

Chapter 2

Legal assistance services

- 2.1 There are four main government-funded legal assistance service providers:
- Legal Aid Commissions (LAC) provide services to most people receiving publicly-funded legal assistance, with a focus on providing legal assistance to disadvantaged Australians. LACs provide assistance in criminal, family and civil matters.
 - Community Legal Centres (CLCs) are community based, not-for-profit organisations, which assist people who cannot afford a private lawyer but who cannot obtain a grant of legal aid. CLCs are diverse organisations, with some offering generalist services, while others target specific areas of law or particular client groups (for example, women or young people). CLCs provide mainly civil and family legal assistance.
 - Indigenous legal assistance providers (formerly Aboriginal and Torres Strait Islander Legal Services (ATSILS)) deliver legal assistance services to Aboriginal and Torres Strait Islander people through targeted, culturally competent legal assistance services. Main areas of law are criminal law matters, with some services in family and civil law as funds permit. The majority of outlets are in regional and remote areas.
 - Family Violence Prevention Legal Services (FVPLS) provide services specifically to Aboriginal and Torres Strait Islander victims of family violence or sexual assault, with the aim of preventing, reducing and responding to incidents of family violence and sexual assault. FVPLS operate primarily in regional and remote areas. Services primarily include family violence orders, child protection, victims compensation and family law and child support where it relates to family violence.¹

2.2 The National Association of Community Legal Centres (NACLC) stated that while the nature, purpose, work and capacities of these providers is complementary they are not interchangeable.² Similarly, the Productivity Commission noted that each of the four types of services provide 'specialised but complementary roles'.³ Figure 1 is a comparative table of the four legal assistance providers.

1 Productivity Commission, *Access to Justice Arrangements*, 2014, Vol 2, pp 667-670; and the Allen Consulting Group, *Review of the National Partnership Agreement on Legal Assistance Services*, Working Paper 2: Evaluation of legal assistance services, Prepared for the Australian Government Attorney-General's Department, June 2013, pp 2-5.

2 *Submission 42*, p. 3.

3 Productivity Commission, *Access to Justice Arrangements*, 2014, Vol 2, p. 667.

Figure 1: Government-funded legal assistance providers 2012-13⁴

	Legal aid commissions (LACs)	Community legal centres (CLCs)	Aboriginal and Torres Strait Islander legal services (ATSILS)	Family violence prevention legal services (FVPLS)
Where are they located?	8 LACs <ul style="list-style-type: none"> • In all states and territories • Metropolitan, regional and remote services including regional offices 	200 CLCs <ul style="list-style-type: none"> • In all states and territories • Mainly in metropolitan and regional areas 	8 ATSILS <ul style="list-style-type: none"> • One in each state, two in NT; ACT serviced by NSW • Majority of outlets in regional and remote areas 	14 FVPLS <ul style="list-style-type: none"> • In all states and territories except ACT and Tasmania • Service 31 high need regional, rural and remote areas
What are their objectives?	<ul style="list-style-type: none"> • Provide access to assistance for the vulnerable and disadvantaged • Provide the community with improved access to justice and legal remedies 	Contribute to access to legal assistance services for vulnerable and disadvantaged members of the community and/or those whose interests should be protected as a matter of public interest	Deliver legal assistance and related services to Aboriginal and Torres Strait Islander people	Provide legal services and assistance to Aboriginal and Torres Strait Islander victims of family violence and sexual assault
Who do they target	<ul style="list-style-type: none"> • State and territory communities • Focus on vulnerable and disadvantaged people 	<ul style="list-style-type: none"> • Local communities (with outreach) except specialist CLCs who service their state/territory community • Those who do not qualify for legal aid focusing on the vulnerable and disadvantaged 	Aboriginal and Torres Strait Islander people or a partner or carer of an Aboriginal or Torres Strait Islander person	Aboriginal and Torres Strait Islander people or a partner or carer of an Aboriginal or Torres Strait Islander person, who is a victim of family violence or a child at risk of family violence and in need of protection

2.3 Submissions emphasised the importance of these services in providing legal assistance for Aboriginal and Torres Strait Islander people. For example, NACLC stated:

Legal assistance providers play a crucial role in the Australian legal system for vulnerable and disadvantaged members of the community and are vital to ensuring access to legal assistance for Aboriginal and Torres Strait Islander peoples.⁵

4 Productivity Commission, *Access to Justice Arrangements*, 2014, Vol 2 p. 668 and Allen Consulting Group, *Review of the National Partnership Agreement on Legal Assistance Services – Final Report*, June 2014, p. 3.

5 *Submission 42*, p. 3. See also Indigenous Legal Need Project, *Submission 19*, p. 7; Legal Aid NSW, *Submission 36*, p. 7.

2.4 In particular, in relation to Aboriginal and Torres Strait Islander people the Productivity Commission noted:

Aboriginal and Torres Strait Islander Australians often have complex legal needs and face substantial barriers in accessing legal assistance. The nature and complexity of their civil law needs means that specialist legal assistance services remain justified.⁶

2.5 National Legal Aid noted that ATSILS and FVPLS are the primary providers of legal assistance services to Aboriginal and Torres Strait Islander people due to those services being culturally competent.⁷

2.6 NACLC indicated its policy and 'firm belief':

[T]hat the most appropriate providers of legal services for Aboriginal and Torres Strait Islander peoples are the specifically dedicated ATSILS and FVPLS staffed and managed, as far as is possible, by Aboriginal and Torres Strait Islander people.

