

31 May 2018

The Executive Director  
Australian Law Reform Commission  
GPO Box 3708 Sydney NSW 2001  
Email: familylaw@alrc.gov.au

Dear Executive Director of the Australian Law Reform Commission

The National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**) is the peak national body for Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) in Australia. NATSILS brings together over 40 years' experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner throughcare to Aboriginal and Torres Strait Islander peoples in contact with the justice system. NATSILS and its members are the experts on the delivery of effective and culturally responsive legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives NATSILS 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. in South Australia (**ALRM**);
- Aboriginal Legal Service (NSW/ACT) (**ALS NSW/ACT**);
- Aboriginal Legal Service of Western Australia Ltd (**ALSWA**);
- North Australian Aboriginal Justice Agency (**NAAJA**);
- Tasmanian Aboriginal Community Legal Service (**TACLS**); and
- Victorian Aboriginal Legal Service Co-operative Limited (**VALS**).

NATSILS writes to provide some feedback on the Issues Paper. We are a national peak body and as such, our comments are aimed at the national level and are intended to complement the more detailed state-level submissions of our members.

NATSILS notes that Western Australia's family law system is unique as it is the only jurisdiction with a state family court. In the Family Court of Western Australia (**FCWA**), disputes involving married persons are dealt with under the *Family Law Act 1975* (Cth) and disputes involving de facto partners are dealt with under the *Family Court Act 1997* (WA). For this reason, our national recommendations may apply differently in practice in Western Australia.

### **Question 1: What should be the role and objectives of the modern family law system?**

NATSILS is of the view that the modern family law system must have the best interests of children and families at its centre. In NATSILS view, this means that the system should be designed to be preventative and to de-escalate or resolve conflict without requiring court intervention. The modern family law system must be about supporting Aboriginal and Torres Strait Islander children to remain with families and communities by providing Aboriginal and Torres Strait Islander families with timely

and culturally safe support, including legal help. Governments must ensure that underlying social issues such as health, substance abuse, mental health, housing, justice, violence and unemployment are not unnecessarily contributing to the separation of Aboriginal and Torres Strait Islander children from their communities.

The modern family law system must be culturally safe with a focus on Aboriginal and Torres Strait Islander community-controlled organisations providing family support services. There is a great need to improve the relationship between Aboriginal and Torres Strait Islander people and the family law system, in order for it to become an effective option for resolving family and child-related issues. It must be a trauma-informed system that aims to build trust and healing with Aboriginal and Torres Strait Islander communities.

The modern family law system must also be well-resourced on every level: essential family support service, additional judicial resources, legal resources, family consultants, Aboriginal Liaison Officers, cultural awareness training, independent children's lawyers and experts.

### **Question 2: What principles should guide any redevelopment of the family law system?**

NATSILS believes that any redevelopment of the family law system must be underpinned by the principles of self-determination and co-design with affected communities. This requires a commitment to funding and supporting Aboriginal and Torres Strait Islander community controlled services, including legal services.

Any re-development must take a human rights centered approach that is informed by principles of integration and collaboration across relevant departments, i.e. the courts and service providers, including greater information sharing. This must place the rights of the child, the right to culture and equal access to justice at the forefront.

### **Questions 5 & 9: How can accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people? How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?**

Access to justice and to support services is a huge concern for Aboriginal and Torres Strait Islander people.

There are many barriers to access to justice for Aboriginal and Torres Strait Islander people.

**Language barriers** prohibit access to the justice system, which can be remedied by having greater access to Aboriginal and Torres Strait Islander interpreters (via video link in court or in person on hearing days) and the provision of information about the family law system in Aboriginal or Torres Strait Islander languages.

**Regional and remote barriers** for Aboriginal and Torres Strait Islander people include a lack of essential family support services, access to culturally safe legal services, and general access to courts including the availability of circuit courts and video links.

