



NATSILS

National Aboriginal and
Torres Strait Islander Legal Services

TRUE JUSTICE FOR OUR PEOPLE

**Submission to the Independent Review of the
National Legal Assistance Partnership 2020-25**

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1 List of Acronyms and Abbreviations

AAT	Administrative Appeals Tribunal
AbSec	Aboriginal Child, Family and Community Peak Aboriginal Corporation
ACCHO	Aboriginal Community Controlled Health Organisations
ACCO	Aboriginal Community Controlled Organisations
AIS	Aboriginal Interpreter Services
ALRM	Aboriginal Legal Rights Movement Inc. in South Australia
ALS NSW/ACT or ALS	Aboriginal Legal Service (NSW/ACT)
ALSWA	Aboriginal Legal Service of Western Australia Ltd
ANZSOC	Australian and New Zealand Standard Offence Classification
ATSILS (Qld)	Aboriginal and Torres Strait Islander Legal Services (QLD)
ATSILSs	Aboriginal and Torres Strait Islander Legal Services
CLC	Community Legal Centres
CLE	Community Legal Education
CMS	Client Management Systems
CNS	Custody Notification Services
COP	Coalition of Aboriginal and Torres Strait Islander Peak Organisations
CPD	Continuing Professional Development
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Client Service Officers
CTG	Closing the Gap
CTG Draft Report	Review of the National Agreement on Closing the Gap Draft Report
DSP	Disability Support Pension
FDM	Funding Distribution Model
FIC	Family is Culture
FVPLS	Family Violence Prevention Legal Services
HECS	Higher Education Contribution Scheme
HJP	Health Justice Partnerships
JAS	Justice Advocacy Service
JPP	Justice Policy Partnership
LACs	Legal Aid Commissions
NAAJA	North Australian Aboriginal Justice Agency
National Agreement	National Agreement on Closing the Gap
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
NDIS	National Disability Insurance Scheme
NGO	Non-governmental Organisation
NLAP	National Legal Assistance Partnership
NLAS	National Legal Assistance Services
ODPP	Offices of the Director of Public Prosecutions
PMC	Prime Minister and Cabinet
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RRR	Rural, Regional and Remote
TALS	Tasmanian Aboriginal Legal Services
VALS	Victorian Aboriginal Legal Services

2 Executive Summary

The National Aboriginal and Torres Strait Islander Legal Services (**NATSILS**), as the peak national body for Aboriginal and Torres Strait Islander Legal Services (**ATSILSs**) in Australia, welcomes this opportunity to submit to the Review of National Legal Assistance Partnership 2020-2025 (**Review of NLAP**).

Prior to the commencement of the current NLAP, ATSILSs came under the purview of the Indigenous Legal Assistance Programme (**ILAP**). These arrangements fundamentally changed the core funding arrangements for ATSILSs where, specifically, the ATSILSs no longer have direct funding agreements with the Commonwealth Attorney-General's Department for their baseline legal assistance funding. Instead, as part of NLAP, Commonwealth funding for ATSILSs is quarantined and administered by state and territory governments through funding agreements with ATSILSs.

Significantly, since the commencement of the current NLAP Agreement, all Australian, State, Territory and Local Governments have signed up to the landmark National Agreement on Closing the Gap 2020-2030 (**National Agreement**) with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (**Coalition of Peaks**). The July 2020 National Agreement is a commitment by Australian governments to set out a future where policy making impacting the lives of Aboriginal and Torres Strait Islander people is done in full and genuine partnership. Implementing the National Agreement on Closing the Gap is everyone's responsibility and is an unprecedented shift in the way governments work, by encompassing shared decision-making on the design, implementation, monitoring and evaluation of policies and programs to improve life outcomes for Aboriginal and Torres Strait Islander people. The next national partnership arrangements on legal assistance need to be informed by the National Agreement and ensure the National Agreement on Closing the Gap Priority Reforms guide the development of those arrangements.

This NATSILS submission on behalf of ATSILSs seeks to provide recommendations, experiences, examples and expertise to the Review of NLAP.

A summary of recommendations can be found in **section 3**. Following the introductory and background information about ATSILSs, NATSILS and our services within **section 4**, NATSILS' recommendations are expanded upon within **sections 6 to 9**.

We all want to know and understand our rights and responsibilities and have access to culturally appropriate wrap around support when we need it most. But, right now, Aboriginal and Torres Strait Islander people across the country are not able to access high quality culturally appropriate support – they are crying out for greater access to ATSILSs and to justice.

NATSILS believes that if the recommendations outlined in this submission are adopted and implemented by Australian Governments, Aboriginal and Torres Strait Islander people will overcome significant barriers to accessing justice, they will have less negative contact with justice systems, we will transform justice systems to be fair for Aboriginal and Torres Strait Islander people and there will be more Aboriginal and Torres Strait Islander children and adults in community, surrounded by love and culture, thriving.

If implemented, these recommendations would embed the principles contained in the National Agreement and recognise the right of self-determination in the development, funding and delivery of culturally appropriate legal services for Aboriginal and Torres Strait Islander people. All Governments have agreed to upholding self-determination and that Aboriginal and Torres Strait Islander community control is an act of self-determination. In **section 6**, NATSILS outlines its recommendations that the next partnership arrangements on legal assistance contain sustainable, long term, needs-based resourcing, with funding responsibility shared by the Commonwealth, States and Territories and informed by self-determination. In this context, NATSILS is calling on

Governments to meaningfully recognise self-determination in the next partnership arrangements on legal assistance and across the legal assistance sector as an essential pillar of reform to achieve substantive change in respect of Aboriginal and Torres Strait Islander people accessing justice.

NATSILS recommends that government and government-funded legal services partner with NATSILS and ATSILSs to develop Legal Assistance Service Transition Strategies to guide transition of services for Aboriginal and Torres Strait Islander people which are more appropriately delivered by community-controlled organisations.

Critically, we require an accurate understanding of the legal needs of Aboriginal and Torres Strait Islander people. Accordingly, NATSILS recommends that Governments should work in partnership with NATSILS, ATSILSs and the legal assistance sector to develop a national legal needs analysis strategy and operational plan.

NATSILS submit that we need to replace the current Funding Distribution Model with a co-designed, needs-based model that is informed by an accurate representation of legal need, service demand and population forecasts and linked directly with the Closing the Gap Priority Reforms, outcomes and targets. Commonwealth, State and Territory Governments should have joint responsibility for the needs-based approach. It should also involve co-designing a strategy and agreed principles for transparent allocation of short term or ad-hoc funding.

In accordance with Priority Reform 4 under the National Agreement, NATSILS submits the next national partnership arrangements on legal assistance should incorporate new, co-design monitoring and reporting processes which establish collaborative and outcomes-focused requirements to properly monitor the impact of expenditure on the lives of Aboriginal and Torres Strait Islander peoples and communities. Appropriate resourcing should be provided to ATSILSs to collect, aggregate, analyse, translate and report on data in schema that is co-designed and informed by the principles of self-determination, Indigenous Data Sovereignty and Governance and Priority Reform 4 of the National Agreement.

Embedding the principle of self-determination, as a collective right, means that Aboriginal and Torres Strait Islander people are best placed to make decisions about their needs and the needs of their children. This includes Aboriginal and Torres Strait Islander autonomy in the delivery of legal assistance services and statutory functions including, for example, statutory child protection functions.

It is also important that Aboriginal and Torres Strait Islander people are given real choice in legal assistance provision to address their legal needs. **Section 7** outlines NATSILS' position that the next partnership arrangements on legal assistance should appropriately resource ATSILSs to substantially increase access to effective, culturally appropriate and comprehensive legal assistance for Aboriginal and Torres Strait Islander people. To provide a real choice, NATSILS submits that ATSILSs must be appropriately resourced to expand their geographical reach, wraparound services, and legal services across practice areas.

ATSILSs understand the needs of community and that is why our service delivery model is unique; we see a holistic approach as pivotal to achieving NLAP's goals. Yet most of ATSILSs' early intervention and prevention, wrap-around, rehabilitation and throughcare services are not appropriately funded through NLAP. NATSILS' position is that ATSILSs should be appropriately funded through future national partnership arrangements on legal assistance to provide holistic legal service delivery and to give assistance in communities beyond individual case work and legal assistance to achieve systemic change. This includes investment for ATSILSs to engage in cross-sector partnerships across the community-controlled sector to address the contextual drivers into the legal system, which of course decreases Aboriginal and Torres Strait Islander people from getting stuck in the quicksand of justice systems and in turn eases downward pressure on resourcing justice systems.

The success or otherwise of increased access to effective, culturally appropriate and comprehensive legal assistance for Aboriginal and Torres Strait Islander people is dependent upon building NATSILS' and ATSILSs' long-term organisational capacities and capabilities to ensure an efficient, strong and sustainable sector. **Section 8** outlines NATSILS recommendations in this respect, including at the very minimum, ensuring ATSILSs can offer salary parity with Legal Aid Commissions (**LACs**), increasing ATSILSs' existing workforce to support safe work practices and increase productivity, and providing resources to ATSILSs to upgrade capital and operational infrastructure. Critically, to strengthen ATSILSs' culturally appropriate operating models and build partnerships, NATSILSs position is that resources should be provided to strengthen ATSILSs' dedicated and identified Aboriginal and Torres Strait Islander workforce.

Finally, to achieve the objectives of the National Agreement, ATSILSs and NATSILS must be supported to work across the legal and community sector to create systemic change through community-informed strategic litigation, law and policy reform and advocacy. This includes appropriate funding to support ATSILSs and NATSILS to work in partnership with the communities they represent, within the sector and across sectors, and in partnership with government in relation to policy design and delivery and Closing the Gap initiatives. **Section 9** outlines NATSILS' recommendations that the next partnership arrangements on legal assistance recognise and resource the fundamental position that NATSILS and ATSILSs have in policy development and advocacy, acknowledged in the National Agreement on Closing the Gap.

We thank Dr Warren Mundy and ACIL Allens for completing this Review, our ATSILSs' membership and the broader legal assistance sector, our funders, our allies and supporters and all who read this submission and seek to adopt and implement our recommendations.