Aboriginal and Torres Strait Islander peoples have experienced, and continue, to experience, historical marginalisation from mainstream services, and generally prefer to and feel culturally secure in attending Aboriginal and Torres Strait Islander specific services. Importantly, both ATSILS and FVPLS offer community-controlled culturally safe services to Aboriginal and Torres Strait Islander peoples.⁸

2.7 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of Western Australia, stated that Aboriginal and Torres Strait Islander people have a preference for the specialist legal assistance providers:

Aboriginal people come to [Aboriginal Legal Services] because they feel comfortable; it is culturally appropriate. They are much more reluctant to go to Legal Aid, for those reasons.⁹

2.8 Both NACLC and National Legal Aid noted that CLCs and LACs also provided services to Aboriginal and Torres Strait Islander people. As NACLC explained:

There will be occasions when ATSILS and FVPLS are unable to assist a client because of real or perceived conflict, lack of resources, or because it is a specialist area of law that is outside their practice expertise. It may also be the case that in some matters, particularly in smaller communities, a person may not wish to consult, or be seen to consult a particular legal service where other members of family or community attend or work. It is therefore important that Aboriginal and Torres Strait Islander people have the choice to access other, culturally appropriate legal assistance providers if they so wish.

6 Productivity Commission, *Access to Justice Arrangements*, 2014, Vol 2, p. 761.

7 *Submission 37*, p. 2.

8 *Submission 42*, p. 3.

9 *Committee Hansard*, 4 August 2015, p. 20.

As a result, CLCs provide vital culturally appropriate services to Aboriginal and Torres Strait Islander peoples.¹⁰

2.9 At the public hearing in Canberra, Ms Elizabeth Quinn, Assistant Secretary, Legal Assistance Branch, Attorney-General's Department (AGD), noted:

While the Commonwealth funds Indigenous legal assistance providers separately to provide these culturally-appropriate services for Indigenous people, mainstream legal assistance services are also assisting Indigenous people. For example, in year-to-date reporting, 12.9 per cent of the representation services provided by the legal aid commission and community legal centres in New South Wales were to Indigenous people. It is interesting to note that [according to the 2011 census, 2.9 per cent of the New South Wales population is Indigenous]...The Indigenous representation by mainstream legal assistance services in other states and territories does vary. However, in all states and territories these mainstream services are providing ongoing representation services, including grants of legal aid, to Indigenous people.¹¹

Commonwealth funding for legal assistance services

2.10 Commonwealth, state and territory governments provide the bulk of funding for all of the four legal assistance services.

National Partnership Agreement on Legal Assistance Services

2.11 In 2010, the Council of Australian Governments (COAG) agreed to establish the National Partnership Agreement on Legal Assistance Services (NPA), a four year agreement between the Commonwealth and the states and territories.¹²

2.12 The NPA was established:

[T]o support a holistic approach to the reform of the delivery of legal assistance services by legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services.¹³

2.13 The initial NPA was extended until 30 June 2015¹⁴ and subsequently replaced with a new NPA for the period 1 July 2015 to 30 June 2020.¹⁵

2.14 The stated objective of the NPA is:

10 National Association of Community Legal Centres, *Submission 42*, p. 4. See also National Legal Aid, *Submission 37*, p. 2.

11 *Committee Hansard*, 4 April 2016, p. 26. See also correspondence from Ms Elizabeth Quinn, Assistant Secretary, Legal Assistance Branch, Attorney-General's Department (AGD) to the Committee Secretary, 8 April 2016 clarifying evidence given at the public hearing on 4 April 2016.

12 *National Partnership Agreement on Legal Assistance Services*, 2010, p. 3.

13 *National Partnership Agreement on Legal Assistance Services*, 2010, p. 2.

14 See Budget Measures Budget Paper No. 2, 2014-15, p. 61.

15 *National Partnership Agreement on Legal Assistance Services*, 2015, p. 3.

[A] national legal assistance sector that is integrated, efficient and effective, focused on improving access to justice for disadvantaged people and maximising service delivery within available resources.¹⁶

2.15 The NPA also lists the outcomes to be achieved:

(a) legal assistance services are targeted to priority clients with the greatest legal need;

(b) legal assistance service providers collaborate with each other, governments, the private legal profession and other services, to provide joined-up services to address people's legal and related problems;

(c) legal assistance services are appropriate, proportionate and tailored to people's legal needs and levels of capability;

(d) legal assistance services help people to identify their legal problems and facilitate the resolution of those problems in a timely manner before they escalate; and

(e) legal assistance services help empower people to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems.¹⁷

2.16 The NPA provides \$1.3 billion, over five years, in Commonwealth funding for LACs and CLCs.¹⁸ The Commonwealth Government is providing \$257.1 million for the NPA for the 2016-17 financial year.¹⁹ While this is an increase of \$6.2 million from the 2015-16 financial year, the forward estimates indicate that there will be a decrease of \$8.4 million from the 2016-17 figure over the period 2017-18 to 2019-20.²⁰

16 *National Partnership Agreement on Legal Assistance Services*, 2015, p. 3.

17 *National Partnership Agreement on Legal Assistance Services*, 2015, p. 2.