For example in the Northern Territory, Aboriginal and Torres Strait Islander people often reside hundreds of kilometres away from the court that is determining their family law matter. The lengthy travel involved, often on unsealed roads, presents a real barrier to participation in the family law system. In addition, many NAAJA clients do not have reliable phone access. There is no permanent Federal Circuit Court Registry in Alice Springs. NATSILS understands that the Alice Springs registry was

closed because there were not enough matters to justify the cost of running the registry. One judge travels to Alice Springs from Darwin for one week of sittings approximately three times a year. In between sittings, Alice Springs matters are mentioned over the phone, which can create a sense of alienation and removal from the court process. An improvement would be to reopen the registry in Alice Springs.

NATSILS recommends that more effective videolink facilities should be established in remote and regional areas, especially for substantive appearances, so that matters can be better progressed in between sittings. The use of telephone appearances for listing hearings could create more flexibility for regional clients. The provision of ongoing access to a physical court space and videolink facilities would assist clients in being more engaged in the family law process.

In the case of formal matters, NATSILS recommends that clients have the option of not appearing when they are legally represented. This could allow cases to progress faster and remove the potential trauma and stress of a court appearance for vulnerable clients. NATSILS notes that this already occurs in some instances in Western Australia.

***Lack of trust and awareness of rights*** also prevents Aboriginal and Torres Strait Islander people using the family law system. Greater culturally appropriate community legal education is needed so that Aboriginal and Torres Strait Islander people are aware of how the family law system can be used and what their rights are. The historic association between the family courts and 'welfare', including intergenerational trauma from the Stolen Generations, raises fears that children will be removed as a result of engaging with court processes. This community legal education should be delivered locally to, and by, Aboriginal and Torres Strait Islander people.

***Lack of access to culturally appropriate legal services*** is a significant factor preventing access to the family law system for Aboriginal and Torres Strait Islander people. The family law system rules, paperwork, filing and other requirements, are such that the average member of society could find it very difficult to navigate. The language used, and required to be used, in the legal process is formal and legalistic, and not in a form that a self-represented litigant would be able to understand. There must be an increase in funding to NATSILS to enable the provision of family law services to be significantly expanded by increasing the number lawyers generally, and especially in regional areas. In Western Australia for example, four family lawyers from ALSWA cover all family court and child protection work in the State. With additional support for delivering family law services, ALSWA was able to employ two regionally based family lawyers which improved the number of Aboriginal people having access to culturally competent support but was unable to continue providing this assistance when the funding ceased in 2015. NATSILS recommends an increase in the resources available to NATSILS so these bodies can have an increased presence in regional and remote areas, and to fund family lawyers travelling to regional areas to speak to clients before family court sittings.

***Aboriginal Liaison Officers*** (referred to as 'Indigenous Family Liaison Officer' in Western Australia) can assist to break down access issues. These support roles provide clients with the option of speaking with someone from their community in person about the family law system and court processes they are facing. They provide culturally appropriate support, referral pathways and act as a conduit for communication in a cultural sensitive manner. Aboriginal Liaison Officers play a critical role in assisting parties to overcome language and cultural barriers, and in navigating the complexities of the family law system.

Aboriginal Liaison Officers were effective in assisting courts to meet the needs of Aboriginal and Torres Strait Islander people during their operation from 1996-2008.<sup>1</sup> However, due to changes in government policy and a decline in resources available to the Court, responsibility for early intervention and engagement with Aboriginal and Torres Strait Islander families was passed to community-based Family Relationship Centres. In many cases, these Centres employed “Indigenous Advisers” for this role, and they assist in liaising with Indigenous families and shaping agency policy and practice in this area.<sup>2</sup> However, NATSILS recommends that these Aboriginal Liaison Officers are reinstated in courts as a support measure.

**Improved cultural safety** of the family court system will increase its accessibility for Aboriginal and Torres Strait Islander people. For example, greater recruitment and retention of Aboriginal and Torres Strait Islander staff within the family law system and increased cultural awareness training amongst court staff, child protection workers, Magistrates, Judges and legal practitioners across Australia.

**Question 10: What changes could be made to the family law system, including to the provision of legal services and resolving family disputes?**

NATSILS is of the view that changes can be made to the family law system to address an unmet need for culturally appropriate legal services and improve family law reports.

*Mapping unmet legal need*

In relation to the provision of legal services, there is an urgent need for governments to work with Aboriginal and Torres Strait Islander organisations to identify unmet legal need.

