



1. Purpose

1.1. To discuss the critical need for the services provided by Aboriginal and Torres Strait Islander Legal Services (ATSILS) and the necessary injection of funds required to effectively deliver culturally appropriate front line services to Aboriginal and Torres Strait Islander peoples.

2. Introduction

2.1. Currently the ATSILS face funding cuts of approximately \$4million p.a. which will come into effect in 2017. These cuts will have a major impact on highly vulnerable Aboriginal and Torres Strait Islander peoples and undermine the current Government's commitment to Closing the Gap. Furthermore, funding cuts to the ATSILS will be a false saving for the government due to significant downstream costs caused by the necessary withdrawal of frontline services.

2.2. NATSILS therefore **recommends** that the Government:

- a) Reverse planned funding cuts to the ATSILS of \$4million p.a.
- b) Provide further funding for the ATSILS to meet urgent unmet legal needs through an immediate increase of 23% of total funding provided which would increase funding from just under \$73 million p.a. to \$90 million p.a. This increase is needed to allow the ATSILS to provide limited civil and family services as previous one-off funding for these services has expired (see para 4.3), meet rising costs (see para 4.3.) and continue to provide quality legal services in the face of overwhelming increases in demand (see paras 3.2-3.4 and 4.4- 4.6).

2.3. NATSILS would like to note support for the submissions of Family Violence Prevention Legal Services (FVPLS) and the National Association of Community Legal Centres (NACLC).

3. About NATSILS

3.1. National Aboriginal and Torres Strait Islander Legal Services (NATSILS) is the peak national body for Aboriginal and Torres Strait Islander Legal Services (ATSILS). The ATSILS have over 40 years of experience and are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples collectively providing on average 200,000 legal assistances per year.¹

3.2. NATSILS represents the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);

¹ Australian National Audit Office, Administration of the Indigenous Legal Assistance Programme (17 Feb 2015) at 16.

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- North Australian Aboriginal Justice Agency (NAAJA);
- Tasmanian Aboriginal Community Legal Services (TACLS)and;
- Victorian Aboriginal Legal Service Co-operative Limited (VALS)

3. Legal Needs of Aboriginal and Torres Strait Islander Peoples:

3.1. The higher levels at which Aboriginal and Torres Strait Islander peoples experience legal issues across all areas of the justice system is well documented.² From significantly higher rates of imprisonment and involvement with child protection systems³, 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.

3.2. Of particular concern is the increasing overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system. According to Don Weatherburn, Aboriginal and Torres Strait Islander people are now nearly 18 times more likely to be imprisoned than non-Indigenous Australians⁴ while the overall number of Aboriginal and Torres Strait Islander people in prison rose 88% from 2004-2014.⁵ This extraordinary rate of imprisonment is extremely costly,⁶ creates less safe communities through recidivism⁷, and limits opportunities for gaining employment and continuing education. On current estimates it is costing tax-payers over \$795 million per annum just to maintain current levels of Aboriginal and Torres Strait Islander imprisonment.⁸

3.3. The availability of culturally competent legal assistance services, including prevention and early intervention programs such as community legal education, as well as advice and representation is critical to addressing this overrepresentation. This has been acknowledged by both the Productivity Commission⁹ and the Commonwealth Attorney General's Department which has stated:

² For more on this issue see the publications of the Indigenous Legal Needs Project:

<https://www.jcu.edu.au/indigenous-legal-needs-project>

³ In 2014, Aboriginal and Torres Strait Islander children were 9.2 times more likely to be in out of home care than their non-Indigenous peers. Child Family Community Australia, *CFA Resource Sheet: Child protection and Aboriginal and Torres Strait Islander children* (Australian Institute of Family Studies, September 2015).

⁴ Don Weatherburn, *Arresting Incarceration: Pathways Out of Indigenous Imprisonment* (Aboriginal Press Studies, 2014) at 1.

⁵ Australian Bureau of Statistics, *Prisoners in Australia 2014* (Cat no. 4517.0, 2014); Australian Bureau of Statistics, *Corrective Services Australia*, December Quarter 2014 (Cat no. 4512.0, 2014).

⁶ According to the Report on Government Services in 2013 the total real recurrent expenditure (less revenue from own sources) on criminal justice in 2013-14 was \$13.4 billion. Since 2002-03, expenditure on criminal justice has increased by 49 percent overall and by an average of 10 percent each year. Australian Institute of Criminology, *Australian Crime: Facts and Figures 2013* (Australian Institute of Criminology, 2014) at 129.

⁷ Just over three out of four Aboriginal and Torres Strait Islander prisoners (77% or 7,628 prisoners) had been imprisoned under sentence previously, compared to one in two non-Indigenous prisoners (50% or 13,220 prisoners). Australian Bureau of Statistics, *Prisoners in Australia 2015* (Cat no. 45170, 2015).

⁸ Don Weatherburn, *Arresting Incarceration: Pathways Out of Indigenous Imprisonment* (Aboriginal Press Studies, 2014) at 9.

