assistance services and/or undertaking activities required under the NLAP.
- A23 Notwithstanding Clause A18, Aboriginal and Torres Strait Islander Legal Services are permitted to undertake lobbying activities within the definition in Clause 98(n) ii, but must prioritise the delivery of frontline legal assistance services.

Clauses A18 and A19 provide guidance regarding law reform and advocacy to the legal assistance sector. Clause A18 states that the NLAP ‘does not prohibit legal assistance services from engaging in lobbying activities.’ Clause A19 states that Commonwealth funding should be prioritised for ‘frontline legal assistance services and/or undertaking activities required under the NLAP.’ Despite these words, and the assurances of the previous government mentioned above, significant concerns remained within the legal assistance sector that if they went ‘too far’ in advocacy, especially challenging government policy and decision making, their funding may be at risk.

In November 2002, the Commonwealth Attorney-General announced that the Commonwealth, states and territories had agreed to remove the problematic clauses from the NLAP agreement. Consistent with the views expressed by the Productivity Commission in 2014, the Robodebt Royal Commission, and the vast majority of participants in this Review, the Attorney-General of the Commonwealth said:

The government, and the Australian community can only benefit if legal assistance providers are able to speak up, and advocate for reform. Legal assistance providers are superbly well placed to provide advice on law reform and legal assistance.

Hon Mark Dreyfus KC MP, Attorney-General of the Commonwealth of Australia, Press Release, 29 November 2023

Schedule A now reflects the Attorney-General's position:

The NLAP does not prohibit legal assistance providers from engaging in lobbying activities. Legal assistance providers funded under the NLAP must prioritise the use of Commonwealth funding for the delivery of frontline legal assistance services and/or undertaking activities required under the NLAP.

The evidence examined by this Review demonstrates that law reform and advocacy has dropped to a negligible level for most of the sector, except for a few CLCs that specialise in advocacy work. In addition to the aforementioned 'gag order' implemented by previous governments, a major factor underpinning this drop is the overall decline in funding for the sector which has led to prioritising client-facing services over law reform and advocacy activity. The Reviewer heard from many providers that law reform and advocacy work was generally undertaken after hours or on weekends and depended on the commitment of the workforce to provide unpaid labour.

The numbers of Centres with capacity to meaningfully engage in law reform work has significantly diminished in the past 10 years, due to the burden of front-line service delivery, reporting requirements, precarious funding and advocacy gags.

Submission, Kingsford Legal Centre, sub. 41, p 4

Specialist centres are particularly well-placed to share insights through advocacy and reform activities. For this to be effective, however, smaller specialist community legal centres require additional and specific resourcing for advocacy. While NLAP does not limit this activity, where a small centre only has a very small core funding level, it is almost impossible to specifically fund this activity.

Submission, Social Security Rights Victoria, sub. 91, p 30

The *State of the Sector Survey* conducted by CLCA identified that most CLCs would prefer to do more advocacy and law reform work than they are currently engaging in.

Box 9.4 Advocacy and law reform work undertaken by CLCs

The 2022-23 State of the Sector Survey asked respondents to identify the proportion of their work that advocacy currently represents:

- 71% said advocacy makes up less than 10% of their work
- 22% said advocacy makes up 10-25% of their work
- 6% said advocacy represents 25-50% of their work.

Centres were then asked how much of their work they would like to devote to advocacy and law reform:

- 12% wanted advocacy to make up less than 10% of their work
- 59% wanted advocacy to make up 10-25% of their work
- 25% wanted advocacy to make up 25-50% of their work
- one wanted advocacy to make up 80% of their work.

Overall, there is strong desire among community legal centres to increase advocacy work.

Source: *Submission, Community Legal Centres Australia*

When advocacy and law reform work has occurred, service providers could highlight areas in which they had advocated successfully for law reform. While not strictly law reform, the Reviewer's own experience in this Review, and with the Productivity Commission, attests to the capability of the legal assistance sector for persuasive public policy advocacy thereby improving outcomes for the community.

Stakeholder feedback and submissions generally sought increased funding for advocacy and law reform work. There was no unanimous view on how this funding should be provided.

One option is to make it part of a general uplift in funding that will allow legal assistance organisations to dedicate more time towards advocacy and law reform. Another option is to designate a proportion of funding for advocacy and law reform.

The Reviewer considers that given the diversity of the legal assistance sector, the level of desirable advocacy and law reform work will differ significantly between providers. It will, by necessity, ebb and flow reflecting the nature and importance of issues. It would be challenging to quantify and isolate designated funding for each service provider that was appropriate to their scope, focus and work program.

Outside direct benefits to the legal sector, there are benefits to the workforce from advocacy and law reform work. It can provide respite from frontline legal assistance service delivery, which may serve an important role in reducing burnout among legal assistance lawyers. Increasing the volume of this work could go some way to addressing retention issues discussed in chapter 8. It also provides a useful avenue for professional development.

However, fear of retribution from certain sections of the media and the parliamentary community also places constraints on legal assistance service providers wishing to undertake advocacy work. These fears are echoed in the difficulties confronted when delivering CLE.

Increased advocacy may impact on service delivery for smaller services by generating more work than a centre's resources allow. There is also a perception in the community that increased advocacy for a particular issue will increase the number of people able to be provided assistance. In reality, this is not always the case when other factors are taken into account such as an increase in demand for services within existing resources, and limited availability of additional government funding.

Submission, Tasmanian Department of Justice, sub. 25, p 3

The Reviewer is not convinced that this is a nationwide problem but accepts, and is concerned, that it may be an issue for smaller providers in smaller jurisdictions. The Reviewer understands that in jurisdictions where CLCs are relatively small, service providers often collaborate in their advocacy efforts. While not wanting to deny those who work in these organisations the opportunity to be active in advocacy and law reform, in considering baseline funding reform, consideration should be given to proper funding for small jurisdictional peaks (that is Tasmania, South Australia and the territories) to undertake work on a sectoral basis. This should only be done in collaboration with, and with the consent of, the relevant service providers. If this approach is adopted, funding should be included in base year funding for A2JP.

Recommendation 12.4 of the Royal Commission into the Robodebt Scheme suggested:

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.

Royal Commission into the Robodebt Scheme

The Reviewer considers that advocacy and law reform is the ordinary business of legal assistance providers for the reasons set out in the PC Report. The Reviewer is satisfied the recommendation below meets the expectations of the Royal Commissioner and the Commonwealth Government's Response of 13 November 2023.

Recommendation 28 – Advocacy and law reform

The Reviewer accepts that strategic advocacy and law reform activities that seek to identify and remedy systemic issues, and so improve access to justice and reduce demand for frontline services. This work should be recognised and encouraged as core work for the sector.

As such, the Reviewer recommends that the A2JP primary agreement explicitly acknowledge the importance of advocacy and law reform in the work undertaken by all legal assistance providers covered by the A2JP and that this inform the establishment of baseline funding recognising the different levels and types of work undertaken by different providers.

Governments should consider how pooled funding arrangements might be put in place in smaller jurisdiction to support existing collaboration by legal assistance providers to undertake this work.

9.6 Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) refers to pathways to resolving disputes that do not engage solely in court and tribunal hearings. Formal court and tribunal processes are resource intensive, costly, time consuming and stressful for all parties. In some cases, ADR provides an appropriate option for resolution. Clause A10 of NLAP states family and civil law matters should be resolved through ADR processes rather than litigation, where appropriate. Despite this, as shown in chapter 3, ADR is a derisory percentage (ranging from 1% to 3%) of services provided by the sector.

Stakeholders identified a significant gap in the ability of legal assistance providers to provide ADR processes even where there is a clear need for them. In family law and family violence matters particularly, ADR can be a better alternative than court-based proceedings because ADR uses a non-adversarial approach and is supported by a multidisciplinary team. An example of this is the Collaborative Family Dispute Resolution (CFDR) pilot:

CFDR pilot was designed for separating families with a history of family violence where there were ongoing safety concerns for parents and their children. The multidisciplinary model involved a case manager/family dispute resolution practitioner (FDRP), a specialist family violence professional for the victim of family violence, a support professional for the perpetrator of violence, a legal advisor for each party, a second FDRP and child consultants. This pilot highlighted the benefits to separating families of a more supportive, non-adversarial and multi-disciplinary approach.

Submission, Family and Relationships Services Australia, sub. 29, p 3

Stakeholders provided examples of where ADR would be appropriate and would provide good outcomes for vulnerable people. Stakeholders are aware of the benefits but have insufficient resources to provide alternative pathways.

HRCLS is aware of significant unmet need in family law and family violence across our region, our own service capacity, and the limited alternate provision of legal services for people experiencing vulnerabilities before the law.

Submission, Hume Riverina Community Legal Service, sub. 38, p 6

The Reviewer considers providing sufficient funding to the legal assistance sector will enable expanded reach of ADR services. This expansion will better serve vulnerable clients, improve the client experience, reduce the burden on the court system, and reduce trauma to families and children. This is addressed through recommendations in section 7.2.1 on baseline funding.

9.7 Using innovative technology in service delivery

Innovative technology applications can help deliver early intervention legal assistance. As noted in Box 4.3, PULS found that about half of Victorians accessing information about legal problems did so online, compared to around 13% using paper-based sources. This online preference is likely to grow. The COVID period showed a preparedness in the community to use technology in both formal and informal resolution of legal issues. It is important A2JP recognises the importance of technology in resolving legal issues and provides adequate funding to legal assistance providers to ensure all Australians, not just the affluent, can benefit from technology innovation.

The 2018 NPA Review indicated that the agreement allowed for innovation, particularly in prevention and early intervention. However, it did not drive innovation by providing specific funding for innovative programs or measures to reduce demand. Despite this, technological innovation was found to be a key mechanism by which the previous NPA achieved value for money.

NLAP does not have specific requirements for the use or promotion of innovative technology. The legal assistance sector has initiated a range of pilots or trials to test innovative technology, recognising there are potential benefits for improved efficiency of legal assistance service delivery. New technologies can improve legal assistance delivery and meet unmet legal need through:

- increasing the reach of legal assistance by providing advice to persons who do not qualify for legal aid but who are unable to afford a lawyer or to fund their own civil disputes
- empowering people to solve their own legal problems without the need for legal assistance
- assisting in triage, provision of minor assistance and practice management.

FineFixer is a digital tool recently developed by Moonee Valley Legal Service through a grant from the Victoria Law Foundation. It is a responsive, web-based tool that guides users in navigating the fines and infringements system, helping them to understand their fines and promoting early action.

The total project cost was \$57,000. Its one-year evaluation projected the tool would, in its first 3 years of operation, provide legal information in 72,456 sessions and save 8,043 hours of legal assistance with a total project cost of \$0.79 per session. This equates to an estimated saving of \$215,962 by providing legal assistance to otherwise legally capable people.

Submission, Access to Justice and Technology Network, sub. 4, p 7

Another example is the Dear Landlord digital tool, developed by Justice Connect.

Dear Landlord is a user-centred digital tool, which empowers more Australians in private rentals to avoid eviction and stay securely housed. It was first co-designed and developed in 2017-18, after the benefits of an accessible self-help tool were identified through data and client insights drawn from our wraparound service delivery, including through our intensive, holistic work preventing homelessness for women and children.

We rapidly iterated Dear Landlord in response to COVID-19 and the related changes to Victoria's rental laws. From the height of the pandemic, Dear Landlord has been a key part of Justice Connect's responsive approach in increasing access to legal support and preventing homelessness, including throughout regional and rural Victoria. Since COVID-19 commenced in 2020, nearly 105,000 renters have used Dear Landlord to avoid eviction.

Submission, Justice Connect, sub. 40, p 9

One such pilot is amica, a case study of which is provided below.

Box 9.5 Technology in legal assistance delivery – case study

- amica (www.amica.gov.au) was developed by LSC on behalf of National Legal Aid through specific Commonwealth Government grant funding. It was designed to address unmet legal need of parties that did not qualify for legal aid and could not afford a private lawyer. Through amica parties can work together to resolve their own dispute.
- amica was researched and developed by legal aid lawyers and digital design experts, alongside people who have experienced separation and family violence. It has an easy-to-use interface, uses conversational language, and provides a guided pathway for users to collect information, upload supporting evidence and agree on statements.
- amica provides users with accurate, trustworthy and court-ready agreements. It is an online tool that guides separating couples through property settlement and parenting arrangements. It empowers people to resolve their disputes and seek information, education and assistance where needed.
- Using AI, amica provides users with a suggested division of assets based on their circumstances, and with agreements commonly reached by other couples in similar situations. It explains how courts generally handle disputes of this nature. The suggested offer is designed to guide the negotiation process. It has important safeguards built in, using natural language processing and sentiment analysis to prevent parties from using abusive language. It also prevents parties agreeing to a percentage split that is outside a reasonable range.
- amica is providing significant social benefit to Australians who have empowered themselves with information. It has benefited those who have received a suggested division using amica's AI, and those who have finalised their separation through one of the agreements generated by amica.
- For those earning below the national minimum wage, amica is free to use. Where users have the capacity to pay, a fee of \$250 is charged if users wish to generate formal consent orders.
- Noting that the average cost of legal advice for such matters is more than \$10,000 per person, Australians have saved more than \$30 million by using amica.
- As amica matures and usage grows, so too will benefits delivered to the community. For this reason, it is considered that amica should be an ongoing funded program and continue to be administered by Legal Aid.

Source: *Legal Services Commission South Australia, sub.51, p 28*

The Reviewer has heard that technology has an important role in shaping how legal assistance services are delivered over the next five to ten years, particularly with rapid developments in machine learning and artificial intelligence. In addition to client-facing digital tools, technology can be used to develop educational tools that upskill lawyers and reduce the supervision workload of senior lawyers. It can be used to streamline eligibility assessment processes for those seeking legal assistance, and to provide data and intelligence to guide decision making. Many technological developments can be scaled up across the legal assistance sectors, multiplying the return on investment.

The abovementioned examples of technology applications demonstrate that technology used well offers significant benefits by extending the reach of legal assistance services to more people who need it, and people can access legal assistance more quickly. Technology used well can offer greater efficiencies through more people having a greater understanding of their legal problems, addressing their legal problems before they become more serious, and reserving client-focused legal assistance for those with the greatest need.

Conversely, poorly used technology can result in greater harm. For instance, technology used for the kinds of data collection and reporting discussed in Chapter 10 does not provide efficiencies to legal assistance service providers. It negatively impacts the workloads of legal assistance service providers without any improved outcomes. Poorly designed technology for legal assistance purposes may misinform those who use them. This can cause confusion, resulting in increased burden for legal assistance service providers who need to undo problems caused by acting upon poorly designed legal advice. In extremes, it may contribute to miscarriages of justice.

A2JP should recognise the importance of technology in future legal assistance service delivery. Access to Justice through Technology Network (AJAT) is already bringing together diverse expertise from the legal assistance, technology and academic sectors. AJAT includes representatives from LACs and not-for-profit legal services providers. AJAT is a non-profit organisation dedicated to promoting technology to increase access to justice in Australia. It supports people facing disadvantage to obtain legal assistance by:

- connecting stakeholders who are interested in access to justice and legal technology
- fostering collaboration and capacity building by disseminating information about initiatives, challenges and opportunities
- providing support for organisations and initiatives through pro bono legal, IT, project management, research and marketing expertise
- conducting research and advocacy on potential uses and impact of legal technology for access to justice.

This is good work. However, the Reviewer is of the view governments must act to ensure effective deployment of technology to the legal assistance sector. Without government action, deployment of innovative technology is likely to be sub-optimal.

Recommendation 29 – Technology funding

The Reviewer recommends the Commonwealth establish a Justice Technology Innovation Fund to:

- fund the development, trial and evaluation of technological solutions and digital tools for the legal assistance sector, including the application of artificial intelligence technologies
- consider opportunities for expanding the deployment of digital tools across all jurisdictions that have been successfully evaluated
- explore technology partnerships between legal assistance providers, governments and other community organisation.

The Fund should be governed by a Board comprising of no less than six people and no more than ten people. The Board must at all times be able to demonstrate the following skills are present.

- an understanding of the use of technology by people within the priority groups
- an understanding of the provision of legal assistance services in Australia
- an understanding of the deployment of technology to community-based organisations, and in particular ACCOs
- assessment, risk management and governance of high risk grant programs
- venture capital and start-ups
- cyber security
- ethical issues including those related to the law and the application of technology
- application of technology to the resolution of disputes
- the training of workers in the use of legal technology systems
- Aboriginal and Torres Strait Islander data sovereignty and self-determination

The Commonwealth should provide initial funding of \$5 million in 2025-26 with supporting contributions to be made by all governments and other parties over the life of the A2JP.

The fund may accept funding from non-government sources subject to the approval of the Commonwealth Attorney General who should publish guidelines for such contributions alongside and investment guideline for the fund no later than 30 June 2025.

Initial annual funding of \$0.5 million be provided in 2024-25 and 2025-26 by the Commonwealth to meet these governance objectives and to recruit the Board. Remuneration of directors should be determined by the Remuneration Tribunal. The remuneration of the Board and the other expenses of the fund should be funded by the Commonwealth.

9.8 Best practice in regulation

There is relatively little research into the regulation and compliance of legal assistance services. This Review has considered how other analyses of regulatory practice might be relevant to the legal assistance sector. It is important to understand that the quality of engagement experienced by legal assistance providers has as much to do with the behaviour of supervising government agencies as it does with the formal obligations placed on service providers, and this is about more than data.

Impact of New Public Management reforms

Many Western democratic nations pursued reforms over the last four decades that are broadly termed New Public Management. These reforms respond to perceptions that public services had become too large and their delivery inefficient, and that private-sector management practices were the key to modernising public service delivery (Lapiente and Van de Walle, 2019).

Lapiente and Van de Walle (2019) synthesised evidence on whether New Public Management strategies have actually worked in increasing efficiency of delivering public services, or whether there have been unintended consequences of decreased quality in service delivery.

They conclude that because costs are more easily measured than quality in public service delivery, there is an incentive to cut the quality of services to a minimum. The evidence gathered in this Review points to added requirements of applying for and acquitting against additional funding sources, so increasing workloads in legal assistance services, and thereby decreasing the quantity of resourcing available for its core services.

The ACT Government has been advised that the reporting obligations required by the NLAP have resulted in service providers redirecting resources and personnel from frontline critical service delivery to collecting data and reporting requirements.

Submission, ACT Government, sub. 5, p 19

VLA have reported that data collection, as well as reporting, is an issue for both legal aid commissions and CLCs. It is crucial that compliance and reporting burdens are limited as much as possible to minimise the extent to which critical funding resources – which could be spent on service delivery – need to be diverted to satisfy compliance and reporting obligations.

Submission, Law Institute of Victoria, sub. 46, p 14

Regulation of small businesses and charities

The legal assistance sector is not unlike the small business and charities and not-for-profit sectors in that there is a small number of large organisations (e.g., LACs, major CLCs) and a relatively higher proportion of small organisations (for example, most CLCs, ATSILS and FVPLS). Like charities and not-for-profit organisations, the legal assistance sector is not profit-motivated and has little to no discretionary budget to invest in data collection and reporting systems. Several studies and reviews have found that, in such sectors, increased regulatory burden often has disproportionate impacts on small organisations compared to large ones.

The Productivity Commission's (2013) report on *Regulatory Engagement with Small Business* found that small businesses tended to have relatively simple systems and processes to support the management of their businesses, are less likely to employ staff with specific knowledge in compliance, and are less likely to be informed about requirements. Evidence gathered by this Review demonstrated that this analysis is similarly applicable to the legal assistance sector. Large organisations were more likely to have dedicated or specialist staff focused on data collection and analysis, and smaller organisations do not.

The Productivity Commission also noted that compliance and regulatory costs can fall under one-off or fixed costs, or ongoing costs. The former is generally 'fixed' and does not vary with the level of the business' output. The latter increases as output increases. Most regulatory frameworks tend to result in one-off costs, which means the scale of a small business' activity is unable to make use of the fixed capital or labour required for compliance. When applied to the legal assistance sector, all reporting appears to be one-off. Legal assistance service providers are required to report the same information regardless of the organisation's size. Additional funding reporting requirements have no regard for a legal assistance service provider's existing reporting requirements, and the scale of reporting does not always reflect the quantum of funding.

Due to the two layers of administration required of the NLAP, there is a cost implication to the compliance and red tape imposed on the states and territories that are parties to the agreement. This is in addition to what is then imposed on the legal assistance sector to ensure the delivery of the services to meet the objective of the NLAP agreement.

Submission, Northern Territory's Department of the Attorney-General and Justice, sub. 64, p

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This issue was recognised particularly among charities and non-profit organisations participating in the *Strengthening for Purpose: Australian Charities and Not-For-Profits Commission (ACNC) Legislation Review* (Commonwealth Treasury, 2018). The report identified that charities and non-profit organisations operated under eight separate jurisdictions, each with its own regulatory regimes, in addition to the Commonwealth Government's regulatory requirements. However, within the ACNC's regulatory framework, a number of thresholds mean regulatory requirements for smaller organisations differ from those of larger entities. The Review recommended changing thresholds for small, medium and large organisations to increase the proportion of organisations that fall under small organisations, and to reduce the reporting requirements under each category.

Overall, both the reviews just cited point towards a risk-based approach to regulation; that is, increased regulation for higher-risk organisations and decreased regulation for lower-risk organisations. Applying this principle to the legal assistance services sector, it appears that most organisations are on the lower end of the risk scale. They tend to be small and governed by boards generally made up of persons who have had substantial legal and government careers. Usually, they have existed for a long time with a strong track record of integrity. The reviews cited above also point to streamlined regulatory design with a single system for acquittal against activities at both Commonwealth and state and territory levels.

A possible way forward

One possible way forward is to introduce a set of standards for legal assistance service providers that replace current regulatory requirements. This can be done by establishing a supporting accreditation system. An example of this is QIC Health and Community Service Standards, created in the 1990s by the Quality Improvement Council for application in health and community organisations. The standards support these organisations to maximise continuous quality improvement opportunities by undertaking a 'whole-of-organisation' approach to assessment, highlighting an organisation's strengths, identifying areas for improvement and specifying which of these areas should be prioritised. The QIC Standards include five areas:

- governance
- management systems
- consumer and community engagement
- diversity and cultural appropriateness
- service delivery.

Undertaking periodic reviews of organisations to provide and maintain accreditation may be a way to reduce the regulatory burden on legal assistance services, while providing assurance and transparency that they are meeting certain standards. This approach would also allow assessment criteria to be developed that are tailored to the size and nature of different legal assistance service providers. Coupled with streamlined reporting requirements set out in recommendation 37, this approach would significantly reduce the regulatory burden on legal assistance service providers.