The disproportionately high number of legal issues experienced by Aboriginal and Torres Strait Islander peoples across all areas of the justice system is well documented. From significantly higher rates of imprisonment and involvement with child protection systems, to vast unmet need for civil and family law services, access to justice directly impacts upon Aboriginal and Torres Strait Islander people’s physical, emotional and social wellbeing.

The ability for Aboriginal and Torres Strait Islander people to access legal assistance services is far from adequate given the extent of legal need in Aboriginal and Torres Strait Islander communities. Whilst this is undoubtedly the case in a criminal law context, the Indigenous Legal Needs Project has also found that civil and family law problems are experienced with considerable frequency in Indigenous communities and often in conjunction with a number of legal matters at one time:

“In measuring legal need in Indigenous communities it is necessary to consider not just the regularity with which specific legal issues are experienced, but also the way in which different types of legal problems run alongside each other and, at certain points, come together or coincide, causing legal need to intensify. The ILNP has referred to this as a ‘snowballing’ of legal problems. It has identified numerous instances of Aboriginal and Torres Strait Islander people being affected by multiple legal problems simultaneously, with often one or all of these problems set aside and left unaddressed, for a range of reasons, until perhaps they reach a crisis point such as eviction from a tenancy or escalation to a criminal law matter. This has implications for service delivery, including requiring that legal services expend additional resources on working with Indigenous clients to effectively address need. They must, for

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<sup>1</sup> Stephen Ralph, *Indigenous Australians and Family Law Litigation: Indigenous perspectives on access to justice* (October 2011) Family Court of Australia <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/reports/2011/indigenous-australians-and-family-law-litigation>>.

<sup>2</sup> Ibid.

instance, spend time ‘unpacking’ the complexity of the issues in question, they should approach this need holistically and should ensure greater access to legal help as soon as possible after issues arise.”<sup>3</sup>

This need for greater access to culturally appropriate legal services has been recognised by the Productivity Commission, which emphasised that funding for separate Aboriginal and Torres Strait Islander legal services should be maintained.

The demand for ATSILS services continues to grow, with particularly high demand for:

- criminal services, including casework and advice matters;
- civil services, especially in the areas of tenancy and police complaints;
- child protection and family law services; and
- representation for defendants of Domestic Violence Orders (which the ATSILS are not currently funded to provide except in very limited circumstances).

The eight ATSILS were set up in line with the principle of self-determination, with an understanding of the unique impact a lack of access to culturally responsive legal assistance services has upon Aboriginal and Torres Strait Islander people and communities.

ATSILS are the preferred, and in many instances the only, legal aid option for Aboriginal and Torres Strait Islander peoples. ATSILS provide a unique legal service that recognises and responds to cultural factors that may influence and/or affect Aboriginal and Torres Strait Islander people. As noted in NATSILS’ submission to the Senate Inquiry into Access to Legal Assistance in 2015:

“[A]boriginal and Torres Strait Islander people don’t just need access to more legal services; they need greater access to culturally appropriate legal services. [...] Cultural competency is essential for effective engagement, communication, delivery of services and the attainment of successful outcomes.”<sup>4</sup>

With respect to civil and family law services, a number of reports have highlighted the levels of unmet need for civil and family law in Aboriginal and Torres Strait Islander communities.<sup>5</sup> It has been noted that an increasing proportion of services delivered by ATSILS relate to civil and family matters.<sup>6</sup> In particular, a high number of the civil law issues experienced by Aboriginal and Torres Strait Islander people relate to housing and tenancy issues, however, the rate at which Aboriginal and Torres Strait Islander people seek legal assistance for such issues is low.<sup>7</sup>

Further, child protection and representing defendants of Domestic Violence Orders are specific issues which could be greatly assisted through increased funding. In relation to child protection, there is a common perception amongst Aboriginal and Torres Strait Islander people that there is a lack of legal

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<sup>3</sup> Indigenous Legal Needs Project, James Cook University, *Submission to the Senate Inquiry into Access to Legal Assistance Services* (2015) <[https://www.jcu.edu.au/\\_\\_data/assets/pdf\\_file/0008/119843/jcu\\_147272.pdf](https://www.jcu.edu.au/__data/assets/pdf_file/0008/119843/jcu_147272.pdf)>.