18 *National Partnership Agreement on Legal Assistance Services*, 2015, p. 2. The 2010 NPA focussed on specific arrangements for the delivery of Commonwealth funded services by State and Territory LACs, see *National Partnership Agreement on Legal Assistance Services*, 2010, p. 4.

19 Budget 2016-17, *Budget Paper No. 3*, p. 71.

20 Budget 2016-17, *Budget Paper No. 3*, p. 71. See J. Murphy and M. Brennan, *Legal aid and legal assistance services*, Parliamentary Library Budget Review 2016-17.

Financial year	\$million
2015-16	250.9
2016-17	257.1
2017-18	248.7
2018-19	252.9
2019-20	256.8

Table 1: Commonwealth funding for the National Partnership on legal assistance services²¹

2.17 Indigenous legal assistance providers will continue to be funded directly by the Commonwealth Government.²²

2.18 In answers to questions on notice, the AGD stated:

Available Commonwealth funding to legal aid commissions, community legal centres and Indigenous legal assistance providers is distributed between states and territories using evidence based funding allocation models. There is a model for each of the three legal assistance programmes.²³

2.19 The NPA provides guidance on the prioritisation of legal assistance services to be delivered by LACs and CLCs:

The legal assistance priority client groups recognise people whose capability to resolve legal problems may be compromised by circumstances of vulnerability and/or disadvantage. People who fall within the priority client groups are more likely to experience legal problems, less likely to seek assistance and/or less able to access services for a range of reasons.

Legal assistance service providers should focus their services on people experiencing financial disadvantage.²⁴

21 Source Budget 2016-17, *Budget Paper No. 3*, p. 71.

22 See Senator the Hon George Brandis QC, Attorney-General, *Attorney-General's Portfolio Budget measures 2015-16*, Media release, 12 May 2015, available at: www.attorneygeneral.gov.au/Mediareleases/Pages/2015/SecondQuarter/12-May-2015-Attorney-General%27s-Portfolio-Budget-measures-2015-16.aspx (accessed 19 November 2015).

23 Attorney-General's Department, answers to questions on notice, received 13 April 2016, p. 1. The Attorney-General's Department provided a document explaining the allocation models for legal aid commissions and community legal centres and a document explaining the Indigenous legal assistance provider funding allocation model, see Attorney-General's Department, answers to questions on notice, received 13 April 2016, Attachment A and Attachment B.

24 *National Partnership Agreement on Legal Assistance Services*, 2015, Schedule B 'Commonwealth priorities and eligibility principles', p. B-1.

2.20 The NPA also states that where appropriate, legal assistance service providers should also plan and target their services to people who fall within one or more of the priority client groups. The priority client groups include Indigenous Australians.²⁵

2.21 The NPA also sets out 'General Principles' as to Commonwealth service priorities:

Commonwealth funding should be directed to the delivery of front-line services and focused on meeting the legal needs of priority clients.

Commonwealth funding should not be used to lobby governments or to engage in public campaigns. Lobbying does not include community legal education or where a legal assistance service provider makes a submission to a government or parliamentary body to provide factual information and/or advice with a focus on systemic issues affecting access to justice.

Legal assistance service providers should deliver timely intervention services to resolve clients' legal problems sooner, or prevent them from arising altogether.

Family or civil law disputes should be resolved through alternative dispute resolution processes rather than through litigation, where appropriate.

Legal assistance service providers should consider whether other services (legal as well as non-legal) may be relevant to a client's needs and make referrals to these services where appropriate. Suitable collaborative arrangements should be established for this purpose.²⁶

2.22 While only LACs and CLCs are funded under the NPA:

[T]he principles set out in [the NPA] are relevant for the broader sector, including Indigenous legal assistance providers and family violence prevention legal services.²⁷

Legal Aid Commissions

2.23 In addition to Commonwealth funding, LACs receive funding from state and territory governments.²⁸ In its submission, National Legal Aid provided a breakdown of LAC funding for the 2013-14 financial year:

The legal aid commissions are funded by each of the Commonwealth and the State/Territory Governments. Nationally, Commonwealth funding to legal aid commissions for the financial year 2013-14 was \$213.047 million, State/Territory funding was \$283.764 million with a further \$85.883 million from trust [and] statutory interest funds.²⁹

25 *National Partnership Agreement on Legal Assistance Services*, 2015, Schedule B 'Commonwealth priorities and eligibility principles', p. B-1.

26 *National Partnership Agreement on Legal Assistance Services*, 2015, Schedule B 'Commonwealth priorities and eligibility principles', p. B-2.

27 *National Partnership Agreement on Legal Assistance Services*, 2015, p. 2.

28 National Legal Aid, *Submission 37*, p. 1.

29 *Submission 37*, p. 4.

2.24 The NPA provides that Commonwealth funding for LACs 'will be used for Commonwealth law matters only', except in certain state law matters which are connected with family law proceedings and 'in discrete assistance or community legal education'.³⁰

Community Legal Centres

2.25 Funding for CLCs varies, as the Productivity Commission noted:

Some CLCs receive sizeable proportions of their revenue from government funding, while others receive very little or no funding and are largely or entirely staffed by volunteers. Those CLCs that receive government funding, can do so from a wide variety of government departments and agencies.³¹

2.26 While noting the Commonwealth, state and territory government funding of CLCs, the Productivity Commission continued:

CLCs are also able to access funding from other sources, including fee income, fundraising, philanthropic donations, seeking contributions from clients and other government funding outside the [Community Legal Services Program].³²

Indigenous legal service providers

2.27 In correspondence to the committee, Mr Chris Moraitis PSM, Secretary, AGD, noted that AGD administers the Indigenous Legal Assistance Program, under which the eight ATSILS are funded.

