



Australian Government
Attorney-General's Department
Civil Justice Policy and
Programmes Division

16/11223

4 November 2016

Ms L Beverly
Secretary
Senate Finance and Public Administration References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Beverly

**Senate Finance and Public Administration References Committee – inquiry into
Commonwealth funding for Indigenous Tasmanians**

Thank you for your letter of 19 October 2016 to the Secretary of the Attorney-General's Department, Mr Chris Moraitis PSM, inviting him to provide a written submission to the Senate Finance and Public Administration References Committee's inquiry into the issue of Commonwealth funding for Indigenous Tasmanians. I am responding on behalf of the Secretary. The department's submission is detailed below.

The Indigenous Legal Assistance Program

The Attorney-General's Department administers the Indigenous Legal Assistance Program (the Program) and the National Partnership Agreement on Legal Assistance Services which funds legal aid commissions and community legal centres nationally. Family Violence Prevention Legal Services are administered by the Department of the Prime Minister and Cabinet.

The Program funds organisations to deliver culturally appropriate legal assistance services to ensure that Indigenous Australians receive the help needed to assist them to deal with their legal problems and fully exercise their legal rights. Under their funding agreements, service providers are expected to focus on Indigenous people experiencing financial disadvantage who fall within one or more client groups:

- children and young people (up to 24 years)
- older people (aged over 65 years)
- people experiencing, or at risk of, family violence
- people experiencing, or at risk of, homelessness
- people at risk of being detained, in custody and prisoners
- people residing in rural or remote areas
- people with a disability or mental illness

- people with a low proficiency in English
- people with low education levels, and
- single parents.

The Commonwealth funds eight Indigenous legal assistance providers: one in each state and territory, except for the Northern Territory, where there are two providers, and New South Wales and the Australian Capital Territory which have the same provider. New funding agreements were entered into with all providers in 2015 and most providers are funded until 30 June 2020. The 2016-17 budgeted funding for the Indigenous Legal Assistance Program is \$73.59 million.

The Commonwealth is the primary funder of Indigenous legal assistance providers, contributing 100 per cent of the base funding for Indigenous legal assistance services. Despite this, nationally, nearly 80 per cent of assistance is provided for state and territory criminal law matters.

Tasmanian Indigenous legal assistance service provider

The Tasmanian Aboriginal Community Legal Service (TACLS), under the auspices of the Victorian Aboriginal Legal Service (VALS), has been funded since 1 July 2015 to deliver Indigenous legal assistance services in Tasmania. TACLS has a five year agreement in place and in 2016-17 will receive \$2 419 316.

Before 1 July 2015, the Tasmanian Aboriginal Centre Inc (TAC) was funded to provide Indigenous legal assistance in Tasmania.

The department reviewed the delivery of the Program nationally during 2014. As a result of this process, an open grants round for the delivery of Indigenous legal services in Tasmania commenced on 5 May 2015 and closed on 22 May 2015. The purpose of the open funding round was to test the market for services in Tasmania. Applications were sought from organisations that could operate state-wide, were committed to improving the lives of Indigenous Australians and able to deliver culturally appropriate legal assistance to Indigenous people in Tasmania. There were three applicants: the TAC, the Legal Aid Commission of Tasmania and VALS.

Since 1 July 2015, as required by the Program's funding agreements, TACLS has provided two performance reports, two annual operational plans and participated in three performance meetings with the Attorney-General's Department. TACLS has been assessed as a low risk organisation using the Program's risk assessment framework which considers governance and financial and performance management.

Since the transition from TAC to TACLS, the legal services delivered in Tasmania are more closely aligned with national service delivery statistics and priorities. This includes an increase between 2014-15 and 2015-16 in criminal and family law matters with child protection issues.

The Commonwealth definition of Aboriginality

Under their funding agreements, Indigenous legal assistance providers must use the Commonwealth definition of Aboriginality/Indigeneity, as reproduced below.

In determining whether a person is Indigenous the Grantee must apply the test used by Commonwealth agencies, that is, that the person:

- a) is of Aboriginal or Torres Strait Islander descent

- b) identifies as an Aboriginal or Torres Strait Islander, and
- c) is accepted as such by the Indigenous community in which he/she resides or has resided.

The test must not be applied rigidly and does not require archival or other historical records.

Allocation of funding

Funding to legal assistance service providers is determined by a funding allocation model. The department has developed three funding allocation models: for legal aid commissions, community legal centres and Indigenous legal assistance services. The models were used to determine the allocation of Commonwealth funding between jurisdictions from 1 July 2015 to 30 June 2020. A more detailed explanation of the models is at **Attachment A** and **Attachment B**. These papers have been provided to the sector.

The models provide an evidence-base for allocating Commonwealth funding between jurisdictions. The models take into account differences in the relative need for services between jurisdictions, and differences in the cost of delivering comparable services between jurisdictions. This includes establishment costs, population, legal need and cost factors (such as Commonwealth Grants Commission cost factors) between jurisdictions.

The population component allocates funding using each state/territory's share of the national Indigenous population. Indigenous population projections (from 2011 Census results) were used to ensure that the population component remains accurate throughout the lifetime of new funding agreements.

Other legal assistance services in Tasmania which assist Indigenous Australians

Under the National Partnership Agreement on Legal Assistance Services, the Commonwealth funds the Legal Aid Commission of Tasmania (LACT) and five community legal centres to provide legal assistance services to vulnerable and disadvantaged Tasmanians. Through the Agreement, the Commonwealth will provide \$5.804 million to LACT and \$1.499 million to Tasmanian community legal centres in 2016-17. Under the Agreement, states and territories are responsible for allocating Commonwealth funding for community legal centres between individual centres. Additional one-off funding of \$650 000 was provided to the Tasmanian Government in July 2015 outside the Agreement to assist with the transition to new funding arrangements.

The Agreement includes Commonwealth guidance on the prioritisation of services to be delivered by legal aid commissions and community legal centres. This guidance includes a focus on assisting people experiencing financial disadvantage, and targeting services towards a number of 'priority client groups', which includes Indigenous Australians. The priority client groups are intended to guide the planning and delivery of services that reach the most disadvantaged and vulnerable members of the community.

The Agreement does not include a definition of Indigeneity. Neither LACT nor Tasmania's community legal centres apply a test of Indigeneity to determine whether or not they will provide assistance. The Attorney-General's Department understands that LACT and Tasmania's community legal centres ask clients to self-identify their Indigenous status.

In 2015-16, seven per cent of LACT's Commonwealth-funded grants of legal aid were provided to Indigenous Australians. During the same period, four and a half per cent of representation services provided by Tasmania's community legal centres assisted Indigenous Australians.

Yours sincerely

Esther Bogaart
Acting Assistant Secretary
Legal Assistance Branch