3 Summary of Recommendations

NATSILS recommends:

Sustainable, long term, needs-based resourcing shared by all levels of government, and informed by self-determination

Embedding Self-Determination

1. The embedding of self-determination in the next national partnership arrangements on legal assistance services, and across the legal assistance sector as an essential pillar of reform, to achieve substantive change in respect of Aboriginal and Torres Strait Islander people accessing justice. Embedding self-determination would include:
 - a. Actioning commitments set out in the National Agreement on Closing the Gap, including that the roles and responsibilities of Governments and Government funded services within the national legal assistance arrangements be reviewed and realigned to ensure consistency with the priorities and commitments under the National Agreement on Closing the Gap;
 - b. Expressly incorporating the fundamental importance of Aboriginal community-control and the rights, strengths, lived experience and expertise of Aboriginal and Torres Strait Islander people;
 - c. Embedding and operationalising the purpose, principles, goals, priorities and strategic initiatives of the Closing the Gap National Justice Policy Partnership;
 - d. When making funding allocation decisions, consideration as to whether:
 - i. ATSILSs, as preferred providers, would be better placed to deliver that funded service;
 - ii. non-Aboriginal Community-Controlled legal services should partner with ATSILSs when providing services to Aboriginal and Torres Strait Islander people.
 - e. Government and government-funded legal services partnering with NATSILS and ATSILSs to develop a Legal Assistance Service Transition Strategy, to guide transition of services to Aboriginal and Torres Strait Islander people which are more appropriately delivered by community-controlled organisations.

Cultural safety

2. Commonwealth, State and Territory governments seek advice from the national Coalition of Aboriginal Peaks on adopting a nationally consistent definition of cultural safety in line with Priority Reform 3 and clause 59 of the National Agreement on Closing the Gap and which might form part of the next national legal assistance partnership arrangements.

Legal need and accessing justice

3. The Commonwealth Government and all jurisdictional governments work in partnership with NATSILS and ATSILSs and the legal assistance sector to develop a national legal needs analysis strategy and operational plan which includes the method and frequency of a periodic national legal needs survey to be undertaken, with a national legal needs analysis to be commenced prior to December 2024.

- a. Legal needs analyses should use and incorporate cross-sector research and insights, for example social services, child protection and education data, recognising that non-legal issues give rise to legal needs.
- 4. To ensure Aboriginal and Torres Strait Islander people have genuine access to justice, including fair trials and just outcomes, Governments must resource interpreter services in locations where English is not the main spoken language.

Needs based funding – models and allocations

- 5. To assist ATSILSs deliver these services and improve outcomes for Aboriginal and Torres Strait Islander people, NATSILS requests the Attorney-General's Department and State and Territory justice departments commit to the following two priorities phased over the next 12 months:
 - a. Immediate investment for operational parity which includes three funding priorities as a minimum:
 - i. Salary parity for staff;
 - ii. Increase the existing workforce to support safe work practices;
 - iii. Capital injection for critical infrastructure (buildings and systems).
 - b. Co-design a future-fit funding model which better reflects the legal needs of Aboriginal and Torres Strait Islander people across Australia, which is more appropriate for ATSILSs, allocates resources efficiently and enables ATSILSs to provide effective and sustainable supports for Aboriginal and Torres Strait Islander people engaged with the justice system.
 - i. Co-designing a needs-based funding model with NATSILS and ATSILSs should be informed by key elements of legal need, service demand and population forecasts, with shared funding responsibility between the Commonwealth and State/Territory governments and aligned with the Closing the Gap Priority Reforms and targets.
 - ii. Investment is required to support comprehensive and genuine deliberation with ATSILSs on the key components of the funding model. In addition to the elements outlined above, in line with the principle of self-determination the co-design process must:
 - 1. be Aboriginal and Torres Strait Islander-led;
 - 2. include equal representation from all ATSILSs to incorporate jurisdictional perspectives and promote shared decision-making;
 - 3. occur over a 9-month period at minimum to promote genuine engagement and information sharing;
 - 4. be supported by the Attorney-General's Department and various state and territory government justice departments.
- 6. To increase transparency, reduce competitiveness and move to an evidence-based approach, funding provided throughout the life of the national legal assistance arrangements is allocated to ATSILSs in line with the future-fit funding model, thus retiring the funding distribution model.
 - a. It is suggested that these arrangements and the model also include provision for periodic and real time review of funding allocations driven by demand for legal

assistance services resulting from changes to law and policy and identifiable through justice impact assessments.

7. The Commonwealth, States and Territories partner with NATSILS and ATSILSs to include long term sustainable (recurrent and sufficient funding) government investment for ATSILSs' Custody Notification Services (CNS) in the ATSILSs' future-fit funding model, ensuring:
 - a. critical lifesaving CNS services are no longer the subject of intergovernmental disagreements relating to which government is responsible for funding;
 - b. 12-month funding agreements renewed weeks before they expire are a thing of the past;
 - c. funding arrangements, funding quantum, monitoring and evaluations reflect the needs of Aboriginal and Torres Strait people.

Data, monitoring and reporting, and outcomes focused frameworks

8. Commonwealth, States and Territories work in partnership with NATSILS and ATSILSs to identify the resources, including data systems, required for ATSILSs and NATSILS to collect, aggregate, analyse, translate and report on data that is identified as useful by Governments, ATSILSs and communities for ongoing service improvement, including meaningful strengths-based data identified by ATSILSs.
 - a. Any new data schema in development should be co-designed with NATSILS and ATSILSs and informed by the principles of self-determination, Indigenous Data Sovereignty and Governance and Priority Reform 4 of the National Agreement on Closing the Gap.
9. Commonwealth, States and Territories streamline performance monitoring and reporting processes including the frequency (bi-annually) to avoid the significant drain on resources and the detraction from a service-delivery focus.
10. Commonwealth, States and Territories partner with NATSILS and ATSILSs to co-design new NLAP reporting processes which establish collaborative and outcomes-focused monitoring and reporting requirements so that expenditure can be properly monitored for its impact on the lives of Aboriginal and Torres Strait Islander peoples and communities, at the national, regional and local level. This may include ATSILSs testing the collection and internal reporting of outcomes information initially.
11. While NATSILS would like to investigate the utility for priority client categories in a future-fit funding model which better reflects the legal needs of Aboriginal and Torres Strait Islander peoples across Australia, additional priority client categories of Aboriginal and Torres Strait Islander people with disability and Aboriginal and Torres Strait Islander people caught up in the care and protection systems be added in the context of the existing framework.

Substantially increase access to effective, culturally appropriate, and comprehensive legal assistance for Aboriginal and Torres Strait Islander people – in recognition and fulfillment of the right of all Aboriginal and Torres Strait Islander people to access justice through culturally appropriate and community-controlled legal services

Addressing legal need through expanding ATSILSs' services

12. Commonwealth, States and Territories invest in expanding the geographical reach of ATSILSs, ensuring all Aboriginal and Torres Strait Islander people, regardless of their postcode, have the choice of culturally safe place-based community-controlled legal assistance services within metropolitan, regional, rural, and remote locations.
13. Governments invest in ATSILSs' long-term organisational capacity to provide comprehensive holistic and culturally appropriate legal assistance services, and address state/territory wide legal need in:
 - a. Criminal law, including Children's law;
 - b. Civil law, including Commonwealth administrative review;
 - c. Family law;
 - d. Child protection law.

Ensuring holistic support and culturally safe wraparound services through workforce and partnerships to obtain justice

14. Commonwealth, State and Territory governments invest in ATSILSs to support and enhance their unique position to provide holistic, culturally appropriate wraparound support to Aboriginal and Torres Strait Islander people. This includes:
 - a. the next national partnership arrangements on legal assistance, and overarching frameworks, agreements and funding arrangements should recognise the interconnected nature of legal issues with broader societal factors that drive Aboriginal and Torres Strait Islander people into the legal systems.
 - b. a whole-of-government approach including cross-portfolio funding commitments between the justice sectors and other key sectors to ensure holistic and integrated responses which address underlying socio-economic issues, including disability (including Mental Health) and the National Disability Insurance Scheme; Cultural, Social and Emotional Wellbeing; Family Violence; Education; Housing; Health; Care and Protection; and Social Services;
 - c. ATSILSs are appropriately funded through NLAP to provide holistic legal service delivery for Aboriginal and Torres Strait Islander people to address over-representation in the justice system by adequately resourcing ATSILSs' capacity to embed early intervention and wrap-around, prevention, diversion, rehabilitation, through-care and therapeutic measures;
 - d. the integration and expansion of ATSILSs' in-house non-legal roles into the legal assistance strategic and funding framework that recognises the interconnected nature of legal issues with broader community and social dynamics. This should include resourcing and embedding trauma-informed and culturally appropriate Frameworks into ATSILSs' service delivery models under the NLAP including opportunities to sustainably embed:

- i. Aboriginal Field/Court Officers across all practice and relevant program areas;
 - ii. Aboriginal Disability advocates;
 - iii. Mental health advocates and Coordinators;
 - iv. Social workers;
 - v. Financial counsellors;
 - vi. Civil law workforce with expertise in disability-related matters including the National Disability Insurance Scheme (NDIS), Disability Support Pension (DSP), mental health tribunal and guardianship matters.
 - e. increasing investment in the vital support provided by ATSILSs' Aboriginal Field Officers, Court Officers and Community Engagement specialists through new positions in underserved and new locations, with greater career advancement opportunities.
15. Governments invests in ATSILSs' organisational capacity (people and infrastructure) to develop, establish and maintain cross-sector partnerships across the community-controlled sector. This includes increasing the Aboriginal and Torres Strait Islander workforce to establish and maintain health justice, disability, housing, and education partnerships to take a multifaceted approach to addressing legal issues at their roots.
 16. Commonwealth, States and Territories should invest in ATSILSs' capacity to enhance intersectional practice and inclusive frameworks which includes tailored supports and lived experience advisory functions to meet the specific and often complex needs of diverse groups including women, children, Elders and older people, people in custody, members of the LGBTIQ+ community, people impacted by disasters, and people with disability.
 17. As an urgent priority and recognising the significant number of Aboriginal and Torres Strait Islander people with disability in justice systems, the Commonwealth, State and Territory governments work in partnership with NATSILS, ATSILSs and the First Peoples Disability Network to develop an Aboriginal and Torres Strait Islander Disability Framework and operational plan which would co-locate disability advocates within NATSILS, ATSILSs and First People's Disability Network.

