

Independent Review of the National Legal Assistance Partnership (2020-2025)

Terms of Reference

Background

Legal assistance plays a vital role in ensuring more equal access to the justice system which is fundamental to our democratic society and the rule of law. Not only does legal assistance facilitate improved outcomes for individuals, it also generates broader benefits to society. Conversely, insufficient legal assistance not only results in injustice and entrenches disadvantage, it can have other profound economic and social costs for individuals, their families and communities.

The Commonwealth and the States and Territories (the States) have a mutual interest and responsibility in the provision of legal assistance services, within available resources. The National Legal Assistance Partnership 2020-2025 (NLAP) is a key mechanism to assist vulnerable people facing disadvantage by keeping the justice system within their reach. Services are delivered through legal aid commissions, community legal centres and Aboriginal and Torres Strait Islander Legal Services, as well as other service models, such as Family Advocacy and Support Services (FASS), Domestic Violence Units (DVUs) and Health Justice Partnerships (HJPs).

The NLAP is subject to an independent review (clauses 81 and 82) which should, at a minimum, consider:

- a) progress towards achieving the overall objective and outcomes of the NLAP;
- b) the appropriateness of the NLAP in achieving its objective and outcomes and delivering its outputs; and
- c) whether mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services funded under the NLAP have been delivered in an effective, efficient and appropriate manner.

It is imperative that the NLAP review informs an improved future legal assistance framework that supports efficient, sustainable, client-centric, evidence-driven service delivery, promoting best practice. This includes a cost-effective and appropriate Commonwealth funding mechanism that fosters a productive partnership between the Commonwealth, the States, and service providers, and advances the importance of legal assistance in improving legal, social and wellbeing outcomes for people in Australia.

Scope of the Review

In accordance with the [Federation Funding Agreements Framework](#) and consistent with the NLAP (clause 82), the review will evaluate the extent to which the objective, outcomes and outputs (clauses 13-20) of the NLAP have been achieved, and the NLAP is efficient, effective and appropriate in achieving its policy intent. It will have a particular focus on:

1. **A holistic assessment of legal need and all Commonwealth legal assistance funding, including:**
 - a) the quantum, prioritisation, allocation, distribution mechanism, and timing and length of existing Commonwealth funding, including funding provided under the NLAP and outside the NLAP, funding allocated across jurisdictions and within each jurisdiction¹.
 - b) comparative analysis of various funding administration mechanisms, such as direct and indirect distribution of Commonwealth funding under the NLAP, and other legal assistance programs for example Family Violence Prevention Legal Services (FVPLS), and the previous Indigenous Legal Assistance Program 2015-2020 (ILAP) to identify best practice for Commonwealth funding arrangements including principles of self-determination.
 - c) the current evidence of unmet legal need and demand, particularly pertaining to the most disadvantaged communities and population groups, such as those in regional, rural and remote locations.
 - d) whether existing arrangements can appropriately respond to emergencies and new priorities (e.g. natural disasters, COVID-19 and legislative change).

2. **An evaluation of the effectiveness and challenges of service delivery, including:**
 - a) the effectiveness and challenges of delivering core legal assistance services of varying complexity and intensity, as well as wrap-around services such as counselling; and the broader role of providers in community education, advocacy and strategic litigation.
 - b) integration, collaboration and innovation of service delivery, within the sector and with other areas of social service provision such as health, employment, disability and child protection services, and how the NLAP supports broader government priorities (such as, the National Plan to End Violence Against Women and Children, Australia's Disability Strategy, and the National Framework for Protecting Australia's Children).
 - c) the cultural appropriateness of legal assistance services for First Nations people, acknowledging the diversity of Aboriginal and Torres Strait Islander culture, and the alignment between legal assistance services and the Priority Reforms and Targets under Closing the Gap.
 - d) cultural appropriateness of legal assistance services for all national priority client groups under the NLAP.

3. **An evaluation of data collection, performance monitoring and reporting, including:**
 - a) the current reporting framework, including its purpose, utility, and data quality, with consideration of the data capability across and the administrative burden on the sector.
 - b) exploring alternative frameworks and approaches to improve the data availability, reliability, quality, and better connection with the broad outcomes.

