

**SENATE INQUIRY INTO INDIGENOUS
ADVANCEMENT STRATEGY (IAS) FUNDING:**

April, 2015



NATSILS

**NATIONAL ABORIGINAL & TORRES
STRAIT ISLANDER LEGAL SERVICES**

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1. About NATSILS

1.1. 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 through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. The ATSILS are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples. This role also gives us 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. (ALRM);
- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia (Inc.) (ALSWA);
- Central Australian Aboriginal Legal Aid Service (CAALAS);
- North Australian Aboriginal Justice Agency (NAAJA); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

2. Introduction

2.1. ATSILS submission to this Senate Inquiry has arisen from seriously held concerns about the process and implementation of the Indigenous Advancement Strategy (hereafter IAS). A number of NATSILS member organisations did not receive funding, and had serious issues with the process for which they tendered for funding.

2.2. Overall, NATSILS is concerned about the level of funding available, the lack of transparency in providing funding, the process for which organisations had to tender for funding and the lack of funding provided to Aboriginal and Torres Strait Islander led organisations. Each of these concerns will be addressed in turn below. NATSILS sees these issues as part of larger systemic issues about how social services for Aboriginal and Torres Strait Islander peoples are funded and delivered both at the commonwealth and state level.

3. Level of Funding Provided:

3.1. In announcing the IAS funding, Minister Scullion stated that the funding has delivered \$860 million to 964 organisations.¹ However, it is important to bear in mind that this funding is a greatly reduced proportion of the funding that was previously available for Aboriginal and

¹ Media Release, 'Minister Scullion '\$860 million investment through Indigenous Advancement Strategy Grants Round' 4 March 2015.

Torres Strait Islander social services and represents a major funding cut of \$534 million announced under the 2014 budget.²

- 3.2. There has also been some confusion about how much is actually available under the fund. Questioning in the Senate has revealed that while the government has stated that the total funding for the IAS is \$4.8 billion, a large portion of that is already committed, so the available funding over four years is \$2 billion.³ Thus it appears that of \$2 billion remaining under the IAS over the next 4 years, \$0.86b was allocated in this funding round. If this is the total amount of funding allocated to specific Indigenous targeted social services, this is of great concern given the very high levels of complex needs in Aboriginal and Torres Strait Islander communities and the lack of culturally appropriate services.
- 3.3. NATSILS is very concerned about the effect that this reduced funding will have on the most vulnerable in society. In particular, NATSILS is concerned that with the loss of front line social services the number of Aboriginal and Torres Strait Islander people coming into contact with the justice system will increase, across civil, family and criminal matters. Given the crisis levels of Aboriginal and Torres Strait Islander peoples contact with the justice system, and in particular, the criminal justice system, NATSILS sees this as a highly unfortunate development.⁴

4. Lack of Transparency:

- 4.1. NATSILS remains concerned about the lack of transparency over who has been funded and the paucity of information provided about how funding applications were evaluated. While it is noted that the government has provided a list stating the organisations that have received funding, NATSILS believes that the government must also provide information about how much these organisations received and which organisations did not receive funding. Without this information it is very difficult to get an accurate picture of what services will be missing or underfunded in the communities NATSILS work in.
- 4.2. More generally, NATSILS is concerned about the lack of transparency for mainstream expenditure of social services, which makes up the bulk of social services delivered to Aboriginal and Torres Strait Islander people. The lack of published information about how these services are delivered and funded, and how they cater to Aboriginal and Torres Strait Islander people, means that there is a lack of control and accountability over the expenditure of these funds. In these conditions, the efficiency and effectiveness of the expenditure of very large quantities of funding that is notionally for the benefit of Aboriginal and Torres Strait Islander people remains opaque.⁵

² Michael Coggan, 'Budget 2014: \$534 million cut to Indigenous programs' *ABC News*, 16 May 2014.

³ Finance and Public Administration Legislation Committee, *Estimates - Cross-Portfolio Indigenous Matters - Department of the Prime Minister and Cabinet*. 27 February 2015.

⁴ Australian Bureau Statistics, *Corrective Services* December Quarter 2014.

⁵ Empowered Communities, *Empowered Communities: Empowered Peoples, Design Report* (Wunan Foundation Inc., Sydney, 2015) at 58.