Building ATSILSs' long-term organisational capacities and capabilities to ensure an efficient, strong and sustainable sector

18. As an immediate foundational step and to address the critical organisational and operational needs of ATSILSs to enable them to meet the demand for, and right of Aboriginal and Torres Strait Islander people to access culturally appropriate services, the Commonwealth, State and Territory governments invest in ATSILSs by increasing funding quantum in the 23/24 Financial year to enable ATSILSs to:
 - a. Provide staff with salary parity with LACs (at a minimum);
 - b. Increase their existing workforce to support safe work practices; and
 - c. Improve ATSILSs' capital and operational infrastructure including the need to:
 - i. repair existing ATSILSs' owned buildings to make them safe and fit for purpose;
 - ii. expand into new permanent and shared office locations;

- iii. update information technology infrastructure and data systems which will allow and support staff to deliver efficient and effective services;
 - iv. enhanced cybersecurity measures to ensure the integrity and security of information and services;
 - v. upgrade and purchase vehicles, particularly vehicles fit for purpose and safe for travel to and within regional and remote locations.
19. Investing in ATSILSs' capacity to strengthen culturally appropriate operating models and build partnerships to strengthen our dedicated and identified Aboriginal and Torres Strait Islander workforce including:
- a. dedicated resources for cultural training, support and supervision;
 - b. partnering with tertiary education providers to grow the Aboriginal and Torres Strait Islander legal assistance sector profession;
 - c. enhancing recruitment strategies and dedicated resources for outsourcing recruitment; and
 - d. expanding secondment opportunities across the private, non-government organisations and government sectors.
20. The development and funding of ATSILSs' governance frameworks to ensure strong connections between cultural, strategic and corporate governance improving decision making processes by defining clear responsibilities and roles and allowing ATSILSs to provide the best quality service to community.
21. ATSILSs are supported by a Peak Body, NATSILS, which has strong governance and policy development and capacity to influence and that ATSILSs are also invested in as jurisdictional peaks in their own right.
22. The next national partnership arrangements on legal assistance should support and adopt the measures identified in the Closing the Gap **Justice Sector Strengthening Plan** that is currently being developed.

Advocating for systemic change and supporting communities in their fight for justice

23. Enhancing ATSILSs' capabilities in policy development and advocacy through a multifaceted approach that aims to empower the sector and build capacity for strategic and impactful initiatives. This includes resourcing ATSILSs with core funding to conduct specialist advocacy and law reform activities on matters affecting Aboriginal and Torres Strait Islander people and in recognition of the increased benefits to the broader non-Indigenous population.
24. Governments support and fund NATSILS and ATSILSs to partner on Closing the Gap initiatives. This includes resourcing ATSILSs to co-design and lead formal partnerships with justice agencies to progress the aims of Closing the Gap, including in reducing the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice and care and protection systems as well as victims of family violence. This would include funding for policy staff, commissioning of reviews and to co-design Closing the Gap strategies, plans and proposals.
25. The next national partnership arrangements on legal assistance embeds and amplifies the lived experience and expertise of ATSILSs and our communities to lead change by investing in ATSILSs' community organising, campaigning, and strategic communications capabilities, to better enable ATSILSs to:

- a. work in partnership with communities to campaign for structural changes across justice systems;
 - b. increase accountability of jurisdictional to local justice responses;
 - c. ensure genuine co-design on new policies and programs; and
 - d. provide tailored, accessible, and culturally appropriate legal education.
26. Increasing accountability and addressing racism across justice systems by funding ATSILSs to establish dedicated services and programs aimed at holding government agencies to account in areas like police misconduct, mistreatment in custodial settings, strengthening support for families in coronial inquests and exploring new opportunities to address systemic issues through strategic litigation.
27. Commonwealth, State and Territory governments ensure NATSILS and ATSILSs play a key role in the policies, design, funding and delivery of justice reinvestment initiatives across Australia. This should include:
- a. Genuine partnership with NATSILS and ATSILSs to align government funded justice reinvestment initiatives with the Closing the Gap architecture;
 - b. Ensuring justice reinvestment initiatives are linked to the current NLAP and future partnership arrangements for legal assistance; and
 - c. Embedding and funding organisational and operational support for ATSILSs involvement in justice reinvestment.

4 About Us

About NATSILS

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 (CLE), advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. NATSILS 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 us a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples.

NATSILS represent the following ATSILSs:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement in South Australia (ALRM);
- Aboriginal Legal Service (NSW/ACT) Limited (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia Ltd (ALSWA);
- North Australian Aboriginal Justice Agency (NAAJA);
- Tasmanian Aboriginal Legal Service (TALS); and
- Victorian Aboriginal Legal Service Co-operative Limited (VALS).

NATSILS was established as the peak body for ATSILSs in 2007. Initially operating as a body to share best practice in the provision of legal assistance services to Aboriginal and Torres Strait Islander peoples, over time NATSILS has evolved and grown into a highly coordinated body that has expanded its sphere of influence to include broader issues in addition to those of service provision.

NATSILS currently co-chairs the Justice Policy Partnership (JPP) under the National Agreement on Closing the Gap and convenes the Australian Legal Assistance Forum (ALAF).

About ATSILSs

Aboriginal and Torres Strait Islander Legal Services were the first established community-based legal services and are some of the oldest Aboriginal and Torres Strait Islander community-controlled representative organisations in Australia.

Maps indicating the locations of ATSILSs' offices and distances each ATSILS cover are found in Appendix A.

Aboriginal and Torres Strait Islander Legal Services Queensland (ATSILS QLD)

Aboriginal and Torres Strait Islander Legal Services Queensland (ATSILS QLD) was originally formed in 1972 largely due to the passion and commitment for justice of various community members. Success in its early stages resulted in the organisation becoming incorporated as a company on 18th September 1974 (Aboriginal & Torres Strait Islanders Corporation (QEA) for Legal Services). The Service was, and remains, a non-profit (public benevolent), community-based organisation. As other ATSILSs were formed around the state, the service delivery area of "QEA" became confined to the south-eastern corner of Queensland and operated out of Brisbane. In the late 1990's regional offices were opened at Beenleigh and Maroochydore.

Responding further to the need of ensuring a professional and accountable service, a new organisation (Aboriginal and Torres Strait Islander Legal Service (QLD South) Ltd) was incorporated under the Australian Securities and Investments Commission in 2005 – coinciding with a tendering process by the Department, which saw the new organisation take on the service needs of the entirety of Southern Queensland – in the process expanding to 17 offices. 2005 also saw the introduction of family and civil law services – addressing a huge area of unmet need. A similar process in 2008 saw the organisation (now re-named the Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd) take on the service delivery for all of mainland Queensland (apart from the Northern Peninsular Area and the Torres Strait Islands). From 1 October 2011 the Organisation became state-wide, as it assumed the service delivery role in the Torres Strait and Northern Peninsula Area – although later withdrew from servicing that region after June 2021 due to a non-preparedness to accept only a one-year funding offer from the Torres Strait Regional Authority.

ATSILS QLD has a team of approximately 250 staff across 25 offices and brings together a wealth of experience in the fields of Criminal, Civil and Family Law. ATSILS QLD has offices in Brisbane, Beenleigh, Bundaberg, Cairns, Charleville, Hervey Bay, Ipswich, Mackay, Maroochydore, Mount Isa, Murgon, Rockhampton, Southport, Strathpine, Toowoomba, Townsville. It also has 9 satellite offices in Cleveland, Cunnamulla, Gladstone, Goondiwindi, Normanton, Palm Island, Roma, St George, and Wacol.

Growth in the areas of law reform, CLE, and throughcare support in recent years has also allowed us to provide a more diverse range of related services to members of our communities across the State.

Aboriginal Legal Rights Movement (ALRM), South Australia

The South Australian Aboriginal Legal Rights Movement (ALRM) began with the assistance of the Aboriginal Community Centre Inc. and the Council of Aboriginal Women of SA Inc. The ALRM was incorporated in January 1972 and received its first government funding of \$22,000 from the Commonwealth in 1971. The ALRM is a not-for-profit charity and a company limited by guarantee that operates as a law practice throughout most of South Australia. ALRM is an Aboriginal community organisation which is also a law practice. The law practice is in two parts – the criminal section which deals with criminal cases and the civil section which deals with civil compensation claims, coronial inquests, child protection and family law cases.

ALRM receives funding to run this law practice under the National Legal Assistance Program. ALRM also carries out social programs to assist Aboriginal prisoners and persons recently released from custody (PCP) and Aboriginal prisoners recently taken into custody (AVS and AVP). These are social programs designed to help Aboriginal to stay out of custody and to re-establish themselves. ALRM also provides services in financial counselling, mental health and family support for clients generally, assistance with engagement with the Disability Royal Commission, a prisoner care program, and an Aboriginal Visitors Scheme for prisoners. ALRM operates a Custody Notification Service in South Australia and took 8745 calls in 2021-2022.

ALRM has regional offices in Port Augusta and Ceduna on the West Coast and the recently opened small office in Port Lincoln, now operated by the West Coast lawyer. ALRM is not able to provide a service in the south-east of South Australia since we were never funded to deliver services to that significant part of the Aboriginal population of the state.

A significant part of our client base has English as a second language and require the use of interpreters, in particular, Aboriginal people from the remote north and west of the state. To service monthly courts on the Anangu Pitjantjatjara Yankunytjatjara (APY) lands and Coober Pedy our staff travel distances of between 1500 to 2500 kilometres depending on the circuit.

ALRM is the peak body in South Australia for law and policy advocacy on behalf of Aboriginal people and communities. ALRM does pioneering work on the interface between legal and medical services and is accountable through its Board and general meetings to the Aboriginal people and communities of the state.