<sup>4</sup> NATSILS, Submission No 13 to Senate Legal and Constitutional Affairs Committee, *Inquiry into Access to Legal Assistance Services*, April 2015, 6.

<sup>5</sup> F Allison, M Schwartz and C Cunneen, ‘The Civil and Family Law Needs of Indigenous People in WA (A report of the Australian Indigenous Legal Needs Project)’ (Report, Australian Indigenous Legal Needs Project, 2014); C Cunneen, F Allison and M Schwartz, ‘Access to Justice for Aboriginal People in the Northern Territory’ (2014) 49(2) *Australian Journal of Social Issues* 219.

<sup>6</sup> See NATSILS, Submission No 13 to Senate Legal and Constitutional Affairs Committee, *Inquiry into Access to Legal Assistance Services*, April 2015, 4, which noted that “[c]urrently 13% of the ATSILS legal assistances are civil needs and 9% are family law matters”.

<sup>7</sup> NATSILS, Submission No 3 to Productivity Commission, *Inquiry into Access to Justice Arrangements*, November 2013, 5, citing C Cunneen and M Schwartz, ‘The Family and Civil Law Needs of Aboriginal People in NSW’ (2008) 69; Fiona Allison et al, ‘Indigenous Legal Needs Project: NT Report’ (2012) 133.

advice or representation for parents in cases where their children are being removed by child protection agencies.<sup>8</sup> In relation to family violence, NATSILS submits that in addition to the increased focus of the ATSILS' work in the area of family law more generally, it is important that there is a separate Aboriginal and Torres Strait Islander-specific service for victims of family violence because of the nature of the provision of legal representation by the ATSILS. There are situations where ATSILS may be required to choose between representing alleged victims of family violence or the accused person. This is especially problematic, where in practice it is common for the alleged perpetrator of family violence to make contact with an ATSILS before the alleged victim.<sup>9</sup>

Overall, despite the critical need and rising demand for ATSILS services, the amount of real funding provided to the ATSILS has been declining since 2013, while the cost of providing services has risen. In the 2017-18 Federal Budget the Government restored funding cuts to ATSILS of \$16.7 million over the forward estimates. However, after 2020, ATSILS will be subject to funding cuts as a result of the Government's 2013 ongoing savings measure. These cuts will have a major impact on highly vulnerable Aboriginal and Torres Strait Islander people and impact upon the ability of ATSILS to deliver services that ensure Aboriginal and Torres Strait Islander people are equal before the law and have access to a fair trial.

In light of this, NATSILS reiterates previous calls to fund the ATSILS so they can meet the civil and family law needs of Aboriginal and Torres Strait Islander people. In particular, that governments implement the finding of the Productivity Commission that an additional \$200 million to the legal assistance sector is required to begin meeting this unmet need.<sup>10</sup>

The family law system can be improved by governments urgently working with the NATSILS to develop a national plan to identify and map the unmet legal needs of Aboriginal and Torres Strait Islander people. The Australian Government funded Indigenous Legal Assistance Programme does not currently identify the unmet legal needs of Aboriginal and Torres Strait Islander people, nor provide resources to address the unmet legal need.

### *Family Law reports*

NATSILS believes that more can be done to make family reports more culturally appropriate. Report writers often lack cultural awareness (for example, gender sensitivities) and are not trained to report on kin arrangements and other avenues of resolving violence and conflict. There is often a disparity between the actual circumstances and what is written in private reports when there are language and literacy barriers and no interpreter available.

The preparation of comprehensive family reports makes a significant difference in reducing financial barriers and in ensuring culture is valued and respected in the process of resolving family disputes. NATSILS recommends extra funding be allocated to ATSILS for them to prepare cultural reports for all cases that involve Aboriginal and Torres Strait Islander children as part of the process of preparing family reports.

Report writers must be instructed to report on cultural issues with community and Elders consulted as appropriate. Where the matter concerns an Aboriginal or Torres Strait Islander child, the report

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<sup>8</sup> C Cunneen and M Schwartz, 'The Family and Civil Law Needs of Aboriginal People in NSW' (2008) 61, 63.