2.28 In 2014-15, total Commonwealth funding for the Indigenous Legal Assistance Program was \$74.311 million.³³ In the 2015-16 Budget, the Indigenous Legal Assistance Program received \$72.978 million.³⁴ Table 2 sets out the funding for Indigenous Legal Assistance Program for the 2016-17 Budget and the forward estimates.

30 *National Partnership Agreement on Legal Assistance Services*, 2015, p. 11. 'Discrete assistance' is defined as 'information, referral, legal advice, non-legal support and legal task'.

31 Productivity Commission, *Access to Justice Arrangements*, 2014, Vol 2 p. 689.

32 Productivity Commission, *Access to Justice Arrangements*, 2014, Vol 2 p. 689. From 2015-16 the majority of funding previously provided to the Attorney-General's Department for community legal services will be provided through the National Partnership Agreement on Legal Assistance Services, see Portfolio Budget Statements 2015-16, *Attorney-General's Portfolio*, p. 30.

33 Correspondence from Mr Chris Moraitis PSM, Secretary, Attorney-General's Department, to the Secretary of the Senate Finance and Public Administration References Committee, dated 5 May 2015.

34 Portfolio Budget Statements 2015-16, *Attorney-General's Portfolio*, p. 33.

	2016-17 Budget \$'000	2017-18 Forward Estimate \$'000	2018-19 Forward Estimate \$'000	2019-20 Forward Estimate \$'000
Indigenous Legal Assistance Program	73,585	69,099	68,992	69,890

Table 2 2016-17 Budget and forward estimates projections for the Indigenous Legal Assistance Program³⁵

2.29 However, the Parliamentary Library made the following comment in relation to comparing funding between financial years for Indigenous legal services:

[C]hanges to some Indigenous program names [in the 2014-15 Budget], their transfer to the Department of the Prime Minister and Cabinet, subsequent consolidation and the lack of details in relevant portfolio budget papers makes assessing long-term funding trends difficult.³⁶

2.30 In October 2015, an officer of AGD informed a Senate Estimates hearing that 'whilst the Indigenous Legal Assistance Program is 100 per cent funded by the Commonwealth, in every jurisdiction [with the exception of Tasmania] the vast majority of the funds are used on state and territory criminal law matters'.³⁷

2.31 In April 2016, Ms Quinn, AGD, provided some further detail on the distribution of funds to Indigenous legal services providers:

The approach we take with the funding we have is to distribute it in the most equitable way possible, according to various need indicators among the jurisdictions, to our Indigenous legal service providers. We take into account...the disadvantage indicators and population distribution aspects that affect the cost of service provision, like how geographically dispersed a population is and those sorts of factors. There is Commonwealth Grants Commission guidance on unit costs of service delivery. We distribute our funds according to that and then we, through our grant program, determine that the most intensive services should be prioritised towards financially disadvantaged people. That is how we end up with the situation where the majority of this funding is being spent on state criminal matters, because the majority of the clients in need are facing imprisonment or are imprisoned.³⁸

35 Source Portfolio Budget Statements 2016-17, *Attorney-General's Portfolio*, p. 20.

36 J. Murphy and M. Brennan, *Legal aid and legal assistance services*, Parliamentary Library Budget Review 2016-17.

37 Mr Greg Manning, Acting Deputy Secretary, Civil Justice and Legal Services Group, Attorney-General's Department, Senate Legal and Constitutional Affairs Legislation Committee, *Estimates Hansard*, 20 October 2015, p. 82. See also Ms Quinn, Attorney-General's Department, *Committee Hansard*, 4 April 2016, p. 26.

38 *Committee Hansard*, 4 April 2016, p. 27.

2.32 Ms Quinn noted that while Indigenous legal service providers are not funded pursuant to the NPA, they are still required to participate in service-planning meetings:

One of the key reforms we delivered under the new national partnership agreement was the requirement for all jurisdictions to bring all legal service providers and complementary services, as they determined fit, together for service-planning meetings. That is a formal requirement.

...

...While the Indigenous providers are not funded under the national partnership agreement, the requirements on them are exactly the same.

...

...Under the NPA, the state is required to include [Indigenous legal service providers], and, correspondingly, in [the provider's] funding agreements, they are required to participate in the service-planning process. That requires the evaluation of not just the supply and the historic—where we have provided services—but actually looking at demand. We have facilitated the development of some key statistical analysis, some mapping and those sorts of things, from expert providers of that sort of analysis, to facilitate that.³⁹

Family Violence Prevention Legal Services

2.33 In December 2013, responsibility for FVPLS moved from AGD to the Department of the Prime Minister and Cabinet (PM&C), as part of the consolidation of Indigenous Affairs programs into PM&C.⁴⁰

2.34 The establishment of the Indigenous Advancement Strategy (IAS), announced as part of the *2014-15 Budget*, involved the streamlining of more than 150 Indigenous programs into five broad program streams. The FVPLS program was one of the programs streamlined as part of the IAS.

