

Senate Select Committee Inquiry into the Abbott Government's Budget Cuts

August, 2014



NATSILS

**NATIONAL ABORIGINAL & TORRES
STRAIT ISLANDER LEGAL SERVICES**

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1. Introduction

Many of the decisions taken in the Abbott Government's first budget will impact adversely and disproportionately upon Aboriginal and Torres Strait Islander peoples, including changes to welfare system, the introduction of a GP co-payment, a cut of over \$500m from Aboriginal and Torres Strait Islander programs, and funding insecurity in relation to Aboriginal and Torres Strait Islander community controlled health organisations. However, other peak bodies in these areas are likely to provide more detailed feedback as to the impact of these measures and hence, we will focus our submission on the announced funding cuts to Aboriginal and Torres Strait Islander Legal Services (ATSILS). However, it should be kept in mind that rather than being independent from each other, the adverse impact of other budget measures will only serve to further disadvantage and marginalise Aboriginal and Torres Strait Islander peoples, and will increase the demand for services provided by ATSILS.

NATSILS is the national peak body for ATSILS in Australia. NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform and prisoner through-care to Aboriginal and Torres Strait Islander peoples. NATSILS are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives us a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples. NATSILS represents the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);
- North Australian Aboriginal Justice Agency (NAAJA); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

NATSILS and our members are solely funded by the Commonwealth Attorney-General's Department under the Indigenous Legal Aid and Policy Reform Program. On Tuesday 17 December 2013, Treasurer Joe Hockey announced in his Mid-Year Economic and Fiscal Outlook that \$43.1m was to be cut across the legal assistance sector over the next four financial years. The Attorney-General's Department has since confirmed that \$13.34m will be cut from the Indigenous Legal Aid and Policy Reform Program between the 2013-14 and the 2016-17 financial years. The following submission will outline the level of need amongst Aboriginal and Torres Strait Islander peoples for culturally competent legal services, the services provided by NATSILS and our members in response to this need, and the impact that the funding cuts will have on levels of service provision and access to justice.

2. Aboriginal and Torres Strait Islander peoples and access to justice

Aboriginal and Torres Strait Islander peoples are facing an access to justice crisis. The level at which Aboriginal and Torres Strait Islander peoples have contact with the justice system in Australia is both shocking and appalling:

- Aboriginal and Torres Strait Islander peoples are incarcerated at a rate 14 times higher than non-Aboriginal and Torres Strait Islander peoples;¹
- The rate at which Aboriginal and Torres Strait Islander women are incarcerated has increased from 2000 – 2010 by almost 59 per cent;²
- Aboriginal and Torres Strait Islander women are now 24 times more likely to go to jail than non-Aboriginal and Torres Strait Islander women;³
- The rate at which Aboriginal and Torres Strait Islander men are incarcerated has increased from 2000 – 2010 by 35 per cent;⁴ and
- Aboriginal and Torres Strait Islander children are 22 times more likely to be in detention than non-Aboriginal and Torres Strait Islander children,⁵ a situation which has been deemed a ‘national crisis’ by the Australian House of Representatives inquiry into Aboriginal and Torres Strait Islander youth and the criminal justice system.⁶

3. About NATSILS & our members

The role of NATSILS is to support our members to increase organisational capacity, create strong governance structures, identify, share and implement best practice within service delivery and provide greater strategic direction. As outlined in NATSILS Strategic Plan 2011-2014 our strategic priority areas are:

- Cultural Leadership and Governance
- Quality Legal Services

¹ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2011*(2011) 4.12.1.

² Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2011*(2011) 4.12.1.

³ ABC News, ‘Doubling of female imprisonment rate almost entirely due to Aboriginal women being locked up’ Thursday 14 August 2014 at <http://www.abc.net.au/am/content/2014/s4066806.htm>

⁴ Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2011*(2011) 4.12.1.

⁵ Australian Institute of Criminology, *Australian Crime: Facts and figures* (2009), 113.

