



NATSILS

National Aboriginal and
Torres Strait Islander Legal Services

TRUE JUSTICE FOR OUR PEOPLE

**Justice for Aboriginal and Torres Strait Islander
people will not improve without funding for
Aboriginal legal services**

NATSILS analysis of the Federal Budget 2022

1. Introduction

Given the alarming rates of over-incarceration and Aboriginal deaths in custody, it is more important than ever for ATSILS to be properly resourced and accessible across Australia.

Yet the legal assistance sector remains seriously underfunded through the recent Federal Budget and this underfunding is particularly severe for Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services and their peak bodies.

I am truly devastated with this announcement. Aboriginal and Torres Strait Islander Legal Services are the advocates and the protectors of the rights of First Nations peoples. Adequate funding for ATSILS means that Aboriginal and Torres Strait Islander people can access culturally safe legal support when they need it. Yet our communities suffer from severe under-resourcing of these services. It is totally unreasonable to manage service delivery expectations with this appalling lack of investment.

Jamie McConnachie, NATSILS Executive Officer

Our analysis of the Federal Budget identifies the lost opportunities to support justice for Aboriginal and Torres Strait Islander people, in the context of the broader policy commitment to close the gap.

2. Analysis

The Aboriginal Legal Service are the protectors of rights of First Nation peoples.

Urgent funding issues affecting ATSILS will persist - including ongoing subpar budgets and unaddressed 20-24% salary disparity between ATSILS staff and Legal Aid Commissions. This unjust disparity continues to affect ATSILS ability in recruiting and retaining legal practitioners, factoring the comparatively low salaries, high workloads and funding uncertainties. Our committed staff and legal advocates labour through funding uncertainty and the indecision of the Government to commit to the value of the ATSILS through adequate on-going funding and salary parity for our staff.

i. Salary parity with our legal aid commission peer's and counterparts

We asked the government to remedy for two major outstanding and urgent funding issues affecting ATSILS:

- Increase to base funding of ATSILS of 15- 20% to achieve salary parity with Legal Aid Commissions for ATSILS staff; and
- a further overall funding increase to ATSILS of 20% each year over 5 years to meet expected demand for services, commencing in 2022-23 and compounding each year.

A culturally safe and competent legal service is also limited by funding to recruit and provide pathways for Aboriginal and Torres Strait Islander lawyers. The independent review into the Indigenous Legal Assistance Program found that currently ATSILS

salaries are approximately 20-24% less than the equivalent at Legal Aid. The Australian Productivity Commission Inquiry into Access to Justice Arrangements Found that the scale of providers does not just affect administrative costs; it can also affect career progression opportunities and the support that providers can offer for staff training. These compound other difficulties providers face in recruiting and retaining legal practitioners including comparatively low salaries and high workloads, funding uncertainties and the demands of remote travel and work.

This salary parity is beyond ATSILS control to remedy under current funding quantum and arrangements. Any proposals to reduce staff to increase salaries of the remaining would have a devastating impact on Aboriginal and Torres Strait Islander people accessing justice due to the withdrawal of front-line services. With greater funding, ATSILS could be competitive with other legal service providers.

NATSILS recommended an additional 15-20% increase in funding to achieve salary parity.

ii. Investment in cultural competency: an essential ingredient in effective legal assistance

NATSILS also advocated for investment in the capacity to develop and provide cultural competency training. Aboriginal and Torres Strait Islander cultural competency is an integral component of the ATSILS' provision of legal assistance services. The term 'Cultural competence' refers to the abilities and values of a person, organisation or system delivering a service and is usually used in the context of discussing non-Indigenous people.

For the legal system to be culturally safe and appropriate for Aboriginal and Torres Strait Islander people, it is essential that people who work across the legal system receive specialised cultural competency training. However, as it currently stands, cultural competency is not a compulsory component of tertiary legal education, law degrees or the Graduate Diploma of Legal Practice. Nor is it a part of Continuing Professional Development (CPD) requirements for Judicial officers, court staff or legal practitioners.

As the experts in the delivery of effective and culturally responsive legal assistance services, the ATSILS are best placed to provide specialised cultural competency training modules and ongoing professional development opportunities relating to law and justice. However, the ATSILS are not funded, and have very limited capacity, to develop and provide training in the same way that Legal Aid Commissions do.

iii. Secure, adequate funding for NATSILS

NATSILS should be funded and supported to grow and expand our size and skill to meet increased service demand and achieve identified strategic planning initiatives, through an injection of \$4.064 million over 5 years (for a total of \$1.053 million per annum in 2020-21 including CPI).

NATSILS welcomed its five-year funding agreement for \$1,726,088 until 2025. As the peak body for the ATSILS, the NATSILS plays a critical role in providing national coordination, strategic leadership, and capacity building to ensure that our members benefit from a nationally coordinated network of service providers. Further, the NATSILS Secretariat works to support the Attorney General's Department in their administration of the NLAP program and provides a streamlined and efficient mechanism (where appropriate) for government engagement and coordination of the sector. The NATSILS Secretariat works extremely hard

to promote collaboration and best practice across Indigenous legal assistance providers. However, the NATSILS Secretariat has only two staff members and therefore the ability of the NATSILS to conduct performance improvement projects and any projects outside of secretariat support is inconceivable.