2.35 Ms Antoinette Braybrook, Chief Executive Officer, Family Violence Prevention and Legal Services Victoria, described the effect of these changes:

The [IAS] tender process announced in August [2014]...confirmed that this decision effectively defunds or abolishes the National Family Violence Prevention Legal Service Program. So that \$21 million that was initially allocated to the program no longer exists.⁴¹

39 *Committee Hansard*, 4 April 2016, p. 29.

40 See National Family Violence Prevention Legal Services submission to the Senate Finance and Public Administration References Committee's inquiry into the Indigenous Advancement Strategy tendering processes, *Submission 83*, p. 4.

41 Senate Finance and Public Administration References Committee, Inquiry into Domestic Violence in Australia, *Committee Hansard*, 5 November 2014, p. 38.

2.36 In its submission to this committee's inquiry on the IAS tender processes, the National Family Violence Prevention Legal Services summarised the outcome of the IAS grant round for FVPLSs:

All FVPLSs were successful in their application under the Indigenous Advancement Strategy, including funding secured for the National Secretariat[;]

Nine of the FVPLSs initially received only one year of additional funding, extending significant funding uncertainty and its distressing impacts on staff and victims/survivors[;]

Following further negotiation these funding agreements were extended to two years[;] and

Five FVPLS Units received confirmation that three year funding agreements would be offered[.]⁴²

2.37 The National Family Violence Prevention Legal Services noted that none of its members received an increase in funding from the IAS grant round, or inclusion of CPI.⁴³

Announcement of budget cuts to legal assistance services and reinstatement of funding

2.38 In the *2013-14 Budget*, the government announced an expansion of funding to legal aid commissions with \$21 million to be provided in funding for the 2013-14 and 2014-15 financial years.⁴⁴ Subsequently, the second year of this additional funding was removed in the *2014-15 Budget*, with the government announcing savings of '\$15 million...by partially reducing funding to legal aid commissions as announced in the *2013-14 Budget*'. The savings from this measure was to be redirected to repair the budget and fund policy priorities.⁴⁵

2.39 In the *Mid-Year Economic and Fiscal Outlook 2013-14* (MYEFO 2013-14) the government announced 'savings of \$43.1 million over four years by removing funding support for policy reform and advocacy activities provided to four legal assistance programmes'. The explanation in MYEFO 2013-14 expressly stated that '[f]unding for the provision of frontline legal services will not be affected'.⁴⁶

42 Senate Finance and Public Administration References Committee Inquiry into Commonwealth Indigenous Advancement Strategy tendering processes, National Family Violence Prevention Legal Services, *Submission 83*, p. 5.

43 Senate Finance and Public Administration References Committee Inquiry into Commonwealth Indigenous Advancement Strategy tendering processes, National Family Violence Prevention Legal Services, *Submission 83*, p. 5.

44 *Budget 2013-14 – Budget Measures, Budget Paper No. 2*, p. 90.

45 *Budget 2014-15 – Budget Measures Budget Paper No. 2*, p. 60.

46 *Mid-Year Economic and Fiscal Outlook 2013-14*, p. 119.

2.40 In answers to questions on notice for the Additional Estimates hearings in February 2014, the AGD provided the following break-down of the funding cuts across the four legal assistance programs:

Figure 2: MYEFO 2013-14 funding cuts to legal assistance services⁴⁷

	2013-14 \$m	2014-15 \$m	2015-16 \$m	2016-17 \$m	Total \$m
Legal Aid Commissions	3.5	1	0.999	0.999	6.498
Aboriginal and Torres Straits Islander Legal Services	0.18	1.641	6.036	5.484	13.341
Community Legal Services	0.875	3.499	7.623	7.621	19.618
SUB TOTAL (3 Attorney- General's Department's Legal Assistance programs)	4.555	6.14	14.658	14.104	39.457
Family Violence Prevention Legal Services (appropriation held by Department of the Prime Minister & Cabinet)	0	0.366	1.646	1.645	3.657
LEGAL ASSISTANCE TOTAL (all 4 programs)	4.555	6.506	16.304	15.749	43.114

2.41 On 25 March 2015, the Attorney-General and the Minister Assisting the Prime Minister for Women announced a reversal of the previously announced funding cuts to the legal assistance sector by guaranteeing the current funding levels for the next two years and that the changes that were to take effect from 1 July 2015 would not proceed.⁴⁸ The announcement noted the government's overall contribution of over \$1.327 billion to the legal assistance sector from 2013-14 to 2016-17, which included:

...restoration of \$25.5 million over two years to 30 June 2017, of funding for Legal Aid Commissions, Community Legal Centres and Indigenous legal service providers, builds on our significant commitment to address domestic violence, both in terms of front line services as well as policies that will lead to long term cultural change.

...

This decision will restore funding of \$11.5 million for Indigenous legal assistance over two years.

47 Senate Legal and Constitutional Affairs Legislation Committee, *Additional Estimates 2013-14*, Attorney-General's Portfolio, question 19.

48 Senator the Hon George Brandis QC, Attorney-General, and Senator the Hon Michaelia Cash, Minister Assisting the Prime Minister for Women, *Legal aid funding assured to support the most vulnerable in our community*, Media Release, 26 March 2015 (accessed 19 November 2015).

