Indigenous Legal Assistance Programme
Funding Allocation – 2015-2020

INTRODUCTION

This paper provides information on the allocation of Commonwealth funding under the Indigenous Legal Assistance Programme (ILAP). The Commonwealth will continue to directly administer funding for Indigenous legal assistance from 2015-16. Funding is provided to Indigenous legal assistance providers under grant arrangements, with funding agreements in place with each provider.

The Commonwealth Attorney-General's Department (AGD) has developed a new funding allocation model (FAM) for allocating funding for Indigenous legal assistance. Separate to the ILAP FAM, AGD has also developed two new FAMs to allocate funding for legal aid commissions (LACs) and community legal centres (CLCs) under the National Partnership Agreement on Legal Assistance Services (2015-2020).

The FAMs provide an evidence base for allocating available Commonwealth funding between jurisdictions to support similar access to services across Australia. The models achieve this by accounting for differences in legal need and the cost of delivering comparable legal assistance services, between jurisdictions.

The new ILAP model improves upon previous iterations by better accounting for a range of factors including Indigenous population, levels of socio economic disadvantage and geographical remoteness. The new model also uses a more nuanced method of accounting for legal need, which is supported by statistical analysis and is consistent with suggestions made by the Productivity Commission.[1]

OVERVIEW OF THE FUNDING ALLOCATION MODEL - ILAP

The ILAP model is comprised of four main components:

1) **Establishment cost**
2) **Population**
3) **Legal need**
4) **Cost factors**

1) Establishment cost

Funding is allocated to each jurisdiction to account for the establishment and operational costs of delivering services, such as rent, equipment hire and other administrative overheads. The funding a jurisdiction receives under this component increases with its Indigenous population size and is adjusted for 'economies of scale' (the cost advantage an organisation obtains as the size of its operations increase). This means that jurisdictions with a smaller Indigenous population receive a larger portion of establishment cost funding relative to their Indigenous population size.

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[1] Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Vol2, Canberra, page 748.

2) Population

Funding is allocated using each jurisdiction's share of the national Indigenous population. Indigenous population growth projections were used to keep this allocation accurate over the span of the funding period.[2] The use of Indigenous population growth projections in the FAM does not impact the overall amount of Commonwealth funding provided under the ILAP Funding Agreements. This is determined by the Australian Government in the Federal Budget.

What is the impact of accounting for population growth?

If a jurisdiction's Indigenous population is growing faster than the national average, it will receive a progressively larger share of Commonwealth funding over the course of the funding period, all else being equal. Conversely, if a jurisdiction's Indigenous population is growing more slowly than the national average, it will receive a progressively smaller share of available funding.

3) Legal need indicators

The legal need component allocates funding using the number of Indigenous people in specific high disadvantaged groups, to account for differences in the relative need for services between jurisdictions. If a jurisdiction has a high levels of Indigenous disadvantaged, it will receive a larger portion of funding under the legal need component.

The chosen modelling approach applies Indigenous population and service access drivers together with a range of disadvantage drivers (as listed below). Weightings by law type were not used in the ILAP model due to the high level of disparity in the services being delivered by Indigenous legal assistance providers.

Regression analysis similar to the LACs and CLCs models was not used in the ILAP model, as it showed no noticeable difference in demand drivers for services by law type between jurisdictions.

What are the disadvantage drivers?

The disadvantage drivers used in the ILAP model are (in alphabetical order):

- disability
- drug/alcohol use and mental illness
- Indigenous language speakers (who also do not speak English well)
- low education levels
- low income
- members of the stolen generation
- number of overcrowded households
- prisoners
- single parent families

How were the disadvantage drivers determined?

A proportion of overall funding is allocated to take into account the number of Indigenous people who are more likely to require and be eligible for legal assistance, relative to the general Indigenous population. The drivers that reflect the need for Indigenous legal assistance have been identified through data analysis and consultation with stakeholders via an online survey and written submissions.

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[2] The ILAP model uses Indigenous population projections sourced from the *Australian Bureau of Statistics – Data series 3238.0: Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2001 to 2026.*

Commonwealth Attorney-General's Department, June 2015

There was a high level of agreement between survey respondents and in written submissions, with the incidence of poor education, mental illness or disability, living in a remote area, low income and unemployment and drug or alcohol abuse or dependency being identified as key drivers of need for legal assistance for Indigenous Australians.

As a majority of the work undertaken by Indigenous legal assistance providers is criminal law, it was impossible to construct a "disadvantage" based model for Indigenous legal assistance using regression models to identify appropriate factors and weights. Instead an approach that combines Indigenous population, Indigenous population remoteness, and a range of similarly weighted disadvantage variables was used.

Due to the unavailability of consistent national data around incidence of family violence, it is not used in the ILAP model. Low income is prioritised over unemployment due to a significant overlap between the two drivers.

How are the disadvantage drivers weighted?

As mentioned above, the ILAP model includes a variety of drivers to account for differing levels of demand for services between jurisdictions.

Each disadvantage driver was originally weighted equally. Adjustments to weightings that were based on evidence and feedback from stakeholders were then considered. AGD was mindful of both the high prevalence of legal problems experienced by Indigenous Australians, as well as difficulties in accessing services, such as geographical remoteness and language barriers. The adjusted disadvantage drivers are detailed below.

Drug/alcohol use and mental illness

It was identified in the survey and submissions as a key driver for demand. Substance abuse and mental health are some of the most important issues affecting Indigenous prisoner populations and impacting on the criminal justice system.

Low education levels

Also identified in the survey and submissions as a key driver for demand, low levels of educational attainment are linked with high levels of unemployment, which consequently increase an individual's degree of social and economic disadvantage in the long term. This effect is stronger for Indigenous Australians than for non-Indigenous Australians.