<sup>9</sup> NATSILS, Submission No 13 to Senate Legal and Constitutional Affairs Committee, *Inquiry into Access to Legal Assistance Services*, April 2015, 12–13, [5.3]–[5.4].

<sup>10</sup> *Ibid* 5 [3.2.7], citing Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview*, Inquiry Report No 72 (2014) 24.

should be prepared by an Aboriginal or Torres Strait Islander report writer and an interpreter should be made available. More Aboriginal and Torres Strait Islander psychologists should be trained on how to prepare family reports. Family reports need to recognise the different nature of Indigenous families, including important information such as kinship mapping, and interviews with extended family, such as aunties or other culturally relevant people in the community. Community law and justice groups can assist with this work.

Other issues that need to be addressed for family reports include the availability of report writers and the cost of private reports.

**Question 11: What changes can be made to court procedures to improve their accessibility for litigants who are not legally represented?**

NATSILS submits that increased resourcing is required to ensure representation is available to those needing to engage with the family law system. Private representation can be prohibitively expensive and Legal Aid representation is subject to strict means testing. This leaves many people without representation. NATSILS recommends that increasing the funding, and therefore the availability and accessibility, of culturally safe legal services must be a priority to reduce the number of litigants going to court without legal representation.

There should be increased funding for duty lawyer services specifically dealing with family law. Resourcing NATSILS and other legal help would allow these bodies to either refer clients to duty lawyers or allow them to directly provide a duty lawyer service to clients. Self-represented litigants should be required to meet with a duty lawyer or community legal service provider regularly for advice on the legal process and their matter. Duty lawyers should also be available at court at all times that the court is sitting.

The courtroom has a very formal structure and appearance, with its hierarchical structure and raised benches, and can be intimidating for any person encountering the legal system, let alone a self-represented litigant. There is also a lack of private spaces in court waiting areas and foyers. This makes it difficult for clients to feel safe when speaking to their lawyers or getting instructions because another parent, with whom there is likely tension or conflict, is in the same vicinity.

NATSILS strongly advocates for the resourcing of identified Aboriginal Liaison Officer positions to provide a bridge between community members and the family law system, including connecting them with culturally appropriate legal assistance.

**Question 14: What changes to the provisions in Part VII of the Family Law Act could be made to produce the best outcomes for children?**

NATSILS supports the requirement that Aboriginal culture must be considered in determining a child's best interests. NATSILS is of the view that the current legislation limits the consideration to 'the child's right to enjoy his or her Aboriginal or Torres Strait Islander culture.'

However, NATSILS suggests that more appropriate mechanisms for introducing cultural evidence in proceedings should be introduced to ensure that this requirement will be complied with in a meaningful way. In the case of *Hort v Verran*,<sup>11</sup> the Court found that the Federal Magistrate properly accepted the evidence of a Tiwi Elder in the absence of anthropological evidence. NATSILS does not consider it necessary for cultural evidence to be provided by an anthropologist with an institutional

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<sup>11</sup> *Hort v Verran* [2009] FamCAFC 214 (1 December 2009).

qualification. Cultural evidence can be more appropriately provided by Elders, and cultural reports and cultural advisors from these sources should be considered by decision-makers. Court personnel and practitioners should be trained to adduce evidence on culture.

One possibility is for the legislation to mirror the Victorian Aboriginal Child Placement Principle,<sup>12</sup> so that in regards to Aboriginal children this ‘paramount consideration’ explicitly includes the child’s interests in preserving their Aboriginal identity through connections to family, community, country and cultural identity.

**Questions 20 & 21: What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes? Should courts provide greater opportunities for parties involved in litigation to be diverted to other dispute resolution processes or services to facilitate earlier resolution of disputes?**

NATSILS considers that diverting parties away from litigation to other dispute resolution processes or services will help to facilitate the timely and cost-effective resolution of family law disputes.

NATSILS also recommends that having a specialised family law matters list for Aboriginal and Torres Strait Islander people, or creating alternative court processes for Indigenous families, can assist. For example, the Koori Family Hearing Day for the Family Division of the Broadmeadows Children’s Court provides a useful model of alternative, less formal and less intimidating processes that encourage children and adults to feel more comfortable. This initiative has seen an increase in the attendance of parents at court.