The Reviewer recommends that in considering future approaches to the administration of A2JP, the Commonwealth, states and territories should have regard to the principles of best practice regulation and the reports of the Productivity Commission and ACNC cited in this section.

Administration and cost sharing

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Box 10.1 Key points

- Given the scope of the reform task contemplated in this Report, A2JP should have a five-year term and all service provider agreements should align to that term.
- The Commonwealth should take a more active role in the legal assistance sector, making clear its overall objective in the Outcomes Framework, becoming a party to service provider agreements, and maintaining and publishing a nationwide data collection on legal assistance funding.
- To improve trust and collaboration between LACs and community legal assistance providers, LACs should have no role in administering baseline funding of other providers. This existing role was almost universally criticised by the community sector as ineffective at best, and more commonly as damaging.
- Given the current highly varied sharing of funding by states and territories, the Commonwealth should agree with each state and territory minimum funding commitments for each year of A2JP. This should exclude service providers and matters that should be funded exclusively by the Commonwealth.
- Negotiations on minimum funding agreements should commence with an understanding by all parties that the principle of 'Commonwealth money for Commonwealth matters' in relation to LAC funding will be abandoned.
- The Reviewer considers current *de minimus* funding for ATSILS provided by some states and territories is inconsistent with their commitments under the National Agreement on Closing the Gap.
- The Reviewer is satisfied that his recommendations are consistent with the Intergovernmental Agreement on Federal Financial Relations.

This chapter explores the proposed administrative and funding roles of the Commonwealth, states and territories under A2JP.

10.1 Duration of the agreement

NLAP commits the Commonwealth to provide financial support to the states and territories for a period of five years from 1 July 2020 to 30 June 2025. Prior agreements for legal aid assistance from the Commonwealth each ran for five years, from 2010 to 2015 and 2015 to 2020 respectively. The duration of NLAP aligns with current and proposed Commonwealth agreements, including the National School Reform Agreement, the National Health Reform Agreement, and the National Housing and Homelessness Agreement.

Commonwealth Grants Rules and Guidelines 2017, issued by the Commonwealth Department of Finance, note that 'longer term grant agreements may better achieve value with relevant money and government policy outcomes, than conducting multiple grant opportunities with grant agreements of shorter-term duration' (Department of Finance, 2017). As can be seen from several discussions in this Report, the Reviewer shares that view.

Developed by the Council on Federal Financial Relations, the Federation Funding Agreements Framework follow eight principles that outline how new agreements should be constructed and the process for their negotiation (Council on Federal Financial Relations, 2020). Principle 5 is ‘funding certainty’ which specifies that ‘new agreements that fund ongoing services will provide states with funding certainty where possible.’ Agreements of longer duration can increase stability, allowing states and territories to adequately develop and operationalise funding strategies for legal assistance. These observations apply equally to service providers.

A recent review of the Universal Access to Early Childhood (the agreement that preceded the Preschool Reform Agreement) recommended a five-year agreement, noting this would ‘provide greater funding certainty [and] address a range of important data and measurement issues’ (Nous, 2020). This review found that a longer agreement would ‘enable service providers to plan, innovate and retain staff’ and would ‘reduce the risk for states and territories in investing and undertaking long-term, more ambitious reforms.’ While this agreement pertains to a different area of service provision, the justification for a long-term agreement is relevant to the legal assistance sector.

10.1.1 Short-term funding

Short-term government funding agreements for legal assistance providers, which run contrary to the 2017 Grant Guidelines mentioned above, have significant risks and downsides which impact on stability and quality of these essential services. Such agreements often lead to uncertainty and inconsistency in service provision as providers of legal assistance cannot confidently plan or invest in long-term initiatives. This is so even for Australia’s largest legal assistance provider.

Short-term funding and associated uncertainties make it more difficult to collaborate and service plan with external stakeholders.

Submission, Legal Aid NSW, sub. 47, p 7

As discussed in section 7.1.2, the irregular nature of short-term funding can disrupt ongoing legal cases. It can impede development of specialised legal expertise tailored to the needs of vulnerable cohorts and the development of trust with communities. It can hinder legal assistance providers’ ability to engage in proactive, strategic advocacy and law reform work as they must often work within immediate funding limitations rather focus on broader, more impactful legal challenges and changes.

In its submission to the review, NLA estimated the amount of short-term funding LACs expect to receive in the 2024-25 financial year. This can range from a low of 10% in Victoria to a high of 29% in Tasmania. For the LAC subsector overall, it is estimated short-term funding will represent 15% of NLAP funding.

Table 10.1 Short-term funding for LACs in 2024-25

LACs	Short-term funding	% of NLAP funding
Legal Aid NSW	\$13 million	17%
Victoria Legal Aid	\$6 million	10%
Legal Aid Queensland	\$6 million	11%
Legal Aid WA	\$7 million	23%
Legal Services Commission of South Australia	\$2 million	13%
Tasmania Legal Aid	\$2 million	29%
NT Legal Aid Commission	\$1 million	19%
Legal Aid ACT	\$0.9 million	17%

Source: NLAP Independent Review, from National Legal Aid’s submission

The Reviewer has heard short-term funding arrangements are also prevalent in the CLC subsector. CLCA's submission states:

The current [NLAP] agreement held out the promise of five-year funding security for centres, but this has not been delivered in jurisdictions other than Qld, SA, and the ACT. Centres in other jurisdictions have had four-, three-, or even two-year contracts. No state or territory government is offering funding security beyond 2025. By the time we see the NLAP review report, no centre will have more than 16 months' funding security. No centre can offer security of employment or service delivery in such an environment.

Submission, CLC Australia, sub.14, p 19

Short-term funding limits the ability of providers to offer long term employment contracts. This can severely restrict recruitment of experienced and entry level staff, and can exacerbate the divide between CLCs and LACs.

The salaries on offer in government jobs and at Victoria Legal Aid for senior lawyers are completely outside the realm of what is possible in the CLC sector. This – along with short-term funding leading to fixed term contracts – makes attracting and retaining senior staff extremely challenging.

Submission, Law and Advocacy Centre for Women, sub. 44, p 6

Further, the short-term nature of employment contracts clearly acts as a disincentive for employers to invest in the professional development of their staff and other aspects of their business, such as IT systems and premises. In a sector like legal assistance where labour is the primary factor of production, and existing workforce arrangements are suboptimal, it is hard to conceive that providers have resources necessary to consider these investment decisions, let alone make them.

Lack of investment has practical implications for providers' ability to deliver safe, efficient, contemporary services. Section 8.10 details challenges providers face in using their current ICT systems, which for many are legacy systems no longer fit for purpose. Given currently onerous reporting and compliance requirements, legacy systems only compound administrative burdens borne by providers, further distracting them from core business of delivering legal assistance.

With the rising threat of cyberattacks, modern and continuously maintained ICT systems are an operational pre-requisite in today's environment. Recent attacks on the Victorian courts show the justice system is vulnerable. Data sensitivity, coupled with existing vulnerabilities of clients, mean safeguarding their information is ever so important. A breach would be catastrophic for the sector and, more importantly, for clients.

More broadly, the lack of funding certainty has also adversely affected the extent to which providers are able to conduct long-term organisational planning. It goes without saying that community-based service providers need to be investing resources to build trust and relationships within their communities. This is even more so for providers operating in areas with large proportions of Aboriginal and Torres Strait Islander peoples. However, in the absence of secure funding, it is difficult for providers to make these long-term commitments to their communities.

Pilbara Community Legal Service, which works with regional and remote communities in the Pilbara region of Western Australia, stated this in its submission to the review:

Building rapport and trust within remote communities is an undertaking that requires time and is reflected in the level of effectiveness and impact that the organisation has.

The length of a funding period has a direct relationship with the overall outcomes that PCLS can achieve. Short periods of funding make it more difficult to build the necessary levels of trust and rapport and would generally be seen to add a narrative of inconsistency.

Submission, Pilbara Community Legal Service, sub.85, p 2

The submission from the National Family Violence Prevention Legal Services Forum expressed a similar perspective:

Short term funding has contributed to FVPLS services being unable to effectively plan for long term interventions, to retain staff who experience uncertainty and insecurity to long term employment and communities to provide commitment to communities that long term support is available.

Submission, National FVPLS Forum, sub.135, p 7

The administrative burden of frequently applying for and reporting on short-term grants consumes valuable resources that could be better used in direct legal service provision. Applying for grants can create gaps and delays for those in need of legal assistance, particularly marginalised and low-income groups. Ultimately, dependence on short-term funding for legal assistance services does not serve pursuit of justice and equal access to legal resources.

There is another perspective to consider. Funding for an extended duration can lead to a lack of flexibility in adapting to changing legal needs and shifts in societal priorities. This rigidity can result in inefficient allocation of resources over time. Long-term agreements with secure funding can stifle innovation as providers may have less incentive to improve or update services. Longer funding periods can create dependencies if providers become overly reliant on government funding, potentially undermining their autonomy and ability to advocate independently. Furthermore, commitment of public funds over a long period can be risky in times of economic uncertainty when budgetary constraints might necessitate reallocation of resources. This could lead to legal assistance providers facing sudden funding shortfalls if governments need to redirect funds.

The Reviewer accepts uncertain short-term funding arrangements significantly impairs the ability of community-based service providers, and in some cases LACs, to offer employment contracts of suitable duration to legal and non-legal staff. This is discussed in chapter 8.

The Reviewer recognises that longer agreements come with the need for appropriate risk management. Efficient contract length is largely a function of how risk is allocated between funders and the funded. If mechanisms can be built into funding agreements to address changes in input costs (largely but not exclusively wages) and demand, then longer contracts can be put in place. If this is not possible, then a shorter contract period is preferred.

The Reviewer initially considered recommending that if most of his funding recommendations were accepted, then a seven-year agreement would be appropriate. Having considered observations made by government officials on the significant implementation challenges presented by what is a fundamental reform, the Reviewer has decided not to make such a recommendation but does suggest a longer agreement period be considered by the first A2JP review.

Recommendation 30 – Term of A2JP

Despite the benefits of a longer agreement, given the scope of the reform challenge proposed by the Reviewer, the A2JP should have a five-year term commencing 1 July 2025.

The costs and benefits of a longer term should be considered by the next review.

The Reviewer recommends that the term of future service provider funding agreements should match the term of the A2JP. In particular, short duration core funding agreements for FVPLS and some CLCs must be replaced by five-year agreements commencing 1 July 2025.

10.2 Governance of legal assistance funding

10.2.1 The Commonwealth's administrative role

The Reviewer is confident that administrative involvement of multiple Commonwealth agencies in funding legal assistance providers has a negative impact on the sector. Knowledge and expertise about providers sits within AGD's legal assistance area. Other departments have noted they have limited understanding of the scope, focus and relative strengths of legal assistance providers. This makes it challenging to allocate funding appropriately and encourages a tendency to allocate funding via a tendering process, the problems with which are discussed in chapter 7. Further, without a unified reporting framework, or clear visibility over activities and outcomes, it is exceedingly difficult to assess the overall impact and effectiveness of the legal assistance provided.

Pervasive departmental silos exist between Commonwealth Government portfolios that share responsibility for the safety of First Nations women and children, and particularly between the Department of Social Services (DSS), the Attorney-Generals' Department (AGD) and the National Indigenous Australians Agency (NIAA). These silos impede the provision of combining legal and non-legal services that are crucial to the effectiveness of family violence prevention services and programs.

Submission, National FVPLS Forum, sub. 135, p 9

The Reviewer recognises the need to improve governance and oversight of legal assistance funding to manage issues discussed in this Report. The logical approach is for AGD to take ownership of all Commonwealth legal assistance funding administration. AGD would act as a single point of contact for service providers, improve oversight and strengthen expertise available to inform strategic planning.

Consolidating administration into AGD will require establishment of a mechanism by which other relevant departments can be kept informed of, and have opportunities to engage in, funding priorities for legal assistance. This should include the development of an annual statement of Commonwealth legal assistance funding provided to Parliament as part of the Budget papers. The first such statement would require a Commonwealth-wide stocktake of legal assistance programs in 2024-25 which then could be revisited annually over the life of A2JP.

For this approach to be effective, AGD will need to increase and improve engagement with service providers. This Report recommends several mechanisms to deepen engagement. They inevitably involve budget supplementation for AGD.

The Review has heard NLAP has improved interactions between service providers and between service providers and governments. The Reviewer considers bringing administration of all legal assistance funding streams into A2JP will further improve interactions, and increase transparency and administrative simplicity, even when the Commonwealth is sole funder of some activities.

Recommendation 31 – Better coordination and reporting of legal assistance funding by the Commonwealth

The Reviewer considers that there would be significant transparency improvements and administrative efficiencies gained from the consolidation of Commonwealth legal assistance funding administration in the Attorney-General's Department. To this end

- administrative arrangements should be put in place to ensure funding from non-AGD Commonwealth sources is provided through AGD with appropriate monitoring arrangements designed to minimise the number of service provider compliance engagements and contact points
- AGD should maintain an appropriate data set on all Commonwealth legal assistance funding to facilitate the publication of an annual Legal Assistance Funding Statement with the Budget Papers
- AGD should make public a consolidated database of all Commonwealth, State and Territory funding provided to legal assistance providers covered by the A2JP.

NLAP tasks states and territories with responsibility for:

Allocating or distributing, as applicable, and administering quarantined Commonwealth funding for the delivery of mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services.

The Review has heard mixed perspectives on the need for greater involvement and control by the Commonwealth over legal assistance funding administration in the states and territories. Those in favour of greater Commonwealth involvement see potential for process efficiencies, better allocation of funding in accordance with government priorities and consistency of practice.

We have a preference for greater Commonwealth control over additional funding allocations, driven by experiences of huge delays in state government allocations of additional Commonwealth funding in response to COVID-19 and disasters.

Submission, Aboriginal Family Legal Service Western Australia, sub.2, p 12

We believe the Commonwealth should have greater oversight and direction in determining funding splits to LAWA and CLC's.... In our view the Commonwealth could directly fund services that deal primarily with Commonwealth law matters, in our case Consumer and Credit Law

Submission, Consumer Credit Legal Service WA, sub.22, p 4

Those against greater Commonwealth involvement believe that the states and territories are best placed to administer and allocate NLAP funding because of their proximity to service delivery.

Decisions about jurisdictional-level funding allocations should remain within the remit of State and Territory Governments, who are, generally, better placed to understand their respective sector's unmet legal needs.

Submission, ACT Government, sub.5, p 13

Also, the Reviewer has heard calls for greater guidance from the Commonwealth about priorities, allocation and approaches to aid coordination of resources.

SSRV generally agrees that the level of government closest to the service delivery should be responsible for determining and administering funding distribution between legal assistance service providers. However, where a service provider focuses on a Commonwealth area of law (i.e., social security), funding is not consistently prioritised to meet the relevant legal need.

Submission, Social Security Rights Victoria, sub. 91, p 27

In any case, the need for improved communication and collaboration between Commonwealth and state and territory governments was expressed consistently throughout this Review's consultation and submissions processes.

States and territories will continue to be primary administrators of funds. However, there is a clear opportunity for the Commonwealth to provide greater clarity by working closely with states and territories that they support.

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

Submission, Victorian Department of Justice and Community Safety, sub. 131, p 5

NLAP's failure to deliver a robust outcomes framework, as discussed in sections 2.7 and 11.1, in the Reviewers opinion means it is almost inevitable that problems like those discussed above will occur. It is also clear that for some additional funding streams, scant guidance was provided by the previous Commonwealth government.

The Reviewer considers these issues can be addressed by better Commonwealth guidance about the outcomes it seeks to achieve through partnerships states and territories. This guidance will preferably be stated in the Outcomes Framework and other primary A2JP documentation.

Clearly, service providers would like closer relationships with the Commonwealth. This could be achieved by the Commonwealth being a party to funding deeds between relevant service providers. This would not involve separate agreements between the Commonwealth and service providers. To reduce costs for all concerned, existing jurisdictional agreements could be used to develop pro forma agreements that reflect new arrangements under A2JP.

Recommendation 32 – Improved Commonwealth involvement

At the Commonwealth level, overarching guidelines must be established, setting a standard framework within which state and territory governments are to operate. These should be reflected in the Outcomes Framework and other A2JP documentation. The Commonwealth must play a leading co-ordinating role, providing clarity and certainty around roles and responsibilities.

To address widespread concerns of community legal sector providers about the absence of Commonwealth involvement and administrative challenges experienced with some with state and territory administrative arrangements, the Commonwealth, through AGD, should be a party to future funding deeds.

Peaks, the Commonwealth, state and territory governments should build on existing agreements to develop proforma service agreements for each of the four service provider types within the relevant jurisdiction.

10.2.2 The administrative role of LACs

The NLAP agreement permits states and territories to delegate responsibility for administration of Commonwealth CLC funding to a legal assistance provider, rather than through their respective Departments of Justice/Attorney-General.

In most jurisdictions, the relevant state department has maintained responsibility for funding administration. Victoria, New South Wales and Queensland are the only jurisdictions in which NLAP funding is distributed to CLCs through LACs. The Review has heard this arrangement carries a risk of perceived or actual conflict of interest that jeopardises collaboration and cooperation.

In many cases, LACs and CLCs (and indeed ATSILS and FVPLS) collaborate on service design and delivery, working together to ensure the community's legal needs are appropriately serviced. Still more collaboration is needed. The Reviewer has heard concerns that LAC involvement in CLC administration creates power imbalances and inequity in access to funding.

In Victoria and New South Wales, LACs have access to performance and service delivery data from CLCs receiving NLAP funding. However, often both LACs and CLCs tender for program-specific funding or pilots, and these LACs have pertinent information on hand about CLCs.

In this environment where VLA and CLCs may compete for funding (including new streams of NLAP funding), VLA has access to performance and other CLC data as part of funding reporting arrangements. There is no reciprocal information flow for CLCs to see equivalent information from VLA.

Submission, Federation of CLCs Victoria, sub. 32, p 28

The eligibility for Legal Aid Commissions to administer legal assistance funding to other legal assistance providers should be removed. This creates a power imbalance, is a conflict of interest, creates unnecessary administrative processes, and can be a barrier to the collaboration of service delivery.

Submission, YFS Legal, sub. 108, p 6

The Reviewer has also heard, and from consultation experience agrees, that the organisational culture of the administering department or LAC has a significant impact on how well the respective arrangements perform. Instances of poor organisational culture in both departments and LACs have been cited as resulting in dysfunctional collaboration due to competition, delays to funding distribution and culturally inappropriate consultation practices.

State agencies have pre-determined ideas about how best to service and meet the needs of Aboriginal communities, which they impose on legal assistance providers.

Submission, Aboriginal Family Legal Service Western Australia, sub. 2, p 8

Examples of poor allocation and administration processes include disaster response funding delivered in 2020, 2021, and 2022, and mental health funding delivered in 2021, which in some extreme cases took 17 months to reach centres struggling to meet increased demand with static resources.

Submission, CLCs Australia, sub. 14, p 21

A cooperative approach ensures resources are allocated efficiently and effectively, so addressing the diverse legal needs of communities across different regions. Reinforcing a culture of collaboration, not compliance, is vital to countering the frictions of funding distribution.

Beyond this, the Review notes that LACs are much larger and better resourced organisations than the vast majority of community service providers. This gives them competitive advantages in some bidding processes, but it is by no means certain the exploitation of economies of scale necessarily leads to the best outcomes for vulnerable clients. It may be that better outcomes will be achieved by more innovative, slightly higher cost service providers. The risks posed here are best addressed by a substantial reduction in the use of competitive tendering, as discussed in section 7.1.3.

Community sector service providers were unanimous in their calls for greater uniformity in funding administration processes. The vast majority specifically indicated that state departments rather than LACs should administer CLC funding. The Reviewer considers the costs of transferring these functions should be small and similar to those regularly incurred by government with machinery of government changes. Benefits are likely to outweigh the costs.

Delegation to LACs of state and territory responsibility for administering funding has been detrimental for community legal centres.

Submission, CLCs Australia, sub. 14, p 22

Recommendation 33 – LACs not to administer funding

The Reviewer recommends that states and territories departments should be responsible for the administration of funding provided by the Commonwealth for ATSILS, LACs and CLCs. The ability to delegate to government agencies other than the relevant policy department the responsibility for the administration of Commonwealth funding to a legal assistance providers should not be a feature of the A2JP.

10.3 Funding roles and responsibilities under the A2JP

To be a truly national partnership, Commonwealth and state and territory governments must genuinely share funding and administrative responsibility for A2JP. As discussed in section 7.1.2 and elsewhere in this Report, fragmentation of government funding is simply unhelpful, and indeed harmful. Once governments have agreed the outcomes they seek from the legal assistance sector, they must agree on the funding distribution to deliver those outcomes rather than fund individual service lines as is currently the case.

The Commonwealth and the jurisdictions should work in partnership in determining the funding distribution between legal assistance service providers.

Submission, Northern Territory's Department of the Attorney-General and Justice, sub. 64, p 12

While acknowledging states and territories make varying contributions (some of which are zero) to funding for LACs, CLCs and ATSILS, there is no requirement in NLAP for states and territories to provide any funding for legal assistance services to complement Commonwealth funding.

The Reviewer believes this represents a failure in the current system. It contributes to funding inadequacies discussed in chapter 6 and the level of unmet legal need discussed in chapter 4. If it is reasonable for the Commonwealth to commit to certain funding for certain services, it is reasonable for its partners to do so.

The Reviewer's deliberate approach first focused on funding the legal assistance sector requires to match the costs it incurs to provide current and identifiable future services. The second step was to consider governments' funding responsibilities. The initial focus on legal assistance providers enabled the Reviewer to make recommendations that would provide the sector with resources sufficient to undertake current workloads efficiently, to prioritise employees' safety, to expand services in areas of greatest unmet need and to advance self-determination of Aboriginal and Torres Strait Islander peoples.

If governments accept most or all the Reviewer's funding recommendations, a mechanism will be needed to share this funding task in A2JP's first year. Funding increases are needed for remuneration for community sector employees and private sector grants of legal aid, noting the funding burden is carried by the Commonwealth in the last year of NLAP. This issue is discussed further in chapter 12.

The minimum amounts to be funded by each level of government in each state and territory should be specified in a bilateral schedule to A2JP, bearing in mind timing issues discussed in chapter 12.

10.3.1 Exclusive Commonwealth funding obligations

To enhance collaboration, the Reviewer recommends A2JP include FVPLS and CLCs funded by the Commonwealth and not covered under NLAP (such as the Environmental Defenders Office and the Arts Law CLC). However, the Commonwealth should remain sole funder of FVLPS and those CLCs currently outside NLAP, at least for the life of A2JP. It is also recommended that the Commonwealth solely fund ICLs for the life of A2JP (recommendation 19).