The disadvantage drivers used in the ILAP model and their relevant weightings are set out below.

Table 4.1 – Disadvantage drivers and weightings

	Disadvantage Drivers	Weightings
Indigenous Legal Assistance Programme model	Disability	1
	Drug/alcohol use and mental illness	2
	Indigenous language speakers (who also do not speak English well)	1
	Low education levels	2
	Low income	1
	Members of the stolen generation	1
	Number of overcrowded households	1
	Prisoners	1
	Single parent families	1

Table 4.2 – Service access and weighting

	Service Access Driver	Weightings
Indigenous Legal Assistance Programme model	Geographic area	0.15

Note: Geographical area is not a driver of disadvantage, but is a factor that affects access to services. It has been included to take into account the distances covered by Indigenous legal assistance providers to deliver services to remote locations.

4) Cost factors

The cost factors account for differences between jurisdictions in the cost of delivering Indigenous legal assistance services. These factors are applied as ratios to all funding allocated by the FAM. Three factors have been used, which are sourced from Commonwealth Grants Commission (CGC).

1) **The CGC wage cost factor:** Accounts for variation in the wages paid to otherwise comparable employees between jurisdictions due to differences in labour markets.

2) **The CGC regional factor:** Accounts for variation in the cost of delivering services between regions, such as higher wages needed to entice people to work in more remote locations and the higher cost of goods.

3) **The CGC service delivery scale factor:** Accounts for the increased cost of delivering services to small isolated communities, and differences in the number of people that reside in such communities, between jurisdictions.

The values for each of the cost factors are set out below.

Table 1 – Cost factor values

	CGC Wage Cost Factor	CGC Service Delivery Scale Factor	CGC Regional Factor
NSW/ACT	1.009	0.998	0.986
VIC	0.980	0.995	0.980
QLD	0.981	1.002	1.020
SA	0.980	1.006	1.005
WA	1.063	1.006	1.017
TAS	0.959	1.005	1.051
NT	1.072	1.059	1.255

Note: The cost factors are expressed as ratios relative to a national average of 1. For example, NSW has a CGC Wage Cost Factor of 1.009 meaning that costs are 0.9% greater than the national average.

FURTHER INFORMATION

What are the differences between the old and new model?

The previous FAM was originally based on the 1999 Commonwealth legal aid model and last revised in 2008.

The previous model (2008) and the new version do not determine the total amount of funding required to meet legal need, but use factors to account for differences in the relative need for Indigenous legal assistance between jurisdictions.

The major differences between the old and the new model are as follows:

- The old model used demographic factors such as age and gender, which respondents to the online service did not consider to be important. The new model focuses on the forms of socio-economic disadvantage that have the greatest influence on demand for Indigenous legal assistance services.
- The 'Indigenous-only language cost factor' in the previous model has been replaced by 'Indigenous language speakers (who also do not speak English well or not at all)'.
- The new model also includes several additional drivers of demand such as disability, drug/alcohol use and mental illness, number of overcrowded households and number of prisoners.

What proportion of funding is allocated using each component?

The establishment cost component distributes approximately 13% of Commonwealth funding for Indigenous legal assistance providers.

Once the establishment cost is allocated, 52.5% of the remaining funding is allocated by the population component and 34.5% is allocated by the legal need and cost factor components. This split of funding between population and legal need emphasises Indigenous population as the single greatest driver of demand followed by the disadvantage drivers.

Why were some groups with characteristically high legal need not included?

AGD acknowledges that the FAM does not incorporate data on all forms of disadvantage or vulnerability that may lead to legal problems. There are a variety of reasons for this, such as:

1. no nationally consistent data set being available for analysis, or
2. another data set covered the same, or a very similar, group of disadvantaged or vulnerable people.

The FAM includes a variety of drivers to account for differing levels of demand for services between jurisdictions, as informed by stakeholder views, and in doing so accounts for relative legal need between jurisdictions more comprehensively than the previous model.

Why do the disadvantage drivers differ from the list of priority clients?

They serve different purposes. The disadvantage drivers in the FAM account for the relative need for Indigenous legal assistance between jurisdictions. While the list of priority clients in the Funding Agreement is guidance from the Commonwealth on the planning and targeting of services.

The disadvantage drivers are representative of the broader section of the Indigenous population who are more likely to require legal assistance due to circumstances of disadvantage and vulnerability. They reflect the most influential drivers of demand for Indigenous legal assistance, based on statistical analysis of service data and consultation with stakeholders. While the drivers provide a valid approximation of legal need at the jurisdictional level, they do not exhaustively cover the many forms of disadvantage that should be considered in the planning and delivery of services.

DATA SETS USED FOR DISADVANTAGE DRIVERS

Table 6 – Indigenous Legal Assistance Services model

Disadvantage Drivers	Data set(s)	Source
Disability	Disability support and carer pensions	Department of Social Services March 2014
Geographic area	Square kilometres per jurisdiction	Provided by consultant
Single parent families	Single parent payment recipients	Department of Social Services March 2014
Drug/alcohol use and mental illness	Clients of Indigenous substance-abuse support	Jurisdiction level only; not nationally comparable
Low education levels	Left school Yr8 or below	ABS IREG census statistics 2011
Low income	Household income less than $199/fortnight	ABS census Indigenous profiles 2011
Indigenous language speakers (who also do not speak English well)	Persons speaking an Indigenous language with no/poor English	ABS census Indigenous profiles 2011
Members of the stolen generation	Stolen generation members	ABS census Indigenous profiles 2011
Prisoners	Number of prisoners	ABS Correctional Services statistics 2014
Number of overcrowded households	Number of people living in overcrowded houses	Provided by consultant