Since the 2013 election, the government has carefully examined legal assistance funding to ensure that funding is directed to front line services where the need is greatest – such as services providing help to those affected by domestic and family violence.

After considerable consultation with State and Territory Governments and service providers, it has been decided there will be no reduction in Commonwealth funding to Legal Aid Commissions, Community Legal Centres (except Environmental Defenders Offices) and Indigenous legal assistance for the next two years.

The Government will honour the funding until the date on which it would have ended – 30 June 2017.

This announcement provides certainty to the sector while the process of negotiating a new funding agreement continues. The new funding agreement is due to commence on 1 July 2015. Commonwealth Government funding will be sustainable and it will match funding to demonstrated need. It will be fair and efficient.⁴⁹

2.42 While NACLIC welcomed the restoration of funding, it noted that the announcement did not reverse all the funding cuts. Further NACLIC stated:

[T]here are a range of unintended consequences arising from the decision that have the potential to negatively impact CLCs across Australia.

As part of the 2015-2016 Federal Budget, funding for CLCs across Australia will drop significantly from 2017-2018 onwards. For example, in total from the Commonwealth CLCs will receive \$40 million in 2015-2016 and \$42.2 million in 2016-2017, however this funding is forecast to [drop] to \$30.1 million in 2017-2018 and \$30.6 million in 2018-2019, a cut in the order of \$12 million per year from 2017-2018.⁵⁰

Adequacy of funding for legal assistance services

2.43 Throughout the inquiry, the committee heard evidence emphasising the inadequacy of funding legal assistance services for Aboriginal and Torres Strait Islander people. For example, at a public hearing in Darwin for the committee's inquiry into the Indigenous Advancement Strategy tendering processes, Mr Jonathon Hunyor, Principal Legal Officer, North Australian Aboriginal Justice Agency (NAAJA) stated:

49 Senator the Hon George Brandis QC, Attorney-General, and Senator the Hon Michaelia Cash, Minister Assisting the Prime Minister for Women, 'Legal aid funding assured to support the most vulnerable in our community', Media Release, 26 March 2015 (accessed 19 November 2015). The \$25.5 million in restored funding comprises: \$11.5 million for the Indigenous Legal Assistance Program; \$12 million for Community Legal Services Program; and \$2 million for the Expensive Commonwealth Criminal Cases Fund. The \$1.327 billion includes the \$1.3 billion for the National Partnership Agreement on Legal Assistance Services discussed above. See also, Senator the Hon George Brandis QC, Attorney-General, *Attorney-General's Portfolio Budget measures 2015-16*, Media release, 12 May 2015 (accessed 19 November 2015).

50 *Submission 42*, p. 6.

It should be seriously beyond dispute that Aboriginal legal services are chronically underfunded. It has been the subject of numerous reports over the years from the Productivity Commission, various parliamentary inquiries and independent reviews. The Law Council of Australia have looked into it. Unfortunately, the calls for increased funding for Aboriginal legal services routinely go ignored. Until those calls are heard, Aboriginal people will not get equal access to legal services or equal access to justice in the Northern Territory—or anywhere, in fact.⁵¹

2.44 Similarly, Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of Western Australia, advised:

Increasingly, we are finding that [Aboriginal Legal Services (ALSs)] are being forced to contract services because we have not got the money to keep offices open. In the Pilbara, for example, we have recently closed our offices in Roebourne and Newman, and we are not doing a three-week court circuit in Karratha, where...there are often 120 people on the list per day, most of whom are Aboriginal, because we do not have the staff to attend that court. We have an office based in Hedland. There is a magistrate in Hedland who is sitting at the same time as the magistrate who comes in from Perth is sitting in Karratha. They sit for three weeks. You cannot be in two places at the one time. Increasingly there are people appearing in criminal courts, facing serious criminal charges, who are unrepresented. A very significant proportion of those are Aboriginal people. In a nutshell, the funding is desultory.⁵²

2.45 The Allen Consulting Group, in a June 2014 review of the 2010 NPA noted:

The existing legal assistance service infrastructure is increasingly focused on earlier resolution of legal problems and is providing a significant level of service delivery to disadvantaged Australians. This is especially notable in the context of high levels of demand, limited resources and clients who often have complex, entrenched and overlapping legal and non-legal needs.

There is however unmet demand for legal assistance services and the findings of this Review suggest that legal assistance service providers will continue to be challenged to achieve government priorities and meet demand within existing resources.⁵³

2.46 In its 2014 inquiry into Access to Justice Arrangements, the Productivity Commission highlighted unmet legal needs, not specific to Indigenous Australians, and recommended that additional funding was needed to:

- better align the means test used by LACs with other measures of disadvantage;

51 Senate Finance and Public Administration References Committee Inquiry into the Indigenous Advancement Strategy tendering processes, *Committee Hansard*, 16 February 2016, p. 14.

52 *Committee Hansard*, 4 August 2015, p. 24.

53 The Allen Consulting Group, *Review of the National Partnership Agreement on Legal Assistance Services: Final Report*, prepared for the Australian Government Attorney-General's Department, p. 43.