Aboriginal Legal Service (NSW/ACT) Limited (ALS NSW/ACT)

The Aboriginal Legal Service (NSW/ACT) Limited ('ALS ACT/NSW') is a proud Aboriginal community-controlled organisation (ACCO) and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in NSW and the ACT.

Born out of a protest movement in the 1960's, the ALS first opened its doors in Redfern in 1970. As the first Aboriginal Legal Service in Australia and the first free legal assistance service on the continent, it was the catalyst for the establishment of other such services across the country.

In 2006, six regionally based Aboriginal Legal Services joined to form one service that now operates across the whole of NSW and ACT.

The ALS (NSW/ACT)'s vision is to achieve social justice and equity for Aboriginal and Torres Strait Islander people, families and communities. ALS (NSW/ACT) has 380 budgeted roles, with around 280 currently employed staff members based at 27 offices in 21 locations across NSW and the ACT in Redfern, Wollongong, Coffs Harbour, Nowra, Canberra, Walgett, Wagga Wagga, Moree, Newcastle, Tamworth, Parramatta, Kempsey, Griffith, Broken Hill, Bourke, Bathurst, Armidale, Lismore, Moruya and Dubbo. In addition, ALS (NSW/ACT) has a tenancy advice service at St Marys in Western Sydney.

The ALS (NSW/ACT) supports Aboriginal and Torres Strait Islander people through the provision of legal advice, information and assistance, and court representation in criminal law, children's care and protection law, and family law. Increasingly, we represent Aboriginal and Torres Strait Islander families in the NSW Coroner's Court, provide a variety of discrete civil law services including tenants advocacy, and undertake policy work and advocacy for reform of systems which disproportionately impact Aboriginal and Torres Strait Islander communities. The ALS (NSW/ACT) operates the Custody Notification Service program for NSW and the ACT and received 24,763 calls in 2021-22.

In addition to legal services, ALS (NSW/ACT) provides a range of complimentary services including bail support programs, disability legal support, and representation in alternative, diversionary and holistic court processes such as the Youth Koori Court, the Dubbo Winha-nga-nha List, and the Walama List. ALS NSW/ACT is implementing new programs such as family violence prevention

programs, holistic child and family advocacy support services, a visiting legal service for Aboriginal young people in youth justice centres, and a mental health advocacy and referral service. ALS NSW/ACT is also undertaking policy and advocacy work in relation to therapeutic pathways for children, throughcare initiatives and justice reinvestment, in addition to leading the development of a partnership between Aboriginal communities and the NSW Government.

The ALS (NSW/ACT) also provides practical training to an ever-growing number of student volunteers and interns in return for their important assistance to our lawyers and admin officers.

The Aboriginal Legal Service of WA Limited (ALSWA)

The Aboriginal Legal Service of WA Limited (ALSWA) is a not-for-profit organisation which provides legal representation and support services for Aboriginal and Torres Strait Islander peoples in Western Australia. ALSWA plays a vital role within WA's justice system, working in collaboration and partnership with communities and key government and non-government partners to rectify legal policies and practices that impact adversely and disproportionately on the legal and human rights of WA's First Peoples.

ALSWA is governed by a Board of Directors who are all Aboriginal. The cultural values of Care, Share and Respect form the foundation of ALSWA and underpin ALSWA's commitment to clients, families and communities. ALSWA's Executive Management Team is responsible for the day-to-day management of the organisation, its staff and twelve regional offices. ALSWA has offices in Albany, Broome, Bunbury, Carnavon, Derby, Geraldton, Halls Creek, Kalgoorlie, Kununurra, Northam, Perth (Head Office), and South Hedland. Embracing a human rights-based approach, ALSWA's professional and culturally appropriate service delivery model ensures that Aboriginal and Torres Strait Islander peoples feel comfortable accessing the service, which has been acknowledged with a National Human Rights Award. ALSWA provides legal services to Aboriginal and Torres Strait Islander people in the areas of Civil and Human Rights Law, Criminal Law and Family and Child Protection Law.

ALSWA also provides other services such as a bail support service, a prison in-reach program, support for Aboriginal people engaging with the Disability Royal Commission, a youth engagement program to provide support and referrals to enable young people to comply with court orders and improve their wellbeing and a Work and Development Permit Service to assist people who are experiencing difficulty paying court fines. ALSWA participates in the Custody Notification Service and received 25,770 calls in 2021-22. In addition to service provision, ALSWA is active in a number of policy and law reform activities and community education campaigns.

The North Australian Aboriginal Justice Agency (NAAJA), Northern Territory

NAAJA is the leading provider of legal services for Aboriginal people in the Northern Territory. Its purpose is to listen and empower Aboriginal people through the delivery of culturally responsive, high quality, holistic and effective law and justice services.

NAAJA provides both criminal and civil legal advice and representation for Aboriginal Territorians and it is also a peak body, meaning that it is responsible for conducting important non-legal services such as policy and advocacy work, CLE, and preventative/therapeutic programs. NAAJA runs throughcare programs for people in and leaving custody.

In 2022-23, NAAJA provided legal services to 8,030 clients. These services were delivered across the vast geographic area that is the Northern Territory, with staffed offices in Darwin, Katherine and Alice Springs and outreach offices in Tennant Creek and Nhulunbuy.

The Tasmanian Aboriginal Legal Service (TALS)

The Tasmanian Aboriginal Legal Service (TALS) is a community legal service which is controlled by local Aboriginal people. TALS specialises in criminal, civil and family law matters - and provides

culturally safe, holistic and appropriate services that are inclusive and open to all Aboriginal and Torres Strait Islander people in Tasmania.

TALS is a committed advocate for justice, equality and human rights, and regularly contributes to policy and law reform. TALS also operates a dedicated Family Violence Prevention Legal Service (known as SiS). SiS provides holistic legal support for victims/survivors of family violence and sexual assault. TALS operates a Custody Notification Service program and received 2,263 calls in 2021-22.

Additional funded programs include:

- Prison Program supporting Aboriginal people in custody;
- Justice Policy Partnership;
- CLE programs (including a school program called TALS Talks); and
- A pilot Bail Support Program.

The Victorian Aboriginal Legal Service Co-operative Limited (VALS)

The Victorian Aboriginal Legal Service Co-operative Limited (VALS) was established as a community-controlled Co-operative Society in 1973. VALS provides referrals, advice/information, duty work or case work assistance to Aboriginal and Torres Strait Islander peoples in the State of Victoria. Over time, VALS has expanded its services for Aboriginal and Torres Strait people and has 8 office locations including Melbourne, Bendigo, Ballarat, Mildura, Shepparton, Swan Hill, Warrnambool and Morwell. The VALS practice areas include criminal law, family law, civil and human rights law, a dedicated youth justice service (Balit Ngulu) and a specialist litigation unit, unique amongst Aboriginal and Torres Strait Islander legal services nationally. As part of delivering culturally safe and accessible legal assistance, VALS provides a range of other key supports for Aboriginal and Torres Strait Islander communities in Victoria. This includes a 24/7 Custody Notification Service, a transitional housing support program for women with complex needs leaving custody (Baggarrook), 1:1 client service and family support officers and CLE to equip Aboriginal people with the knowledge and skills to confidently self-advocate for their rights. VALS participates in the Custody Notification Service and received 11,836 calls in 2021-22.

VALS maintains a strong client service focus. Client Service Officers (CSOs) act as a bridge between the legal system and the Aboriginal and Torres Strait Islander community. VALS is actively involved in community education, research and advocacy around law reform and policy development. VALS strives to:

- promote social justice for Aboriginal and Torres Strait Islander peoples;
- promote the right of Aboriginal and Torres Strait Islander peoples to empowerment, identity and culture;
- ensure that Aboriginal and Torres Strait Islander peoples enjoy their rights, are aware of their responsibilities under the law and have access to appropriate advice, assistance and representation;
- reduce the disproportionate involvement of Aboriginal and Torres Strait Islander peoples in the criminal justice system; and
- promote the review of legislation and other practices which discriminate against Aboriginal and Torres Strait Islanders.

Description of ATSILSs' Services

Area	Description of services
Criminal law	Criminal law work includes duty work, representation, advice, casework, dispute resolution and appeals. ATSILSs represent both children and adults. ATSILSs travel to some of Australia's most remote locations to provide criminal law support.

Custody Notification Services	Every ATSILS runs a Custody Notification Service under which support workers and lawyers are on-call 24/7 for notifications from police when an Aboriginal or Torres Strait Islander person is taken into custody - to provide welfare checks and legal advice.
Indigenous Courts and Indigenous Lists	ATSILSs are also active in the development of and running Indigenous Courts and lists. In criminal law this includes Nunga courts in SA (ALRM), Murri Courts in QLD (ATSILS Qld), Koori Courts in Victoria, NSW and the ACT (VALS and ALS NSW/ACT), the Walama District Court Sentencing List (ALS NSW/ACT), the Galambany Court in the ACT (ALS NSW/ACT), and the NSW Civil and Administrative Tribunal Indigenous Tenancy List (ALS NSW/ACT). ATSILSs are also involved in the Family Court Indigenous Lists across Australia. ATSILSs are also involved in the new Winha-nga-nha Care List in Dubbo (ALS NSW/ACT).
Civil law	<p>Civil work is varied across the ATSILSs but can include advice, dispute resolution and casework on legal issues on tenancy; fines and infringements, victims of crime and compensation, complaints against police, prison and other government authorities, human rights and discrimination, motor vehicles and insurance, personal injury, stolen generations and reparations scheme, family violence and sexual assault, social security, consumer law matters, health care complaints; forfeiture or seizure of property, adult guardianship and employment.</p> <p>Civil work also includes support to access Commissions of Inquiry including the Royal Commission into Child Sexual Abuse and the Disability Royal Commission.</p> <p>ATSILSs note that addressing people’s civil law can be a significant factor in keeping people away from other legal issues, including criminal offending – and as such can be considered as “early intervention”. Indigenous Legal Needs Project of 2013 highlighted that civil and family law need were the areas of legal need least met for Aboriginal and Torres Strait Islander people.</p>
Child protection/ care and protection	ATSILSs assist with care applications, child removal, child protection orders and advice, contact orders and therapeutic orders, out-of-home care placement. ATSILSs are also deeply involved in advocacy and law reform in child protection.
Family law	All ATSILSs conduct family law work. This includes specialist family law services in general family law matters involving children, as well as dispute resolution.
Youth legal services	VALS runs Balit Ngulu youth service for Aboriginal young people. Some ATSILSs run visiting legal services for children in youth detention and bail support for young people.
Through-care prisoner support	Many ATSILSs run throughcare support for people leaving custody. For example, NAAJA runs the Kunga throughcare program for women in custody and an adult Indigenous through-care program with intensive case management, ALRM runs programs for people entering and leaving custody. VALS and ATSILS Qld also provide throughcare support.
Deaths in custody inquests	Every ATSILS undertakes coronial work on death in custody cases. This includes providing information, support and legal representation to the families through the coronial process.
Strategic litigation	In some instances, ATSILSs will run strategic litigation to combat policies or laws contributing to the overrepresentation of, or breaching the human rights of, Aboriginal and Torres Strait Islander people.

