

**Submission to the Review of the
Indigenous Expenditure Report and its
relationship to the Overcoming
Indigenous Disadvantage Data**

March, 2016



NATSILS

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

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1. Introduction:

- 1.1. NATSILS wishes to thank the Steering Committee for the Review of Government Service Provision for the opportunity to provide input into this review. At the outset it is important to note that NATSILS, and the ATSILS it represents, do not have significant experience with IER data and this constrains the extent of information NATSILS is able to provide in response to this review. However, noting the terms of reference and the purpose of this review (which is aimed at making the data more available, relevant and useful to organisations) NATILS has a number of comments and suggestions.
- 1.2. NATSILS would also like to take this opportunity to encourage the government to support the delivery of more targeted and culturally competent services for Aboriginal and Torres Strait Islander peoples. The recent emphasis of the government on working with Aboriginal and Torres Strait Islander people to overcome disadvantage is recognised, which NATSILS believes is the critical foundation for effective service delivery to Aboriginal and Torres Strait Islander peoples.¹

2. About NATSILS:

- 2.1. 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.
- 2.2. 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);
 - North Australian Aboriginal Justice Agency (NAAJA);
 - Tasmanian Aboriginal Community Legal Services (TACLS) and;
 - Victorian Aboriginal Legal Service Co-operative Limited (VALS).

¹ We were encouraged to hear in the Prime Minister's Close the Gap speech that a key way in which the Government can close the gap is for the government to work with, rather than do things to, Aboriginal peoples.

3. Overview:

- 3.1. The Issues Paper (*Review of the Indigenous Expenditure Report and its relationship to the Overcoming Indigenous Disadvantage: Key Indicators Report*) highlights that the IER 'does not assess the adequacy, effectiveness or efficiency of expenditure'.² It is further stated that neither the IER nor OID report on its own provides sufficient information for this purpose. From NATSILS perspective this is the key issue. Data about the level of expenditure per se does not assist in policy development. The data needs to be unpicked to explain and understand the level of expenditure and whether that level of expenditure on a particular type of service provision is effective and/or adequate. By commenting on a number of specific questions asked by the Steering Committee, NATSILS hopes to shed some light on how the IER data may be more usefully targeted.

4. Comments on Questions:

- 4.1. ***Should the IER and/or OID report examine access to mainstream and Indigenous specific services by Indigenous people and associated outcomes, and identify which programmes are improving outcomes?***
- 4.2. Yes, this would be useful data and analysis because it is very important to identify which programs are improving outcomes. In this regard, it is important to note that the IER provides data in relation to expenditure on services for Aboriginal and Torres Strait Islander people in comparison to non-Aboriginal and Torres Strait Islander people. Overall, more money is spent per head of population for Aboriginal and Torres Strait Islander people than for non-Aboriginal and Torres Strait Islander people. The IER report notes that the reason for the higher expenditure is caused by greater intensity of service (i.e. greater need and a younger age profile) and by the higher cost of providing services (e.g. remoteness).
- 4.3. Here NATSILS would like to note that the complexity of the reasons for higher Indigenous government expenditure could be more accurately acknowledged. This is important because statistics which highlight that government expenditure for Aboriginal and Torres Strait Islander people is substantively more than that provided to non-Indigenous people, can be misused and serve to further entrench negative stereotypes and misconceptions. In NATSILS opinion these statistics should be contextualised by recognising the serious disadvantage faced by Aboriginal and Torres Strait Islander peoples, including much higher rates of complex needs. For a lay reader this type of backgrounding is critical to appreciating the reasons for greater Indigenous expenditure.
- 4.4. Significantly, the latest IER report found that mainstream services accounted for 81.4% of total Indigenous expenditure and Indigenous-specific services accounted for 18.6% of

² Steering Committee for the Review of Government Service Provision, *Review of the Indigenous Expenditure Report and its relationship to the Overcoming Indigenous Disadvantage: Key Indicators Report* (2016) at 2.

Indigenous expenditure.³ Indigenous-specific services are described as either alternative ways of providing services (eg, Abstudy) or additional services (eg, Indigenous student counsellors in schools).⁴ Hence, Indigenous-specific services are not the same as services provided by Aboriginal community-controlled organisations. It can be assumed that a subset of Indigenous-specific services as defined in the IER would be provided by Aboriginal community controlled organisations, but how big a subset is unknown.