⁶ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing* (2011), 2.4.

- Dedicated, Highly Skilled and Professional Staff
- Quality Community Legal Education, Advocacy, Law Reform and Policy Development
- Productive Community Stakeholder Relationships and Partnerships
- Quality Promotions, Marketing and Media

Our members

ATSILS core services involve providing culturally competent legal assistance in the following areas:

Criminal law

Providing legal advice, assistance, representation, and duty lawyer services to clients in criminal law matters, ensuring the right to a fair hearing and the efficient and effective operation of the courts;

Family law

Providing specialist family law services in the areas of child protection, domestic violence and general family law matters, with a focus on seeking to maintain the family unit where possible;

Civil law

Providing advice on various civil law matters to ensure that Aboriginal and Torres Strait Islander peoples can access justice on an equal basis;

Specialist Projects

ATSILS deliver a range of special law and justice projects designed to strengthen the capacity of Aboriginal and Torres Strait Islander peoples to participate equally in the justice system, to take individual and collective responsibility for their lives and the issues they face, to fully exercise their legal rights and have better access to justice. These projects include community legal education to assist Aboriginal and Torres Strait Islander peoples and their communities to develop an increased understanding and capacity to interact and engage with the mainstream legal system, law reform and advocacy to work collaboratively with government and non-government agencies to effect positive changes in the law to make our community safer, and prisoner through-care to support Aboriginal and Torres Strait Islander individuals to make a successful transition from custody back into the community.

4. Our strengths

Growing our services

ATSILS have been in existence for over 40 years and during that time much has changed within the legal assistance sector. As a national peak body, NATSILS is able to provide support and greater strategic direction to ATSILS across the country to ensure that our members benefit from a nationally coordinated network of service providers. By providing a mechanism for ATSILS across the country to share service delivery best practice, identify ways to increase organisation capacity and create strong governance structures, NATSILS ensures that individual services benefit from the support and learnings of others. In return

for a relatively small level of investment, NATSILS builds on the more substantial investment by the Government in ATSILS to ensure that across the country these services are efficient, effective and coordinated.

Providing comprehensive legal services across Australia

Unlike other legal assistance services, ATSILS provide a twenty four hour/seven days a week service to their communities and service metropolitan, regional, rural and remote areas of Australia. In some locations ATSILS are the only legal assistance service provider available and hence, because there are no legal aid commissions or private practitioners other than ATSILS servicing some court circuits, from time to time ATSILS is called upon to appear as friends of the court to non-Aboriginal and Torres Strait Islander clients.

Providing culturally competent legal services

The critical aspect of ATSILS service delivery that sets them apart from other legal assistance services is their focus on, and ability to provide, culturally competent legal services to Aboriginal and Torres Strait Islander peoples. ATSILS staff are highly skilled in working with Aboriginal and Torres Strait Islander people, with particular attention paid to cross-cultural communication, use of interpreters, and ensuring clients are able to understand and meaningfully participate in court processes. Cultural competency is much more than awareness of cultural differences, as it focuses on the capacity to improve outcomes by integrating cultural understanding into the design and delivery of services on a daily basis. It requires commitment to a 'whole of organisation' approach. As a culturally competent service model, ATSILS are Aboriginal and Torres Strait Islander community-controlled organisations that have Aboriginal and Torres Strait Islander cultural needs and values at their core. It is this community knowledge and understanding that results in our communities recognising ATSILS as their preferred legal assistance provider. Given the disproportionate and diverse contact of Aboriginal and Torres Strait Islander peoples with the justice system, it is essential that Aboriginal and Torres Strait Islander peoples can access culturally competent legal assistance services such as ATSILS. As the peak body representing ATSILS, NATSILS plays a key role in the development and sharing of culturally competent best practice strategies and educating the wider legal assistance and justice sector as to their necessity and effectiveness.