Current Indigenous Lists include the Federal Circuit Court of Australia’s specialist list, introduced in 2016 by Judge Sexton in the Sydney Registry. The list aims to provide a bridge between family law and the state based child protection services which so often, in removing children from their families and communities, separates siblings, forces loss of cultural identity and perpetuates the inter-generational loss, grief and trauma experienced by Aboriginal and Torres Strait Islander people. The List is supported by the Indigenous Advisor to the Chief Justice of the Family Court, various support organisations and the Child Dispute Services section of the Registry.<sup>13</sup>

Similarly, NATSILS understands that the Aboriginal & Torres Strait Islander List of the Federal Circuit Court in Adelaide commenced on 8 March 2018 with Judge Kelly. The list is conducted in the ‘Aboriginal court in the round’, developed in conjunction with Kurna Elders. Family members are encouraged to sit in court along with support workers from various organisations who are available to discuss the services they can provide with the clients and the Judge. The list aims to provide a wrap-around service to clients. In addition to Aboriginal service providers being available on the day, designated members of the courts Child Dispute Services are made available to conduct child dispute conferences and family reports. The process aims to create a more mediated, less adversarial outcome.<sup>14</sup>

Another example is the Ponki mediators on the Tiwi Islands. Tiwi Island communities address conflict constructively, using a combination of cultural mainstream skills and practices, and the Ponki mediators work to support Tiwi Island families. Their work is complex, and their aim is to actively

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<sup>12</sup> Victorian Aboriginal Child Care Agency Co-Operative Limited, *Aboriginal Child Placement Principle* <<https://www.vacca.org/about-us/aboriginal-child-placement-principle/>>.

<sup>13</sup> Information provided by ALRM, who conducted on behalf of the community an observation and investigation into the Indigenous List in 2017.

<sup>14</sup> Information provided to NATSILS by ALRM.



address community safety and family wellbeing promptly and expertly. Ponki mediators are nationally trained and accredited, and work collaboratively with existing and established services. Ponki mediators provide the much needed cultural foundation framework and strength that local people recognise and respond to. Examples of the work undertaken by Ponki mediators include:

- reference letters for court;
- court support for community members;
- meeting magistrates;
- conflict mediation –community violence; and
- conflict mediation – family mediation.<sup>15</sup>

**Question 23: How can parties who have experienced family violence or abuse be better supported at court?**

There must be better collaboration between court services and referral pathways for culturally appropriate support. Cultural healing – driven by Aboriginal and Torres Strait Islander community controlled organisations, built on trauma-informed practice and responsive to the diverse needs in different community contexts, must be embedded in all elements of family violence response and prevention for Aboriginal and Torres Strait Islander peoples.

There must be a key focus on resourcing needs for Aboriginal and Torres Strait Islander community-controlled organisations. Funding commitments must ensure national coverage of holistic and culturally safe service responses in areas including:

- family support services;
- early intervention and prevention programs (including tailored programs for women, men and young people);
- community based healing programs, with tailored supports for both victims/survivors and perpetrators of family violence;
- legal assistance for victims/survivors and perpetrators;
- programs working with perpetrators;
- trauma counselling and specialist supports for survivors;
- crisis housing, and access to safe, stable and culturally appropriate long term housing options for women and their children experiencing family violence;
- placements with kin for children removed because of violence; and
- culturally safe programs and services to better support non-violent parents (victims/survivors) to safely maintain the care of their children (thereby avoiding child removal and out of home care placements).

ATSILS and Family Violence Legal Prevention Services must also be resourced to meet the legal needs of Aboriginal and Torres Strait Islander people who have experienced family violence.

**Question 31: How can integrated services approaches be better used to assist client families with complex needs? How can these approaches be better supported?**

There must be better collaboration between courts and service providers to ensure that families with complex needs are receiving the support they require. Aboriginal and Torres Strait Islander people need access to essential family support services, including:

- appropriate accommodation;
- community education which promotes the legal rights of women and encourages supportive relationships for children;

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<sup>15</sup> Information provided to NATSILS by NAAJA.