5. Poor Process:

- 5.1. NATSILS is concerned about the process for which tendering for funding took place, particularly in terms of poor communication and miscommunication on behalf of the government.
- 5.2. Feedback from our member organisations was that the process:
 - a) Was very resource intensive, which they noted disadvantages Aboriginal and Torres Strait Islander organisations compared to large NGOs that have dedicated teams to work on funding. One ATSILS noted that the “experience was a nightmare, and took us weeks to complete”;
 - b) Lacked clear and reliable information, which further complicated an already complicated process. This included uncertainty about whether organisations needed to re-apply for funding that they had previously secured (for example, under the Stronger Futures programme);
 - c) Lacked experienced staff with knowledge about the process. One member organisation noted that they were allocated a different contact person each time they called for further information or clarification on the process. They stated that this caused major difficulties as each time they made contact they got a totally different response to the last one. An example cited was that on one occasion they were told they could only apply for 12 month funding, while on the next occasion they were told they could apply for 4 year funding;
 - d) Another issue raised was that properly addressing the application requirement necessitated attaching numerous documents (budgets etc.). However, the size of the application then exceeded the stated email limit. This necessitated a number of lodgements, each time with less supporting materials. The ATSILS attempted contacting the Helpline to resolve this issue, but found that it was never answered (presumably due to over-demand), while making contact via email simply led to automated email responses. As a consequence they remain unsure as to whether all of the materials they provided were taken into account in refusing their application;
- 5.3. Of particular concern was the lack of clarity about whether funding had been approved and at what level. For example, one ATSILS received one letter saying that their funding had been successful, followed by a second letter that told them they had been unsuccessful. Obviously this miscommunication as to the success of their application was distressing for them. A number of ATSILS were informed that their application had been successful. However, after a period it became apparent that their applications had only been partially successful with funding providing at a greatly reduced level to that which was applied for, placing these ATSILS in a difficult position as the money provided fell far short of that needed to run the service. In one instance an ATSILS received a mere 20% of the amount applied for which was not enough to hire the one part-time staff member needed to provide the service. In such circumstances it is difficult to see what criteria was used to evaluate the application and how it was considered that the provision of the service could practically be provided.

- 5.4. A further point of confusion was the length of time applications should cover given that some funding arrangements ended at different times. As a result it wasn't clear whether organisations should apply for a full three years (even if they had one year of overlap in funding) or otherwise. In one situation this meant that an ATSILS was unclear whether their funding had been denied because their funding had already been secured until July 2016. The uncertainty in this case arose from a suggestion by the Department that the ATSILS should as a precaution apply during the first round of funding to ensure that funds were earmarked for the period commencing July 2016. They currently have no idea as to whether their application has been rejected outright (i.e. will not be funded after June 2016), or whether the rejection was based upon the fact that no funding was required in the 2015/16 financial year.
- 5.5. The lack of feedback given to the ATSILS and NATSILS about how their applications were evaluated has also emerged as an issue. For example, in response to NATSILS request for funding to continue their operations, NATSILS was told that the funding was “oversubscribed” with no further feedback given. While it is obvious that the funding pool was “oversubscribed”, in the sense that there were over twice as many applications as there were grants given, this response gives NATSILS no information about how their application was evaluated. The result of not providing funding to NATSILS is that unless alternative funding can be sourced, NATSILS will cease operations after 30 June 2015. In this regard, we also note the seeming inconsistency of the government’s position on the funding of peak bodies, in which some peak bodies have been provided quite substantial funds while others have not been funded.

6. Funding for Aboriginal and Torres Strait Islander Organisations:

- 6.1. NATSILS is particularly concerned by emerging evidence about the lack of funding provided to Aboriginal and Torres Strait Islander led organisations. While the current paucity of information makes an accurate picture of funding difficult, it appears that the government has favoured large external providers over Aboriginal and Torres Strait Islander led organisations. According to one analysis, two thirds of the organisations that that have been funded under the IAS are non-indigenous organisations; although it remains unclear how much of the total proportion of funding they received.⁶ Funding major sporting bodies, universities, governments, shire councils and large well-funded non-government organisations with money earmarked for Aboriginal and Torres Strait Islander people is unacceptable. The undeniable result will be that many more Aboriginal and Torres Strait Islander organisations will be forced to limit their services, reduce staff members, or close their doors.
- 6.2. The ATSILS are amongst those so affected, while NATSILS will cease to operate altogether if funding is not provided through an alternative source by the 30 June 2015. The ATSILS made a number of applications for front-line services. Please see **attached Appendix One** which provides a table of the funding ATSILS applied for, funding received and the impact of receiving/ or not receiving funding. As will be seen the ATSILS received very little funding to

⁶ Natasha Robinson, ‘Indigenous Advancement Strategy Funding Revealed’ *The Australian*, 24 March 2015; See also: Helen Davidson, ‘Government departments among list of federal Indigenous grant recipients,’ *The Guardian*, 24 March 2015.

provide front line legal services to Aboriginal and Torres Strait Islander communities. There is a dire need for these services.