Community Legal Education including early intervention and prevention activities	All ATSILSs provide CLE for Aboriginal and Torres Strait Islander people. CLE takes several forms but often involve community workshops in relation to topics including driving offences, driver’s licences, fines, police relations and complaints, the court system, compliance with court and parole orders and domestic violence laws, including how to obtain and comply with a restraining order. ATSILSs capacity to undertake CLE is dependent on funding.
Advocacy and law reform	Depending on capacity (funding) ATSILSs undertake advocacy and law reform initiatives. These may be aimed at prevention, early intervention, diversion or at addressing discrimination or unfairness in laws. This includes submission writing, government relations, coalition work and sitting on committees.
Community support and justice initiatives	ATSILSs run a broad range of community support programs that involve our Client Support Officers, Field Officers and Court officers. ATSILSs provide culturally safe wraparound and therapeutic support in the areas of family violence, mental health, bail support and housing. ATSILSs are also involved in cross-sector initiatives through place-based justice reinvestment and health justice partnerships.

5 Introduction

This submission has been developed with and endorsed by the NATSILSs membership, comprising the seven independent, community controlled ATSILSs across Australia.

NATSILS notes that some ATSILSs have submitted to the NLAP Review individually. NATSILS also notes that material has been sent directly to the Review team either through NATSILS or directly from individual ATSILSs at the request of the Review team. This submission does not repeat or refer to this earlier submitted material, and NATSILS assumes that the Review team will be taking that material into account in the formulation of its Report and recommendations.

We commence this Submission with some “Key Facts” on criminal justice and child protection statistics. These are challenging sets of data that point to the unacceptable over-representation of Aboriginal and Torres Strait Islander people in the criminal justice and child protection systems and are the context within which ATSILSs operate and fight for justice with the communities we serve.

KEY FACTS: Child Protection

Too many Aboriginal and Torres Strait Islander children are in out-of-home care (OOHC)

As at 30 June 2022, there were

19,432

Aboriginal and Torres Strait Islander children in OOHC in Australia.¹



Not enough Aboriginal and Torres Strait Islander kids in OOHC are with family and kin



Only 41% of Aboriginal and Torres Strait Islander children in OOHC were living with Indigenous relatives and kin, or other Indigenous caregivers.⁵

Even before a child is born, Aboriginal and Torres Strait Islander families are disproportionately under the watch of child protection systems



In 2021-22

756

unborn Aboriginal and Torres Strait Islander children were the subjects of substantiations of notifications. This made up

47.4%

of total substantiations of notifications of unborn children in 2021-22 across Australia.⁷

Child and family authorities are removing Aboriginal children at an increasing rate

The rate of Aboriginal and Torres Strait Islander children in OOHC in Australia per 1,000 increased from **52.1 in 2018** to **56.8 in 2022**.⁶



Aboriginal and Torres Strait Islander children make up

39.3%

of all children in OOHC in Australia²,

but just 6% of the total population of children³.



Working with ACCOs gets better outcomes

For example, in Victoria,

83%

of Aboriginal and Torres Strait Islander children are reunified with their parents or family when case managed by an Aboriginal Community Controlled Organisation (ACCO) compared to

64%

when case managed by the Department of Families, Fairness and Housing.⁸



The out-of-home care system seems stacked up against us

Our kids are **11.8 TIMES** more likely to be in OOHC than non-Indigenous children⁴

¹ Productivity Commission, 'Part F, Section 16 Child Protection Services', *Report on Government Services 2023*, Table 16A.2.

² Australian Institute of Health and Welfare, *Child protection Australia 2021-22*, Table S5.1.

³ Young people aged 0 - 17, Productivity Commission, 'Part F, Section 16 Child Protection Services', *Report on Government Services 2023*, Table 16A.41.

⁴ Australian Institute of Health and Welfare, *Child protection Australia 2021-22*, Table S5.5. Productivity Commission, 'Part F, Section 16 Child Protection Services', *Report on Government Services 2023*, Table 16A.2.

⁵ Australian Institute of Health and Welfare, *Child protection Australia 2021-22*, Table S5.12.

⁶ Australian Institute of Health and Welfare, *Child protection Australia 2021-22*, Table T3.

⁷ Australian Institute of Health and Welfare, *Child protection Australia 2021-22*, Table S3.6.

⁸ State of Victoria, Response to Issues Paper 2: Call for Submissions on Systemic Injustice in the Child Protection System, [46]. Section 18 authorisation refers to s18 Children, Youth and Families Act 2005 (Vic)

KEY FACTS: Criminal Justice

Aboriginal and Torres Strait Islander people are over-represented in the criminal system

Aboriginal and Torres Strait Islander people were



more likely to be imprisoned than non-Indigenous people.¹

Helping our people in police custody

ATSILS received almost **100,000** calls to their Custody Notification Services in 2021-2022



Our people are still dying in custody

556

Aboriginal deaths in custody since 1991

16

Aboriginal deaths in custody since 1 January 2023⁹



Our strong Aboriginal men are doing it tough

Nationally, Aboriginal and Torres Strait Islander men are

13.9 x

more likely than non-Aboriginal men to be in prison.⁸



Our strong Aboriginal women are doing it even tougher

Nationally, Aboriginal and Torres Strait Islander women are

19.3 x

more likely than non-Aboriginal women to be in prison.⁷



Our over-reliance on prisons is not only harmful, but expensive

The daily average number of Aboriginal and Torres Strait Islander youth in detention in 2021-22 was

416³



In 2021-2022, it cost

\$2,720.01

per day to lock up a child.⁴



\$413,006,318.40 PER YEAR.

The daily average Aboriginal and Torres Strait Islander adult prisoner population in 2021-22 was

12,782⁵



In 2021-2022, it cost

\$405.15

per day to lock up an adult.⁶



\$1,890,338,927.40 PER YEAR.

Aboriginal-run, specialist programs deliver results

In Victoria, artwork program The Torch reduced the rate of participants returning to prison from

59% To 11%¹⁰



¹Productivity Commission, Report on Government Services 2023 – Corrective Service Data Tables, Table 8A.5.

²ABS – Corrective Services, Australia, June Quarter 2023, Table 2 and Table 11.

³Productivity Commission, Report on Government Services 2023 – Youth Justice Services Data Tables, Table 17A.5.

⁴Productivity Commission, Report on Government Services 2023 – Youth Justice Services Data Tables, Table 17A.21.

⁵Productivity Commission, Report on Government Services 2023 – Corrective Service Data Tables, Table 8A.4.

⁶Productivity Commission, Report on Government Services 2023 – Corrective Service Data Tables, Table 8A.19.

⁷Age standardised rate per 100,000 as at 30 June 2022. ABS Prisoners in Australia, 2022, Table 17.

⁸Age standardised rate per 100,000 as at 30 June 2022. ABS Prisoners in Australia, 2022, Table 17.

⁹Australian Institute of Criminology, Deaths in custody in Australia.

¹⁰The Australian, 12 May 2023, Indigenous art changing lives through The Torch program

6 Sustainable, long term, needs-based resourcing shared by all levels of government, and informed by self-determination

Embedding self-determination

Recommendation 1: Embedding Self Determination

The embedding of self-determination in the next national partnership arrangements on legal assistance services, and across the legal assistance sector as an essential pillar of reform, to achieve substantive change in respect of Aboriginal and Torres Strait Islander people accessing justice. Embedding self-determination would include:

- a. Actioning commitments set out in the National Agreement on Closing the Gap, including that the roles and responsibilities of Governments and Government funded services within the national legal assistance arrangements be reviewed and realigned to ensure consistency with the priorities and commitments under the National Agreement on Closing the Gap.
- b. Expressly incorporating the fundamental importance of Aboriginal community-control and the rights, strengths, lived experience and expertise of Aboriginal and Torres Strait Islander people.
- c. Embedding and operationalising the purpose, principles, goals, priorities and strategic initiatives of the Closing the Gap National Justice Policy Partnership
- d. When making funding allocation decisions, consideration as to whether:
 - i. ATSILSs, as preferred providers, would be better placed to deliver that funded service;
 - ii. non-Aboriginal Community-Controlled legal services should partner with ATSILSs when providing services to Aboriginal and Torres Strait Islander people.
- e. Government and government-funded legal services partnering with NATSILS and ATSILSs to develop a Legal Assistance Service Transition Strategy, to guide transition of services to Aboriginal and Torres Strait Islander people which are more appropriately delivered by community-controlled organisations.

Self-determination

Self-determination is misunderstood and misused by numerous governments and many mainstream organisations.

While the language of self-determination is used in the NLAP, the right to self-determination is not actually being substantively applied. NATSILS is calling for embedding self-determination in the next partnership arrangements on legal assistance and across the legal assistance sector as an essential pillar of reform to achieve substantive change in respect of Aboriginal and Torres Strait Islander people accessing justice.

Self-determination in international law is the right of Indigenous peoples to freely determine their political status and economic, social, and cultural destiny. It is much more than a right of participation or consultation. It extends to the right to develop autonomous arrangements and the power to make decisions from conception through to implementation and review.

Self-determination is a collective right. It is not about individual agency or decision-making by individuals but rather the shared right of Aboriginal and Torres Strait Islander peoples and communities.