- maintain existing frontline services that have a demonstrated benefit to the community; and
- allow legal assistance providers to offer a greater number of services in areas of law that have not previously attracted funding.⁵⁴

2.47 The Productivity Commission noted budgetary constraints but argued:

...not providing legal assistance in these instances can be a false economy as the costs of unresolved problems are often shifted to other areas of Australian and overseas studies show that there are net public benefits from legal assistance expenditure.⁵⁵

2.48 The Australian Government's response was released on 29 April 2016. However, a specific response to recommendation 21.4 regarding funding is not evident.⁵⁶ The statement made by the Attorney-General, Senator the Hon George Brandis QC indicated:

The Australian Government is committed to doing what it can to increase funding levels for legal assistance in a tight fiscal environment. This is demonstrated by the \$15 million legal assistance component of the \$100 million Women's Safety Package, and the restoration of \$25.5 million in funding to the legal assistance sector.⁵⁷

2.49 In relation to Indigenous Australians, The Redfern Statement calls for adequate funding of Aboriginal and Torres Strait Islander Community controlled front-line legal services, including:

- immediately reversing planned funding cuts to ATSILS funding, due to come into effect in 2017, and investing in FVPLS to create funding certainty;
- immediately injecting \$18.58 million into the Indigenous Legal Assistance Program per annum, and providing appropriate funding for FVPLS to urgently address unmet civil and family law needs of Aboriginal and Torres Strait Islander peoples;
- supporting policy functions within peak Aboriginal and Torres Strait Islander organisations to allow Community Controlled Organisations with front-line service delivery expertise to inform policy development; and

54 Australian Government, Productivity Commission, Access to Justice Arrangements, Inquiry Report No. 72, 5 September 2014, p. 63.

55 Australian Government, Productivity Commission, Access to Justice Arrangements, Inquiry Report No. 72, 5 September 2014, pp 30-31.

56 See <https://www.ag.gov.au/LegalSystem/Documents/Government-response-to-Productivity-Commissions-report.pdf> (accessed 5 October 2016). Note: the document indicates that the table lists the recommendations that the Australian Government has implemented, or is in the process of implementing.

57 See <https://www.ag.gov.au/LegalSystem/Pages/response-to-report-into-access-to-justice-arrangements.aspx> (accessed 5 October 2016)

- committing to the development of an evidenced-based long term funding model for the ATSILS, FVPLS and the broader legal assistance sector to ensure funding is targeted at meeting the unmet legal needs of Aboriginal and Torres Strait Islander peoples.⁵⁸

2.50 At the public hearing in Canberra, Ms Quinn, AGD, acknowledged the shortfall in funding:

Our providers certainly keep us very well aware of that aspect and we are very conscious of the fact that the earlier you can intervene in a person's legal problem the better the chances that things do not escalate.

Many people have a series of problems that they are facing, and we know there is evidence to suggest that often a person does not realise they have a legal problem before it has escalated—the example of unpaid fines is a critical one. So I do not dispute the evidence of our providers saying it is very hard to resource that. The issue is, as I said earlier, that around 80 per cent of their services are being directed towards state criminal matters, which leaves very little in terms of their resourcing to be able to deal with the sorts of challenges you are talking about. Legal aid commissions do do quite a bit of that work, as do community legal centres. But, at the end of the day, yes, I cannot dispute the idea that there is not always enough money to go around.⁵⁹

Intergovernmental arrangements

2.51 At the public hearing in Canberra, Mr Nick Parmeter, Executive Policy Lawyer, Law Council of Australia stated that it is not only the lack of funding which is an issue. Noting the numerous previous inquiries on this topic, Mr Parmeter remarked:

A fundamental challenge for policy makers in this area is clearly not a lack of goodwill. We suggest it is the short attention span given to implementing and evaluating recommendations which have come before, the absence of an effective intergovernmental framework for Indigenous justice and the absence of funding to implement it.⁶⁰

2.52 Both the Australian National Audit Office (ANAO) and the Productivity Commission have commented on the effect of state and territory policies on the demand for Commonwealth funding for legal services. The ANAO stated:

[T]he demand for services arises largely from the operation of state and territory laws. In this respect, demand for Indigenous legal assistance services is not in the control of the Australian Government and can be affected significantly by changes made to state and territory laws.⁶¹

58 The Redfern Statement, p. 11.

59 *Committee Hansard*, 4 April 2016, pp 33-34.

60 *Committee Hansard*, 4 April 2016, p. 15.

61 Australian National Audit Office, *Administration of the Indigenous Legal Assistance Program: Attorney-General's Department*, Report No. 22 of 2014-15, p. 16.

2.53 Mr Hunyor, from NAAJA, reiterated this point:

[W]e are funded exclusively by the Commonwealth, from various buckets...when laws in the Territory are changed our funding is not changed to reflect the increasing workload. Things like alcohol protection orders, mandatory sentencing, changes to the bail act or changes to procedure in the courts can impact massively on our workload, and yet there is never any reflection of that in our funding.⁶²

2.54 Ms Polly Porteous, CEO of NACLCL, commented on the funding commitments provided by the governments pursuant to the NPA for CLCs:

The National Partnership on Legal Assistance Services does not require the states and territories to set in stone the amount of money that they are going to give, if any at all. I think that in Western Australia, South Australia, Tasmania and the Northern Territory and to a lesser extent the ACT, just because it is smaller, the state governments in some cases are contributing no money, as in the case of the Northern Territory, or they are contributing such small amounts to the community legal centres that the effect of this reallocation of the bucket of funding is that a lot of legal centres have actually lost funding.⁶³