4.5. NATSILS submits that Indigenous specific services (as currently described in the IER) should be further divided into those services that are provided by Aboriginal community-controlled organisations and those that are provided by other organisations/agencies. It is vital to have evidence of the effectiveness of the different types of services and the quantum of services delivered by Aboriginal community controlled organisations and mainstream services. NATSILS is deeply concerned that there has been a slow retreat away from funding Aboriginal community controlled organisations to the detriment of Aboriginal peoples and self-determination. These concerns have not been allayed by the recent IAS process which has raised significant issues for Aboriginal organisations, which are detailed in NATSILS submission to the IAS inquiry.⁵ In this connection, NATSILS would also be interested in knowing what total percentage of Indigenous expenditure is allocated to government.

4.6. It is NATSILS view that the importance of Aboriginal community controlled organisations is often missed, as the value of culturally competent services is not understood or measured appropriately. To an extent this requires some qualitative data. The following two short case studies are provided as examples of when ATSILS cultural competency made a critical difference to outcomes for clients.

4.7. *Case Study One: Supporting a Sustainable Tenancy*

Territory Housing terminated Mr and Ms H's tenancy because they had failed to keep the premises in a reasonable condition. Our member organisation North Australian Aboriginal Justice Agency (NAAJA) was able to use their cultural expertise to identify that the family had a range of complex personal issues which were preventing the family from meeting their obligations as tenants. Mr and Mrs H had difficulty controlling intoxicated visitors and were under significant pressures caring for their eight children. The Tenancy Sustainability Program offered by Territory Housing was not appropriate for assisting with these underlying issues. NAAJA assisted the family to appeal the decision not to renew the tenancy to the Territory Housing Appeals Board (THAB). The THAB recommended that a six-month lease be granted and that the family work with an intensive family support service. Throughout the next six

³ Steering Committee for the Review of Government Service Provision, *2014 Indigenous Expenditure Review* (Commonwealth Government, December 2014) at 1.

⁴ *Ibid*, at 24.

⁵ This submission can be accessed through the NATSILS website at the following link: <http://www.natsils.org.au/portals/natsils/NATSILS,%20Inquiry%20into%20Indigenous%20Advancement%20Strategy%20Funding%20.pdf>

months NAAJA worked closely with the family support worker and the family, monitoring progress and providing ongoing advice about tenant and landlord responsibilities in ways that were culturally appropriate and supportive. At the end of the six-month period the family passed the final inspection and a further lease was granted. This made a major difference for the family who would have faced an increasingly hopeless situation if their underlying complex needs had not been supported.

4.8. *Case Study Two: Supporting Clients with Mental Illness/ Disabilities*

A client of our member organisation, Aboriginal Legal Rights Movement (ALRM) was before the South Australian District Court in December 2015. His mental state was such that he required special care. ALRM arranged for his family and him to be put up in a hotel during the court case (his wife was a witness). When the matter was completed in court the client (who was in a very delicate mental state and had just been released from a psychiatric hospital) - was promptly driven home to the country by an Aboriginal Field Officer, because of concerns about this ability use public transport. Here it is important to note that Aboriginal Field Officers play a vital link within the ATSILS in terms of providing cultural safety to clients and ensuring understanding of legal processes. Subsequently the Civil team of ALRM commenced working with the family to obtain a guardianship order and appropriate disability services to the whole family. This is an attempt to use all of ALRM services to provide a "wraparound service" which covers multiple needs. This occurs through good communication between sections within ALRM and culturally competent communication with clients which builds trust and understanding.

4.9. It is important to note that the resolutions reached in these case studies were only possible because of the trust and rapport that ATSILS have with their clients. ATSILS are known as being a vital part of the communities that they represent and it is this context which allows successful client engagement to resolve issues before they escalate into entrenched issues. These types of resolutions can't be replicated by non-Indigenous legal service providers. An understanding of effectiveness of services therefore needs to take into account the savings that result as a product of the early identification and prevention of legal issues.⁶

4.10. In order to get an accurate picture of whether Indigenous services have been successful, the data should also take into consideration whether such services have been funded on a short-term/ uncertain basis (as is often the case for Indigenous programs). In NATSILS experience the provision of short term funding and/ or funding on an uncertain basis,