6.3. NATSILS notes that this favouring of large external providers is part of a larger trend that has occurred rapidly since the demise of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 2004. This is inherently problematic as often large external providers have underdeveloped local networks, restrictions to delivering services through visiting community staff, limited opportunity to understand what other services are being delivered in the community, and are unable to develop close relationships with other providers.⁷ The result is poorer quality of services to the detriment of Aboriginal and Torres Strait Islander communities.

6.4. The issue with competitive tendering as occurred under IAS, where small Aboriginal and Torres Strait Islander organisations are pitted against large external providers, was well articulated in the Forrest Review report which stated:

Competitive tendering processes are likely to continue to deliver lowest common denominator outcomes for remote communities ... First Australian organisations that could rise to the challenge and perform well will continue to miss out. The standard and polish of their tender documentation will rarely be competitive with that of an experienced non-government organisation (NGO) with multiple business arms, and staff with a dedicated focus on winning government tenders.

While on paper the product may look good, in practice it frequently fails to connect with the real needs of local people. The essential mutual trust between a service provider and its clients is hard to achieve with a fly-in fly-out service or where a big NGO or private provider has no demonstrated relationship with the community. The disconnect leads to under-usage, poor service and fails to meet local needs.⁸

6.5. There have been a number of other reports which have highlighted the same issues, particularly in regards to the legal needs of Aboriginal and Torres Strait Islander people. For example, the *Doing Time - Time for Doing* Report highlighted that

[f]unding for ATSILS has remained constant – becoming reduced in real terms – for more than ten years while funding for mainstream legal services has more than doubled during the same period...At the same time the number of court cases involving Indigenous people has grown. As a consequence, access by Indigenous Australians to ATSILS is diminished.⁹

6.6. At the same time this report noted the importance of Aboriginal and Torres Strait Islander specific legal services. Victoria Legal Aid noted in their submission:

the consistent findings that indigenous people experience a greater and more successful engagement with indigenous specific services provided by indigenous people. And conversely, the lack of indigenous

⁷ Empowered Communities, *Empowered Communities: Empowered Peoples, Design Report* (Wunan Foundation Inc., Sydney, 2015) at 58.

⁸ Andrew Forrest, *Forrest Review: Creating Parity*, (Commonwealth Government, Canberra, 2014) at 201.

⁹ House Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time - Time For Doing: Indigenous Youth in the Criminal Justice System* (20 June 2011) at 7.70. See also: C Cunneen and M Schwartz, 'Working Cheaper, Working Harder: Inequity in Funding for Aboriginal and Torres Strait Islander Legal Services' (2009) 7(10) *Indigenous Law Bulletin* 19; Cunneen, C and Schwartz, M, 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access', (Feb 2008) 32(1) *Criminal Law Journal*, 38.

specific programs has been consistently identified as a major barrier to indigenous participation and successful reintegration from prison.¹⁰