A2JP should specify minimum funding amounts the Commonwealth is to provide to each service provider. Specified amounts should account for all funding recommendations involving each service provider and include meaningful consultation with them, subject to timing issues discussed in chapter 12.

Similarly, the Commonwealth should specify in A2JP its minimum annual funding contributions to other recommendations that do not involve service provider funding. The largest of such ongoing funding amounts will be for the legal needs survey (recommendation 1), establishing the Justice Technology Innovation Fund (recommendation 29) and developing a new data core to replace CLASS (recommendation 38).

In 2024-25 the Commonwealth will also need to fund those urgent recommendations set out in section 12.1.1 which will then be shared with other governments over the life of the A2JP.

10.3.2 Funding of ATSILS

Data presented in chapter 6 shows four jurisdictions make derisory contributions to ATSILS funding and three jurisdictions provide over 30%. While 30% is reasonable, the Reviewer understands those governments making such material funding contributions largely do so via programmatic allocations which are beset by short-term funding problems discussed elsewhere in this Report.

From discussions and submissions, the Reviewer is confident most state and territory government senior officials engaged with the legal assistance sector believe baseline funding of ATSILS and FVPLS is the sole responsibility of the Commonwealth. The views of their governments are not known to the Reviewer. The officials' view seems to be largely justified by the fact that funding for these organisations is a longstanding Commonwealth activity. But it is difficult to see how this view, and the service outcomes that flow from it, can be seen as consistent with Australian governments' commitments to each other and Aboriginal and Torres Strait Islander peoples under the National Agreement on Closing the Gap. To object to a funding model by saying but we have always done it this way is a weak argument against reform.

All Australians experiencing disadvantage are the joint responsibility of the Commonwealth and the government of the jurisdiction in which they live. The notion that the legal assistance needs of Aboriginal and Torres Strait Islander peoples are somehow the sole province of the Commonwealth is a nonsense. Jurisdictions that assert this position reflect fiscal preferences, not a proposition well based in law or policy. The Reviewer hopes state and territory governments, after reflecting on the perspective of their officials, will adopt a vigorously different view

If an Aboriginal or Torres Strait Islander person chooses to be defended by an ATSILS in relation to an alleged state or territory crime, funding that person's legal assistance cannot cease to be the responsibility of the state or territory prosecuting the criminal matter as it would have been if they had chosen to be represented by a LAC. Such a position disregards an important feature of Australia's justice system that people are free to choose who represents them. The position put by officials too simply dismisses the economic benefits of improved court efficiency and reduced incarceration that flow from legal assistance provided. The benefits accrue not to the Commonwealth but to the state or territory in which the criminal matter is tried. A state or territory that takes the benefits but shifts the costs is shirking its funding responsibilities.

The Reviewer acknowledges the substantial and high-quality services provided to Aboriginal and Torres Strait Islander peoples by LACs, and the funding provided to them by state and territory governments as well as the Commonwealth. That said, the Reviewer fundamentally believes state and territory governments should share funding for ATSILS. A disproportionate amount of ATSILS resources are devoted to state and territory criminal matters, to the detriment of service provision in family and civil law. The Reviewer does not wish to single out particular jurisdictions. However, it is ironic, indeed scandalous, that those jurisdictions with some of the most notorious justice outcomes for Aboriginal and Torres Strait Islander peoples are the jurisdictions that contribute least to support services that can help mitigate or avoid those terrible outcomes, particularly when mitigating those outcomes through legal assistance would reduce pressure on other areas of their own budgets.

It is hoped that governments will consider the funding arrangements for ATSILS as recommended in this Report, and commit to some or all of them. It is hoped they will make those commitments in a spirit of partnership and that over time state and territory governments will progressively increase their contributions to core funding of ATSILS. Given the difference of current funding and policy positions of state and territory governments, the Reviewer sees little utility in trying to make recommendations for cost sharing ahead of governments making in principle commitments.

In any event, where state and territory governments provide non-baseline funding to ATSILS and consider that funding to be ongoing rather than a short-term fix, they should agree to that funding being provided as baseline funding on an ongoing basis and for it to be indexed in accordance with recommendation 21.

If any state or territory governments fails to come to the party, the Reviewer reluctantly suggests the Commonwealth takes on this funding responsibility. The needs of ATSILS clients are too urgent and too important to leave unattended. If such a regrettable funding arrangement comes to pass, the Commonwealth should consider directly managing funding relationships with ATSILS through AGD.

10.3.3 Funding of LACs

LAC funding is currently shared between the Commonwealth and states and territories. As best the Reviewer can tell, the Commonwealth's share ranges between 25% and 50%. This funding profile almost certainly reflects policy preferences of governments, along with demographic factors. The profile seems to reflect an attempt to redress horizontal fiscal imbalance, with the Commonwealth providing a higher funding share in smaller jurisdictions, the Australian Capital Territory excepted.

There have been calls from the Law Council of Australia and National Legal Aid to return the Commonwealth's share of LAC funding to 50%. Presuming these bodies do not wish funding to smaller jurisdictions to be reduced, the impact of doing this would substantially increase funding to the largest four jurisdictions. Whilst the Reviewer would expect that additional resources would be well used by the larger LACs, there is no evidence that it would be better used by them when compared to the benefits of similar funding to smaller LACs – it might be the case, but there is no evidence.

Substantial funding will flow to LACs under recommendations which require co-funding by Commonwealth, state and territory governments. These recommendations include addressing unmet geographic need (recommendation 2), additional grants for civil matters (recommendation 5), funding for disasters (recommendation 6), rebasing funding of legal assistance providers (recommendation 17), rates of grants of legal aid (recommendation 18) and indexation (recommendation 21).

It is acknowledged that if the principle of 'Commonwealth money for Commonwealth matters' is maintained, then states and territories will bear a large burden of the increase in grant of legal aid rates though their criminal law practices if they accept that recommendation.

If rates do not increase broadly in line with civil and family rates then private practitioners may preference civil and family matters over criminal matters to a point where there is an inadequate supply of lawyers prepared to do criminal work, especially in non-metropolitan areas.

It is the Reviewer's preference that the principle of 'Commonwealth money for Commonwealth matters' is abandoned for reasons discussed below, and that funding of LACs be agreed to between governments, with their minimum annual funding commitments reflected in A2JP. If it is not possible for the Commonwealth to reach such an arrangement with a state or territory, the principle of Commonwealth money for Commonwealth matters should continue.

Commonwealth money for Commonwealth matters

NLAP provides guidance regarding the priority of funding through the General Principles set out in Clause A8, and for specific areas of law in Clauses A13 through to A17. However, clause 63 of NLAP sets out a further principle of 'Commonwealth money for Commonwealth matters' which guides the use of funds provided to LACs.

The notion of a 'Commonwealth matter' for the purposes of legal assistance funding was a fiction in 1996 when it was introduced. It remains a fiction today.

It is often the case that proceedings or circumstances in which a person seeks legal assistance cannot readily or usefully be classified as a Commonwealth matter. Australians who go to court, or are dealing with legal matters, know there is often more than one area of law involved in their matter. For example, more than 80% of family law matters include allegations of family violence, and often breaches of state or territory family violence orders. Australia has one integrated national legal system. Both Commonwealth and state or territory laws will often apply in a dispute.

Nor is there any reason of principle for governments to fund legal assistance only for matters involving their own laws. Both the Commonwealth and states and territories fund court systems which routinely hear cases involving laws enacted by the other level of government. Defamation and class actions are two examples currently receiving significant media attention. Commonwealth crimes are heard almost exclusively in state and territory courts.

Stakeholders were critical of this principle for a range of reasons. The primary objection is that it causes NLAP and funding rules to be overly prescriptive. The principle makes it difficult for legal assistance service providers to be responsive to the needs of vulnerable people.

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

Submission, Victorian Department of Justice and Community Safety, sub. 131, p 3

A participant in the Review observed that the school funding equivalent of this principle would be for Commonwealth money to be used only to fund history and mathematics.

Removing this principle would allow LACs to better respond to their clients' unique needs. The reality is that people who require legal assistance increasingly have multiple needs and issues that are generally not solely Commonwealth or state or territory matters. If nothing else the principle creates an additional administrative burden without any apparent benefit to clients. It contributes to funding fragmentation problems discussed in section 7.1.2 and elsewhere in this Report. This is particularly the case during the current cost of living crisis and matters relating family violence and breakdown.

It has been suggested to the Review that cost shifting goes both ways.

When conflicts of interest issues occur for the sole funded ATSILS in the NT, being NAAJA, there is no other agency in the NT specifically funded under the NLAP to provide legal assistance to Aboriginal and Torres Strait Islander peoples. It is understood that NAAJA refers conflicted clients to NTLAC (as well as other legal assistance providers such as CAWLS and TEWLS). This effectively means a cost shifting from the Commonwealth to NTG to provide NTLAC with funding for clientele that should otherwise be funded under NLAP.

Submission, NT Department of Attorney-General and Justice, sub. 64, p 14

The principle of 'Commonwealth funding for Commonwealth matters' in relation to legal aid commissions should be reviewed. Historic concerns that states and territories may cost shift to the Commonwealth partly underpins the NLAP being highly prescriptive, but these historic concerns also undermine autonomy and flexibility.

Submission, NT Department of Attorney-General and Justice, sub. 64, p 16

The Reviewer considers the principle of 'Commonwealth money for Commonwealth matters' should be abandoned because:

- it is a legal fiction
- it is antithetical to delivering integrated, client-focused wraparound services
- there is no legal or policy reason why this principle should apply to LACs, but not other legal assistance providers funded by the Commonwealth
- it is currently observed in the breach with Commonwealth money provided to LACs regularly used in state and territory matters in a family breakdown context
- it unnecessarily adds administrative and reporting complexity for LACs, with no apparent policy or client benefit.

The Reviewer understands this principle was introduced to address a concern at the time that states and territories may be cost shifting onto the Commonwealth by developing laws and policies that increase demand for legal services. The Productivity Commission heard in 2014 that for LACs the implication of *Dietrich v The Queen* was significant pressure to divert funding, including from the from civil matters, where virtually all Commonwealth funding is deployed, to criminal matters largely in under state and territory jurisdiction.

If the Commonwealth was confident of the states and territories providing funding for legal assistance providers that met governments' joint desired outcomes, then the protection this principle provides would be unnecessary. To get to this point would involve governments receiving mutual assurances, through A2JP, that their (hopefully common) specified policy outcomes for criminal, civil, family, and administrative law will be delivered by LACs and other legal assistance providers. Governments would make mutual commitments to provide annual funding in accordance with the agreement. NLAP provides the Commonwealth with no such assurances.

If the Commonwealth cannot gain a commitment from a state or territory to provide funding as agreed over the life of A2JP, regrettably the Commonwealth should continue to apply this principle to its funding for that state or territory in the same way as it currently does.

The Reviewer notes that a bilateral commitment was achieved by the Commonwealth and Western Australia on 31 January 2024 in relation to achieving 100% of the School Resourcing Standard by 2026. If this outcome is possible for schools, there is no reason why a similar commitment cannot be achieved for the legal assistance sector, to the benefit of disadvantaged people who depend upon it.

Recommendation 34 – Commonwealth money for Commonwealth matters

The principle of ‘Commonwealth money for Commonwealth matters’ for the use of monies provided to LACs as set out in clause 63 of NLAP should not be continued in the A2JP wherever a state or territory gives an explicit commitment to provide funding over the life of the A2JP.

This increased flexibility will enable LACs to more effectively address emerging complex issues, including those associated with the cost of living such as mortgage and financial stress, tenancy and homelessness

10.3.4 Funding of CLCs

As with other funding streams there is significant variability in the Commonwealth share of CLC funding, ranging from around 25% to 90% based on data available to the Reviewer. This variation introduces questions, particularly for low contributing jurisdictions, about how funding shares will operate to support the increase in community legal sector pay (recommendation 25) and the baselining exercise (recommendation 17). Again, the Commonwealth will need to work with each state and territory government to agree on the desired outcomes for the sector in each jurisdiction, and then agree a funding path over the life of A2JP. For completeness, the funding of specialist women’s CLCs should be approached in the same manner.

10.3.5 Administrative funding

The Reviewer acknowledges that implementing many of his recommendations will require significant effort from officials and service providers. Implementation costs incurred by service providers should be met via the baselining exercise set out in recommendation 17 and discussed further in chapter 12.

The Reviewer is not able to estimate initial and ongoing administrative costs to each government of implementing the Report’s recommendations. It is likely additional staff will be required, especially during the rebasing exercise, and this cost will fall disproportionately on the Commonwealth. These additional costs are likely to be small relative to the funding required to give Australia a properly functioning legal assistance sector.

The Reviewer is aware that NLAP provides funding to states and territories for certain administrative tasks. Section 3.2 sets out in some detail the benefits of legal assistance. The Reviewer notes a number of these are fiscal benefits accruing to state and territory governments through reducing demand on services such as state and territory judicial systems, health care, prisons, and child protection and welfare. Other than ‘to get the deal done,’ it is hard to see why the Commonwealth should pay states and territories to administer funding from which they are direct fiscal beneficiaries.

Recommendation 35 – Sharing the funding task

Outside those service providers to be directly funded by the Commonwealth (FVPLS and those CLCs currently funded by the Commonwealth outside NLAP) the Commonwealth and each state and territory should agree and commit to minimum funding contributions over the life of the A2JP. The minimum amounts to be funded by each government in respect of each state and territory should be specified in a bilateral schedule to the A2JP bearing in mind the timing issues discussed in chapter 12.

Funding from the Commonwealth to the states and territories for the administration of NLAP should not continue in the A2JP with all governments adequately funding their own administrations in recognition of the fiscal benefits that they receive from the provision of legal assistance as discussed in section 3.2 of this Report. These resources are more appropriately devoted to funding legal assistance providers.

10.4 Intergovernmental Agreement on Federal Financial Relations

Feedback from state and territory officials questioned whether a number of the recommendations in this Report are consistent with the Intergovernmental Agreement on Federal Financial Relations (the IGA), and more generally the principle of subsidiarity. The Reviewer is confident they are.

Clause 5(a) of the IGA seeks to implement collaborative working arrangements between different levels of government, including clearly defined roles and responsibilities. Several recommendations seek to enhance interjurisdictional cooperation and cooperation with legal assistance providers.

Recognition of state and territory primacy in clause 7 of the IGA is qualified by an acknowledgement in clause 8 that coordinated action is necessary to address many economic and social challenges confronting the Australian community. In terms of this Review, this can be no better seen than in the recommendations that seek to advance the intent and Priority Reforms of the National Agreement on Closing the Gap. Further, the primacy of states and territories in clause 7 of the IGA refers to sectors they are responsible for. The Reviewer notes A2JP will provide funding to assist people with a wide range of matters the Commonwealth has constitutional responsibility for, such as family law and migration matters.

Clause 9(a) of the IGA commits to reducing Commonwealth prescription, but in no way suggests that there is an obligation on the Commonwealth to remove all oversight and guidelines about how services are delivered by states and territories. Indeed, the Reviewer suggests that by reducing fragmentation and removing 'Commonwealth money for Commonwealth matters', prescription is likely to be reduced as suggested by the Northern Territory in a quote in the section above.

The Federation Funding Agreements (FFAs) Framework is also relevant here. Principle 3 holds that agreements must recognise and balance the priorities of all levels of government, including the Commonwealth. The Outcomes Framework suggested in recommendation 36 does exactly that.

Principle 4 requires new agreements will provide states and territories with budget autonomy and flexibility, where practical, to deliver services in ways they consider will most effectively and efficiently improve outcomes for Australians. The Reviewer notes this is not a blanket prohibition on Commonwealth involvement in decision making under FFAs. This Report's recommendations still provide ample scope for state and territory budget autonomy and flexibility in how they deliver services, particularly through LACs as the largest service providers. Autonomy and flexibility also apply to any commitments states and territories make under A2JP, all of which are voluntary.

What is new to the legal assistance sector is that A2JP, through consultation and negotiations with each other and the sector, will see the Commonwealth and states and territories make funding commitments for the life of A2JP.

These will be commitments that each government, and service providers, can rely upon. While new to the legal assistance sector, these arrangements are routine in education and other sectors. Of course, there is nothing to stop any government providing additional funding for any lawful purpose during the life of the A2JP.

Outcomes and data

11

Box 11.1 Key points

- Failure to deliver an outcomes framework during the life of NLAP is a significant failure. Significant effort should be devoted to addressing this as soon as possible.
- New performance indicators must be developed to reflect A2JP's Outcomes Framework and Closing the Gap Priority Reforms. These indicators should be incorporated in the *National Legal Assistance Data Standards Manual*, which should be simplified.
- A2JP should commit all governments to minimising data requirements placed on legal assistance providers by reducing overlap and focussing on data governments and the sector are likely to use.
- CLASS is commonly viewed as ineffectual in meeting legal providers' data reporting requirements. It should be abandoned. Existing IT infrastructure for data collection is outdated and insufficient. Funding for upgrades is meagre.
- The Commonwealth should fund development of a new data core that can interact with commonly used practice management systems.

This chapter considers how the data collection framework for A2JP can improve on that for NLAP through better systems and integration with outcomes and performance indicators.

11.1 A2JP's Outcomes Framework

Expected NLAP outcomes are outlined in Clauses 14 to 16 of the agreement. However, no outcomes measurement framework currently guides data collection, review, and evaluation of NLAP.

The absence of an outcomes framework, which should reflect the legal needs governments seek to address through their funding decisions, significantly reduces the benefits of data collection from a policy and performance monitoring perspective. This absence contributes to the scepticism many service providers have about the value of data they provide to governments at very significant cost.

Moreover, if Ministers cannot specify what outcomes they wish to achieve, it is difficult to justify the funding they provide, let alone the expanded services that are so desperately needed. As such, it is essential that an Outcomes Framework, linked to data collection requirements and service provider contracts, is in place prior to A2JP's commencement, as opposed to the end of the agreement as appears to be the case with NLAP.

Previous attempts at outcome measurement

Outcomes measurement has been discussed on several occasions in predecessor agreement reviews. As part of the Review of Legal Assistance Services National Partnership Agreement (NPA) in 2014, Allen Consulting Group designed an evaluation framework. It drew on a substantive process of consultation and testing with the legal assistance sector, and consolidation of existing knowledge about evaluation of legal assistance services.

The evaluation framework was used to deliver that review, and was refined at the end of that review to make it more relevant for ongoing evaluation. The 2014 review documented difficulties in developing the framework:

- lack of consistently or reliably disaggregated costs or input data
- variation in recording types of disadvantage of those presenting for legal assistance services affecting assessment of appropriateness and cost-effectiveness
- differences in service categories and counting rules across services, limiting both comparisons across programs and sectorwide analysis
- LACs were unable to construct a national time series of performance against NPA indicators and benchmarks because of data gaps, inconsistent measurement and reporting, and lack of clarity about definitions of some indicators and benchmarks (Allen Consulting Group, 2014).

The NPA Review undertaken by Urbis in 2018 found then current performance indicators did not capture the full range of outputs delivered by legal assistance service providers, and provided little insight into outcomes achieved. The review noted the National Strategic Framework for Legal Assistance 2015-2020 provided an outcomes framework for the sector. However, there were no associated indicators and measures within this framework. There was considerable interest among stakeholders in developing the sector's capacity and capability in outcomes measurement. The set of performance indicators at the time were limited because they:

- did not consistently capture the full range of outputs created by funded legal assistance service providers
- inadequately represented the variability, complexity and extent of input effort or work done to deliver each unit of output
- did not represent outcomes achieved by the sector.

The Urbis (2018) review recommended the Strategic Framework be updated to incorporate key indicators attached to each of its outcomes, and to provide guidance on purposeful, cost-effective monitoring and reporting at service and sector levels.

It seems to the Reviewer that the concerns of both the Allen Consulting Group and Urbis remained largely unaddressed by NLAP.

Current progress towards an Outcomes Framework

The NLAP agreement outlines key principles and outcomes aligned with each key principle, but does not provide any guidance or advice on measurement of these outcomes. AGD has previously stated its intention to develop an NLAP Outcomes Framework. This was reflected in several strategic plans developed by states and territories. For example:

Under the NLAP, the Commonwealth, states and territories are jointly responsible for developing an outcomes-based framework (Outcomes Framework) for legal assistance services for potential implementation from 1 July 2025. DJAG will continue to consult with the sector and provide input into development of the Outcomes Framework.

QLD Legal Assistance Strategy

Progress towards this Outcomes Framework has been unacceptably slow. AGD commissioned the Law and Justice Foundation of NSW to undertake a scoping study of outcomes frameworks which was completed in July 2022. The scoping study found that 'use of outcomes frameworks in the legal assistance sector is patchy and remains largely in its infancy nationally and internationally' (Butler, 2022). The report indicated that, despite challenges in designing and implementing outcomes frameworks, these are worth overcoming as an outcomes-based approach encourages services and governments to tailor policy and service delivery to clients' needs.

In the absence of a nationally agreed NLAP outcomes framework, some jurisdictions attempted to develop their own. The Victorian CLC Sector Outcomes Measurement Framework was developed by the Federation of Community Legal Centres Victoria, in partnership with 35 Victorian CLCs and facilitated by Lirata Consulting. This framework was developed as a sector-driven tool which assists CLCs to measure outcomes of their work and better demonstrate individual and collective impact, to improve outcomes for clients, and to build evidence for further advocacy to funders. The Victorian CLC Sector Outcomes Measurement Framework consists of five themes, with one high-level outcome for each theme and intermediate outcomes and indicators for each theme.

A project was also funded by the Queensland Government and led by CLCQ in partnership with the Incas Group. This project's aim was to provide Queensland CLCs with a practical self-evaluation toolkit which could:

- more systematically capture, measure and report outcomes for clients and other stakeholders
- build the measurement and evaluation capacity of CLCs and the sector
- effectively capture and communicate what works to funders and the sector
- use the information and insights to highlight possible improvements to a CLC (Butler, 2022).

The project delivered a theory of change model that identifies outcomes for clients, community, justice system services, and volunteers. Indicators and data sources were identified and piloted with three CLCs that reflect the shared goals and diversity of CLCQ's membership.

Among stakeholders whose feedback or submissions covered legal assistance outcomes, there was unanimous support for developing an outcomes framework. It is important for understanding how effective legal assistance services are in meeting the needs of those who require them. Feedback from stakeholders reaffirms the evidence from previous reviews that current data collected about legal assistance service provision focuses on outputs rather than outcomes.