⁶ The need for the early identification and resolution of legal problems was noted by the Productivity Commission in their report on access to justice when they stated that, "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 spirally 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. See also M Schwartz and C Cunneen, 'From Crisis to Crime: the escalation of civil and family law issues to criminal matters in Aboriginal communities in NSW'(2009) 7(15) *Indigenous Law Bulletin*, 18

severely undermines the capacity of these programs to achieve outcomes, particularly relative to programs given ongoing reliable funding. In NATSILS view the so-called failure of many programmes stems not from flaw in programs, or their delivery, but from expectations that outcomes will be met in unrealistic timeframes with often inadequate and uncertain funding.

5. *If the report were not combined, would you value analysis drawing jointly on the IER and OID Reports?*

5.1. If the IER and OID reports are not combined then NATSILS would value analysis drawing jointly on the IER and OID reports.

6. *Are there particular topics where examining expenditure and outcomes could help inform prioritisation and reforms?*

6.1. From NATSILS perspective, examination of expenditure and outcomes in the justice system is crucial to informing policy development; in particular, expenditure and outcomes in the criminal justice system and child protection system. It is well known that expenditure at the highest levels in these systems (e.g., imprisonment, statutory child protection interventions and out-of-home care) is extremely high and it is essential that there is proper analysis of the cost-effectiveness of these service delivery entities.

7. *Would there be value in including additional disaggregations below the state/territory level (eg, by remoteness). How would you use geographically disaggregated data for policy development?*

7.1. Yes it would be valuable to disaggregate state/territory data in terms of remoteness and geographical location. In NATSILS view this would help in informing where there are gaps in service provision, particularly in remote and rural areas. In this regard, NATSILS is extremely concerned about the lack of legal services in remote and rural communities and the ATISILS inability to meet this need due to a lack of funding. A leading research project, the Indigenous Legal Needs Project has described access justice in remote communities as "so inadequate that remote Indigenous people cannot be said to have full civil rights."⁷

7.2. Furthermore, there is increasing evidence about the value of justice reinvestment which requires data about geographical areas/communities/towns to ensure that investment is targeted to those communities most in need. In order to do this effectively, it will be necessary to examine the levels of service provision in particular locations, the levels of disadvantage and gaps in service delivery. As noted in the Empowered Communities report, "The lack of information about program-level funding at the place-based level also means that it is not possible to make any comparison of the cost effectiveness of particular place-based initiatives, which is also information vital to learning the lessons of different efforts."⁸

⁷ C. Cunneen and M. Schwartz, *The Family and Civil Law Needs of Aboriginal People in NSW* (2008) 31.

⁸ *Empowered Communities, Empowered Communities: Empowered Peoples, Design Report* (Wunan Foundation Inc., Sydney, 2015) at 59.

- 7.3. As well as greater understanding about expenditure funding flows and the effectiveness of services, there needs to be more insight about what services are needed on the ground. Currently, there is no rational methodology for determining legal need and the quantum of money required to meet that need. Expenditure on legal services is a key area where there needs to be greater understanding of what is happening on the ground, and what is needed to address issues.
- 7.4. It should also be noted that Jesuit Social Services have mapped the post codes which have concentrated social disadvantage across a range of indicators. This research demonstrated that socio-economic disadvantage is highly concentrated in a relatively small number of post codes.⁹ Having a more detailed picture of service delivery in these areas and the identification of possible gaps/ anomalies in service provision in these areas, would assist in gaining a better understanding of need for the most socially disadvantaged communities.
- 8. *Would there be value in including more information on what is driving expenditure and intensity of use, and changes over time?***
- 8.1. Understanding the factors that drive expenditure and the intensity of service use is critical to understanding Aboriginal and Torres Strait Islander disadvantage and understanding changes in government expenditure. For example, much of the information and claims by the government regarding the IAS did not match what the experiences have been on the ground for Aboriginal organisations. Having a greater understanding of changes in expenditure and changing needs would help to inform the overall picture and ensure accountability for expenditure.
- 9. *Would it be appropriate to distinguish between expenditure in preventative/transformative (e.g. education) and reactive service areas (e.g. corrective services)?***
- 9.1. It would be extremely helpful to distinguish between expenditure in preventative services versus reactive services. This should include the level of expenditure as well as an assessment of effectiveness/outcomes. As highlighted above, ATSILS services are critical to Aboriginal and Torres Strait Islander people. However, particularly in regards to the provision of criminal legal services, ATSILS are the ambulance at the bottom of the cliff - the result of the failure of other services to provide effective interventions for vulnerable Aboriginal and Torres Strait Islander peoples. NATSILS is strongly of the view that we need to have a better understanding of how preventative services such as education and housing can reduce government expenditure in other key areas (for example, health and corrective services).