We note that many government representatives and mainstream legal assistance providers conflate the definition referencing an Aboriginal and/or Torres Strait Islander person's right to make their own decisions.

However, the right to self-determination recognises that Aboriginal and Torres Strait Islander communities are best placed to make decisions about their needs and the needs of their children. This includes Aboriginal and Torres Strait Islander autonomy in the delivery of legal assistance services and statutory functions including, for example, statutory child protection functions.

All Governments have agreed to upholding self-determination as part of the National Agreement on Closing the Gap and the National Agreement itself recognises that Aboriginal and Torres Strait Islander community control is an act of self-determination (clause 44 of the National Agreement). We also note that many other policies including, for example, the National Framework on Protecting Australia's Children 2021-31 agree to upholding self-determination.

Self-determination and partnership arrangements on legal assistance services

The section below details the framework and architecture under the National Agreement on Closing the Gap within which governments have committed to uphold self-determination. NATSILS submits that these commitments make it incumbent on all governments and government agencies to embed and implement self-determination in practical, genuine and meaningful ways in the next partnership arrangements on legal assistance services, through both funding arrangements and funding quantum. This means partnering with NATSILS and ATSILSs, sharing decision-making on policies and programs, recognising ATSILSs' role as preferred providers for culturally appropriate legal services for Aboriginal and Torres Strait Islander people, and putting commitments into practice through appropriate and meaningful funding allocations to ATSILSs and Family Violence Prevention Legal Services.

Closing the Gap and National Legal Assistance Partnership arrangements

The July 2020 National Agreement on Closing the Gap is a commitment by Australian governments to set out a future where policy making impacting the lives of Aboriginal and Torres Strait Islander people is done in full and genuine partnership. The National Agreement commits to ensuring the views and expertise of Aboriginal and Torres Strait Islander people, including Elders, Traditional Owners and Native Title holders, communities and organisations will continue to provide central guidance to the Coalition of Peaks and Australian governments throughout the life of the National Agreement. To implement the National Agreement, Australian governments are required to share decision-making with Aboriginal and Torres Strait Islander people represented by their community-controlled peak organisations on Closing the Gap, the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks).

Implementing the National Agreement on Closing the Gap is everyone's responsibility and is an unprecedented shift in the way governments work, by encompassing shared decision-making on the design, implementation, monitoring and evaluation of policies and programs to improve life outcomes for Aboriginal and Torres Strait Islander people. The National Agreement's Implementation Plans provide additional guidance on key priorities, including socio-economic outcomes, priority reforms and focus areas.

For information about the Productivity Commission’s findings and recommendations on the ongoing implementation of the National Agreement on Closing the Gap please see the [Review of the National Agreement on Closing the Gap Draft report](#) (CTG Draft Report) released on 26 July 2023.

The CTG Draft Report highlights areas of improvement and emphasises where additional effort is required to close the gap. The key messages are:

- There is some evidence that governments demonstrate ability and willingness to partner in shared decision-making, but change is not occurring;
- Accountability is limited; and
- Progress is falling short of envisaged expectations.

Working in Genuine Partnership: Effective Engagement and Collaboration

The National Agreement sets the overarching policy framework for government effort to improve the lives of Aboriginal and Torres Strait Islander people. The National Agreement includes 17 socio-economic outcomes and additional targets. It also includes four Priority Reforms intended to change the way governments work to accelerate improvements in the lives of Aboriginal and Torres Strait Islander people.

The Priority Reforms have arisen from the Partnership between Australian governments and the Coalition of Peaks; they respond to the voices and aspirations of Aboriginal and Torres Strait Islander people; and were overwhelmingly supported during formal engagement on this Agreement in 2019.

Priority Reform 1 Formal Partnerships and Shared Decision Making	Priority Reform 2 Building the Community Controlled Sector	Priority Reform 3 Transforming Government Organisations	Priority Reform 4 Shared access to data and information at a regional level
Outcome: Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements	Outcome: Building the community-controlled sector: There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country.	Outcome: Improving mainstream institutions: Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund.	Outcome: Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally-relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.
Target: There will be formal partnership arrangements to support Closing the Gap in place between Aboriginal and Torres Strait Islander people and governments in	Target: Increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres	Target: Decrease in the proportion of Aboriginal and Torres Strait Islander people who have experiences of racism.	Target: Increase the number of regional data projects to support Aboriginal and Torres Strait Islander communities to make decisions about Closing the Gap

place in each state and territory enshrining agreed joint decision-making roles and responsibilities and where Aboriginal and Torres Strait Islander people have chosen their own representatives.

Strait Islander community-controlled organisations.

and their development.

For further information on the Priority Reforms and Transformation Elements see <https://www.closingthegap.gov.au/national-agreement/priority-reforms>.

The National Agreement on Closing the Gap and Policy Development

In the drafting of the next national partnership arrangements on legal assistance, attention should be given to ensure the National Agreement on Closing the Gap Priority Reforms guide its development. In addition, consideration should also be given to the socio-economic outcome(s) and target(s) to which the arrangements aim to contribute. This includes targets 10, 11, 12 and 13, in particular.

In doing so, throughout the policy development process awareness of the status of the ‘gap’ should be outlined as part of the rationale for the expenditure. Implementation arrangements for the partnership arrangements should take into consideration how expenditure will help achieve progress against both the Priority Reforms, socio-economic outcome(s) and target(s).

Further information on the progress against outcomes and targets can be found in the Productivity Commission’s *Annual Data Compilation report*.

Priority Reform One – Formal Partnerships and Shared Decision-making

The National Agreement sets out the key elements for effective formal partnerships and shared decision-making, as follows:

- Partnerships are accountable and representative;
- Formal agreements are in place; and
- Decision-making is shared between government and Aboriginal and Torres Strait Islander peoples.

Applying the elements

During the development of policy, an understanding of the ongoing partnership requirements between agencies and the relevant peak body (NATSILS) and other Aboriginal and Torres Strait Islander organisations and individuals is required to support and guide the development and implementation of the policy. Consideration should also be given to establishing an ongoing partnership with the relevant peak to jointly monitor the impact and effectiveness of the new

expenditure and ensure that Aboriginal and Torres Strait Islander peoples are benefitting as intended.

There are a number of existing formal policy partnerships, already established or being established, to support a joined-up approach between governments and Aboriginal and Torres Strait Islander representatives. The formal policy partnerships are:

- Justice (adult and youth incarceration);
- Social and emotional wellbeing (mental health);
- Housing;
- Early childhood care and development; and
- Aboriginal and Torres Strait Islander languages.

Effective policy partnerships present important opportunities to inform policy positions at the development stage. In the justice space, the JPP is an important forum to lead a nationally joined-up approach to transform justice systems through genuine partnership. In June 2023, Joint Council on Closing the Gap endorsed a Strategic Framework to inform the JPPs work. The Framework contains the following four overarching goals, which are closing aligned with the Closing the Gap Priority Reforms:

1. **Transforming justice systems** so that they work for, and not against Aboriginal and Torres Strait Islander people, by eliminating racism, embedding self-determination as an essential pillar of reform, ensuring policies and programs are culturally safe and designed in partnership with communities, and all justice agencies engage with families and individuals in a strength-based way.
2. **Establish formal partnerships**, share decision-making and ensure **accountability** to meet justice targets and implement priority reforms, reducing the overrepresentation of Aboriginal and Torres Strait Islander people in prisons and increasing positive contact with justice systems.
3. Build a strong, effective and sustainable Aboriginal and Torres Strait Islander **community-controlled** law and justice sector, which is **appropriately resourced** to deliver culturally safe and holistic services which meet the needs and priorities of Aboriginal and Torres Strait Islander communities.
4. Delivery **holistic, integrated and inclusive** systems which meet the diverse needs, priorities and wellbeing of all Aboriginal and Torres Strait Islander people and communities.

The goals are intimately connected with a strong Aboriginal community-controlled legal assistance sector. The success or otherwise of progress towards the JPP's goals is dependent upon well-resourced ATSILSs and NATILS both in terms of their service delivery and their ability to inform policy development and law reform. NATILS and ATSILSs are a critical voice in the JPP, having the knowledge and expertise as front-line Aboriginal community-controlled legal service providers. To be effective, it is critical NATILS and ATSILSs are appropriately resourced to engage in the JPP across the breadth of interrelated justice policy issues.

Priority Reform Two: Building the community-controlled sector

The National Agreement sets out the elements needed for a strong community-controlled sector as follows:

- Sustained capacity building and investment;
- A dedicated and identified Aboriginal and Torres Strait Islander workforce;

- Community-controlled organisations are supported by a Peak Body which has strong governance and policy development and capacity to influence; and
- Community-controlled organisations have a dedicated, reliable and consistent funding model designed to deliver the types of services required by communities.

Applying the elements

During the development of the next legal assistance arrangements, consideration should be given to both how new expenditure may support the building of strong Aboriginal and Torres Strait Islander community-controlled ATSILSs, and also how a “meaningful proportion” of the expenditure is to be delivered by ATSILSs as the community-controlled organisations with the relevant expertise.

Further information on a “meaningful proportion” of expenditure is set out in the next section.

Sector Strengthening Plans

Under the National Agreement, four sectors were initially identified for a joint national strengthening effort and the development of three-year Sector Strengthening Plans. These sectors are Early Childhood Care and Development, Health, Disability, and Housing. The sectors were chosen given their potential for cross-cutting impacts over a range of the socio-economic targets, while also enabling positive structural change in the most immediate and relevant policy areas. In June 2023, the Closing the Gap National Joint Council agreed to prioritise the establishment of a Justice Sector Strengthening Plan in recognition of the need to grow the community-controlled law and justice sector. This requires sustained capacity building and investment to expand ATSILSs.

As the new partnership arrangements on legal assistance will be developed at the same time as the Justice Sector Strengthening Plan, we recommend that there be a mechanism for the future legal assistance arrangements to consider relevant actions from the Justice Sector Strengthening Plan.

Priority Reform Three: Transforming Government Organisations

The National Agreement sets out the transformation elements as follows:

Governments will:

- Identify and eliminate racism;
- Embed and practice meaningful cultural safety;
- Deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people;
- Increase accountability through transparent funding allocations;
- Support Aboriginal and Torres Strait Islander cultures; and
- Improve engagement with Aboriginal and Torres Strait Islander people.