It is important to highlight that NLAP has no measures relating to [the objectives under the NLAP], and [measures] mainly focus on the count of services provided rather than outcomes.

Submission, National Regional, Rural, Remote and Very Remote Community Legal Network (4Rs Network), sub. 1, p 38

One area where policy development and investment are needed is outcomes measurement...it is our experience that the broader public legal assistance service and policy sector does not have a shared understanding of what an outcomes framework and any associated measurement may entail. Substantial foundational work is required to build a framework to effectively move from outputs to outcomes measurement, develop the evidence base, and inform national legal assistance policy. Time is now likely too short to deliver an agreed framework before July 2025, but this is important work and deserves high level attention and effort.

Submission, Victoria Law Foundation, sub. 103, p 12

TASC Legal and Social Justice Centre's submission summarised literature on measuring the effectiveness of legal services. Two major dimensions explored in the literature are achievements of the desired outcomes or objectives (Digiusto, 2012), and the quality of the service being provided (Curran & Crockett, 2013). These are distinct from the actual reach or consumption of legal assistance services provided.

However, there are several areas within legal assistance services where outcomes are difficult to measure. One example is advocacy.

We recognise that measuring the impact of advocacy for systemic change presents challenges. The Centre for Evaluation Innovation notes that 'advocacy occurs in dynamic political contexts, where advocates partner or work in parallel with others to advance a policy agenda and counter opposition.' This captures a number of issues: the changing, complex and often unpredictable context in which advocacy happens; and the fact there are almost always multiple players involved, making it difficult to distinguish contribution and attribution for outcomes.

Submission, Public Interest Advocacy Centre, sub. 84, p 12

While some legal assistance providers focus significantly or exclusively on advocacy, there is considerable variation among legal assistance service providers about how much advocacy work is done. Also, as mentioned in section 9.5, the volume of law reform and advocacy work is likely to be lumpy through time. Variation across all types of work undertaken by different providers, including advocacy work, also means consistent measurement can be difficult.

Another barrier in advancing the outcomes framework is that legal assistance service providers are not funded to participate in or contribute to developing an outcomes framework. Given workforce pressures in the sector, there is little capacity for effective engagement with the sector to build a shared understanding of outcomes in legal assistance. This issue should be addressed in setting baseline A2PJ funding for 2025-26.

Stakeholders also raised issues about how a potential A2PJ Outcomes Framework could be used. There are concerns that using such a tool for performance measurement or for making funding decisions could have negative unintended consequences.

The Foundation suggests that clearly articulating the purpose of outcomes measurement is central to the design and use of any framework and cautions against the use of outcomes measurement frameworks for the purpose of performance measurement or as a funding decision tool. The Foundation also discourages its use as a benchmarking tool given the diverse nature of delivery and the variability of contributing factors renders comparison between providers fraught...Not all outcomes nor many important and critical aspects of a program can be meaningfully quantified or reliably measured (Butler 2022).

Submission, Law and Justice Foundation NSW, sub. 45, p 19

The Reviewer believes there is clear evidence that improved measurement of outcomes is needed to understand whether legal assistance services are achieving objectives set by governments. There is acknowledgement within the sector that this is important, both to guide jurisdictional and service provider decision-making and operations, and to improve legal assistance service planning and delivery. Establishing a national A2JP Outcomes Framework will facilitate an outcomes-based service arrangement, leading to stronger alignment between measured outcomes and data collection and reporting by service providers.

This is an urgent matter, the resolution of which underpins the logic of the funding framework. As discussed, significant work has been done over many years by the sector and governments. A landing must be found. Attorneys-General must not allow bureaucratic preferences to obstruct this work. The likelihood of delay is reduced by the Outcomes Framework being brought together by independent consultants reporting directly to the Standing Council of Attorneys-General (SCAG) via AGD.

Recommendation 36 – Outcomes framework

The Commonwealth, state and territory governments should agree an Outcomes Framework for the legal assistance sector. This should include a national set of outcomes and indicators with robust and consistent data to monitor progress towards national priorities and inform future policy and funding decisions. To the greatest extent possible, this should leverage previous work already done by the Commonwealth, state and territory governments and sectoral peaks.

Service contracts with providers should address a subset of the outcomes agreed by governments and their reporting obligations should be limited to these.

As a matter of urgency, the Commonwealth should appoint consultants to develop an Outcomes Framework for the A2JP for agreement prior to the commencement of the A2JP. In developing this framework, regard should be had to previous work and involve consultation with state and territory governments and service provider peaks. This is estimated to cost \$0.5 million in 2024-25.

SCAG should consider and adopt this framework, or a variant of it, no later than 30 June 2025.

11.2 Performance indicators

Notwithstanding the absence of a clear outcomes framework, quality data on legal assistance services is essential to providing an understanding of which clients are accessing what legal assistance services in what locations and from which providers. Data can also provide insight into which service models are most effective and how legal assistance funding is best targeted.

To do this, data need to be consistent, accurate and linked to support performance management and service improvement. Data collection arrangements under NLAP do not achieve this.

Part 4 of the NLAP sets out national performance indicators, including:

- total number of clients receiving legal assistance services (provided to individuals), separately identifying funding category and legal assistance provider type and the number and percentage of total clients who are national priority clients, disaggregated by the specific national priority client groups
- number of legal representation services and the percentage of those services in which the clients were financially disadvantaged
- number and percentage of legal assistance services (provided to individuals), separately identifying funding category, legal assistance provider type and service type, where applicable, disaggregated by:
 - primary law type or law type and problem type
 - specific national priority client groups
- total number of information and referral services by legal assistance providers, separately identifying service type and legal assistance provider type
- total number of legal assistance services (provided to the community), separately identifying legal assistance provider type, disaggregated by:
 - number of community legal education and/or community education activities undertaken
 - number of community legal education and/or community education resources developed
 - number of stakeholder engagement activities
 - number of law and legal services reform activities.

States and territories provide compliance reporting to AGD on these performance indicators. Reporting requirements are discussed further in section 11.5.

11.2.1 National Legal Assistance Data Strategy

NLAP is supported by the National Legal Assistance Data Strategy. The Strategy sets the policy framework for collection, storage, reporting, transmission and analysis of data that are collected and reported under NLAP. The Strategy outlines four key outcomes:

- NLAP service data are consistent and accurate
- the legal assistance sector is informed by data to deliver improved services for people experiencing disadvantage and for their communities
- Commonwealth, state and territory governments have a better understanding of legal assistance services to inform legal assistance policies and programs
- NLAP service data informs an outcomes-focused approach.

11.2.2 Legal assistance services data project

Under NLAP, the Commonwealth initiated the legal assistance services data project to provide, for the first time, access to unit level data for legal assistance services. The ABS is responsible for collecting and storing information, which is intended to inform a national evidence base on frontline legal assistance services.

This project is recognised as providing significant value. It does create an additional reporting burden as data on performance indicators is separate to ABS reporting, creating two processes for data collection, cleaning and provisioning. This both increases the administrative burden for the sector and generates siloed data activities not coherently connected or aligned to a shared set of outcomes.

It would be preferable for reporting to AGD and ABS to be aligned. Alignment should be part of the data framework specification set out in recommendation 36. This will require consideration of the nature of the platform, privacy and handling requirements, and potential linkage considerations.

11.2.3 Linkage to Closing the Gap

Priority Reform 4 of the National Agreement aims specifically to ensure that 'Aboriginal and Torres Strait Islander peoples have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.' As noted in chapter 3, the draft Productivity Commission report (2023) found changes to government data policy and access have been limited. A more detailed discussion of Aboriginal data sovereignty and Closing the Gap efforts is provided in chapter 5.

11.2.4 In sum

The Reviewer struggles to see what inferences could be drawn from current NLAP data collection. It does not recognise the nature of legal assistance provision, the growing complexity of legal need, the preference for holistic and culturally appropriate services, or the wide variation of matters and clients seen by legal assistance providers. To use the language of some stakeholders, data collection seems to be directed at 'making widgets' rather than at outcomes achieved for clients and community.

The Reviewer considers the current reporting framework inadequate. It does not produce data that is accurate, usable or reflective of activity, or the achievement of outcomes. As discussed in section 11.1, there is a need to develop an Outcomes Framework for that then serves A2JP implementation and monitoring.

11.3 Data Standards Manual

The 2014 PC Report noted that:

Without standard terminology, the ways that services are counted and measured, and how service users are classified, differ across providers and institutions...Collections of demographic data are also affected by inconsistent classifications... In turn, this can lead to poor decision-making as allocations are based on inconsistent results from a poor definition as opposed to comparable measures of need.

Productivity Commission 2014, p 882-883

The PC Report highlighted that lack of disaggregated data meant there was limited detail on the types of legal services accessed by different groups. This made it challenging to identify gaps in legal assistance services. The PC Report also noted that outcomes, while complicated to measure, were also poorly captured. As such, the report stated there existed:

...a need for a common framework around definitions, objectives and use of the data to substantially improve the quality of data collected.

Productivity Commission 2014, p 884

The National Data Standards Working Group was convened to discuss and develop the data standards for legal services. The Working Group included representatives from LACs, CLCs, ATSILS, FVPLS, Commonwealth AGD and the ABS. The first iteration of the *National Legal Assistance Data Standards Manual* (DSM) was published in 2015.

DSM provides uniform legal service data elements, counting rules, and gathering procedures for the legal assistance sector. The aim behind DSM is to help legal assistance providers to collect consistent and comparable data that allow for better evaluation of the legal assistance sector. DSM has three parts:

- Part 1 defines types of categories and services, and provides guidance on how services are to be counted, facilitating consistency across the legal assistance sector.
- Part 2 provides best practice guidance on what data items may be collected for each service type, to establish a strong evidence base for the sector.
- Part 3 defines data items to improve consistency of data collected by service providers.

11.3.1 Implementing the Data Standards Manual

DSM is viewed as a much-needed tool to assist with data collection. However, not all data elements specified in DSM are required for mandatory NLAP reporting. As a result, there remains a lack of consistency with respect to much of the data collected. Different interpretations of counting definitions are used across the sector. Legal assistance providers collect data in different ways. In addition to inconsistency of definitions, there is variation in the type of data collected and reported. Often this reflects the diverse nature of services offered by providers, and the types of clients they service.

The broader legal assistance sector was somewhat assisted by the implementation of the Data Standards Manual; however, this was hampered by the continual message from various government departments that the manual was a 'guide' and not meant to be definitive.

Submission, Central Tablelands and Blue Mountains Community Legal Centre, sub. 13, p 2

The Review has heard about significant issues with the data collected and its ability to provide a true reflection of service delivery. The counting rules do not account for complexity and duration that can arise when providing legal assistance. An example of this is highlighted below:

A simple assault matter defended at hearing that may take four months from opening the file to completion, will count as one representation in a reporting period. The same value is given to a complex defended murder charge that may require considerable work across multiple reporting periods by several staff members, but it will also be counted as one, and on its face, carry the same value to the funder.

Submission, Aboriginal Legal Services (NSW/ACT), sub. 140, p 30

DSM counting rules also do not pick up the need for, and provision of, crucial wraparound services. For example, counselling provided to victim-survivors of domestic violence after they have received legal assistance is not considered by DSM and thus not captured and reported on.

ALRM remains concerned that some of the data requirements of the Commonwealth data standards manual (DSM) are irrelevant to ALRM work, and that others of the criteria do not adequately reflect the amount of work done or the value to our clients

Submission, Aboriginal Legal Rights Movement, sub. 3, p 27

In some cases, DSM does not define or require particular data that providers consider important to their operations. A Victoria Law Foundation report noted that secondary consultations are not defined in DSM, leading some providers to develop their own practices for collecting this information (McDonald et al., 2020). The report also found that many Victorian participants 'noted lack of clarity in the National Data Standards Manual (DSM) concerning how some things should be counted, inconsistent data practices across the sector, and lack of benchmarks concerning what 'good' services figures were.'

The DSM is frequently unclear and requires too much individual interpretation across too many fields. Interpretation between lawyers varies and interpretation between lawyers at different CLCs varies even more widely. No CLC lawyer has or will ever have the capacity to consult the DSM for 600 data fields while providing duty lawyer services to 15 clients in one day.

Submission, Gippsland Community Legal Service, sub-34, p 10

The Review has heard some data standards and definitions are out of step with current standards, specifically relating to gender and sexual diversity. This has hampered a clearer understanding of the degree to which the legal needs of particular cohorts are being met. This lack of clarity can result in systemic inefficiencies, where vulnerable groups might be overlooked or underserved, exacerbating existing legal and social inequalities.

Our recently established Diversity and Inclusion Working Group sought to make improvements in our data collection processes to ensure that we are accurately capturing the data of our LGBTQIA+ clients (e.g., gender types, sexual orientation and pronouns). While minor improvements have been made, the outdated definitions used by the DSM have presented as a significant limitation on further progress in this area.

Submission, Darwin Community Legal Service, sub. 23, p 8

From the work of the Review and submissions provided to it, the Reviewer is satisfied DSM does not fulfil the policy objectives set out by the Productivity Commission in 2014 nor the National Legal Assistance Data Strategy. It will require significant review to align it to the outcomes agreed in A2JP and service contracts that flow from it.

The Reviewer also notes DSM does not materially address costs of service provision and therefore cannot fully inform funding decisions. This should be rectified in data collection for A2JP.

Recommendation 37 – Performance indicators and Data Standards Manual

The performance indicators that underpin the A2JP should be revised to focus on Outcomes Framework set out in Recommendation 37 and have particular focus on the delivery on the Priority Reforms of the National Agreement on Closing the Gap.

The Data Standards Manual should then be redrafted to reflect the new set of performance indicators and address concerns raised by legal assistance providers and include elements relating to the costs of service provision.

The Commonwealth should lead engagement with state and territory officials and service providers to increase uptake of the DSM, ensuring alignment of definitions.

11.4 Data collection

11.4.1 Reporting platforms

There is a myriad of disconnected data collection systems across the legal assistance sector. This leads to data that are inconsistent, fragmented and not easily used. Without a comprehensive view of the sector and Australia's legal need, policy makers and advocacy groups cannot form a clear understanding of how to effectively combat persistent and ongoing challenges, nor can they adequately fund and allocate resources to the areas that are most in need.

Community Legal Assistance Service System (CLASS)

As data was identified as an issue in the PC Report 2014, Commonwealth funding was provided to redevelop the Community Legal Services Information System (CLSIS), the mechanism by which CLCs collected data. This upgraded system became CLASS.

The fundamental purpose of CLASS was to secure a single authoritative data source for CLCs' legal assistance data, and to provide a thorough overview of the state of the sector. To function effectively it needs to be used by all CLCs, and preferably all legal assistance providers.

Many providers, however, do not use CLASS. In Victoria, for example, CLASS is used by only 18 of 29 CLCs interviewed as part of a Victoria Law Foundation report, and many supplement their data collection with other technologies and tools (McDonald et al., 2020). The report found a variety of systems were being used, with many providers stating that data collection workarounds (for example, using Excel) were used because their main data system was inflexible, making it difficult for them to 'record, analyse and extract' data, especially for those using CLASS:

Several other issues with CLASS also had a bearing on an organisation's ability to meet reporting requirements. For example, CLASS data entry was widely described as 'clunky', and its extraction was 'very slow' during peak user times (such as when service figures were due).

The Review consistently heard of overwhelming dissatisfaction with CLASS, with widespread lack of confidence in the accuracy of CLASS data. Providers often find inconsistencies within their own CLASS data, forcing them to 'double-collect' information as sense checks for any data extracted from the system.

The quality of the data is also variable because many centres that use CLASS enter data purely to fulfil their reporting obligations and thus it becomes an overhead rather than a supporting system with consequent impact on data consistency and quality.

Submission, Federation of CLCs Victoria, sub. 32, p 75

The inefficiencies of CLASS are most apparent when compared to other platforms. Data received by the Review highlights stark differences in time taken by CLC staff to enter data, undertake conflict checks, and create referrals using CLASS as compared to another platform.

Table 11.1 Time inefficiencies of CLASS

Task	CLASS time average (mins)	Other CMS time average (mins)	Total consensus records	Total time saved (mins)
New intake webform	5.23	0	113	590
Uploading emails	1.74	0	974	1,674
Uploading documents	4.41	0	1,179	5,199
Conflict checking	0.41	0	102	41.31
Creating referrals	5.23	1	61	258

Source: Marrickville Legal Centre

Estimates of time taken to record data into CLASS are staggering:

On average, it takes 12 minutes for an MLC worker to undertake a conflict check, enter intake data and upload an email/document into CLASS. This time does not include recording the actual advice provided to the client or facilitating a referral (which would generally double this time). In the 2022-2023 financial year, MLC provided legal advice to 2,640 clients. It would have taken at a minimum 518.76 hours to record this data into CLASS. MLC also provided 1,389 referrals, which at 5.23 minutes per referral, would have required 121.07 hours. As noted above, these hours do not actually record the time it takes to enter the legal advice into CLASS. In circumstances where an advice can be delivered within 20 minutes, then the time it takes to record the data in CLASS would account for 37.5% of the worker's time.

Submission, Marrickville Legal Centre, correspondence with Reviewer.

CLCs have reported waiting several hours for reports to be extracted from CLASS. Others say the CLASS system has simply crashed when crucial data are needed for reporting. System users describe the platform as 'clunky' and frustrating to use.

CLCs data is wholly unreliable as there is no consistent way of recording pieces of work. The CLASS database was never fit for purpose and many centres have moved to using case management systems built for legal practices that allow customisation and better data reporting.

Submission, Central Tablelands and Blue Mountains Community Legal Centre, sub. 13, p 3

Impediments identified to developing and implementing CLASS are as follows:

- Inadequate funding from the Commonwealth for software development and business transition procedures.
- Commonwealth delegation of CLASS development to Community Legal Centres Australia (CLCA), a task that was not within their primary expertise.
- A limited timeframe (12 months) to develop and implement new software.
- An overestimation of CLASS' capabilities and functionality.

Though CLASS is viewed as a well-intentioned attempt at building a complete CLC data repository, it is clear many shortcomings persist. Any alternative system built or selected as a replacement for CLASS should heed current user experiences and the reasons for its failure to deliver on its intent.

Work undertaken by the Victoria Law Foundation found providers in the state used a mix of administrative data systems by (McDonald et al., 2020). The report found that:

Most frequently, participant organisations used a combination of CLASS and Excel spreadsheets (12 of 29 organisations; 41 per cent) and a further four (14 per cent) used CLASS supplemented by both Excel and another data system (as noted already, two suggested they would be moving from CLASS to Actionstep soon). Five organisations (17 per cent) used another data system together with Excel, one organisation used Actionstep and Excel, and one organisation used CLASS, Actionstep, Excel and another data system.

On the evidence from submissions and stakeholder consultations, the Review understands many providers have simply moved away from CLASS to other, private data collection systems. These systems are broadly viewed as built-for-purpose and have additional benefits as a workflow management tool. Their diversity, however, undermines the completeness of the CLASS system as a single repository of legal assistance data. There is also ambiguity about the future of CLASS post-2025, and this too has contributed to many providers switching to alternative CMS platforms.

Moving to an alternative Client Management Systems (CMS) platform is costly. It requires upfront investment in software, possibly a license fee, and staff retraining. In many cases, providers cannot afford to upgrade their systems, and are forced to use a system that does not meet their needs.

Despite uptake of modern CMS tools by about 30% of centres to date, smaller centres simply don't have the resources to invest in the technology needed to improve data capture and reporting.

Submission, CLC Australia, sub. 14, p 68

Other platforms for reporting

The means legal assistance providers use to collect their data differs widely. While CLASS is used by some CLCs, other CLCs, LACs, ATSILS and FVPLS have their own data systems. Some providers use advanced CMS platforms. Others rely on traditional paper-based methods. Almost all providers use a combination of data systems, including but not limited to:

- Actionstep
- CASES
- ATLAS
- Excel
- Manual paper systems.

The Reviewer has heard there is insufficient funding available for ATSILS and FVPLSs to transform to digital environments through capital upgrades. Systemic underfunding of these providers has led to use of outdated, largely manual systems. As an example, the Reviewer travelled to Wadeye and observed the Bush Court. ATSILS lawyers relied on paper-based systems to deal with their matters, whereas police prosecutors had access to contemporary IT equipment. The rebasing exercise set out in section 7.2.1 addresses this funding issue.

LACs are generally in a better position, being able to leverage scale of funding and operations to support appropriate infrastructure. That said, data management remains administratively cumbersome and time consuming as a result of the reporting requirements discussed elsewhere in this Report. Use of different systems by different provider types generates difficulties in aggregating data across sectors to provide a comprehensive picture of activity in the sector. As noted in earlier chapters, activity-based reporting is not available for FVPLS in the same form as other reporting. There is also significant duplication of effort in collating data across systems to support monitoring and accountability.

Recommendation 38 – Data systems

The Reviewer accepts the position put by a large number of stakeholders that CLASS should be replaced at the earliest opportunity without disrupting normal service delivery.

The Commonwealth should fund the development and effective implementation of (including training in) a legal assistance sector-wide data collection platform to provide a national repository that can collate data from other front end data entry applications. For the avoidance of doubt, this system should collect data on all services and sources of funding, including those services funded by the states and territories and any funded by the Commonwealth outside A2JP.

The platform should be implemented across all sub-sectors and should replace CLASS. Fields should be linked to the outcomes framework.

Once developed, provision of data to this system should be a condition of receiving A2JP funding.

The A2JP should require governments to commit to maximising the use of existing data collection points when providing additional funding for pilot programs. To the extent that data fields must be added, this must be agreed between the Commonwealth, the government providing the funding and the relevant peaks.

Efforts should be made to minimise duplication with ABS data collection and to align the systems to the greatest extent possible having regard to the costs of system development, user costs, and compliance and data security requirements.

Acknowledging that a replacement for CLASS will take a number of years, governments should work with service provider peaks to 'optimise' the use of the system with a focus on reducing reporting to data this is particularly useful.

11.4.2 Capacity and capability for data collection

The extent to which services can dedicate resources to data collection is constrained by their size and funding. The Review has heard that many smaller providers lack necessary IT infrastructure and skills to undertake these activities, and that costs for upgrading systems are insurmountable given current funding arrangements. By way of example, Tasmania Legal Aid has estimated that the capital and operating investment required to bring their digital administration and infrastructure to the required level is approximately \$1.4 million.

The existing funding arrangements, however, mean that data collection, monitoring and evaluation are far from optimal at small organisations... This not only relates to one-off costs associated with a change to improved systems (generally, a grant may be obtained for such costs), but also other unfunded costs, such as staff capability to manage the change internally, and ongoing licensing fees associated with new technologies.