2.55 On this issue the Productivity Commission recommended:

Given that the policies of State and Territory Governments have a significant impact on the demand for Aboriginal and Torres Strait Islander legal services, especially in relation to criminal matters, State and Territory Governments should contribute to the funding of these services as part of any future legal assistance funding agreement with the Australian Government.⁶⁴

2.56 In terms of a coordinated approach to Indigenous justice issues, Mr Parmeter noted earlier work that state, territory and Commonwealth governments had done in this area in the form of the National Indigenous Law and Justice Framework 2009-2015 (NILJ Framework). The NILJ Framework was prepared by the Council of Australian Governments Standing Committee of Attorneys-General Working Group on Indigenous Justice.⁶⁵ The Framework's stated purpose is to provide:

[A] national approach to addressing the serious and complex issues that mark the interaction between Aboriginal and Torres Strait Islander peoples and the justice systems in Australia.⁶⁶

2.57 The NILJ Framework sets out five interrelated goals:

62 Senate Finance and Public Administration References Committee Inquiry into the Indigenous Advancement Strategy tendering processes, *Committee Hansard*, 16 February 2016, p. 15.

63 *Committee Hansard*, 23 September 2015, p. 32.

64 Productivity Commission, *Access to Justice Arrangements*, 2014, Vol 1, Recommendation 22.4, p. 66.

65 *Committee Hansard*, 4 April 2016, p. 15.

66 National Indigenous Law and Justice Framework 2009-2015, p. 4.

1. improve all Australian justice systems so that they comprehensively deliver on the justice needs of Aboriginal and Torres Strait Islander peoples in a fair and equitable manner
2. reduce over-representation of Aboriginal and Torres Strait Islander offenders, defendants and victims in the criminal justice system
3. ensure that Aboriginal and Torres Strait Islander peoples feel safe and are safe within their communities
4. increase safety and reduce offending within Indigenous communities by addressing alcohol and substance abuse, and
5. strengthen Indigenous communities through working in partnership with governments and other stakeholders to achieve sustained improvement in justice and community safety.⁶⁷

2.58 While each of these goals has associated strategies and actions that could be undertaken, the NILJ Framework explicitly states:

The Framework does not set out to prescribe strategies or actions to be adopted by governments or service providers. Rather it articulates an agreed good practice approach, based on available evidence, that provides government agencies and service providers with a framework from which to identify the most appropriate responses to specific issues at the local, regional, state or territory level. The Framework draws on existing State and Territory instruments such as Aboriginal and Torres Strait Islander justice agreements.⁶⁸

2.59 Mr Parmeter noted:

No funding was attached to [the NILJ Framework's] implementation and the lack of state and territory government buy-in ensured that it lay effectively moribund in the Commonwealth Attorney-General's Department. Recently, responsibility for the framework was transferred to the Prime Minister's department, with no obvious plans for its renewal.⁶⁹

2.60 AGD provided the following information on the NILJ Framework:

The [NILJ] Framework was intended to support the Council of Australian Government's [COAG] agenda to 'Close the Gap' in Indigenous disadvantage, particularly in relation to community safety.⁷⁰

2.61 Noting that the NILJ Framework did not prescribe actions to be adopted by governments or service providers, and was rather an agreed good practice approach, AGD continued:

An external review of the [NILJ] Framework was undertaken by the National Justice and Policing Senior Officers group in 2013. It was then

67 National Indigenous Law and Justice Framework 2009-2015, p. 7.

68 National Indigenous Law and Justice Framework 2009-2015, p. 4.

69 *Committee Hansard*, 4 April 2016, p. 15.

70 Attorney-General's Department, answers to questions on notice, received 13 April 2016, p. 2.

due to be reconsidered in October 2013 but, this item was put on hold. In 2014 the framework was rolled into the broader Indigenous justice item on [COAG's Law, Crime and Community Safety Council agenda (LCCSC)].

[AGD] is advised that no further work has been undertaken by LCCSC on the [NILJ] Framework.⁷¹

2.62 AGD continued, referring to the recently finalised National Strategic Framework for Legal Assistance 2015-20:

The [National Strategic Framework for Legal Assistance 2015-20] promotes a unified and coordinated approach by governments and the legal assistance sector to enhance access to justice for disadvantage people in Australia, and to help focus finite resources towards areas of greatest legal need. The [National Strategic Framework for Legal Assistance 2015-20] is a strategic document that does not link to government funding, or contain reporting requirements or obligations on legal assistance service providers. The [National Strategic Framework for Legal Assistance 2015-20] sits above the Commonwealth's funding agreements for legal assistance services, being the National Partnership Agreement on Legal Assistance Services and individual funding agreements with Indigenous legal assistance providers, adding context and an overarching link between these funding arrangements. Commonwealth, state and territory governments endorsed the [National Strategic Framework for Legal Assistance 2015-20] by majority through the National Justice and Policing Senior Officers Group on 25 September 2015, demonstrating a mutual commitment to legal assistance.⁷²

2.63 The next chapter of the report looks at the areas of unmet legal needs for Aboriginal and Torres Strait Islander people and the barriers to accessing legal assistance.

71 Attorney-General's Department, answers to questions on notice, received 13 April 2016, p. 2.

72 Attorney-General's Department, answers to questions on notice, received 13 April 2016, pp 2-3.