Mainstream organisations and institutions are required to be far more responsive to the needs of Aboriginal and Torres Strait Islander peoples and to make a greater contribution to Closing the Gap.

During the development of the next national partnership arrangements on legal assistance, consideration should be given to what obligations mainstream organisations and institutions, including LACs and Community Legal Centres (CLCs), receiving government funding should have with respect to Aboriginal and Torres Strait Islander peoples, including the cultural safety and responsiveness of the organisation and its services.

To be clear, the requirements apply to grants for non-government organisations that deliver programs and services on behalf of the government. The next national partnership arrangements on

legal assistance should set out how these organisations will need to demonstrate how they will be more responsive to the needs of Aboriginal and Torres Strait Islander peoples, what processes will be used to demonstrate these aspects prior to and after receipt of funding, such as in Grant Guidelines, and monitoring, accountability and evaluation frameworks.

However, they must also be required to identify if there are community-controlled organisations - ATSILSs and Family Violence Prevention Legal Services (FVPLSs) relevantly – who are better placed to deliver these services to Aboriginal and Torres Strait Islander people. This may require the development of a transition plan for delivery from mainstream organisations to Aboriginal and Torres Strait Islander organisations. The length of time within the transition plan might be immediate or longer term, whilst the Aboriginal and Torres Strait Islander organisations and sectors are strengthened. Some examples of transitional processes are included in existing Sector Strengthening Plans.

Currently, there is a need for LACs and CLCs to deliver services to Aboriginal and Torres Strait Islander people and continue to do in the current context at least where there are legal conflicts of interest. Priority Reform Three continues to apply to these non-Indigenous organisations where they are still required to deliver services and programs designed for Aboriginal and Torres Strait Islander peoples, due to the legal conflicts or potentially due to lack of local organisations.

Priority Reform Four: Shared Access to Data and Information at a Regional Level

The National Agreement sets out the following data and information sharing elements:

- Partnerships are in place to guide the improved collection, access, management and use of data to inform shared decision-making;
- Governments provide communities and organisations with access to the same data and information they use to make decisions;
- Governments collect, handle and report data at sufficient levels of disaggregation, and in an accessible and timely way; and
- Aboriginal and Torres Strait Islander communities and organisations are supported by governments to build capability and expertise in collecting, using and interpreting data in a meaningful way.

There is work to do in the legal assistance sector to ensure that specifically ATSILSs and FVPLSs, but all providers can collect, analyse and interpret data so that this expenditure can be properly monitored for its impact on the lives of Aboriginal and Torres Strait Islander peoples and communities, at the national, regional and local level.

In the development of the next national partnership arrangements on legal assistance, active consideration must also be given to how the data held by government and non-Indigenous organisations and institutions will be shared with Aboriginal and Torres Strait Islander organisations and communities.

Further, this should not only include data from the legal assistance sector but data from all jurisdictional justice sectors as well as interrelated sectors. For example, disaggregated disability data.

There is more information in this submission in relation to data requirements and the next national partnership arrangements on legal assistance.

Development of the National Partnership arrangements for Legal Assistance

The next overarching National Partnership arrangements for Legal Assistance are considered a mainstream proposal, referring to these arrangements relating to expenditure to the Australian community as a whole, under one or more of the 17 socio-economic outcome areas of the National Agreement on Closing the Gap.

While under the current Legal Assistance Partnership arrangements there are Aboriginal and Torres Strait Islander Legal Services delivering services and providing supports specifically to Aboriginal and Torres Strait Islander people, there are also universal services and supports delivered by CLCs and LACs.

Applying the Priority Reforms

Priority Reform One of the National Agreement is a commitment from governments to work in partnership with Aboriginal and Torres Strait Islander communities and organisations to share in decision-making on policies and programs that have a significant impact on them. Whilst mainstream policies are applicable to the Australian community as a whole, Priority Reform One should still guide the efforts of departments and agencies in the development of any new policy including the next National Partnership arrangements for Legal Assistance.

To effectively deliver Priority Reforms Two, Three and Four departments and agencies need to engage the relevant Aboriginal and Torres Strait Islander peak bodies and organisations on the initial design. This means working in partnership with NATSILS and NFVPLS.

Information gathered from working with us as peak bodies and other organisations should inform the design of the legal assistance arrangements, the consideration of a ‘meaningful proportion’ of funding, and the need for continued and fulsome engagement with us as peaks.

Allocating a ‘Meaningful Proportion’ (55b)

Clause 55(b) under Priority Reform 2 of the National Agreement states that government will allocate a “meaningful proportion” of new funding initiatives intended to service broader socio-economic outcomes to Aboriginal and Torres Strait Islander organisations. The clause notes:

Government Parties agree to implement measures to increase the proportion of services delivered by Aboriginal and Torres Strait Islander organisations, particularly community-controlled organisations, including by:

- a. implementing funding prioritisation policies across all Closing the Gap outcomes that require decisions about the provision of services to Aboriginal and Torres Strait Islander people and communities to preference Aboriginal and Torres Strait Islander community-controlled organisations and other Aboriginal and Torres Strait Islander organisations*
- b. where new funding initiatives are decided by governments which are intended to service the broader population across socio-economic outcome areas of the Agreement, that a meaningful proportion is allocated to Aboriginal and Torres Strait Islander organisations with relevant expertise, particularly community-controlled organisations. A meaningful proportion is an amount which takes into account the number and capacity of Aboriginal and Torres Strait Islander organisations, particularly the existing community-controlled sectors and the service demands of Aboriginal and Torres Strait Islander people, including through the views of Aboriginal and Torres Strait Islander community-controlled peaks organisations in the relevant jurisdiction.*

The intention of the clause is to increase the number of Aboriginal and Torres Strait Islander people benefitting from mainstream funding, services and programs to help Close the Gap. It acknowledges that Aboriginal and Torres Strait Islander people are more likely to access a particular service if it is delivered by their own organisations.

The National Agreement on Closing the Gap details that the clause be implemented progressively, with implementation completed by the 2024-25 Budget, where it will apply to all mainstream policies.

There are a number of ways to define and determine a “meaningful proportion” and there is further feedback within this submission on the recommendation to develop a needs-based funding model for Aboriginal and Torres Strait Islander people to access culturally appropriate and community controlled legal assistance. However, to guide this ‘meaningful proportion’ calculation in relation to legal assistance, we suggest the following considerations:

- **the proportion of the population that is Aboriginal and Torres Strait Islander** that may be impacted by the policy or access the services;
- **the level of need to Close the Gap** in the policy area or service proposed in the policy. Where costs in the policy are determined based on per person services, activity-based funding or another measure, the potential different costs as they relate to delivery to Aboriginal and Torres Strait Islander people should be considered. This includes, for example, access to services in remote areas, different levels of health, education and other needs, and overcoming other barriers to service. The funding model should reflect any differing needs between areas or communities; and
- **the capacity of Aboriginal and Torres Strait Organisations, particularly community-controlled organisations, namely ATSILSs, to deliver the policy.** This consideration refers to the ability of Aboriginal and Torres Strait Islander Legal Services to absorb and effectively deliver any proposed funding related to a policy, which may require a phased approach to funding increases. At the same time, consideration should also include the provision of funding to build the capacity of Aboriginal and Torres Strait Islander Legal Services over time.

Clause 55(a) of the National Agreement commits government parties to preference Aboriginal and Torres Strait Islander community-controlled organisations and other Aboriginal and Torres Strait Islander organisations across all Closing the Gap outcomes that require the provision of services to Aboriginal and Torres Strait Islander people and communities.

Policies specifically supporting Aboriginal and Torres Strait Islander people should clearly state the proposed delivery model and specify the proportion of expenditure to be delivered through Aboriginal and Torres Strait Islander organisations, particularly community-controlled organisations.

A Legal Assistance Service Transition Strategy

As noted above, Priority Reform Three is about transforming government organisations. This includes increasing accountability through funding allocations. This means that in receiving new expenditure to provide service to Aboriginal and Torres Strait Islander people, mainstream organisations should be required to demonstrate how they will be more responsive to the needs of Aboriginal and Torres Strait Islander peoples and the communities in which they are delivering services. This also means those mainstream services must also be required to identify whether ATSILSs and FVPLSs are better placed to deliver these services to Aboriginal and Torres Strait Islander people.

During the development of the next national partnership arrangements on legal assistance, consideration should be given to what obligations mainstream organisations and institutions, including LACs and CLCs, receiving government funding should have with respect to Aboriginal and Torres Strait Islander peoples.

NATSILS and ATSILSs submit this should be done through the development of a Legal Assistance Service Transition Strategy for delivery from mainstream organisations to Aboriginal and Torres Strait Islander organisations. The length of time within the transition strategy might be immediate or longer term, whilst the Aboriginal and Torres Strait Islander organisations and sectors are strengthened. Transitional processes are also included in existing Sector Strengthening Plans, including the Justice Sector Strengthening Plan referred to at Recommendation 22.

Recommendation 2:

Commonwealth, State and Territory governments seek advice from the national Coalition of Aboriginal Peaks on adopting a nationally consistent definition of cultural safety in line with Priority Reform 3 and clause 59 of the National Agreement on Closing the Gap and which might form part of the next national legal assistance partnership arrangements.

Under clause 59 of the National Agreement on Closing the Gap, Government parties have committed to implement transformation elements within government mainstream institutions. These elements include, embedding and practising meaningful cultural safety.

Embedding cultural safety under clause 59 sits alongside other transformative elements which include identifying and eliminating racism, delivering services in partnership with Aboriginal and Torres Strait Islander people, increased accountability through transparent funding allocations, supporting Aboriginal and Torres Strait Islander cultures and improving engagement with Aboriginal and Torres Strait Islander people.

Commonwealth, State and Territory governments would benefit from advice and guidance from the Coalition of Aboriginal and Torres Strait Islander Peak Organisations on a national and consistent definition of cultural safety, which might form part of future national legal assistance funding arrangements and frameworks.