Supporting employment

Across Australia NATSILS and its members employ over 750 people, with over 42 percent of the workforce comprising of Aboriginal and Torres Strait Islander peoples. We provide much needed employment opportunities for Aboriginal and Torres Strait Islander peoples that utilises their unique skills in providing culturally competent and high quality services to Aboriginal and Torres Strait Islander communities. As a national peak body, we demonstrate a strong commitment to professional development and sustained growth by promoting and providing opportunities to enable staff to continuously build upon their professional skill set.

Assisting government

As the key legal assistance service provider to Aboriginal and Torres Strait Islander peoples, it places us in a unique position to be able to engage meaningfully and beneficially as partners with government at the Commonwealth, State and Territory level and provide strategic and well informed advice in the development of effective law and justice policy. Australian governments frequently reach out to NATSILS and individual ATSILS for

professional advice and essential frontline information to inform and assist in the development of effective laws, policies and programs. NATSILS and ATSILS are well placed to respond to such requests with evidence based information and advice that reflects the 'on-the-ground realities' within the justice sector more broadly. We have a reputation for providing considered, constructive advice based on our ability to draw from the frontline experience of our members in engaging with Aboriginal and Torres Strait Islander communities and providing crucial insights and case studies that would not otherwise be available to government. Law reform and advocacy is an essential part of the role that we perform as it identifies opportunities where government can more efficiently address systemic issues within the justice system, rather than dealing with such on a more costly case by case basis.

5. Funding cuts

NATSILS and our members are solely funded by the Commonwealth Attorney-General's Department under the Indigenous Legal Aid and Policy Reform Program. On Tuesday 17 December 2013, Treasurer Joe Hockey announced in his Mid-Year Economic and Fiscal Outlook that \$43.1m was to be cut across the legal assistance sector over the next four financial years. The Attorney-General's Department has since confirmed that \$13.34m will be cut from the Indigenous Legal Aid and Policy Reform Program between the 2013-14 and the 2016-17 financial years. The Government has stated that these cuts are aimed at defunding law reform and advocacy activities.

Impact of funding cuts

Under these funding cuts, the very small amount of funding provided to NATSILS will be cut, meaning that NATSILS will be defunded. The remaining funding cut will be spread across individual ATSILS. How the funding cuts will be spread across ATSILS and how such will be implemented has not been made clear by the Commonwealth Attorney-General's Department.

The Attorney-General has made it clear however, that the funding cuts are aimed at directly targeting the ability of NATSILS and individual ATSILS to undertake law reform and advocacy work. This targets our ability to work with government to address the underlying causes of why Aboriginal and Torres Strait Islander peoples are so disproportionately represented in our justice system. There is no one else to fulfil this role if we are prohibited from doing so.

Without the law reform and advocacy work undertaken by NATSILS and ATSILS, governments around Australia will have no access to informed, evidenced based frontline advice in regards to the effectiveness of the justice system. Justice related costs are spiralling out of control around Australia, and removing the ability of frontline services to provide government agencies with accurate policy advice will only serve to make our system more ineffective, inefficient and increasingly costly.

Removing funding from any part of the activities of NATSILS and individual ATSILS would be counter-productive. It would result in higher rates of imprisonment, harsher sentences, greater dysfunction within Aboriginal and Torres Strait Islander communities, and a greatly diminished capacity to identify and manage the issues that contribute to this dreadful cycle. These consequences translate to a real cost for government. That cost would surely far exceed the short-term savings that would be achieved from the announced funding cuts.

Will the cuts affect ‘frontline’ services?