Submission, Social Security Rights Victoria, sub. 91, p 33

While [Toongabbie Legal Centre] endeavours to collect some statistics, this is one area where lack of funding and lack of staff time makes this extremely difficult and challenging.

Submission, Toongabbie Legal Centre, sub. 98, p 99

For many providers, administrative staff are responsible for the input of administrative data; however, and particularly in smaller providers, lawyers and administrative staff share this role, diverting time from frontline service delivery. Appropriate funding for administrative roles (and specific consideration of the time costs associated with data collection) is crucial to improving data.

As the current funding does not account for administrative processes, management of NLAP and all other financial reporting is led by the legal team, diverting resources away from service delivery and adding significant workload to already stretched resources.

Submission, inTouch Multicultural Centre Against Family Violence, sub. 122, p 28

Administrative and reporting burdens remove CLC staff from our important work on the front line and cause increased levels of stress in already overworked staff. This is acutely felt at the ICLC as we are a smaller centre.

Submission, Inner City Legal Centre, sub. 39, p 5

Reporting now takes considerable time by key positions at the Centre and reduces the opportunities for roles such as the Director, Principal Solicitor and Office Manager to engage in other work.

Submission, Kingsford Legal Centre, sub. 41, p 2

The Reviewer acknowledges challenges experienced by small services in meeting their data obligations and extracting value from them. Funding for administrative activities such as these should be included in baseline funding for 2025-26, discussed in section 7.2.1.

11.5 Reporting

11.5.1 Roles and responsibilities

Under NLAP, the Commonwealth is responsible for monitoring and assessing performance to ensure outcomes are achieved and outputs are delivered, and for facilitating improvements to DSM and to collection of nationally consistent data.

States and territories are responsible for reporting on the delivery of outcomes and outputs, monitoring and assessing delivery of legal assistance services under NLAP, ensuring CLCs funded through NLAP collect and report on data, and ensuring data is consistent with DSM.

Collectively, Commonwealth and states and territories are responsible for working with the legal assistance sector to increase the scope and number of fields provided at unit-level from 1 July 2025. This work is separate to ABS unit level data and NLAP Outcomes Framework projects. That these are separate fields of effort demonstrates the level of siloed practice in legal assistance data, and further emphasises the need for activity to be drawn together to support a coherent and aligned approach. The Reviewer considers this work should be paused at least until the implementation timeframes of recommendations 36 and 38 are properly understood.

States and territories are required to report against national performance indicators on a bi-annual basis through the Statement of Services and Funding, and the Jurisdictional Performance Report. In addition to national performance indicators, the Jurisdictional Performance Report includes two case studies covering service delivery models and triage practices, and client satisfaction surveys.

Prior to NLAP's commencement the Commonwealth AGD provided states and territories with NLAP implementation guides. These documents outlined the obligations of each party, including aspects like reporting and funding, and indicated when detailed instructions on certain matters, such as reporting, would be available.

The data collected by legal assistance providers are sent to the providers' respective state or territory governments for a validation process to ensure accuracy and completeness. Where data anomalies or errors exist, states and territories liaise directly with legal assistance providers. Data are collected in two reports, the templates for which are provided by the Commonwealth AGD:

- Statement of services and funding
- Jurisdictional Performance Reporting.

The reports are assessed by Commonwealth AGD staff who are expected to work with their counterparts in states and territories to correct any errors. NLAP funding payments are tied to Commonwealth AGD's acceptance of these reports.

Timelines imposed by the Commonwealth for feedback and data queries are broadly seen as unnecessarily tight. States and territories are often given limited time to respond to questions from the Commonwealth, and for smaller jurisdictions this can be a taxing process, especially given that release of NLAP funding is tied to acceptance of these reports.

There have been instances when the Department has been given a short amount of time to provide comments or feedback (for example, following the submission of NLAP reporting we are given only a day or two to respond to any questions the Commonwealth may have). As a smaller jurisdiction, Tasmania has a small team of three staff overseeing the administration of NLAP and State funding to the Tasmanian legal assistance sector. As such, the Department does not always have the capacity to review documents and provide feedback quickly.

Submission, Tasmanian Department of Justice, sub. 25, p 5

The Reviewer considers formal reporting in the Statement of services and funding, and Jurisdictional Performance Reporting, needs only be undertaken annually, and must be aligned to the outcomes framework to support information consistency and continuous improvement. Service provider data provision should also be annual, with an adequate lag between data provision and formal reporting to ensure data quality verification and analysis by state and territory governments.

11.5.2 Administrative burden

The NPA review (Urbis, 2018) found the NPA reporting burden was low and perceived to be generally appropriate. However, this finding was prefaced by the fact that only NPA requirements were considered, and there were signs reporting requirements for LACs and CLCs were beginning to become cumbersome due to the increasing number of reporting streams. The Urbis (2018) report included several quotes from legal assistance service provider submissions stating that additional funding streams, both from Commonwealth and from state and territory governments, resulted in increasing reporting obligations and administrative burden. An example cited in that review was the Consumer Credit Legal Service WA (CCLSWA) which was then required to complete 11 separate reports annually.

Data collection in the current environment is incredibly time consuming and burdensome. One CLC in Victoria found that, on average, 17% of a lawyer's time in consultation with a client is spent on data collection alone and not on legal services. Other services estimated their data team spent approximately 150 hours working on each half yearly report, with executives spending a total of 30 hours drafting their sections. This frustration was expressed throughout stakeholder consultations and the submission process, with nearly all legal assistance providers commenting on the administrative load of data collection activities.

Data collection requirements are often highly onerous, and CLCs are not funded to meet these specific demands.

Submission, Brimbank Melton CLC, sub. 116, p 4

On average, CLCs spend around 3-5 hours per week on reporting and more than 8 hours a week on data cleansing and supervision.

Submission, CLC NSW, sub. 15, p 51

A key driver for this burden is funding fragmentation, as discussed in section 7.1.2. The Victoria Law Foundation's report found that of the legal assistance service providers they surveyed, the average number of funding streams was just under nine, and nearly 40% of survey respondents indicated they had 10 or more funding streams. The report found that 'in the current funding environment it was easier to expand funding through one-off project or grant funding, rather than obtain an increase in ongoing core funding. One-off funding often took the form of specific grant programs for pilots and innovative projects.

While this strategy could successfully expand organisational capacity, it invariably increased the organisation's reporting requirements and often necessitated additional data collection'.

For example, the LIV notes that Victorian CLCs have an average of nine different funding streams – all of which require reporting. However, the largest number of funding streams for a single Victorian CLC is 48.

Submission, Law Institute of Victoria, sub. 46, p 14

The variations in reporting requirements, which is a direct result of the diversity of funding sources, are reflected in the diverse range of information and data required to be reported. Additionally, some programs operated by the organisation receive funding from more than one source. This situation places an additional burden on staff where there is a requirement to replicate data into several reports during the same period. Overall, this situation leads to a significant increase in administrative costs.

Submission, Pilbara Community Legal Centre, sub. 85, p. 4

Legal assistance services that receive funding from other sources are generally required to provide separate reporting. The National Legal Assistance Data Strategy recommends this reporting aligns with the DSM to support consistency and comparability, but there is no requirement to do so. This increases the volume of reporting, and each supplier of funding might have their own idiosyncratic data requirements varying by templates and systems for reporting, outcome measures, counting methodology, and specific line items.

This means legal assistance providers are obligated to collect and report data for a range of funders in multiple ways. This has led to frustration and data fatigue. By way of example, Tasmania Legal Aid identified 15 distinct reporting templates and acquittal processes to comply with annual Commonwealth and state funding agreements.

In order to have some viability and sustain activities, smaller centres regularly obtain additional resources from other funding sources beyond NLAP. While broader funding sources can enhance service offerings, multiple funding streams can be resource intensive to manage and result in multiple and complex funding streams. Consideration should be given to whether NLAP can support streamlined reporting across funding programs outside NLAP, particularly through identification and promotion of minimum data sets needed for reporting that might be adopted by other funders.

Submission, Social Security Rights Victoria, sub. 91, p 31

This problem is not necessarily solved by using one CMS like CLASS. As the Victoria Law Foundation noted, CLASS does not create different reports for different funders, meaning providers must extract information and develop bespoke reports. This saps valuable time and resources. Increasingly, providers are moving away from CLASS, or supplementing their use of CLASS with other data collection systems (specifically Actionstep). Providers often use their own systems to build reports that align with NLAP reporting templates. However, when NLAP templates change, providers must spend additional hours reconfiguring reporting processes to meet the new template requirements. Further, data collected using mismatched templates cannot be compared over time.

For example, for the purposes of preparing this submission, Legal Aid WA wanted to conduct an exercise to review our service outputs under the NLAP agreement. However, it quickly became clear that using our own NLAP six monthly reports was not an effective way to do this because the template had changed so often it was not possible to accurately compare changes over time.

Submission, Legal Aid WA, sub. 50, p 39

11.6 Use of data

11.6.1 Application

The Review heard from government officials that a material amount of data collected and reported as part of NLAP requirements was not used for any practical purpose. The Reviewer understands no analysis has been undertaken on jurisdictional reporting under the current agreement.

While NLAP does not specify responsibility for analysing and sharing results, it is reasonable to expect any data collected would have some utility in informing service planning and improvement. The Review considers data should not be collected if it is not to be used. Significant revision of data reporting requirements is needed, particularly given the level of administrative burden.

The Review has heard the intended purpose of collected service data remains ambiguous for providers and its utility, especially in its present form, is unclear. NLAP Clause D8 (which relates to data collected for ABS publication) clearly states reporting under NLAP is not used for compliance or regulatory purposes. However, there is the potential to do use it for these purposes. Some providers have reported being pressured by officials to demonstrate there is an appropriate use of funding received in terms of reach of services.

Data collection is onerous, and we are not clear how the information is used by government? Is what we provide meaningful? There is no feedback mechanism.

Submission, Consumer Credit Legal Service WA, sub. 22, p 8

The current reporting framework is not fit for purpose. Legal Aid NSW is concerned there is a lack of clarity around the questions the Commonwealth wants to answer and, therefore, what data is needed. As a result, current reporting obligations are often artificial, onerous and duplicative.

Submission, Legal Aid NSW, sub. 47, p 35

The reporting process imposes a considerable administrative burden on all parties, yet yielding little tangible result or benefit. This calls into question the efficacy and efficiency of the existing system. Many submissions to the Review noted that funding did not change as a result of their efforts in data reporting, further calling into question its purpose.

Unit record data

The Review has heard concerns from providers about client unit level data collected for ABS use. Many CLCs expressed their apprehension at the need for such data, citing concerns for client privacy and data security.

The introduction by the NLAP 2020-25 of the requirement to report 'client unit level data' has presented persisting ethical and resourcing issues in terms of being able to adequately explain to clients and community how the data collected from them is utilised and/or purposeful and protected.

Submission, Australian Legal Assistance Forum, sub. 8, p 2

The current reporting obligations to the Commonwealth are onerous and we are also required to provide unit level data to the Australian Bureau of Statistics. Given the sensitive nature of the client data we provide, data should only be required to the extent that it contributes to building a relevant evidence base.

Submission, Legal Aid NT, sub. 48, p 39

Providers in the CLC subsector are concerned over lack of clarity from the Commonwealth about the use of client unit level data. Given existing concerns about service and activity data, client unit level data is seen by the sector as a further unnecessary reporting obligation that yields little benefit in return.

The ABS is creating a report using the NLAP reporting to try and quantify the work being done with NLAP funding. However, the ABS data will vary in a range of ways (for instance NLAP records matters at the start date and the ABS data will record from the end date). This means our data team will have to produce multiple versions of what is supposed to be the same data.

Submission, Victorian Aboriginal Legal Service, sub. 138, p 36

National Services Summary

As stated in NLAP, the Commonwealth is responsible for developing a summary of states and territories' legal assistance data. Clause 47 of NLAP reads:

Subject to each State fulfilling its relevant roles and responsibilities in respect to the NLAP, the Commonwealth, in collaboration with the States and the National Legal Assistance Advisory Group, will produce a Legal Assistance: National Services Summary annually.

This is elaborated in Clause 48:

The Legal Assistance: National Service Summary will include information and analysis on the delivery of legal assistance services and use of government funding. The Legal Assistance: National Service Summary will, subject to the agreement of the relevant Parties to the NLAP, also contain information provided in each State's Jurisdictional Performance Report.

The Review has heard that an initial draft of the Summary Report presented to the Legal Assistance Services Inter-Governmental Committee (IGC) met with reservation. Concern was raised about lack of consultation with states and territories, the level of detail to be published, issues with data maturity, and other data limitations. The report was delayed and subsequently withdrawn.

If the [National Service Summary] is to remain a requirement of future national agreements, there is a need to address the existing data limitations. As this is a national priority, the Commonwealth is ideally placed to drive this work in consultation with jurisdictions.

Submission, Queensland Department of Justice and Attorney-General, sub. 126, p 29

Other stakeholders expressed a desire for the National Service Summary to be scrapped, citing many of the issues associated with the report's delay. The Reviewer sees little utility in continuing the National Services Summary. It should be subsumed into periodic A2JP outcomes reporting.

Implementation

12

Box 12.1 Key points

- Implementing reforms as significant as those proposed in this Report will take more time than is available before NLAP expires.
- Some funding proposals are urgently needed to address labour market issues.
- Provision of additional funding for Aboriginal and Torres Strait Islander interpreters should be implemented in 2024-25.
- Further, funding should be provided in 2024-25 to support the organisational capacity of ACCOs.
- Funding profiles will need to evolve over the term of A2JP, reflecting the availability of costings data and the capacity of service providers to deploy new funding.
- Where a current funding stream provides indexation for inflation, the rate to determine funding in 2024-25 should be 4.5%. All governments should apply this rate for all legal assistance providers.
- A mechanism is needed to increase service provider funding in the early years of the A2JP until baseline assessments are completed.

This chapter outlines implementation considerations for actioning the suite of recommendations provided by the Review, and considers which priorities require dedicated effort.

12.1 Implementation and priorities

The Reviewer is aware of the significant amount of work required by legal assistance providers and governments to implement many of the recommendations contained in this Report. Some recommendations necessarily inform the implementation and cost of others. The Reviewer is also aware that market and physical constraints necessarily mean service providers may need several years to fully deploy additional funding made available to them, especially those which involve recruiting new staff and upgrading premises and IT systems. Others, such as work on a legal needs survey and Justice Technology Innovation Fund, are largely independent and can be implemented as government resources permit.

There has been no challenge by officials to this Review's key conclusions that there is significant unmet legal need in Australia, and that funding from all sources is inadequate to address the legal needs of those people the legal assistance sector is meant to support. Further, the Reviewer is satisfied that on the basis of existing studies and research (including the work of the Productivity Commission and the Law Council of Australia), and submissions made to the Review, that it is highly likely benefits associated with this Report's recommendations, including those involving significant funding, will exceed their costs at least until funding approaches efficient levels.

That said, the Reviewer is aware that some recommendations do involve significant fiscal commitments and will need to be considered by governments in light of competing expenditure

priorities but this is the normal business of governments and necessarily reflects values and priorities.

Between the time of finalising this report in February 2024 and the end of NLAP there will be at least five state and territory elections and a Commonwealth election. Clearly, relevant caretaker periods and normal budgetary cycles will interact, adding to challenges of engagement between governments and with service providers. These are not issues the Reviewer can resolve.

This is the ordinary business of the Australian Federation. It cannot stand in the way of urgently needed and well supported reform, nor the long-term development of capability in public, private and community sectors. There are priorities for proposed reforms that can be expected to improve safety outcomes for women and children, reduce incarceration rates of Aboriginal and Torres Strait Islander peoples, and help people experiencing challenges with cost of living in areas like tenancy, social welfare payments, workplace rights and consumer credit.

Commentary from officials on the Draft Report strongly suggested the proposed implementation timing of the recommendations was too ambitious. The Reviewer agrees. The original intent was to have all relevant information necessary for decision making by Ministers available by February 2025 for to support finalisation of A2JP and its implementation prior to 1 July 2025. That approach was developed on the basis that governments would accept all recommendations, and without information on the capacities of government agencies and service providers.

On further consideration, the Reviewer considers it would be more helpful to break down the recommendations into three categories:

- Urgent – those which need to be implemented largely in full by 30 June 2025
- Architecture – those relating to governance and the documentation of A2JP, or which support its long-term development
- Phased – these largely relate to expenditure that involves recruiting workers and capital investment, and those it will take time to assess need and cost.

Each category is addressed in some detail below.

12.1.1 Urgent recommendations

Throughout this Report, and in particular chapter 8, the impact of low pay of community legal sector and private sector providers has been identified and discussed. The Reviewer considers immediate implementation of recommendations about remuneration and employment conditions will assist in stabilising the workforce, provide additional capacity to service clients, avoid service suspensions and closures, and reduce gender and racial wage gaps in the legal profession. These recommendations to be funded in 2024-25 are outlined in Table 12.1.

The Reviewer observes that all governments have completed significant on funding of disaster preparedness and responses. There are well established subject groups and programs operating in this area. It should be possible for the work associated with recommendation 6 to be completed in time for inclusion in A2JP documentation.

Additional interim funding for ACCOs

The Reviewer is particularly concerned about the level of unmet legal need currently experienced by Aboriginal and Torres Strait Islander peoples. There is an urgent need to expand the frontline workforce of ATSIILS, and to build administrative and corporate capacity within them. Fortunately, since the Draft Report was provided to governments, NATSIILS has made a prebudget submission to Commonwealth Treasury that provides costings for many items included in the rebasing exercise set out in section 7.2.1. The Reviewer notes that item 1.3 relating to employment conditions in NATSIILS' prebudget submission is provided for in recommendation 25.

A number of items in NATSILS' prebudget submission relate to capacity building and suggested funding is combined for 2024-25 and 2025-26:

- Item 1.2 - \$15 million for updates to infrastructure, cyber security, and corporate and community governance
- Item 3.2 - \$4 million for the Aboriginal Community Controlled Law and Justice Sector Strengthening Plan
- Item 3.4 - \$4 million for developing cross-sectoral partnerships to achieve National Agreement on Closing the Gap objectives
- Item 3.5 - \$2.5 million to strengthen governance, regulatory, operational and service delivery models.

The Reviewer considers all these are consistent with various items set out in section 7.2.1, and the costings on face value seem to be reasonable. Further, these initiatives are necessary to support and sustain growth, including but not limited to implementing this Review's recommendations for ATSILS. The Reviewer strongly encourages the Commonwealth to work with NATSILS to identify the extent to which these programs can be deployed in 2024-25, and for them to be included in the Commonwealth budget in May 2024. The Reviewer has allocated a proportion of these costs to 2024-25 funding in Table 12.1.

Item 1.1 of NATSILS' prebudget submission proposes an additional \$130 million over two years to restore services in areas of highest need. This is consistent with recommendation 17. The Reviewer's only concern is the capacity of ATSILS in two years to recruit and induct 350 new employees, or around 30% of their current workforce, ensure they have appropriate work environments and where necessary provide residential accommodation to support their work in regional and remote communities. That said, the Commonwealth should work with NATSILS and state and territory governments to identify areas of greatest need and assess the ease of recruiting workers to those areas. A multiyear plan is likely to be necessary which can be built into the baseline exercise suggested in recommendation 17. The Commonwealth should bear the cost of any new staff in 2024-25, bearing in mind time taken to complete the above assessment and consequential recruitment activities will mitigate cost in that year. As an interim measure to progress this recommendation, the Reviewer recommends ATSILS receive \$12 million in funding in 2024-25.

At the time of finalising this Report, the Reviewer was not aware of a prebudget submission from the National FVPLS Forum. However, it is clear that funding in 2024-25 is required to develop the capacity of FVPLS to grow. The funding amount needs to be agreed between all FVPLS and the Commonwealth, but an amount of \$4 million shared between providers would seem reasonable.

Table 12.1 Urgent recommendations – estimated cost 2024-25

Recommendation	2024-25
Recommendation 11: Self-determination review	\$0.3 million
Recommendation 13: Aboriginal interpreters	<i>Not costed</i>
Recommendation 17: Rebasing community service providers (partial for ATSILS and FVPLS)	\$16 million
Recommendation 18: Rates of grants of legal aid	\$44.0 million
Recommendation 19: Independent Children's Lawyers	\$84.0 million
Recommendation 24: Workforce strategy	\$5.0 million
Recommendation 25: Remuneration of community sector workers	\$66.0 million
Total funding required	\$215.3 million

12.1.2 Architecture recommendations

There is a large number of recommendations about governance and responsibilities within A2JP and its documentation which we need to be worked through by governments, and to a lesser extent by service providers, prior to 1 July 2025. These are:

- Priority client groups (recommendation 8)
- All legal assistance provided by ACCOs to be funded through A2JP (recommendation 10)
- Self-determination in existing services (recommendation 11)
- Self-determination in new services (recommendation 12)
- NLAP funding model to be abandoned (recommendation 14)
- Reduction in fragmentation (recommendation 15)
- Cease competitive tendering (recommendation 16)
- Step (recommendation 20) (other than as it applies to recommendations 2,3,4 and 5)
- Indexation (recommendation 21)
- Legal Assistance Impact Assessment (recommendation 22)
- Use of baseline funding (recommendation 27)
- Advocacy and law reform (recommendation 28)
- Commonwealth money for Commonwealth matters (recommendation 34)
- Sharing the funding task (recommendation 35)
- Improved Commonwealth involvement (recommendation 32)
- Administrative responsibility (recommendation 35).

There are other recommendations related to discrete pieces of project work which, if accepted by government, should commence as soon as practicable

Table 12.2 Architecture recommendations – estimated cost 2024-25

Recommendation	2024-25
Recommendation 1: Legal needs survey	\$3.0 million
Recommendation 7: Women's peak funding	\$0.25 million
Recommendation 18: Grants restructuring review	\$0.3 million
Recommendation 29: Justice Technology Innovation Fund Board	\$0.5 million
Recommendation 31: Better reporting	<i>Not costed</i>
Recommendation 36: Outcomes Framework	\$0.5 million
Recommendation 37: Performance indicators	<i>Not costed</i>
Recommendation 39: Data systems	<i>Not costed</i>
Total funding required	\$4.6 million

12.1.3 Phased recommendations

Several recommendations require work to be undertaken to assess the needs of service providers, ensure costs are reasonable and reflect the time needed to deploy new funding. Consideration will also need to be given to the capacity of governments to provide funding over the term of A2JP. The Reviewer expects funding from all governments will grow over time, reflecting outcomes of assessment work and timing of funding deployment.