⁹ T Vinson et al, *Dropping off the Edge 2015: Persistent communal disadvantage in Australia* (Jesuit Social Services and Catholic Social Services of Australia, 2015).

10. Should the IER include information on expenditure per user (in addition to expenditure per person in the population), noting that information on expenditure per user is unlikely to be possible for all service areas?

10.1. A greater understanding of expenditure per user would be helpful. In particular, NATSILS would be interested in understanding the concentration of expenditure for the top users of services. For example, what percentage of the cost of total services does the top 10% or the top 1% of service users absorb?

10.2. NATSILS hypothesises that this type of analysis would reveal that expenditure is highly concentrated in a number of very high need individuals. For example, a recent report by Eileen Baldry *et al* shows that Aboriginal and Torres Strait Islander people with multiple complex needs (such as disabilities, drug and alcohol abuse) have cost the government significant amounts of money by the time they are in contact with the criminal justice system due to welfare, complex health issues and the significant costs of interaction with the criminal justice system, including imprisonment.¹⁰ This type of information is critical to making the case for more preventative expenditure, such as early childhood education, drug and alcohol support services, housing and education.

11. Would it be useful to distinguish between service provision and administrative/overhead expenditure? How would 'on the ground service provision' and 'administrative/overhead' expenditure be defined?

11.1. NATSILS considers that it would be useful to distinguish service provision and administrative/overhead expenditure. While administrative/overhead expenditure is necessary, it is important to be able to assess whether particular types of services (e.g., based on the nature of service, type of service provider, location of service) are top heavy with administrative/overhead costs and, if so, an analysis of possible reasons for this discrepancy. Those results can inform policy development in terms of which services are most effective at delivering on-the-ground services to Aboriginal and Torres Strait Islander people as well as improvements that could be made to reduce administrative costs. Furthermore, it will be important to examine the differences between administrative requirements/burdens of government vs non-government service providers (and between Aboriginal community-controlled organisations and other NGOs). If, for example, particular types of NGOs have overly onerous reporting requirements in comparison to other agencies then an analysis of effectiveness will need to take that into account.

12. Concluding Observations:

12.1. NATSILS would welcome more data that would assist the government form a rationalised budget for Indigenous expenditure that meets the needs of Aboriginal and Torres Strait Islander peoples. It is critical that this data and findings are used to inform funding decisions.

¹⁰ Eileen Baldry *et al*, A Predictable and Preventable Path: Indigenous Australians with Mental health Disorders and Cognitive Disabilities in the Criminal Justice System (UNSW, October 2015).

12.2. It has been NATSILS experience that strong evidence and research do not always inform government expenditure. In this regard, it is noted that a number of government reports and research findings have found that the ATSILS provide good value for money, yet are significantly underfunded. For example, the Senate Inquiry into Youth Justice recommended that ATSILS funding be increased to at least that of Legal Aid Commission funding¹¹, 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.¹²

3.1. 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.¹³

12.3. To date, these recommendations have been ignored. This not only limits ATSILS ability to provide a full range of services (and without the ATSILS providing these services there is generally no alternative service provider in remote communities), but also limits capacity to implement best-practice strategies, including early intervention and prevention initiatives.

12.4. It is NATSILS position that data and evidence must inform funding decisions. NATSILS would welcome further data that allowed both service providers and the government, to better understand service delivery to Aboriginal and Torres Strait Islander people.

¹¹ 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.

¹² Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview* (September 2014) at 24.

¹³ 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. See also: M Schwartz and C Cunneen, *Working cheaper, working harder: Inequity in Funding for Aboriginal and Torres Strait Islander Legal Services* (2009) 7(10) *Indigenous Law Bulletin* 19; C Cunneen and M Schwartz, 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access', (Feb 2008) 32(1) *Criminal Law Journal*, 38.