- counselling, including the provision of men's counselling and treatment;
- drug and alcohol rehabilitation;
- mental health and cognitive impairment treatment and support; and
- culturally competent legal services.

These services must be accessible and culturally competent, ideally run by Aboriginal and Torres Strait Islander organisations.

One example of this in practice, in the criminal law context, is ALSWA's Youth Engagement Program. Three Aboriginal or Torres Strait Islander diversion officers work with children appearing in the Children's Court of Western Australia (CCWA).<sup>16</sup> Diversion officers are often co-located at the CCWA and they provide individualised support and assistance including: case management, mentoring, referrals to other services and programs (including education), practical help (such as transport); and support with Centrelink, birth certificates, bank accounts, and medical needs. This model could be easily adapted for the family law system. NATSILS notes that this is similar to a new service in Western Australia operated by Legal Aid WA, known as Family Advocacy and Support Service, which includes two lawyers, a paralegal and a social worker. NATSILS considers that in order for such services to be effective for Aboriginal and Torres Strait Islander people they should be operated by Aboriginal community controlled organisations such as ATSILS and AFVPLS.

**Question 33: How can collaboration and information sharing between the family courts and state and territory child protection and family violence systems be improved?**

NATSILS supports greater collaboration and information sharing between the family courts and the state and territory child protection and family violence systems.

Western Australia has been a leader in the development of a collaborative approach to dealing with children's matters involving child protection concerns. In 2008, the FCWA entered into a Memorandum of Understanding (MOU) with CPFS and Legal Aid WA to ensure the best possible outcomes for children.<sup>17</sup> The MOU provides for procedures for the provision of information from CPFS to the court and in 2009 a senior CPFS officer was collocated with the Family Court Counselling and Consultancy Service (FCCCS).

NATSILS is of the view that these MOUs between the Federal Family Court and state and territory-based courts dealing with child protection matters, as well as the relevant departments, would be greatly beneficial. In any complex child protection matters, it would be beneficial for Judges to decide the most appropriate jurisdiction to hear the matter.

**Question 39: What changes are needed to ensure that all children who wish to do so are able to participate in family law system processes in a way that is culturally safe and responsive to their particular needs?**

NATSILS recommends that the following changes are made:

- funding and supporting ATSILS to meet legal needs and provide holistic support;

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<sup>16</sup> Supreme Court of Western Australia, *Aboriginal Diversion Officers / Social Workers* (7 November 2017) <[http://www.supremecourt.wa.gov.au/equaljustice/A/aboriginal\\_diversion\\_officers\\_social\\_workers.aspx?uid=2-2546-5872-38](http://www.supremecourt.wa.gov.au/equaljustice/A/aboriginal_diversion_officers_social_workers.aspx?uid=2-2546-5872-38)>.

<sup>17</sup> Government of Western Australia Department of Communities, *Statutory review of Children and Community Services Act 2004* (November 2017), 87 <<https://www.dcp.wa.gov.au/ccsactreview/Documents/Statutory%20Review%20of%20the%20Children%20and%20Community%20Services%20Act%202004.pdf>>.

- improving cultural competency across the system including prioritising the recruitment of Aboriginal family consultants, Aboriginal Liaison Officers and support workers;
- further training for court staff, judiciary, lawyers and support persons as to what is appropriate for a child of a given age; and
- cultural experts assisting in preparing the space for a child with a culturally diverse background.

**Question 41: What core competencies should be expected of professionals who work in the family law system? What measures are needed to ensure that family law system professionals have and maintain these competencies?**

NATSILS recommends that all professionals working in the family law system have training on:

- trauma informed practice;
- family violence;
- drug and alcohol use;
- children’s development;
- gratuitous concurrence; and
- cultural safety, issues and awareness.

Cultural competency needs to be prioritised not only for practitioners that regularly work with clients from different backgrounds, but for all practitioners, as well as judges, magistrates and other family law staff.

Please contact our NATSILS Executive Officer, Karly Warner (via phone 0423 610 587 or email [kwarner@vals.org.au](mailto:kwarner@vals.org.au)) to arrange a suitable time.

Yours sincerely,

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