⁹ The Productivity Commission has stated, "If left unresolved, civil problems can have a big impact on the lives of the most disadvantaged. The Commission was given many examples of simple problems spiralling into complex problems when legal assistance was not provided. Unmet civil problems can also escalate into

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Resources need to be directed to the most efficient and effective means of resolving legal problems and disputes....Failing to intervene early to prevent legal problems and disputes from escalating is not only costly in terms of resource usage, but affects individual and community well-being by embedding disadvantage and limiting capacity to participate fully in the economy and society.¹⁰

3.4. ATSILS are the experts in engaging efficiently and effectively with Aboriginal and Torres Strait Islander communities to prevent contact with the justice system and in assisting people who do come into contact with the justice system by connecting them with the necessary referral pathways to address underlying causes of offending.

4. ATSILS Funding Overview:

4.1. Despite the overwhelming need for ATSILS services funding remains a major concern. After a period of considerable funding uncertainty¹¹, in May and June 2015 the ATSILS received new contracts and funding agreements. While there are no cuts in the current two year period, in 2017 funding cuts come into effect for the ATSILS. Budget estimates show that **from 2017 ATSILS funding will decrease by over \$4million.**

4.2. The ATSILS are seriously concerned about this impending funding cut which will significantly impact on ATSILS operations, particularly as budgets have already been cut to the bone. The cuts will require the ATSILS to reduce staffing numbers not only for 2017/2018, but also going forward into 2019-20. The result will be the unavoidable withdrawal of frontline services resulting in Aboriginal and Torres Strait Islander people being unrepresented in courts and unable to access culturally competent legal services. This will have unintended costs associated to the courts because of unrepresented litigants will increase court times and thus increase costs to government. In effect these cuts will deny many Aboriginal and Torres Strait Islander people the access to justice and procedural fairness that all Australian citizens deserve.

4.3. Additionally, one-off funding totalling \$12 million (\$6 million p.a.) to deliver civil and family services which was provided to the ATSILS in June 2013-June 2015 has now expired. The lack of funding for these services will heavily compromise the ability of the ATSILS to deliver services in civil and family, particularly given there is so much demand on their services for criminal matters. Furthermore, funding and indexation provided by the Commonwealth is now significantly less than consumer price index movements and so

criminal matters." Productivity Commission, Access to Justice Arrangements, Inquiry Report Overview (September 2014) at 24.

¹⁰ Access to Justice Taskforce Commonwealth Attorney-General's Department, A Strategic Framework for Access to Justice in the Federal Civil Justice System (2009) 146. The Productivity Commission which has stated, "If left unresolved, civil problems can have a big impact on the lives of the most disadvantaged. The Commission was given many examples of simple problems spiralling into complex problems when legal assistance was not provided. Unmet civil problems can also escalate into criminal matters." Productivity Commission, Access to Justice Arrangements, Inquiry Report Overview (September 2014) at 24.

¹¹ In late 2013 funding cuts to the ATSILS was announced to take effect on 30 June 2015. The funding cuts would have amounted to approximately \$14m in lost funding and would have resulted in NATSILS losing its funding completely (amounting to \$295, 000 p.a.). In late March 2015 the government reversed the cuts to the ATSILS and NATSILS.

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provides very limited capacity to deal with cost pressures. Increasing operating costs including utilities, cars, fuel, technology and wage pressures all place considerable stress on the ATSILS in terms of maintaining quality service provision.

4.4. As noted, impending funding cuts and ATSILS underfunding arises in the context of growing need for legal services and crisis levels of Aboriginal and Torres Strait Islander imprisonment, so that there is greater need for ATSILS services than ever before. Furthermore, ATSILS are also coming under pressure due to the withdrawal of other legal service providers in remote areas.¹²

4.5. The burden that this places on the ATSILS was well articulated by the Law Council in their submission to the 2015-16 Budget when they noted that,

“[T]he Law Council is particularly concerned that the increasing rate of offending and arrest of Indigenous people will overwhelm ATSILS. Seemingly, it is expected that these services will continue to meet substantially increasing demand for representation in criminal matters in spite of virtually static funding.”¹³

4.6. As a result of this static funding, the ATSILS are increasingly in the difficult position of having to choose whether they will withdraw from services areas (such as civil and family) or geographical locations.¹⁴ The ATSILS are gravely concerned about the consequences of withdrawing services, particularly given that other legal assistance providers may be unavailable as they also face funding cuts. Furthermore, it should be stressed that the ATSILS are the experts in providing culturally competent legal services, and that Aboriginal and Torres Strait Islander people are less likely to reach out to non-Indigenous service providers.¹⁵

4.7. Funding of NATSILS is also a major issue. As the peak body for the ATSILS, NATSILS plays a critical role providing national coordination, strategic leadership, and capacity building to ensure that our members benefit from a nationally coordinated network of service providers. NATSILS provides a streamlined and efficient mechanism (where appropriate) for government engagement and coordination of the sector. Thus in return for a small level of investment, NATSILS builds on the more substantial investment by the Australian Government in the ATSILS. However, the ability of NATSILS to fulfil these functions is severely compromised by inadequate funding, currently set at \$295, 000 p.a. This amount must cover all expenses including staff salaries, technology requirements, flights and accommodation and various fixed and variable costs. NATSILS struggles to cover these

¹² For example the Legal Services Commission withdrawal from physical attendance on the APY Lands court Circuits is placing an additional strain on our member organisation the Aboriginal Legal Rights Movement (ALRM).