¹ Note they are subject to:

- (1) The Federation Funding Agreements Framework need to balance the fiscal autonomy of the States with the Commonwealth oversight role.
- (2) The Commonwealth's executive power to contract and spend.

- c) opportunities and strategies to enhance data collection of legal assistance that improve service delivery, guide future outcomes-based frameworks, and align with Closing the Gap Priority Reforms 2 and 4².

Individual evaluations of specific services under the NLAP, such as FASS, DVUs and HJPs, will be outside the scope of the review. However, the impact of these service models will be considered as part of the review.

Process

The review will adopt a transparent and collaborative approach to consultation and will consult widely and extensively. At minimum it will enable inputs through submission and/or consultation from:

- Legal Assistance Inter-Governmental Committee (IGC) and its members³
- National Legal Assistance Advisory Group and its members⁴, and other advisory bodies as appropriate
- Peak bodies and providers of the legal assistance sector at all levels
- Sectors and service streams that interact with legal assistance, including government departments and institutions, and non-government bodies, such as research institutions, peaks and providers in relevant social and health sectors
- Clients (existing and potential) of legal assistance services

The reviewer should strive towards best practice in engaging, consulting and collaborating with First Nations legal service providers, peak bodies and communities in a genuine, comprehensive and culturally appropriate manner that values First Nations experience and expertise. The review methodology should align with the Closing the Gap Priority Reform Areas which highlight the importance of empowering and partnering with Aboriginal and Torres Strait Islander people. A draft review report and the final report will be provided to all Attorneys-General around December 2023 (clause 81). The final report will be publicly released by the Commonwealth within three months of completion of the review (clause 86).

² Priority Reform 2 – Building the Community-Controlled Sector; Priority Reform 4 - Shared Access to Data and Information at a Regional Level.

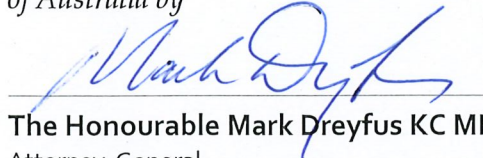
³ Comprising Commonwealth and state and territory representatives from Attorney-General's Departments or equivalent.

⁴ Community Legal Centres Australia, National Legal Aid, National Aboriginal and Torres Strait Islander Legal Services, National Family Violence Prevention Legal Services, Australian Pro Bono Centre, Health Justice Australia, Law Council of Australia, Victoria Law Foundation, and Law and Justice Foundation of NSW.

INDEPENDENT REVIEW OF THE NATIONAL LEGAL ASSISTANCE PARTNERSHIP

The Parties have confirmed their commitment to this Terms of Reference as follows:

Signed for and on behalf of the Commonwealth of Australia by



The Honourable Mark Dreyfus KC MP
Attorney-General

[Day] [Month] [Year]
16 2 2023

Signed for and on behalf of the State of New South Wales by

The Honourable Mark Speakman SC MP
Attorney-General of the State of New South Wales

[Day] [Month] [Year]

Signed for and on behalf of the State of Queensland by

The Honourable Shannon Fentiman MP
Attorney-General of the State of Queensland

[Day] [Month] [Year]

Signed for and on behalf of the State of South Australia by

The Honourable Kyam Maher MLC
Attorney-General of the State of South Australia

[Day] [Month] [Year]

Signed for and on behalf of the Australian Capital Territory by

The Honourable Shane Rattenbury
Attorney-General of the Australian Capital Territory

[Day] [Month] [Year]

Signed for and on behalf of the State of Victoria by

The Honourable Jaclyn Symes MLC
Attorney-General of the State of Victoria

[Day] [Month] [Year]

Signed for and on behalf of the State of Western Australia by

The Honourable John Quigley MLA
Attorney General of the State of Western Australia

[Day] [Month] [Year]

Signed for and on behalf of the State of Tasmania by

The Honourable Elise Archer MP
Attorney-General of the State of Tasmania

[Day] [Month] [Year]

Signed for and on behalf of the Northern Territory by

The Honourable Chansey Paech MLA
Attorney-General of the Northern Territory of Australia

[Day] [Month] [Year]