- 6.7. This report and others have also highlighted that the lack of funding is a significant strain on the ATSILS in that they often provide services to meet rising need, but without funding. Despite the fact that ATSILS continuously provide more with less, there are still enormous legal needs that the ATSILS are simply unable to meet on current funding levels.¹¹ As the Productivity Commission report highlighted an additional \$200 million is needed to meet urgent legal needs.¹² In the absence of properly funded services the gap between Aboriginal and Torres Strait Islander people and non-Indigenous people will widen.
- 6.8. The allocation of funding in this way also conflicts with the ‘Principles for a Partnership – centred approach for NGOS working with Aboriginal and Torres Strait Islander organisations and communities.’ These principles were developed between peak Aboriginal and Torres Strait Islander organisations, namely NATSILS, the Secretariat of National Aboriginal and Islander Child Care (SNAICC), National Aboriginal Community Controlled Health Organisations (NACCHO), National Family Violence Prevention Legal Service (NVPLS), and the Australian Council of Social Services (ACOSS).
- 6.9. The principles are designed to “guide the development of a partnership-centred approach between Aboriginal and Torres Strait Islander and mainstream NGOs in tendering for program funds and engaging in the delivery of services or development initiatives in Aboriginal and Torres Strait islander communities.” A particular objective of the principles is to, “address issues arising from processes such as the Federal Government’s open tendering of all Indigenous funding under the Indigenous Advancement Strategy.” In this regard the principles provide that, “[w]here Aboriginal and Torres Strait Islander NGO’s are willing and able to provide a service or development activity, mainstream NGOs shall not directly compete for tender, but will seek, where appropriate, to develop a partnership in accord with these principles.”
- 6.10. NATSILS **recommends** that these principles, which are **attached as Appendix two** should be adopted in the IAS application process. NATSILS also urges the Inquiry to **recommend** that future funding under IAS be preferentially invested in Aboriginal and Torres Strait Islander controlled organisations which have an interest and knowledge of the communities in which services will be delivered.
- 6.11. NATSILS is also concerned about the requirement under the Indigenous Advancement Strategy funding that organisations in receipt of more than \$500, 000 must incorporate under the Office of the Registrar of Indigenous Corporations. In NATSILS opinion the requirement is discriminatory in that it only applies to Aboriginal and Torres Strait Islander organisations. It is

¹⁰ *Ibid*, at 7.68.

¹¹ Productivity Commission, Commonwealth Government *Access to Justice Arrangements* (2014) .

¹² *Ibid*, at 30. See also reports from the Indigenous Legal Needs Projects: C Cunneen, F Allison, M and Schwartz, ‘Access to Justice for Aboriginal People in the Northern Territory’ (2014) 49(2) *Australian Journal of Social Issues* 219.

noted that this requirement will necessarily cause disruption, cost and inconvenience for Aboriginal and Torres Islander organisations. Estimates of the anticipated costs are that it may cost upwards of \$10, 000.

- 6.12. NATSILS recommends that the Senate Inquiry explore the government’s reasoning as to why such a requirement should only apply to Aboriginal and Torres Strait Islander organisations, with a view to making a finding on whether the requirement is discriminatory. Should the Senate Inquiry find that the requirement of incorporation is reasonable we ask that they further consider the question of who should bear the costs of incorporation. It is the position of NATSILS that the Commonwealth should cover these costs.

7. Timing of the Senate Inquiry:

- 7.1. ATSIILS wishes to note that they are concerned that the timing of this Inquiry precedes funding finalisation for many organisations. This will mean that a number of organisations will not participate for fear of losing funding now or in the future. It is common knowledge that organisations have not made their concerns public for fear of this issue.¹³ This is highly undesirable in terms of achieving an open and impartial Inquiry on this issue and the Inquiry should bear this in mind in assessing the type and number of submissions received.

8. Concluding Comments:

- 8.1. Aboriginal and Torres Strait Islander organisations, including NATSILS and the ATSIILS it represents, want real engagement with the government on the development of social policy and the distribution of funding for social services. Aboriginal and Torres Strait Islander people want to work constructively with government to achieve real outcomes that improve the quality of life experienced by Aboriginal and Torres Strait Islander people. As Pat Dodson said recently:

If the gap between the wellbeing of Indigenous Australians and their fellow citizens is ever to be properly addressed, the starting point has to be a genuine engagement between our Indigenous peoples and all Australian governments. The negotiation must be fully informed and the first step is for governments to reach a real understanding of the diverse nature of Indigenous societies, their hopes and aspirations.¹⁴

- 8.2. NATSILS submits that the government should begin this constructive dialogue now, as it represents the only realistic path to improved outcomes for Aboriginal and Torres Strait Islander people. The need is urgent and must be addressed as a matter of priority.

¹³ As an ABC report noted, “Most service providers the ABC has contacted have declined to comment on their funding for fear of losing future financial support from the Government.” Kate Wild, ‘Aboriginal organisations feeling cost of Federal Government funding cuts call for Nigel Scullion’s sacking’ *ABC News*, 11 March 2015.

¹⁴ Pat Dodson, Comment: Tony Abbott’s lifestyle comments highlight the lack of policy in Aboriginal affairs *Sydney Morning Herald*, 13 March 2015.