¹³ Law Council of Australia, *Submission to the 2015-16 Federal Budget* (17 November 2014) at para 24.

¹⁴ In this regard it is noted that in remote communities, access to justice has been described as "so inadequate that remote Indigenous people cannot be said to have full civil rights". C. Cunneen and M. Schwartz, *The Family and Civil Law Needs of Aboriginal People in NSW* (2008) 31.

¹⁵ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing* (2011) para 68; Senate Standing Committee on Legal and Constitutional Affairs, *Commonwealth of Australia, Access to Justice* (2009) at 137.

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basic expenses, severely curtailing NATSILS capacity to effectively engage with our members, the wider sector and other relevant government agencies and peak bodies.

4.8. A number of government reports share the above concerns and have recommended that ATSILS funding needs to be increased. For example, the Senate Inquiry into Youth Justice recommended that ATSILS funding be increased to at least that of Legal Aid Commission funding¹⁶, while the Productivity Commission report on Legal Access noted that:

[services are] vastly under-resourced in terms of capacity to address legal need in Aboriginal communities. Additional funding is urgently required for civil/family law work, with priority to be given to Indigenous legal services as primary providers of legal assistance to Indigenous people.¹⁷

4.9. In similar vein, the Commonwealth Attorney-General's Department has recommended that:

the Australian Government increase the level of funding for Indigenous legal services with a view to sufficiently resource this sector of the legal aid system to meet the needs of Indigenous peoples, including appropriate loading for extra service delivery costs.¹⁸

5. Recommendations:

5.1. As discussed funding levels to ATSILS are not keeping pace with significant growth in demand or rising costs. Consequently the ATSILS capacity to deliver equitable and culturally competent access to justice for Aboriginal and Torres Strait Islander peoples is increasingly being compromised.

5.2. NATSILS **key recommendations** are that the government should:

- a) Reverse planned cuts to ATSILS funding which would come into effect from 2017.
- b) Provide further funding for the ATSILS to meet urgent unmet legal needs through an immediate increase of 23% of total funding provided which would increase funding from just under \$73 million p.a. to \$90 million p.a. This increase is needed to allow the ATSILS to provide limited civil and family services as previous one-off funding for these services has expired (see para 4.3), meet rising costs (see para 4.3.) and continue to provide quality legal services in the face of overwhelming increases in demand (see paras 3.2-3.4 and 4.4- 4.6).

NATSILS also **recommends** that the government should:

- c) Develop in consultation with the ATSILS a funding mechanism that recognises increases in legal needs and the additional complexity of providing services to Aboriginal and Torres Strait Islander peoples which necessarily incurs additional costs.¹⁹ This funding model should be implemented for subsequent budgets. While the exact amount of funding needed should be determined by a robust funding model based on legal need and disadvantage, NATSILS view

¹⁶ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time – Time for Doing* (2011) at para 79. See also the Office of Evaluation and Audit Report 2003 which indicated that ATSILS required an additional \$25m to achieve funding levels similar to Legal Aid Commissions.

¹⁷ Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview* (September 2014) at 24.

¹⁸ Access to Justice Taskforce Commonwealth Attorney-General's Department, *A Strategic Framework for Access to Justice in the Federal Civil Justice System* (2009) 147, Recommendation 27.

¹⁹ National Weighted Activity Units (NWAUs)

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is that additional funding should be in line with the Productivity Commission's recommendations that the quantum of additional funding required to meet unmet legal need is in the vicinity of \$200 million, and that Indigenous specific services (ATSILS and Family Violence Prevention Legal Services (FVPLS)) should have priority funding.²⁰

- d) Provide annual increases of 3% to ATSILS funding to cover the necessary and ongoing costs of delivering our services, which will allow ATSILS to pay adequate increases in staff remuneration and take into account market forces and significant fluctuations of prices in the sector.
- e) Increase NATSILS funding from \$295, 000 p.a. to \$500, 000 p.a. This funding increase would allow NATSILS to operate more effectively as the peak representative national body and pay for needed administrative support, travel expenses and professional development.
- f) Provide contracts of 5 years plus to provide certainty for ATSILS and the community.

5.3. NATSILS supports further funding for Family Violence Prevention Legal Services (FVPLS) and the Community Legal Centres as these services are also critically underfunded.

5.4. As noted, in the absence of additional funding the ability of the ATSILS to deliver legal services will become increasingly constrained which will come at a major cost for vulnerable Aboriginal and Torres Strait Islander communities. Equitable investment in ATSILS not only addresses the fundamental principle of equity before the law, it makes good economic sense.

5.5. NATSILS appreciates the opportunity to make this submission and looks forward to the opportunity for further discussion with the government so that the sustainable provision of legal services for Aboriginal and Torres Strait Islander people can be guaranteed in the future.

²⁰ Productivity Commission, *Report on Access to Justice Arrangements: Overview*, No. 72, 5 September 2014, Note 1 at 30 and Recommendation 21.4.