Recommendation 2 deals with providing new or improved services in geographic areas of greatest need. The Reviewer expects some service providers will have well developed, well costed plans capable of rapid deployment. Others will need more work from officials and service providers themselves. Some areas are probably not covered by existing plans.

After consultation with relevant community groups and service providers, governments will need to agree which geographic areas require further service provision and what services should be provided. This will inevitably lead to some existing service providers receiving further funding and new services being established. In the latter case, where the client population is largely Aboriginal and Torres Strait Islander, it would be appropriate to turn to the relevant ATSILS to provide the service, at least in the first instance. With other populations, the relevant LAC should be preferred. The reason for this preference is that by leveraging existing multilocation service providers, services are likely to be deployed more rapidly and successfully. That said, there may be instances where a reasonably proximate CLC could undertake the work, or a strong community service organisation could support the service.

It is acknowledged this work will take time and expenditure will ramp up over the life of A2JP as new services are deployed. How these additional costs are to be shared should be agreed as part of A2JP, as discussed in section 10.3.

Recommendation 3 seeks to address similar geographic challenges for providing FVPLS. The National FVPLS Forum has developed a proposal for extending services to areas of greatest need. This proposal is costed at about \$40 million per annum, although this may include some elements more appropriately addressed in the baselining exercise. Nevertheless, this would be a good place to start. Again, 'some early wins' may be achievable in 2024-25 with the remainder of the program, once validated, rolled out relatively quickly given the relatively small number of providers and funding, and it being the sole jurisdiction of the Commonwealth during A2JP.

Recommendation 5 involves increasing the number of grants of legal aid for civil and family law matters along the lines of recommendation 21.4 of the PC Report. The Reviewer expects this to cost all governments \$459 million in 2025-26. Consistent with the Productivity Commission estimate, around 60% of this recommendation's cost would be borne by the Commonwealth.

The Reviewer is unsure whether relevant service providers will have the capacity in 2025-26 to make full use of this funding. To the extent that they do not, and account being taken of the recommendations in this Report that are accepted, the funding profile should be sculptured to match expected service provider capacity.

The Reviewer readily acknowledges that recommendation 17 involving establishment of baseline funding for service providers is likely to be the most time consuming and resource intensive to implement. That said, once done and done properly, along with this Report's other recommendations, Australia's legal assistance sector should be on a sound financial footing capable of moving forward without major structural change for at least a decade.

Again some service providers will have well developed, well costed plans capable of rapid deployment. Others will need more work from officials and service providers themselves. The Reviewer does not expect all well-developed plans of service providers will necessarily align with the areas of greatest unmet legal need.

The Reviewer considers the focus in the first instance should be on ATSILS and FVPLS because these are the two service provider groups with the most significant challenges, and the benefits of additional funding are likely to be greatest. The Reviewer notes there are only seven ATSILS and 14 FVPLS and this work is already underway by the peaks and a number of individual service providers. This work should be led by the Commonwealth and involve state and territory governments where appropriate.

The Commonwealth should also attend to those CLCs it solely funds. It is expected this work can be completed by 30 March 2026 for inclusion in funding for 2026-27, the second year of A2JP. However, if possible, implementation by 2025-26 would be preferable.

Assessments of CLCs (other than those solely funded by the Commonwealth) and LACs should be led by states and territories which should determine priorities for assessment and funding roll out. It is anticipated this work should be completed by 30 March 2027 for inclusion in funding for 2027-28, the third year of A2JP.

12.2 Temporary indexation

12.2.1 Inflation for 2024-25

Putting aside the fact there is no real provision for growth in demand in NLAP's funding framework, the Reviewer understands legal assistance providers can expect indexation increases in 2024-25 of around 1.6%. This compared to the year-on-year change in the consumer price index in the December 2023 quarter of 4.1%.

Section 7.2.3 and other parts of this Report discuss the inadequacy of annual indexation under NLAP. The cumulative impact of underfunding over time is demonstrated in section 6.5. Given the rebasing exercise will lead to substantial increases in funding, and given the current chronic level of underfunding, the Reviewer recommends that where funding streams are subject to annual indexation, a minimum rate of 4.5% be applied to 2023-24 funding to determine 2024-25 funding. This should apply to all service providers and all funding streams provided by all governments.

For the Commonwealth, the Reviewer estimates that for the funding proposed to be administered by AGD under A2JP, the cost in 2024-25 will be \$7.9 million for LACs, \$3.2 million for CLCs, \$2.6 million for ATSILS and \$1.0 million for FVPLS. The Commonwealth is likely to incur additional expenditure for those providers currently not administered by AGD, such as the Art Law CLC. The Reviewer does not have sufficient information to estimate budgetary impacts on states and territories.

For the avoidance of confusion, this indexation should be applied before any additional funding discussed in section 12.1.1.

12.2.2 Temporary indexation until baselining complete

The Reviewer accepts new funding baselines for all service providers will not be completed before A2JP commences. Therefore, for those service providers a mechanism needs to be found to determine funding in 2025-26, and potentially 2026-27 and 2027-28. Any such mechanism is necessarily arbitrary and should be as simple as possible. A possible approach for CLCs, ATSILS and FVPLS is to index funding in 2024-25 by 10% to identify 2025-26 funding amounts. The base funding in 2024-25 should include remuneration increases set out in recommendation 25. This funding should continue to be indexed by 10% each year until the baseline assessment has passed through to funding. All other additional funding should be indexed in accordance with recommendation 21. A similar approach should be adopted for LACS, with funding from recommendations 18 and 19 excluded but subject to indexation under recommendation 21.

The Reviewer notes that indexation under recommendation 21 is likely to be in the order of 5% to 6%, depending on service provider type and macro-economic developments. It therefore seems unlikely there is a potential for a windfall as it is difficult to see that any service provider, particularly in the community sector, does not need an increase in its baseline funding of under 15% today.

Recommendation 39 – Temporary indexation

To determine funding in 2024-25, 2023-24 funding should be indexed at a rate of 4.5% to which amounts from other funding recommendations should be added. It is estimated this will cost the Commonwealth \$14.7 million in 2024-25.

In the event that the baselining exercise has not been completed in time to set funding for 2025-26 for any given community legal assistance provider, its funding be set at a level 10% higher than that provided in 2024-25.

In subsequent years, until the baselining exercise is completed, its funding should be increase by 10% each year.

Bibliography

Aboriginal Legal Service (NSW/ACT) Limited. (2023). Criminal law services frozen at 13 local courts. Accessed at: <https://www.alsnswact.org.au/service-freeze-in-place>

Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd. (2023). The Queensland State Budget delivers a welcome funding boost for the Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd - (ATSILS). Accessed at https://ATSILS.org.au/wp-content/uploads/2023/06/ATSILS_MediaRelease_StateFunding_22June2023-002.pdf

Aboriginal & Torres Strait Islander Social Justice Commissioner. (2006). Social justice report, 2005. Human Rights and Equal Opportunity Commission: Accessed at: <https://apo.org.au/sites/default/files/resource-files/2006-02/apo-nid4450.pdf>

ACIL Allen. (2022). Assessment on the Current Legal Needs in Western Australia. Prepared for the Western Australian Department of Justice.

Allen Consulting Group. (2014). Review of the National Partnership Agreement on legal assistance services. Prepared for the Australian Government Attorney-General's Department.

Allison, C. (2023). NAAJA suspends new criminal matters in Alice Springs until end of 2023, after mass exodus of lawyers. Australian Broadcasting Corporation. Accessed at: <https://www.abc.net.au/news/2023-11-16/naaja-suspends-new-criminal-matters-alice-springs-staff-exodus/103103900>

Attorney-General's Department. (2023). Expensive commonwealth criminal cases fund. Accessed at <https://www.ag.gov.au/legal-system/legal-assistance/expensive-commonwealth-criminal-cases-fund>

Attorney-General's Department (2020). National Legal Assistance Partnership (NLAP). Accessed at <https://federalfinancialrelations.gov.au/agreements/national-legal-assistance-partnership-nlap>

Attorney-General's Department. (2023). Native title respondent funding scheme. Accessed at <https://www.ag.gov.au/legal-system/legal-assistance-services/commonwealth-legal-financial-assistance/native-title-respondent-funding-scheme>

Attorney-General's Department. (2023). Natural disaster legal assistance funding. Accessed at <https://www.ag.gov.au/legal-system/legal-assistance-services/natural-disaster-legal-assistance-funding>

Attorney-General's Department. (2022). Supplementary funding for Legal Aid Commissions to respond to demand arising from case management transition in the Federal Circuit and Family Court of Australia. Accessed at <https://federalfinancialrelations.gov.au/agreements/supplementary-funding-legal-aid-commissions-respond-demand-arising-case-management>

Attorney-General's Department. (2020). Project agreement for COVID-19 legal assistance funding. Accessed at <https://www.ag.gov.au/legal-system/publications/project-agreement-covid-19-legal-assistance-funding>

Australian Bureau of Statistics. (2024). Prisoners in Australia. Accessed at: <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release>

Australian Bureau of Statistics. (2023). Corrective services, Australia. Accessed: <https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>

Australian Bureau of Statistics. (2023). Estimates of Aboriginal and Torres Strait Islander Australians. Accessed at: <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/30-june-2021>

Australian Bureau of Statistics. (2023). Job mobility. Accessed at: <https://www.abs.gov.au/statistics/labour/jobs/job-mobility/feb-2023>

Australian Bureau of Statistics. (2023). Labour force, Australia. October 2023. Accessed at: <https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>

Australian Bureau of Statistics. (2021). Non-school qualification: Field of study (QALFP) by level of highest educational attainment (HEAP) and State and Territory (STE). *Census TableBuilder*.

Australian Bureau of Statistics. (2021). Non-school qualification: Age in five year groups (AGE5P) by level of highest educational attainment (HEAP) and State and Territory (STE), filtered by field of study (QALFP). *Census TableBuilder*.

Australian Bureau of Statistics. (2020). National, state and territory population. Accessed at <https://www.abs.gov.au/statistics/people/population/national-state-and-territory-population/dec-2020#:~:text=Media%20releases-,Key%20statistics,due%20to%20net%20overseas%20migration.>

Australian Council of Social Services. (2013). Australian Community Sector Survey 2013: National Report.

Australia Council on Federal Financial Relations. (2020). Federation funding agreement: Education and skills. 2020, Canberra.

Australian Council of Social Services and University of New South Wales. (2022). Poverty in Australia 2022: A snapshot. Accessed at: https://povertyandinequality.acoss.org.au/wp-content/uploads/2022/10/Poverty-in-Australia-2020_A-snapshot_print.pdf

Australian Government (2023). Royal commission into the Robodebt Scheme. 7 July 2023, Commonwealth of Australia.

Australian Government. (2020). Royal commission into national natural disaster arrangements. 28 October 2020, Commonwealth of Australia.

Australian Government: Study Assist. (2023). Student contribution amounts. Accessed at: <https://www.studyassist.gov.au/help-loans/commonwealth-supported-places-csps/student-contribution-amounts>

Australian Government. (2023). Study and training support loans. Accessed at: <https://data.gov.au/dataset/ds-dga-ce4c58ec-c930-4a05-8a37-f244d960e5f8/distribution/dist-dga-0661912a-d114-4155-8b42-63ab1417adea?q=>

Australian Human Rights Commission. (2020). Wiyi Yani U Thangani (women's voices): Securing our rights, securing our future. Accessed at:

https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf

Australian Institute of Family Studies. (2022). Evaluation of the lawyer-assisted family law property mediation: Legal Aid Commission trial: Final report. Melbourne: Australian Institute of Family Studies.

Australian Institute of Health and Welfare. (2021). Mental health workforce. Accessed at: <https://www.aihw.gov.au/mental-health/topic-areas/workforce>

Australian Institute of Health and Welfare. (2019). Family, domestic and sexual violence in Australia: continuing the national story. Accessed at: <https://www.aihw.gov.au/getmedia/b0037b2d-a651-4abf-9f7b-00a85e3de528/aihw-fdv3-FDSV-in-Australia-2019.pdf.aspx?inline=true>

Australian Law Reform Commission. (2017). Pathways to justice: An inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples. Accessed at: <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/2017-pathways-to-justice-nsw-law-reform-commission-final-report.v1.pdf>

Australia's National Research Organisation for Women's Safety, 2020. National plan to reduce violence against women and their children. Accessed: https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf

Australian Parliament. (2020). Final budget outcome 2019-20. Commonwealth of Australia. September 2020. Accessed at: <https://archive.budget.gov.au/2019-20/fbo/download/FBO-2019-20.pdf>

Australian Pro Bono Centre. (2023). Report on the 8th national law firm pro bono survey. February 2023.

Australian Taxation Office (2023). Study and training loan repayment thresholds and rates. Accessed at <https://www.ato.gov.au/tax-rates-and-codes/study-and-training-support-loans-rates-and-repayment-thresholds>

[Australia's National Research Organisation for Women's Safety. \(2020\). Women's imprisonment and domestic, family, and sexual violence: Research synthesis \(ANROWS Insights, 03/2020\). Sydney: ANROWS.](#)

Balmer, N.J., Pleasence, P., McDonald, H.M. & Sandefur, R.L. (2023). *The public understanding of law survey (PULS) Volume 1: Everyday problems and legal need*. Melbourne: Victoria Law Foundation.

Basten, J., Graycar, R., & Neal, D. (1983). Legal centres in Australia. *UNSWLJ*, 6, 163.

Baughman, S. B. (2017). Costs of pretrial detention. *BUL Rev.*, 97, 1.

Beacon Legal. (2022). Private practice salary & market report. July 2022.

Bolli, T., Olivares, M., Bonaccorsi, A., Daraio, C., Garcia Aracil, A., & Lepori, B. (2016). The differential effects of competitive funding on the production frontier and the efficiency of universities. *Economics of Education Review*, 52, 91-104.

Bucci, N. (2022). Community legal services turn clients away amid funding shortfall as family violence spikes. *The Guardian*. Accessed at: <https://www.theguardian.com/law/2022/jul/11/community-legal-services-turn-clients-away-amid-funding-shortfall-as-family-violence-spikes>

Bucci, N. (2022). 'Saying no has an enormous impact': overwhelmed community legal centres forced to turn away clients. *The Guardian*. Accessed at:

<https://www.theguardian.com/law/2022/nov/06/saying-no-has-an-enormous-impact-overwhelmed-community-legal-centres-forced-to-turn-away-clients>

Butler, K. (2022). *Legal assistance services outcomes frameworks: a rapid scoping review*. Law and Justice Foundation of New South Wales.

Chief Minister. Treasury and Economic Development Directorate, (2023). ACT public sector legal professionals enterprise bargaining agreement 2021-2022. ACT Government. Accessed at: https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0011/1888373/ACT-Public-Sector-Legal-Professional-Enterprise-Agreement-2021-2022-FINAL.pdf

College of Law. (2022). The state of gender equity in the Australian legal profession. Accessed at: <https://www.collaw.edu.au/news/2022/11/16/gender-inequality-in-legal-profession>

Community Legal Centres Australia. (2022). Impact of COVID-19 on the community legal sector. March 2022.

Community Legal Centres Queensland. (2019). Evidence and analysis of legal need: June, 2019.

Commonwealth Attorney-General's Department. (2023). Expensive Commonwealth Criminal Cases Fund. Accessed at <https://www.ag.gov.au/legal-system/legal-assistance/expensive-commonwealth-criminal-cases-fund>

Commonwealth Attorney-General's Department. (2023). Native title respondent funding scheme. Accessed at <https://www.ag.gov.au/legal-system/legal-assistance-services/commonwealth-legal-financial-assistance/native-title-respondent-funding-scheme>

Commonwealth Attorney-General's Department. (2023). Natural disaster legal assistance funding. Accessed at <https://www.ag.gov.au/legal-system/legal-assistance-services/natural-disaster-legal-assistance-funding>

Commonwealth Attorney-General's Department. (2022). Supplementary funding for Legal Aid Commissions to respond to demand arising from case management transition in the Federal Circuit and Family Court of Australia. Accessed at <https://federalfinancialrelations.gov.au/agreements/supplementary-funding-legal-aid-commissions-respond-demand-arising-case-management>

Commonwealth Attorney-General's Department. (2020). Project Agreement for COVID-19 Legal Assistance Funding. Accessed at <https://www.ag.gov.au/legal-system/publications/project-agreement-covid-19-legal-assistance-funding>

Commonwealth Director of Public Prosecutions. (2023). Public service (section 24(1)— office of the Commonwealth director of public prosecutions non-SES employees) determination 2023/24. Accessed at: <https://www.cdpp.gov.au/system/files/2023-05/Public%20Service%20s24%281%29%20Non-SES%20Determination%20April%202023.pdf>

Commonwealth Treasury. (2018). *Strengthening for purpose: Australian charities and not-for-profits commission legislation review*. Commonwealth of Australia.

Commonwealth of Australia. Senate Legal and Constitutional References Committee (1997). Inquiry into the Australian Legal Aid System Second Report.

Council of Australian Law Deans. (2019). Factsheet –Law students in Australia – 2019. Accessed at: https://cald.asn.au/wp-content/uploads/2019/07/Updated-Factsheet-Law_Students_in_Australia-20-04-2019.pdf

Council of Australian Law Deans. (2000). The funding of legal education. Accessed at: <https://cald.asn.au/wp-content/uploads/2017/11/Funding-of-Legal-Education-Dec-2000-V31.pdf>

- Cox Inall Ridgeway. (2020). Review of the Indigenous Legal Assistance Program (ILAP) 2015 – 2020. Prepared for the Australian Government Attorney-General's Department.
- Cunneen, C., & Schwartz, M. (2009). Civil and family law needs of Indigenous people in New South Wales: The priority areas. *The University of NSW Law Journal*, 32(3), 725-745.
- Curran, L., & Crockett, A. (2013). Measuring legal services: a practical methodology for measuring quality and outcomes of legal assistance services. *University of Tasmania Law Review*, 32(1), 70-95.
- Dandurand, Y., & Jahn, J. (2018). *A feasibility study on measuring the economic impact of criminal and immigration and refugee legal aid in Canada*. Prepared for the Evaluation Division, Department of Justice Canada. June 27, 2018.
- Dansie, M. and Mounter, B. (2023) Fears for increased First Nations incarceration grow as Indigenous legal services cut. Australian Broadcasting Corporation. Accessed at: <https://www.abc.net.au/news/2023-05-16/aboriginal-torres-strait-islander-legal-service-cuts-impact/102351422>
- Department of Finance. (2017). Commonwealth grants rules and guidelines 2017. Commonwealth of Australia.
- Department of Justice, Canada, (2016). *Evaluation of the Legal Aid Program*. Prepared for the Evaluation Division – Corporate Services Branch.
- Department of Social Services. (2022). Financial counselling industry funding model, discussion paper. Commonwealth Government of Australia. Accessed at: <https://engage.dss.gov.au/wp-content/uploads/2022/11/Financial-Counselling-Industry-Funding-Model-Discussion-Paper-Final-DSS-Engage-1.pdf>
- Department of Social Services. (2022). National plan to end violence against women and children 2022–2032: Ending gender-based violence in one generation. Commonwealth Government of Australia: Accessed: https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf
- Department of Veterans Affairs. (2023). Definition of Veteran. Accessed at: <https://clik.dva.gov.au/compensation-and-support-policy-library/part-1-service-requirements/11-veterans/111-who-veteran/definition-veteran>
- Digiusto, E. (2012). Effectiveness of public legal assistance services: a discussion paper. *Justice Issues* (16), 1-11.
- Dolnicar, S., Irvine, H., & Lazarevski, K. (2008). Mission or money? Competitive challenges facing public sector nonprofit organisations in an institutionalised environment. *International Journal of Nonprofit and Voluntary Sector Marketing*, 13(2), 107-117.
- Dreyfus, Hon M. (2023). Health justice Australia conference 2023. Accessed at: <https://ministers.ag.gov.au/media-centre/speeches/health-justice-australia-conference-2023-24-11-2023>
- Dreyfus, Hon M. (2022). Ending the gag on legal assistance providers. Accessed at: <https://ministers.ag.gov.au/media-centre/ending-gag-legal-assistance-providers-29-11-2022>.
- Durbach, A., Edgeworth, B. & Sentas, V. (2018). The civil and family law needs of Indigenous people forty years after Sackville: The findings of the Indigenous legal needs project. *Law and Poverty*, 40, 231-248.

Fair Work Ombudsman. (2023). Pay guide – Social, community, home care and disability services industry award [MA000100]. Accessed at:

<https://calculate.fairwork.gov.au/payguides/fairwork/ma000100/docx>

Fair Work Commission. (2023). Victorian aboriginal legal service agreement 2022. Accessed at:

<https://www.fwc.gov.au/document-search/view/3/aHR0cHM6Ly9zYXNyY2RhdGFwcmRhdWVhYS5ibG9iLmNvcmlzZW50ZXJwcmVlbnVudHMvMjAyMi85L0FFNTE3MjY1LnBkZg2?sid=&q=Victorian%24%24Aboriginal%24%24Legal%24%24Service>

Farrow, T., Currie, A., Aylwin, N., Jacobs D., & Moore, L. (2016). Everyday legal problems and the cost of justice in Canada: Overview report. *Canadian Forum on Civil Justice*. Toronto.

Faulk, L. H. (2011). *Nonprofit and foundation behaviour in competitive markets for grants*. Georgia Institute of Technology and Georgia State University.

Federal Circuit and Family Court of Australia. (2023). Independent children's lawyer. Accessed at:

<https://www.fccoa.gov.au/fl/children/icl>

Feigenbaum, S. (1987). Competition and performance in the nonprofit sector: The case of US medical research charities. *The Journal of Industrial Economics*, 241-253.

Flynn, A., Hodgson, J., McCulloch, J., & Naylor, B. (2016). Legal aid and access to legal representation: redefining the right to a fair trial. *Melb. UL Rev.*, 40, 207

Froelich, K. A. (1999). Diversification of revenue strategies: Evolving resource dependence in nonprofit organizations. *Nonprofit and Voluntary Sector Quarterly*, 28(3), 246-268.

Gabe, T. (2016). *Economic impact of civil legal aid services in Maine*. Prepared for Maine's Justice Action Group. November 2016.

Gewurtz R. E., Cott C., Rush B., Kirsh B. (2015). How does outcome-based funding affect service delivery? An analysis of consequences within employment services for people living mental illnesses. *Administration and Policy in Mental Health and Mental Health Services Research*, 42, 19.

Greacen, J. M. (2011). The benefits and costs of programs to assist self-represented litigants. *Judges J.*, 50, 15.