NATSILS Secretariat funding is currently set at \$304,000 pa. This budget covers all expenses including staff salaries, performance improvement projects, technology requirements, and travel expenses, including those to participate in government meetings and respond to government inquiries. NATSILS struggles to cover these basic expenses, severely curtailing the NATSILS capacity to effectively engage with ATSILS members, the wider sector and other relevant government agencies and peak bodies. This is not sufficient to achieve our strategic goals as the national peak body for ATSILS, especially with additional responsibilities and workload under the NLAP.

During 2017 the NATSILS was provided with grant funding from the Attorney General's Department to undertake a strategic planning process with the ATSILS which identified six strategic goals, consistent with our vision and purpose, to guide our work over the next five years.

Due to some additional one-off funds in 2019 from the Attorney General's Department, NATSILS has been able to bring on a full time Communications Officer, bringing our core staff from 2 to 3 FTE (plus one additional staff member funded by the Disability Royal Commission for the Your Story Legal Support Service). However, the Communications position was unable to be maintained as the funding remains at \$304,000 per annum. These initiatives will be staggered, allowing NATSILS to bring in the necessary resources to deliver the initiatives over time. In order to achieve these initiatives, the NATSILS core team will need to grow from 3 FTE (of core staff) to 8.4 full time equivalent by 2023.

3. Legal assistance to close the gap

NATSILS has previously welcomed the increase to the Government's investment in legal assistance services by \$10.1 million per year (indexed) from 1 July 2020.

NATSILS has also welcomed the confirmation of five-year funding for our own role supporting community controlled Aboriginal and Torres Strait Islander legal services. \$1.569 million over 5 years gives us certainty of funding but it is a tight budget, allowing for two positions only and limited travel budget, through which to support the entire national network of Aboriginal legal services.

In 2022, we asked the Government to remedy two major outstanding and urgent funding issues affecting ATSILS:

- we called for an increase to base funding of ATSILS of at least 15-20% to achieve salary parity with Legal Aid Commissions for ATSILS staff; and
- a further overall funding increase to ATSILS of 20% each year over 5 years to meet expected demand for services, commencing in 2022-23 and compounding each year.

While funding is welcomed, systemic shortcomings persist.

NATSILS welcomed the Justice Policy Partnership funding from 2021-22 to

2023-24. This included:

- \$2.434 million staff to support the Justice Policy Partnership, including costs for meeting attendance

- \$2.184 million to enhance ATSILS' data capability and capacity to inform the Partnership for the Closing the Gap Implementation Plan.

Costings were based on part-time data officers in each of the 7 ATSILS and JPP staff at NATSILS and ATSILS.

NATSILS welcomed the additional funding, principles of self-determination and security of five-year funding agreements under the new National Legal Assistance Partnership (NLAP). However, NATSILS opposed the decision to abolish the only national dedicated program to ending the disadvantage of Indigenous people in the justice system, the Indigenous Legal Assistance Program, and to roll ATSILS funding into the NLAP.

Whilst NATSILS appreciated the Government's dedicated funding to the ATSILS to provide legal assistance to families of deceased Aboriginal and Torres Strait Islander individuals in coronial inquiries and to support clients involved in complex and expensive cases, the fact that these cases continue is a much more serious justice gap that needs to be addressed.

Appendix: Our Budget 2022 recommendations

NATSILS, ATSILS and FVPLS need to be adequately funded to truly Close the Gap.

In the 2022-23 Federal Budget, NATSILS called for:

- urgent significant investment in the ATSILS and legal assistance sector
- resourcing of national legal assistance sector peak bodies NATSILS and NFVPLS
- investment for a national Justice Reinvestment Body
- investment for a Disability Justice Support Program and mental health law
- support.

The Federal Budget was silent on its commitment to the priorities we identified through the following recommendations for expenditure.

1. The Commonwealth Government funds ATSILS to meet unmet legal need by implementing the recommendations of the Productivity Commission and Law Council of Australia's Justice Project for an additional \$200 million for civil legal need and \$390 million per annum for the legal assistance sector. For ATSILS this injection should have included an increase for CPI at 4%; increased capacity in law reform and policy; expanded geographic reach; increased baseline funding for ATSILS which did not receive SACS supplement to ensure salary parity. Plus additional injections for salary parity; capacity to develop cultural competency training; and justice reinvestment partnerships.
2. NATSILS should be funded and supported to grow and expand our skills and expertise to meet increased service demand and achieve identified strategic planning initiatives with an injection of \$4.064 million over 5 years (for a total of \$1.053 million per annum in 2022-23 including CPI).
3. The Commonwealth Government provides additional injection of resourcing and support for the ATSILS and legal assistance sector to respond to the impact of COVID-19 on the demand for legal assistance services.
4. The Commonwealth Government provides additional and ongoing injection of resources for the ATSILS in disaster affected jurisdictions to meet additional legal and community justice demand as a result.

5. The Commonwealth Government should:
 - a) ensure funding certainty and predictability for Family Violence Prevention Legal Services, including funding agreements for a period of at least five years and funding increases that incorporate indexation for all services
 - b) support the National Family Violence Prevention Legal Services Forum including through additional funding and a commitment to long-term funding and support including providing at least \$1 million for the National FVPLS Forum Secretariat
 - c) increase base funding to Family Violence Prevention Legal Services by at least \$32 million per annum.
6. The Commonwealth Government invests to establish a national Justice Reinvestment Body and contributes seed and 5 year funding to new and existing justice reinvestment trials and partnerships.
7. Investment for culturally-safe, trauma informed disability and mental health law support modelled services.