



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: IIC:EEgm1792535

6 November 2019

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: john.farrell@lawcouncil.asn.au

Dear Mr Smithers,

National Legal Assistance Partnership Overview Paper

I write regarding your request for input on the National Legal Assistance Partnership Overview Paper (“Overview Paper”) to assist in the Law Council’s submission to the Attorney-General’s Department.

We note the Law Council has engaged heavily with various governments regarding separate independent funding of Aboriginal and Torres Strait Islander Legal Services (“ATSILs”) and increased Commonwealth funding to the legal assistance sector. The Law Society has pursued similar advocacy at the state level and our correspondence to the NSW Attorney General is attached to this letter.

We note that under the new National Legal Assistance Partnership (“NLAP”) scheme, as described in the Overview Paper, payments will be made under both a public Legal Assistance Strategy and Legal Assistance Action Plan developed by the states and territories. This is a significant shift in policy given ATSILs are currently funded directly by the Commonwealth.

Furthermore, states and territories will have the flexibility to reallocate baseline funding from an existing funded ATSIL to another Aboriginal Community Controlled Organisation following consultation with the Commonwealth, including where there is a “demonstrable and substantial shift in legal need within a jurisdiction”. On its face, this new model does not give the requisite certainty expected and could have impacts for the Aboriginal Legal Service (NSW/ACT) which is already under resourcing pressures.

In addition, there appears to be no engagement policies or protocols with any ATSILs or Aboriginal controlled services, under the Overview Paper, built in to the NLAP. This could mean that funding decisions can be made by the states and territories without any consultation with the affected bodies.

Monitoring and assessing the delivery of legal assistance services by ATSILs funded under the NLAP is the responsibility of states and territories in the Overview Paper. We understand the Aboriginal Legal Service (NSW/ACT) is already under financial and staffing strain and any increased performance reporting levied on the

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney
ACN 000 000 699 ABN 98 696 304 966

T +61 2 9926 0333 F +61 2 9231 5809
www.lawsociety.com.au



organisation will have an impact on service delivery. We also note that no administration (meaning advocacy) services can be funded out of the NLAP in the Overview Paper. Whilst we do not have a firm view on its appropriateness, we suggest this could undermine the effectiveness of ATSILS' engagement with Indigenous peoples at the community level.

Indigenous legal clients are a unique cohort of clients requiring protection and this new funding model, with its increased flexibility and monitoring requirements, will inevitably put further pressure on services. If you have any questions in relation to this letter, please contact Georgina McArthur, Policy Lawyer, on 9926 0275 or email georgina.mcarthur@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Espinosa', written in a cursive style.

Elizabeth Espinosa
President

Encl.



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: IIC:EEgm1768620

6 September 2019

The Hon. Mark Speakman SC MP
Attorney General
GPO Box 5341
SYDNEY NSW 2001

Dear Attorney,

Funding changes to the Indigenous Legal Assistance Program (“ILAP”)

We write regarding the 2019-2020 Commonwealth Government’s Budget commitment to a new Legal Assistance Package (“LAP”). We write on behalf of our Indigenous Issues Committee to emphasise the importance of maintaining separate funding for Indigenous legal services. We note that this is a Commonwealth decision and that the Law Council of Australia is pursuing similar advocacy at the Federal level. We are writing to you, however, to ensure the NSW Government is aware of the ramifications of the changes to the Commonwealth Budget, and to inform NSW Government negotiations with the Commonwealth for the development of the single National Mechanism to deliver legal assistance funding.

The Law Society supports the recommendations of the independent *Review of the Indigenous Legal Assistance Program 2015-2020* and we note the primary recommendation of that review: *“To facilitate a sustainable, community-controlled Indigenous legal assistance sector, Commonwealth Government funding should continue to be delivered through a standalone, specific purpose funding program with minimum five-year funding terms.”*

We recognise that under the LAP the total baseline Commonwealth funding for Legal Aid Commissions, Community Legal Centres and Aboriginal and Torres Strait Islander Legal Services (“ATSILS”) will be increased. However, uncertainty remains as to the amount of actual funding that will flow to ATSILS. We understand that funding for Indigenous legal services will only be quarantined for five years, which may undermine the security of the future funding of ATSILS.

While we await the release of further details, we are concerned that the effectiveness of ATSILS could be put at risk under the LAP through any funding delays or a lack of funding certainty over the longer term. The ILAP Review observed that ATSILS provide a significant percentage, sometimes the majority, of legal advice services in local criminal courts in regional and remote communities. In the view of our Committee members, without ATSILS, some courts would be unable to function, or would function much less efficiently.

If you have any queries relating to this letter, please contact Georgina McArthur, Policy Lawyer, on (02) 9926 0275 or email Georgina.Mcarthur@lawsociety.com.au.

Yours sincerely,

Elizabeth Espinosa
President

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