Haggerty JL, Reid RJ, Freeman GK, Starfield BH, Adair CE, McKendry R. (2003) Continuity of care: a multidisciplinary review. *BMJ*. 2003 Nov 22;327(7425):1219-21. doi: 10.1136/bmj.327.7425.1219. PMID: 14630762; PMCID: PMC274066.28. doi:10.1007/s10488-014-0534-8.

Hughes, P., & Luksetich, W. (2010). Modeling nonprofit behavior. *Handbook of research on nonprofit economics and management*, 120.

Human Rights Law Centre (2017). Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment. Accessed at:

<https://www.hrlc.org.au/reports-news-commentary/2017/5/18/report-over-represented-and-overlooked-the-crisis-of-aboriginal-and-torres-strait-islander-womens-growing-over-imprisonment>

Irving, N.L. (2016). *Alberta bail review: Endorsing a call for change*. Accessed:

<https://open.alberta.ca/dataset/2532e913-c5c6-4316-842d-b1cf39217994/resource/4c134128-7c59-4057-8fdd-dbd0ce0a9ae8/download/albertabailreview-report.pdf>

Kellard, K., Compton, S., Vickers, N. & Fishman, A. (2014). Victoria Legal Aid: Community Research. The Social Reach Centre. Accessed at:

<https://www.legalaid.vic.gov.au/sites/default/files/vla/vla-community-research-report-the-social-research-centre.pdf>

- Labour Market Insights. (2023). Social workers – Occupational profile. Accessed at: <https://labourmarketinsights.gov.au/occupation-profile/social-workers?occupationCode=2725>
- Lapunte, V., Van de Walle, S. (2019). The effects of new public management on the quality of public services. *Governance*, 33(3), 461-475.
- Latrobe University. (2023). What does LGBTIA+ mean?. Accessed at: <https://latrobe.edu.au/students/support/wellbeing/resource-hub/lgbtiqa/what-lgbtiqa-means>
- Law and Justice Foundation. (2012). Legal Australia-Wide survey. Legal need in Australia.
- Law Council of Australia. (2018). The justice project: Final report. August 2018
- Legal Aid ACT. (2023). Applying for legal aid. Accessed at: <https://www.legalaidact.org.au/what-we-do/legal-representation>
- Legal Aid ACT. (2022). Legal aid commission (ACT) enterprise agreement 2021-2022. Accessed at: <https://www.legalaidact.org.au/sites/default/files/files/publications/Legal%20Aid%20Commission%20%28ACT%29%20Enterprise%20Agreement%202021-2022.pdf>
- Legal Aid Queensland. (2022). Can I get legal aid? Accessed at: <https://www.legalaid.qld.gov.au/Find-legal-information/Publications-and-resources/Factsheets/Can-I-get-legal-aid>
- Legal Aid NSW. (2023). Application for legal aid. Accessed at: [https://www.legalaid.nsw.gov.au/content/dam/legalaidnsw/documents/pdf/ways-to-get-help/apply-for-legal-aid/Application%20for%20legal%20aid%20\(use%20this%20form%20to%20apply%20for%20legal%20aid%20in%20New%20South%20Wales\).pdf.coredownload.pdf](https://www.legalaid.nsw.gov.au/content/dam/legalaidnsw/documents/pdf/ways-to-get-help/apply-for-legal-aid/Application%20for%20legal%20aid%20(use%20this%20form%20to%20apply%20for%20legal%20aid%20in%20New%20South%20Wales).pdf.coredownload.pdf)
- Legal Aid WA. (2018). What is a contribution? Accessed at: <https://www.legalaid.wa.gov.au/get-legal-help/get-lawyer-run-your-case/what-contribution>
- Legal Services Commission South Australia. (2023). Applying for legal aid. Accessed at: https://lsc.sa.gov.au/cb_pages/legal_aid.php#:~:text=When%20services%20beyond%20simple%20legal.can%20reasonably%20afford%20to%20pay
- Legal Services Commission South Australia. (2023). Funding. Accessed at https://lsc.sa.gov.au/cb_pages/funding.php
- Mackey, W. (2019, April 30). More regional Australians are moving to the city to study. Few return when they've finished. Grattan Institute. Accessed at: <https://grattan.edu.au/news/more-regional-australians-are-moving-to-the-city-to-study-few-return-when-theyve-finished/>
- Maloney, M. (2021). Women's Legal Service Tasmania pleads for funding to keep Launceston office open. *The Examiner*. Accessed at: <https://www.examiner.com.au/story/7220871/legal-service-may-close-in-launceston-without-more-funding/>
- McDonald, H.M., McRae, C., Balmer, N.J., Hagland, T., & Kennedy, C. (2020). Apples, oranges and lemons: The use and utility of administrative data in the Victorian legal assistance sector. Melbourne: Victoria Law Foundation.
- Mitchell, G. (2023). Aboriginal legal services to scale back work nationally amid funding crisis. *The Sydney Morning Herald*. April 2023.
- Mundy, W. (2015). The economist and the lawyer went to lunch. A public lecture at the Australian Institute of Judicial Administration. Accessed at: <https://www.pc.gov.au/media-speeches/speeches/warren-mundy-access-justice>

- National Institute of Corrections (2017). *Pretrial justice. How much does it cost?* Accessed: https://portal.ct.gov/-/media/Malloy-Archive/Reimagining-Justice/Reimagining-Justice---Pretrial-justice-at-what-cost-PJI-2017.pdf?sc_lang=en&hash=2D9ACDE29DDD4EE58364277140A64B8F
- National Legal Aid. (2023). The benefits of providing access to justice. January 2023.
- National Legal Aid. (2023). Justice on the Brink – Stronger Legal Aid for a Better Legal System. Accessed at <https://www.nationallegalaid.org/resources/justice-on-the-brink/>
- Noone, M. A. (2001). The state of Australian legal aid. *Federal Law Review*, 29(1), 37-56.
- Northern Territory Legal Aid Commission. (2023). How do I apply? Accessed at <https://www.legalaid.nt.gov.au/need-help/applying-for-legal-aid/>
- Notterman, B. (2015). Leveraging Civil Legal Services: Using Economic Research and Social Impact Bonds to Close the Justice Gap. *Harbinger*, 40, 1.
- Nous. (2020). UANP review: Final review Report. COAG Education Council. October 2020.
- Nous. (2013). Family violence prevention legal services: Research and needs analysis report. Prepared for the Australian Government Attorney General's Department. July 2013, p.48.
- Office of the Commissioner for Public Employment. (2022). Northern Territory public sector 2021 – 2025 enterprise agreement. Northern Territory Government. Accessed at: https://ocpe.nt.gov.au/data/assets/pdf_file/0004/513193/ntps-2021-2025-enterprise-agreement-v02.pdf
- Prairie Research Associates. (2017). *Evaluation of the Expanded Criminal Duty Counsel: Evaluation refresh final report*. Prepared for the Legal Services Society. October 2017. Vancouver, British Columbia: Accessed: <https://legalaid.bc.ca/sites/default/files/2019-03/EXP%20CDC%20Refresh%20Evaluation%20Report-Final.pdf>
- Preložnjak, B. (2017). Impact of cuts to legal aid – comparative view and economic prospects. *Intereulaweast: Journal for International and European Law, Economics and Market Integrations*, 4 (2), p. 35-61.
- Productivity Commission. (2023). Draft report: Review of the National Agreement on Closing the Gap.
- Productivity Commission. (2019). Inquiry report – A better way to support veterans.
- Productivity Commission. (2014). Inquiry Report: Access to Justice Arrangements.
- Productivity Commission. (2013). Regulator Engagement and Small Business.
- Pleasence, P. (2016). 'Legal need' and legal needs surveys: Background paper. Accessed at: <https://grassrootsjusticenetwork.org/resources/legal-need-and-legal-needs-surveys-a-background-paper/>
- Public Service Association of New South Wales. (2021). Crown employees (public sector – salaries 2022) award. Accessed at: <https://psa.asn.au/wp-content/uploads/2022/09/Crown-Employees-Public-Sector-Salaries-2022-Award.pdf>
- PWC. (2009). Legal aid funding: Final Report. December 2009, p.6.
- PWC, (2009). *The economic value of legal aid: Analysis in relation to Commonwealth funded matters with a focus on family law*. Australia: National Legal Aid. Accessed: https://www.legalaidact.org.au/sites/default/files/files/publications/economic_value_of_legalaid.pdf

Queensland Industrial Relations Commission. (2022). Legal aid Queensland employees award: State 2015. Access at: https://www.qirc.qld.gov.au/sites/default/files/2022-09/legal_aid_qld_010922.pdf

Rishworth, Hon Amanda Burney, Hon Linda and Elliot, Hon Justine. (2023). New action plans include concrete steps and targets to end gender-based violence. Accessed at: <https://ministers.dss.gov.au/media-releases/12186>.

Rosenberg, D.A. (2015). Supporting survivors: The economic benefits of providing civil legal assistance to survivors of domestic violence. *Institute for Policy Integrity*. New York, New York: July 2015.

Save the Children (2023). Putting children first. A rights respecting approach to youth justice in Australia. April 2023.

South Australian Employment Tribunal. (2021). SA public sector enterprise agreement: Salaried 2021. Accessed at: <https://www.saet.sa.gov.au/app/uploads/2021/12/SA-Public-Sector-EA-Salaried-2021-ET-21-05787.pdf>

Studying Law in Australia. (2023). Australia's law schools. Accessed at: <https://cald.asn.au/slia/australias-law-schools/>

Tasmania Legal Aid. (2023). Guidelines for grants. Accessed at: <https://www.legalaid.tas.gov.au/wp-content/uploads/2023/08/Guidelines-23-NLAP-2020-2025-1>

Tasmanian Industrial Commission. (2021). Legal practitioners agreement 2021. Accessed at: https://www.tic.tas.gov.au/_data/assets/pdf_file/0006/670236/Legal-Practitioners-Agreement-2021.pdf

Tasmanian Industrial Commission. (2019). Legal practitioners agreement 2019. Accessed at: https://www.tic.tas.gov.au/_data/assets/pdf_file/0007/562399/T14748-of-2020-Legal-Practitioners-Agreement-2019.pdf

The Legal Services Board and The Law Society. (2020). Legal needs of individuals in England and Wales. January, 2020.

United Nations Office on Drugs and Crime. (2016). Global study on legal aid: Country profiles. Accessed at: https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/GSLA_-_Country_Profiles.pdf.

United Nations. (2013). Principles and guidelines on access to legal aid in criminal justice systems. Vienna. June 2013.

Urbis. (2023). 2022 National profile of solicitors. Prepared for the Law Society of NSW.

Urbis. (2022). 2021 National profile of solicitors. Prepared for the Law Society of NSW.

Urbis. (2018). Review of the National Partnership Agreement for Legal Assistance. Prepared for the Australian Government Attorney-General's Department.

Victoria Law Foundation. (2022). Working in community legal centres in Victoria. Results from the community legal centres workforce project: Workforce profile.

Victoria Law Foundation. (2020). LGBTIQ Legal Need.

Victoria Legal Aid. (2023). Paying for a lawyer. Accessed at: <https://www.legalaid.vic.gov.au/paying-lawyer>

Victoria Legal Aid, (2021). Enterprise agreement 2020–24. Access at: <https://www.legalaid.vic.gov.au/sites/default/files/2022-03/vla-enterprise-agreement-2020-24.pdf>

- Victorian Department of Justice and Community Safety. (2022). Victorian Legal Assistance Strategy 2022-25: Building the foundations. Accessed at <https://www.justice.vic.gov.au/justice-system/legal-assistance/victorian-legal-assistance-strategy-2022-2025#appendix-b-funding-for-legal-assistance>
- Victorian State Government: Treasury and Finance. (2020). Victorian public service enterprise agreement 2020. Accessed at: <https://content.vic.gov.au/sites/default/files/2023-09/Victorian-Public-Service-Enterprise-Agreement-2020.pdf>
- Western Australian Department of Energy, Mines, Industry Regulation and Safety. (2022). Funding to boost health and safety in WA's mining industry. Accessed at <https://www.dmp.wa.gov.au/News/Funding-to-boost-health-and-30754.aspx>
- Western Australian Industrial Relations Commission. (2023). Public sector CSA agreement 2022. Accessed at: <https://downloads.wairc.wa.gov.au/agreements/pub063.pdf>
- Western Australian Industrial Relations Commission. (2022). Aboriginal legal service of Western Australia limited agreement 2022. Accessed at: <https://downloads.wairc.wa.gov.au/agreements/abo009.pdf>
- World Bank. (2019). A tool for justice: the cost benefit analysis of legal aid.
- Yong J, et al. (2018). Do rural incentives payments affect entries and exits of general practitioners? *Soc Sci Med*, 214: 197-205.

Appendices

Terms of Reference

A

Background

Legal assistance plays a vital role in ensuring more equal access to the justice system which is fundamental to our democratic society and the rule of law. Not only does legal assistance facilitate improved outcomes for individuals, it also generates broader benefits to society. Conversely, insufficient legal assistance not only results in injustice and entrenches disadvantage, it can have other profound economic and social costs for individuals, their families and communities.

The Commonwealth and the States and Territories (the States) have a mutual interest and responsibility in the provision of legal assistance services, within available resources. The National Legal Assistance Partnership 2020-2025 (NLAP) is a key mechanism to assist vulnerable people facing disadvantage by keeping the justice system within their reach. Services are delivered through legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander Legal Services, as well as other service models, such as Family Advocacy and Support Services (FASS), Domestic Violence Units (DVUs) and Health Justice Partnerships (HJPs).

The NLAP is subject to an independent review (clauses 81 and 82) which should, at a minimum, consider:

- a) progress towards achieving the overall objective and outcomes of the NLAP
- b) the appropriateness of the NLAP in achieving its objective and outcomes and delivering its outputs
- c) whether mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services funded under the NLAP have been delivered in an effective, efficient and appropriate manner.

It is imperative that the NLAP review informs an improved future legal assistance framework that supports efficient, sustainable, client-centric, evidence-driven service delivery, promoting best practice. This includes a cost-effective and appropriate Commonwealth funding mechanism that fosters a productive partnership between the Commonwealth, the States, and service providers, and advances the importance of legal assistance in improving legal, social and wellbeing outcomes for people in Australia.

Scope of the Review

In accordance with the Federation Funding Agreements Framework and consistent with the NLAP (clause 82), the review will evaluate the extent to which the objective, outcomes and outputs (clauses 13-20) of the NLAP have been achieved, and the NLAP is efficient, effective and appropriate in achieving its policy intent. It will have a particular focus on:

1. A holistic assessment of legal need and all Commonwealth legal assistance funding, including:

- a) the quantum, prioritisation, allocation, distribution mechanism, and timing and length of existing Commonwealth funding, including funding provided under the NLAP and outside the NLAP
 - b) funding allocated across jurisdictions and within each jurisdiction.
 - c) comparative analysis of various funding administration mechanisms, such as direct and indirect distribution of Commonwealth funding under the NLAP, and other legal assistance programs for example Family Violence Prevention Legal Services (FVPLS), and the previous Indigenous Legal Assistance Program 2015-2020 (ILAP) to identify best practice for Commonwealth funding arrangements including principles of self-determination
 - d) the current evidence of unmet legal need and demand, particularly pertaining to the most disadvantaged communities and population groups, such as those in regional, rural and remote locations
 - e) whether existing arrangements can appropriately respond to emergencies and new priorities (e.g., natural disasters, COVID-19 and legislative change).
2. An evaluation of the effectiveness and challenges of service delivery, including:
 - a) the effectiveness and challenges of delivering core legal assistance services of varying complexity and intensity, as well as wrap-around services such as counselling; and the broader role of providers in community education, advocacy and strategic litigation
 - b) integration, collaboration and innovation of service delivery, within the sector and with other areas of social service provision such as health, employment, disability and child protection services, and how the NLAP supports broader government priorities (such as, the National Plan to End Violence Against Women and Children, Australia's Disability Strategy, and the National Framework for Protecting Australia's Children)
 - c) the cultural appropriateness of legal assistance services for First Nations people, acknowledging the diversity of Aboriginal and Torres Strait Islander culture, and the alignment between legal assistance services and the Priority Reforms and Targets under Closing the Gap
 - d) cultural appropriateness of legal assistance services for all national priority client groups under the NLAP.
 3. An evaluation of data collection, performance monitoring and reporting, including:
 - a) the current reporting framework, including its purpose, utility, and data quality, with consideration of the data capability across and the administrative burden on the sector
 - b) exploring alternative frameworks and approaches to improve the data availability, reliability, quality, and better connection with the broad outcomes
 - c) opportunities and strategies to enhance data collection of legal assistance that improve service delivery, guide future outcomes-based frameworks, and align with Closing the Gap Priority Reforms 2 and 42.

Individual evaluations of specific services under the NLAP, such as FASS, DVUs and HJPs, will be outside the scope of the review. However, the impact of these service models will be considered as part of the review.

Process

The review will adopt a transparent and collaborative approach to consultation and will consult widely and extensively. At minimum it will enable inputs through submission and/or consultation from:

- Legal Assistance Inter-Governmental Committee (IGC) and its members
- National Legal Assistance Advisory Group and its members, and other advisory bodies as appropriate
- Peak bodies and providers of the legal assistance sector at all levels

- Sectors and service streams that interact with legal assistance, including government departments and institutions, and non-government bodies, such as research institutions, peaks and providers in relevant social and health sectors
- Clients (existing and potential) of legal assistance services

The reviewer should strive towards best practice in engaging, consulting and collaborating with Aboriginal and Torres Strait Islander legal service providers, peak bodies and communities in a genuine, comprehensive and culturally appropriate manner that values Aboriginal and Torres Strait Islander experience and expertise. The review methodology should align with the Closing the Gap Priority Reform Areas which highlight the importance of empowering and partnering with Aboriginal and Torres Strait Islander peoples. A draft review report and the final report will be provided to all Attorneys-General around December 2023 (clause 81). The final report will be publicly released by the Commonwealth within 3 months of completion of the review (clause 86).

Consultations and submissions

B

Consultations

Stakeholder	Date	Format
Law Council of Australia	27-Jun	Webex
Health Justice Australia	28-Jun	F2F
Tasmanian Department of Justice	3-Jul	Webex
Victorian Law Foundation	3-Jul	Webex
South Australian Attorney-General's Department	4-Jul	Webex
Northern Territory Department of the Attorney General and Justice	4-Jul	Webex
Western Australian Department of Justice	5-Jul	Webex
Victorian Legal Aid	5-Jul	Webex
Deputy Chief Justice, Federal Circuit & Family Court of Australia	6-Jul	Teams
Commonwealth Attorney General	10-Jul	F2F
Queensland Department of Justice and Attorney-General	14-Jul	Teams
NSW Department of Communities and Justice	14-Jul	Teams
Australian Statistician	14-Jul	F2F
FVPLS Forum Executive	17-Jul	Teams
CLCA	18-Jul	F2F
Refugee Advice & Casework Service	18-Jul	F2F
Arts Law Centre	18-Jul	F2F
Law Society of New South Wales	19-Jul	F2F
Law and Justice Foundation NSW	19-Jul	F2F
Aboriginal Legal Service (NSW/ACT)	19-Jul	F2F
Australian Pro Bono Centre	19-Jul	F2F
Western Australian Attorney General	20-Jul	Teams
Victorian Department of Justice and Community Safety	24-Jul	Teams
Australian Capital Territory Government Justice and Community Safety Directorate	24-Jul	F2F
Department of Social Security	26-Jul	Teams
National Emergency Management Agency	31-Jul	F2F
National Legal Aid	31-Jul	Teams

Stakeholder	Date	Format
Productivity Commission	4-Aug	Teams
Northern Territory Attorney General	4-Aug	Teams
Commonwealth Attorney General's Office	10-Aug	F2F
Commonwealth Minister for Indigenous Australians Office	10-Aug	F2F
Professor Simon Rice, University of Sydney Law School	14-Aug	F2F
Legal Aid New South Wales	14-Aug	F2F
CLC NSW	15-Aug	F2F
New South Wales Attorney General	15-Aug	F2F
National Indigenous Australians Agency	18-Aug	Teams
Commonwealth Minister for Veterans Affairs, Minister for Defence Personnel	21-Aug	F2F
Legal Aid ACT	21-Aug	F2F
Australian Capital Territory CLC Forum	21-Aug	F2F
Australian Council of Social Services	22-Aug	Teams
Queensland Law Society	23-Aug	F2F
CLC Queensland	23-Aug	F2F
Queensland Legal Aid	24-Aug	F2F
Aboriginal Family Legal Services Queensland	24-Aug	F2F
Queensland CLC forum - Brisbane	25-Aug	F2F
Department of Justice and Attorney General Queensland	25-Aug	F2F
Aboriginal and Torres Strait Islander Legal Service Queensland	25-Aug	Teams
NATSILS Members Forum	28-Aug	F2F
Economic Justice Australia	29-Aug	Teams
New South Wales Minister for Aboriginal Affairs	29-Aug	F2F
Youth Law Australia	1-Sep	F2F
Chief Justice of South Australia	4-Sep	F2F
Westside Lawyers	4-Sep	F2F
Family Violence Legal Service of South Australia	4-Sep	F2F
Legal Services Commission South Australia, Adelaide Office	5-Sep	F2F
Aboriginal Legal Rights Movement, Adelaide Office	5-Sep	F2F
South Australian Attorney-General's Department	5-Sep	F2F
CLC Forum South Australia	5-Sep	F2F
Aboriginal Legal Rights Movement, Port Augusta Office	6-Sep	F2F
Judge Heath Barley, District Court of South Australia	6-Sep	Phone
Magistrate David McLeod, Resident Magistrate in Port Augusta	7-Sep	F2F
Legal Services Commission South Australia, Port Augusta Office	7-Sep	F2F
Law Society of Tasmania	11-Sep	F2F
Women's Legal Services Tasmania	11-Sep	F2F
Tasmanian Aboriginal Legal Service	11-Sep	F2F
Tasmanian Law Institute	11-Sep	F2F