As confirmed by the Commonwealth Attorney-General’s Department during recent Senate Estimates hearings, the funding of ATSILS cannot be easily separated between ‘frontline’ service and ‘policy’ activity. Law reform and advocacy is undertaken within ATSILS by a range of staff. Rather than having full time staff solely focused on law reform and advocacy, it is more often the case that such activities are undertaken by staff in combination with numerous other responsibilities such as community legal education or by solicitors, managers and Principal Legal Officers in addition to their main roles. For this reason, implementing the announced funding cuts cannot simply be done by removing dedicated law reform and advocacy positions. Given how law reform and advocacy work is shared amongst multiple people with responsibility in areas of frontline services, the implementation of the announced funding cuts will mean that cuts to frontline service delivery will have to be made. Furthermore, ATSILS allocate very little resources on law reform and advocacy work, and the size of the announced funding cuts far exceed what is spent in this area meaning that in order to implement such, other frontline services are going to have to be withdrawn.

Despite the funding cuts being announced 8 months ago, to date, no information has been provided by the Commonwealth Attorney-General’s Department as to how the announced funding cuts will be applied across individual ATSILS.

This lack of information is already having an impact on ATSILS service delivery. Without information as to how the funding cuts are going to be implemented, ATSILS are unable to appropriately plan ahead and provide staff with direction and employment certainty. ATSILS around the country are already losing staff as a result of the uncertainty in employment security created by the announced cuts. Furthermore, in order to avoid being left in a situation where they have to undertake strategic decision-making ‘on the run’ at the last moment, our members are being forced to make difficult decisions without the necessary information to safeguard the future of their services. NAAJA, for example, has had to make the decision to close their Nhulunbuy office, and ATSILS Qld have had to close their Warwick, Cunnamulla, Chinchilla, Dalby and Cooktown offices. After consultation with NATSILS member services as to what additional cut backs are likely going to have to be made to incorporate the funding we can advise that such would include further office closures, reduction in criminal and civil law service provision including the cessation of duty lawyer services in some locations, cessation of family law services, cessation of services to prisoners before Parole Boards and the scaling back of community legal education programs. This would be in addition to the cessation of all law reform and advocacy activities which are the stated sole focus of the funding cuts.

It is very clear that despite public assurances by the Attorney-General that the funding cuts will not affect ‘frontline’ service delivery, they will indeed do precisely that.

Working with Government on funding issues

NATSILS and our members were not consulted prior to the announcement of these cuts and are not aware of what evidence the decision was based upon. Given the recent release of the Review of the National Partnership Agreement on Legal Assistance Services, as well as the Draft Report from the Productivity Commission’s Inquiry into Access to Justice Arrangements, both of which identify a significant shortfall in funding for legal assistance services, including ATSILS, and a significant level of unmet legal need amongst Australians, we feel there is much to discuss with the Attorney-General and his Department.

6. Conclusion

The level of need amongst Aboriginal and Torres Strait Islander peoples for culturally competent legal services is critical and is only growing. Recent reviews by the Productivity Commission and of the National Partnership Agreement on Legal Assistance Services all confirm this. These Government commissioned reviews have found that there is a significant level of unmet need and that rather than system reform, it is in fact an injection of additional resources that is needed in order to meet demand. The Government's decision to cut funding from legal assistance services, and ATSILS in particular, completely goes against this evidence. In effect, we are unaware of what specific evidence or advice the Government's decision is actually based upon. A complete lack of consultation with ATSILS, and the broader sector, has exacerbated our state of confusion.

We are unaware of what evidence was used by the Government to calculate the amount of funding that could be cut while only affecting law reform and advocacy activities undertaken by NATSILS and our members. As demonstrated above, the Government's calculation is clearly incorrect and the impacts of the funding cuts will go well beyond law reform and advocacy activities and will force significant withdrawal in critical service delivery areas such as criminal, civil and family law, assistance to Parole Boards and the provision of community legal education which are presently at the coalface of our work.

Ultimately the Government's decision to cut funding from NATSILS and its members is a short-sighted false economy which will only serve to increase costs to the justice system overall. A reduction in service delivery will only mean that more Aboriginal and Torres Strait Islander people will end up in contact with the justice system and in detention due to a lack of access to a culturally competent legal assistance service. It is in the Government's best interest to understand that the relatively small investment made in funding NATSILS and its members, provides a far greater return in terms of savings to the justice system overall.