Stakeholder	Date	Format
Tasmania CLC Forum	11-Sep	F2F
Tasmanian Department of Justice	12-Sep	F2F
Legal Aid Tasmania,	12-Sep	F2F
North West Community Legal Centre	12-Sep	F2F
Launceston CLC	13-Sep	F2F
Asylum Seeker Resource Centre	14-Sep	F2F
Law Institute of Victoria	14-Sep	F2F
Legal Aid Victoria	14-Sep	F2F
Victorian Aboriginal Legal Service	14-Sep	F2F
Victoria Law Foundation	14-Sep	F2F
Eastern CLC	15-Sep	F2F
Disaster Legal Help	15-Sep	F2F
Victorian CLC Forum	15-Sep	F2F
Legal Aid Queensland - Cairns Office	18-Sep	F2F
Queensland CLC forum - Cairns	18-Sep	F2F
Department of Justice and Attorney General First Nations Co-ordinator	18-Sep	F2F
Queensland Indigenous Family Violent Legal Service	19-Sep	F2F
Legal Aid Queensland Preferred Practitioners - Cairns	19-Sep	F2F
Aboriginal and Torres Strait Islander Legal Service - Mt Isa Office	20-Sep	F2F
Central Qld Community Legal Centre	20-Sep	F2F
Legal Aid Queensland - Mt Isa Office	20-Sep	F2F
Wirringa Baiya Aboriginal Women's Legal Centre	25-Sep	F2F
Aboriginal Legal Service (NSW/ACT)	25-Sep	F2F
Relationships Australia	25-Sep	F2F
Financial Rights Legal Centre	27-Sep	F2F
New South Wales Department of Communities and Justice	27-Sep	F2F
New South Wales CLC Forum	27-Sep	F2F
Family Court of Western Australia	29-Sep	F2F
Law Society of Western Australia	29-Sep	F2F
Southern Aboriginal Legal Service	29-Sep	F2F
Western Australia CLC Forum	2-Oct	F2F
Aboriginal Family Legal Service	2-Oct	F2F
Western Australian Department of Justice	2-Oct	F2F
Aboriginal Legal Service of Western Australia	3-Oct	F2F
Law Access	3-Oct	F2F
Legal Aid WA	3-Oct	F2F
Kimberley Community Legal Service	4-Oct	F2F
Legal Aid WA – Broome Office	4-Oct	F2F
Aboriginal Legal Service – Broome	5-Oct	F2F
Magistrate Deen Potter, Resident Magistrate Broome	6-Oct	Phone

Stakeholder	Date	Format
Chief Judge of the Local Court of the Northern Territory	9-Oct	F2F
Northern Territory Department of Attorney-General and Justice	9-Oct	F2F
Northern Australia Aboriginal Family Legal Service	9-Oct	F2F
Law Society of the Northern Territory	9-Oct	F2F
CLC Forum Northern Territory	9-Oct	F2F
Bush Court – Wadeye, accompanied by the Attorney General of the Northern Territory including meetings with Judge, interpreters and community	10-Oct	F2F
Darwin Community Legal Service	11-Oct	F2F
Northern Australia Aboriginal Justice Agency	11-Oct	F2F
Chief and Deputy Chief Justices and others, Federal Circuit & Family Court of Australia	12-Oct	Teams
Public Interest Advocacy Centre	12-Oct	Teams
Commonwealth Ombudsman	16-Oct	F2F
Victorian Department of Justice and Community Safety	16-Oct	Teams
Australian Capital Territory Attorney General	16-Oct	F2F
Australian Services Union - officials	17-Oct	Teams
Secretary - Commonwealth Department of Finance	17-Oct	F2F
Administrative Appeals Tribunal	17-Oct	F2F
Secretary – Commonwealth Department of the Attorney General	18-Oct	F2F
Women's Legal Services Australia	18-Oct	Teams
Financial Counselling Australia	18-Oct	Teams
President - Law Reform Commission	18-Oct	Teams
Marninwarrtikura Women's Resource Centre	18-Oct	Teams
Secretary – Commonwealth Department of the Treasury	20-Oct	F2F
Gippsland Community Legal Service	23-Oct	F2F
Gippsland Legal Assistance Forum	23-Oct	F2F
Chair, Law Council of Australia Access to Justice Committee	23-Oct	F2F
Refugee Legal	24-Oct	F2F
Australian Services Union – organisers forum	24-Oct	Teams
Private Practitioners Forum – hosted by Arnold Bloch Liebler, Sydney	25-Oct	F2F
knowmore	27-Oct	F2F
Commonwealth Office for Women	30-Oct	Teams
Commonwealth Attorney General	30-Oct	F2F
Commonwealth Department of Home Affairs	30-Oct	F2F
Central Australian Aboriginal Family Legal Unit	30-Oct	Teams
Legal Service Commission of South Australia	1-Nov	Teams
Secretariat of National Aboriginal and Islander Child Care	1-Nov	Teams
Wirringa Baiya Aboriginal Women's Legal Services	6-Nov	F2F
Resilient Lismore	6-Nov	F2F
Legal Aid New South Wales, Lismore Office	7-Nov	F2F

Stakeholder	Date	Format
Aboriginal Legal Service (NSW/ACT), Lismore Office	7-Nov	F2F
Northern Rivers CLC	7-Nov	F2F
Aboriginal Legal Service (NSW/ACT), Moree Office	8-Nov	F2F
Legal Aid New South Wales, civil and family law outreach program, Moree	8-Nov	F2F
Thiyama-li Family Violence Service	8-Nov	F2F
Access to Justice Technology Network	9-Nov	F2F
Deputy Chief Magistrate, New South Wales Local Court	9-Nov	F2F
Federation of CLCs Victoria	10-Nov	F2F
Family Law Council	10-Nov	Teams
Department of Social Services	13-Nov	Teams
Australian Capital Territory Minister for Aboriginal and Torres Strait Islander Affairs	15-Nov	F2F
Djirra	28-Nov	F2F
Justice James Henry, Supreme Court of Queensland, Cairns	30-Nov	Teams
Commonwealth Attorney General	15-Dec	Teams
Commonwealth Attorney General	5-Mar	F2F

Note: excluded from this list are meetings with official of AGD to discuss data, project administration and Commonwealth policy positions

Submissions

Note: Submission numbers were an internal numbering system and reflect total documents (i.e., if 3 documents were received from one organisation, each document was given an ID). However, the organisation is only counted once in the table below as having made a submission. Therefore, there are more submission IDs than submitting organisations. 3 anonymous submissions were received and are not captured in the register below.

Sub. #	Submission
1	National Regional, Rural, Remote and Very Remote Community Legal Network (4Rs Network)
2	Aboriginal Family Legal Service Western Australia
3	Aboriginal Legal Rights Movement
4	Access to Justice & Technology Network
5	ACT Government
8	Australian Legal Assistance Forum
9	Australian Pro Bono Centre
10	Basic Rights Queensland
11	Bruce Cameron
12	Caxton Legal Centre
13	Central Tablelands and Blue Mountains
14	CLC Australia
15	CLC NSW
16	CLC Tasmania
17	CLC Queensland
18	Community Legal WA
19	Coalition of Peaks
20	Commonwealth Ombudsman
21	Consumer Action Law Centre
22	Consumer Credit Legal Service WA
23	Darwin Community Legal Centre
24	Defence and Veterans Legal Service
25	Tasmanian Department of Justice
27	Eastern Community Legal Centre
28	Economic Justice Australia
29	Family & Relationships Services Australia
30	Family Law Practitioners' Association of WA
31	Far West CLC
32	Federation of CLCs Victoria
33	First Nations Women's Legal Services QLD
34	Gippsland CLS
35	Health Justice
38	Hume Riverina CLS

Sub. #	Submission
39	Inner City LC
40	Justice Connect
42	Launceston Community Legal Centre
43	Law Access
44	Law and Advocacy Centre for Women
45	Law and Justice Foundation of NSW
46	Law Institute of Victoria
47	Legal Aid NSW
48	Legal Aid NT
49	Legal Aid QLD
50	Legal Aid WA
51	Legal Services Commission South Australia
52	LGBTILS
53	Marrickville Legal Centre
54	Migrant Justice Institute
55	MinterEllison
56	National Indigenous Australians Agency
57	National Joint Submission on Disaster Response
63	National Legal Aid
64	Northern Territory's Department of the Attorney-General and Justice
66	Canberra Community Law
70	Monica Taylor
76	Specialist Refugee and Immigration Legal Centres
83	NSW Department of Communities and Justice
84	Public Interest Advocacy Centre
85	Pilbara Community Legal Service
87	Relationships Australia
88	Respect@Work
89	RSL Australia
90	SCALES
91	Social Security Rights Victoria
92	South-East Monash Legal Service
93	Southside Justice
94	Street Law Centre WA Inc
95	TASC Legal and Social Justice Services
97	Tenants' Union of NSW
98	Toongabbie Legal Centre
99	Townsville Community Law
100	Transparency International
101	University of Melbourne Student Union Legal Service

Sub. #	Submission
102	UNSW / Kaldor Centre for International Refugee Law
103	Victoria Law Foundation
104	Victoria Legal Aid
105	Victorian Sector Outcomes Pilot
106	Women's Legal Service Victoria
107	Women's Legal Services Australia
108	YFS Legal
109	Youth Law Australia
110	Youthlaw (VIC)
111	Aboriginal Legal Service WA
114	Australian Copyright Council
115	Australian Services Union
116	Brimbank Melton CLC
117	Circle Green Community Legal
118	Commonwealth Attorney-General's Department
119	Environmental Defenders Office
121	Indigenous Law Students and Lawyers Association of Victoria Tarwirri Inc
122	inTouch
123	Westjustice
125	Private Law Firms Victoria
126	Queensland Department of Justice and Attorney-General
127	Administrative Appeals Tribunal
128	ADO
130	Department of Veterans' Affairs
131	Victorian Department of Justice and Community Safety
133	Monash Law Clinics
134	National ATSILS
135	National FVPLS Forum
137	Tasmanian Aboriginal Legal Service
138	Victorian Aboriginal Legal Service
139	Financial Counselling Australia
140	Aboriginal Legal Services (NSW /ACT)
142	Secretariat of National Aboriginal and Islander Child Care (SNAICC)
143	South Australian Attorney-General's Department
145	knowmore
146	North Australian Aboriginal Justice Agency (NAAJA)
147	Western Sydney Community Legal Centre
148	Law Council of Australia

Means tests



Table C.1 Means tests and contributions – comparative table (as of 30 June 2023)

	LAACT	TLA	LANSW	LAQ	LSCSA	NTLAC	VLA	LAWA
Income thresholds								
Most recently published HPL figure	\$405.62 Head in workforce, cost other than housing, single person December quarter 2022, published May 2023							
Date income test threshold last updated	March 2015	01/12/2016	1/05/2023	November 2018	14/04/23	01/06/2022	01/03/2016	01/07/2017
Maximum net assessable income (i.e., following allowable deductions) for no contribution or minimum contribution (i.e., 'income threshold')	\$411	\$525	\$213	\$695	\$490	\$451	\$360	\$407
Percentage of HPL used to calculate income for no/minimum contribution	120%	N/A	90%	N/A	120%	110%	105%	110%
Current maximum income for no or minimum contribution as percentage of most recently published HPL figure	101%	N/A	53%	N/A	120%	111%	89%	100%
Maximum income for no or minimum contribution calculated on most recently published HPL using applicable Commission %	\$487	N/A	\$365	N/A	\$490	\$446	\$426	\$446

	LAACT	TLA	LANSW	LAQ	LSCSA	NTLAC	VLA	LAWA
Income test cut off (e.g., no aid contributions exceed cost)	\$411	\$1,025	\$450	\$2,200 (gross amount for couple with 5 children)	\$700	\$581 (Cat 1) \$661 (Cat 2) \$661 (Cat 3)	\$469 (Cat 1) \$540 (Cat 2) Between \$361 a week & less than the estimated legal costs (Cat 3)	\$587 (Cat 1) \$557 (Cat 2) \$667 (Cat 3)
Benchmark for income test cut off expressed as a % of most recently published HPL	120%	N/A	134%	N/A	173%	143% (Cat 1) 163% (Cat 2) 163% (Cat 3)	135% (Cat 1) 155% (Cat 2) 105% - 155% (Cat 3)	164% (Cat 1) 156% (Cat 2) 187% (Cat 3)
Income test cut off if most recently published HPL applied	\$487	N/A	\$544	N/A	\$700	\$580 (Cat 1) \$661 (Cat 2) \$661 (Cat 3)	\$548 (Cat 1) \$629 (Cat 2) Between \$426 a week & less than the estimated legal costs (Cat 3)	\$665 (Cat 1) \$633 (Cat 2) \$759 (Cat 3)
Current Income test cut off expressed as a % of most recently published HPL	101%	N/A	111%	N/A	173%	143%	116% (Cat 1) 133% (Cat 2) 89% (Cat 3)	145% (Cat 1) 137% (Cat 2) 164% (Cat 3)
Asset limits								
Date Assets Test Thresholds – when last updated	Mar-15	Jul-16	1/05/2023	29/03/2019	14/04/2023	1/06/2022	1/10/2018	1/07/2017
Home equity — capital city	\$525,600	\$370,000	\$815,000	\$146,000	\$670,000	\$415,000	\$500,000	\$362,060
Home equity — Other areas	\$525,600	\$270,000 (Nth) \$259,250 (Nth West)	\$815,000	\$146,000	\$670,000	\$415,000	\$500,000	\$339,000 (Sth) \$401,000 (Nth)
Car equity	\$16,790	\$11,500	No cap, one car per adult	\$16,000	\$30,000	\$19,400	\$20,000	\$60,000
Savings				\$2,000				

	LAACT	TLA	LANSW	LAQ	LSCSA	NTLAC	VLA	LAWA
Farm/business equity —homeowner no FAP	\$202,000	\$118,000	\$287,750	\$166,750	\$670,000	Not specified but included in total home equity	\$161,500	\$250,000
Farm/business equity — homeowner with FAP	\$286,500	\$167,000	\$287,750	\$236,500	\$670,000	As above	\$229,000	\$375,000
Farm/business equity – non homeowner no FAP	\$348,000	\$202,000	\$287,750	\$287,750	\$670,000	As above	\$278,500	\$450,000
Farm/business equity – non homeowner with FAP	\$433,500	\$251,000	\$287,750	\$287,500	\$670,000	As above	\$278,500	\$450,000
Allowable assets – no FAP	\$1,200	\$740	\$4,660	\$930	\$3,000	\$1,680	\$1,095	\$1,201
Allowable assets – with FAP	\$2,300	\$1,490	\$5,900	\$1,880	\$5,000	\$3,220	\$2,190	\$2,402
Amount of minimum equity before imposition of security	No minimum	No minimum	No min equity but min value of \$200,000	N/C	\$2,350	No minimum	No minimum	No minimum

Source: National Legal Aid, 2023

Areas of unmet need

D

There are geographic areas that have unmet legal need, either because there are no services operating in those locations or because additional services are required. The table below lists areas of unmet need identified through submissions and consultations. The list is by no means exhaustive.

Table D.1 Potential regions with unmet need

Jurisdiction	Region	Sub sector	Submission
NSW and ACT	Cooma – Snowy Mountains	LAC	Legal Aid NSW (sub.47)
	Far South Coast	LAC	Legal Aid NSW (sub.47)
	Southern Tablelands	LAC	Legal Aid NSW (sub.47)
	Goulburn	LAC	Legal Aid NSW (sub.47)
	Tweed Heads	LAC	Legal Aid NSW (sub.47)
	Central Coast	ATSILS	NATSILS (sub.134)
	Southwestern Sydney Port Macquarie	ATSILS	NATSILS (sub.134)
	Grafton	ATSILS	NATSILS (sub.134)
	Tweed Heads	ATSILS	NATSILS (sub.134)
	Albury	ATSILS	NATSILS (sub.134)
Victoria	Geelong	ATSILS	NATSILS (sub.134)
	Frankston	ATSILS	NATSILS (sub.134)
	Bairnsdale	ATSILS	NATSILS (sub.134)
	Western Melbourne	ATSILS	NATSILS (sub.134)
	Wodonga	ATSILS	NATSILS (sub.134)
	Horsham	ATSILS	NATSILS (sub.134)
Queensland	Gulf region	ATSILS	NATSILS (sub.134)
	Cape region	ATSILS	NATSILS (sub.134)
	Torres Strait region	ATSILS	NATSILS (sub.134)
Northern Territory	Darwin	ATSILS	Legal Aid NT (sub.48)
	Katherine	ATSILS	Legal Aid NT (sub.48)
	Alice Springs	ATSILS	Legal Aid NT (sub.48)
Western Australia	Broome	ATSILS	ALSWA (sub.113)
	Kununurra	ATSILS	ALSWA (sub.113)
	South Hedland	ATSILS	ALSWA (sub.113)

Jurisdiction	Region	Sub sector	Submission
	Carnarvon	ATSILS	ALSWA (sub.113)
	Geraldton	ATSILS	ALSWA (sub.113)
	Metropolitan locations (Midland, Fremantle, Joondalup, Rockingham)	ATSILS	NATSILS (sub.134)
	Regional, Rural and Remote Locations (Onslow, Exmouth, Tom Price, Busselton, Meekatharra, Newman, Fitzroy Crossing, Narrogin, Esperance, Karratha)	ATSILS	NATSILS (sub.134)
South Australia	Mt Gambier	ATSILS	NATSILS (sub.134)
	Bordertown	ATSILS	NATSILS (sub.134)
	Millicent	ATSILS	NATSILS (sub.134)
	Naracoorte	ATSILS	NATSILS (sub.134)
	Christie's Beach	ATSILS	NATSILS (sub.134)
	Mt Gambier	LAC	Legal Services Commission SA (sub.51)
	Berri	LAC	Legal Services Commission SA (sub.51)
	Waikerie	LAC	Legal Services Commission SA (sub.51)
Tasmania	North West	CLC	Consultation feedback
	West Coast	CLC	Consultation feedback

Source: *Synthesis of submissions*

Barriers to bottom-up costing

E

E.1.1 Barriers to conducting a bottom-up costing exercise

It is essential to understand the level and kind of funding required to appropriately deliver legal assistance services, and how to differentiate funding allocations based on location, scale, client groups and areas of law. Consequently, considerable effort was dedicated to determining how the Review might best approach a service costing exercise.

As a starting point, the team examined whether a bottom-up unit costing exercise could be used to understand the cost to deliver legal assistance services. This was ultimately unsuccessful, largely because of a lack of robust data on legal need and the cost structure of service providers. Further details on the challenges faces can be found below.

E.1.2 Intent of the service costing exercise

The findings from a bottom-up service costing exercise, if possible, would represent an important reference point from which to inform the Review's recommendations regarding legal assistance funding. It would inform both: 1) the total quantum of funding required to meet legal need and 2) how funding should be directed to address particular areas of unmet need that face disproportionate costing challenges.

E.1.3 Approach to conducting service costing

While there is some detail to consider in conducting a service costing exercise, the broad steps are relatively straightforward, involving:

- **Data Collection:** this step involves collecting financial and activity data from service providers. The data would need to capture the costs involved in delivering the various service types or categories and the number of services by category currently delivered (or in the future required) for this cost.
- **Costing Analysis:** this step involves estimating the unit cost of legal assistance service delivery. This needs to be done by provider, and capture variations in service delivery, whereby unit costs would reflect the type of service delivered, the location in which it is delivered, the area of law the service related to and any other factors that may lead to variation in service cost.
- **Validation and Aggregation:** this step involves validating costing analysis results with service providers and conducting additional logic checks to test the accuracy of results as well as aggregating the analysis to determining the overall cost of legal assistance delivery. While it is likely service providers will be consulted during the costing analysis step, it is important that results are verified with these stakeholders before being finalised. Aggregation involves determining the overall cost of legal assistance delivery (based on the bottom-up costing

results) and identifying the range of unit costs, based on the categorical factors captured in the costing analysis step (such as service types).

The below section outlines the Review team's consideration of the potential approaches and associated risks and assessment of bottom costing for this review.

E.1.4 Assessment of the bottom-up costing approach

The key challenges are summarised below.

Service categories: A key requirement is to have a well-established taxonomy of services to which costs can be allocated. These services need to be consistently defined and used to capture activity by service providers. The main approach to coding various activities across the legal assistance sector is informed by the *National Legal Assistance Data Standards Manual*. Providers have raised concerns with the guidance outlined in this publication, including the equitability of counting rules, and the sufficiency of service types.

There are serious concerns about the accuracy, comparability and completeness of service data available for the costing exercise.

Delineation of NLAP / Non-NLAP activity: Providers in the legal assistance sector are primarily funded under the NLAP agreement. However, many providers also receive funding to deliver services outside of the agreement. This includes other State and Commonwealth Government grants, as well as philanthropic funding and pro bono contributions. This arrangement creates complications in reporting, where some providers will capture and report, and potentially duplicate, activity data in separate systems depending on the funding arrangement. It is also the case that some providers pool or patch together funding to deliver a portfolio of NLAP and non-NLAP services, making it difficult to isolate the service costs.

The inconsistent reporting and potentially blurred management of NLAP and non-NLAP funded activity would likely compromise data submitted for the costing exercise.

Cost apportionment: Cost apportionment is the most challenging step in a service costing exercise. It relies on accurate financial and activity data and involves allocating service costs to services to determine a unit cost for different services. While some providers indicated they had commenced work to estimate the amount of time spent undertaking different activities, this type of information was not routinely captured across the legal assistance sector. Furthermore, guidance from the sector was that there was a considerable range of variance within the services, suggesting that more work was required to categorise services or capture the key drivers influencing the time and cost to provide services. Lastly, this activity would need to be completed by, or with significant input from, representatives from legal assistance providers, which posed capacity and capability risks.

There are serious limitations in the suitability of data and availability of sector representatives to assist in performing cost apportionment for the costing exercise.

Cost inclusions / exclusions: The Review also found a wide range of service models that different service providers used to deliver services. Some providers operated from premises they owned outright, while others incurred leasing costs. There was also variation in the condition of building, vehicles and equipment used by services providers.

Such variances undermine the comparability of results from the costing exercise, and these variances could not all be identified and managed within the Review timeframe.

Validation constraints: Given the importance of the costing exercise, and the findings it would inform, validation of the accuracy and completeness of its analysis is a critical step. This was not possible within the Review's timeframe, particularly given many providers are already facing resourcing constraints and the imposition of submitting data, and then responding to validation requests would be too onerous for many in the sector.

Validation of a bottom-up costing approach was not feasible within the Review's timeframes.

Implications of incorrect information: Finally, but not least, the above factors meant that the costing exercise may ultimately come down to a series of best-estimate assumptions, which in many respects defeats the purpose of a bottom-up approach. While assumptions are a reality for many exercises of this nature, in this case such assumptions may result in major limitations for the overall results, especially as incorrect assumptions at the bottom will be amplified significantly at the top.

The impact of inaccurate bottom-up assumptions that are unable to be corrected would result in unacceptable results in aggregate.

For the above reasons, the team determined that a top-down, rather than bottom-up approach to assessing the adequacy of funding would be more appropriate.