Legal need and accessing justice

Recommendation 3:

The Commonwealth Government and all jurisdictional governments work in partnership with NATSILS and ATSILSs and the legal assistance sector to develop a national legal needs analysis strategy and operational plan which includes the method and frequency of a periodic national legal needs survey to be undertaken, with a national legal needs analysis to be commenced prior to December 2024.

- a. Legal needs analyses should use and incorporate cross-sector research and insights, for example social services, child protection and education data, recognising that non-legal issues give rise to legal needs.

A national legal needs analysis strategy

NATSILS are not aware of recent comprehensive *national* research having been undertaken into the scope of unmet legal need, and current quantitative data at the national level appears inadequate. Currently, there appears to be no up-to-date national research and little capacity for input from NATSILS or ATSILSs into how legal need is defined and measured or how data should be used to inform the collective or individual agency's work of the legal assistance sector going

forward. With no national leadership or agreement on legal need, State and Territory organisations are stepping in to fill the void. While State-based legal needs analyses are welcome and useful,¹ the result is that contemporary legal needs analyses are not representative, and fragmented evidence might be relied upon to make nation-wide assumptions.

This has contributed to difficulties in determining how unmet legal need should be accounted for in the design and funding of legal assistance services. There still “needs to be a better understanding of who is receiving services, how many services are being provided, whether the same people receive similar services over time, and whether services are being delivered in a cost-effective manner and achieve what is expected”.²

NATSILS submits that it is essential that any legal needs analysis starts from the premise that non-legal issues give rise to legal needs. It follows that the analysis must incorporate cross-sectoral research and insights, including data from social services, child protection, education and health. It is well established, for example, that early intervention to address non-legal needs in a culturally safe, holistic and wraparound manner can assist in avoiding escalation and more costly legal system interactions downstream. Examples of embedded non-legal support include social workers, disability support workers and financial counselling assistance.

Apart from recognising the non-legal/legal nexus, it is important that any legal needs analysis appreciate the interconnectedness of different types of legal issues for Aboriginal and Torres Strait Islander clients, in particular factors that result in interaction with the criminal justice and/or care and protection systems. For example, an analysis that simply concludes that Aboriginal and Torres Strait Islander people are more likely to use criminal court processes tells a one-dimensional story if it fails to take account of and unpack closely related issues, such as the nature of policing in Aboriginal and Torres Strait Islander communities.

Despite the lack of a recent comprehensive, national-level analysis, all research to date has emphasised in some way the particular legal needs of Aboriginal and Torres Strait Islander people. As noted in an analysis conducted by the Law and Justice Foundation of NSW “(t)he multiple disadvantages experienced by Indigenous people is critically relevant to their legal needs,” there is a “strong link between disadvantage and vulnerability to legal problems” and draws attention to the fact that Aboriginal and Torres Strait Islander people have “heightened vulnerability to multiple legal problems of a more substantial nature.”³

A rights-based approach

In our view, the Commonwealth, State and Territory governments should consider taking a rights-based approach to the legal needs of Aboriginal and Torres Strait Islander people. Such an assessment would be based on the understanding that every Aboriginal and Torres Strait Islander person, within relevant means tests and considerations, should have the right to free legal assistance, and the right to choose an ATSILS, and that each ATSILS is appropriately funded to meet the demand.

This approach is essential to ensure culturally appropriate, wraparound services and support in conjunction with communities. It also recognises that unmet legal need and gaps in the provision of services can have severe consequences.

¹ See, for example, more recent State based legal needs assessment analyses in Western Australia: ACIL Allen, *Assessment on the Current Legal Needs in Western Australia* (2022) <https://acilallen.com.au/uploads/projects/642/ACIL-Allen_WA-Legal-Needs-Report.pdf>. Also see the work in Victoria on the public’s understanding of law: Victoria Law Foundation, *Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need* (2023) <<https://puls.victorialawfoundation.org.au/publications/everyday-problems-and-legal-need>>.

² Australian Productivity Commission, *Access to Justice Arrangements: Inquiry Report (Volume 2)* (2014), 804, <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>>.

³ Z Wei, HM McDonald and C Coumarelos, ‘Indigenous people, multiple disadvantage and response to legal problems’, *Law and Justice Foundation of NSW*, (2015) 1, at <www.lawfoundation.net.au>

Meanwhile, in ATSILSs daily work with Aboriginal and Torres Strait Islander communities, it is abundantly clear that the demand for culturally appropriate legal assistance continues to outstrip our capacity to meet that demand, due to inadequate investment in ATSILSs.

The role of Government in legal needs analysis

National and robust needs analyses is not the responsibility of the legal assistance sector. NATSILS and ATSILSs submit that national leadership is required and that the Commonwealth, State and Territory governments develop and fund, in partnership with NATSILS and ATSILSs and the legal assistance sector, a national legal needs analysis strategy which would include a plan for conducting the analysis including the frequency of a periodic national legal needs analysis should be undertaken. Noting the link between legal and non-legal problems, NATSILS submits that any legal needs analyses should use and incorporate cross-sector research and insights, for example, social services, child protection and education data, recognising that non-legal issues give rise to legal need.

NATSILS further submits that a national strategy is significant to inform a needs-based funding model, as recommended and discussed at Recommendations 5 to 7.

Recommendation 4:

To ensure Aboriginal and Torres Strait Islander people have genuine access to justice, including fair trials and just outcomes, Governments must resource interpreter services in locations where English is not the main spoken language.

The right to be able to understand legal proceedings is well-established.⁴ Aboriginal and Torres Strait Islander people, particularly in remote and regional areas, are often multilingual. For many people from isolated Aboriginal and Torres Strait Islander communities, English may be a second or third language.⁵ However, as the Australian Law Reform Commission has noted, and ATSILSs working in remote areas can attest to, while the entitlement to an interpreter is clear, practical challenges exist in procuring access to interpreters, both in relation to Aboriginal and Torres Strait Islander languages and where an Aboriginal and/or Torres Strait Islander person experiences hearing loss.⁶

ATSILSs are committed to arranging interpreter services for clients so that clients receive a fair hearing and more just outcomes.

Some ATSILSs work closely with and support the Aboriginal and Torres Strait Islander interpreter services. However, there is a well-recognised and persistent shortage of fully qualified legal interpreters for many Aboriginal and Torres Strait Islander languages. Only a handful of Aboriginal and Torres Strait Islander interpreter services exist and those that do exist are insufficiently resourced to operate beyond limited geographical areas or provide interpreters in all necessary situations.

The Commonwealth must invest in interpreter services to ensure Aboriginal and Torres Strait Islander people can practically exercise their right to interpreter services.

⁴ See article 14, International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁵ See, Australian Law Reform Commission (2018) *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133) (2018), 10.1-10.19, <<https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/10-access-to-justice/access-to-interpreters/>>.

⁶ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133) (2018), 10.11, <<https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/10-access-to-justice/access-to-interpreters/>>.

CASE STUDY: NAAJA – Work towards improving interpreter services

Many clients of NAAJA in remote communities face unique difficulties with language, given the prevalence of clients who speak local language. In many of the communities that NAAJA services, English is a second, third or fourth language and almost all clients from remote communities require an interpreter.

While NAAJA works closely with, and strongly supports, the Aboriginal Interpreter Services (AIS), there is a well-recognised shortage of fully qualified legal interpreters for many Aboriginal languages.

In the Supreme Court case of *R v Bronson Wurrarama* [2011] NTSC 89 (in which NAAJA argued for a stay of proceedings in a criminal trial on the grounds that no suitable interpreter was available), a number of systemic challenges were highlighted. These include:

- Cases in the NT are often delayed due to difficulties in finding a suitable interpreter;
- In many language groups, there is a shortage of suitably trained and qualified interpreters;
- Simultaneous interpreting of court proceedings rarely occurs; and
- At present, the burden of arranging interpreters falls on defence lawyers.

NAAJA is committed to lessening, where possible, the burden of these systemic challenges on remote communities, and improving the ability of Aboriginal people to understand the law and legal processes and therefore access justice. NAAJA therefore continues to work with the AIS to improve legal understanding amongst interpreters, including in the following ways:

- Conducting joint training sessions on legal interpreting for AIS and NAAJA staff;
- Working with AIS to develop a Yolgnu Matha plain English dictionary;
- Working closely with the AIS to develop a protocol for court interpreters; and
- Seconding interpreters from the AIS into NAAJA to provide legal skills training and facilitate professional skills exchange.

Needs based funding – models and allocations

Recommendation 5:

To assist ATSILSs deliver these services and improve outcomes for Aboriginal and Torres Strait Islander peoples, NATSILS requests the Attorney-General's Department and State and Territory justice departments commit to the following two priorities phased over the next 12 months:

- a. Immediate investment for operational parity which includes three funding priorities as a minimum:
 - i. Salary parity for staff;
 - ii. Increase the existing workforce to support safe work practices;
 - iii. Capital injection for critical infrastructure (buildings and systems).
- b. Co-design a future-fit funding model which better reflects the legal needs of Aboriginal and Torres Strait Islander peoples across Australia, which is more appropriate for ATSILSs, allocates resources efficiently and enables ATSILSs to provide effective and sustainable supports for Aboriginal and Torres Strait Islander people engaged with the justice system.
 - i. Co-designing a needs-based funding model with NATSILS and ATSILSs should be informed by key elements of legal need, service demand and population forecasts, with shared funding responsibility between the Commonwealth and State/Territory governments and aligned with the Closing the Gap Priority Reforms and targets.
 - ii. Investment is required to support comprehensive and genuine deliberation with ATSILSs on the key components of the funding model. In addition to the elements outlined above, in line with the principle of self-determination the co-design process must:
 1. be Aboriginal and Torres Strait Islander-led
 2. include equal representation from all ATSILSs to incorporate jurisdictional perspectives and promote shared decision-making
 3. occur over a 9-month period at minimum to promote genuine engagement and information sharing
 4. be supported by the Attorney-General's Department and various state and territory government justice departments.

Recommendation 6:

To increase transparency, reduce competitiveness and move to an evidence-based approach, funding provided throughout the life of the national legal assistance arrangements is allocated to ATSILSs in line with the future-fit funding model, thus retiring the funding distribution model.

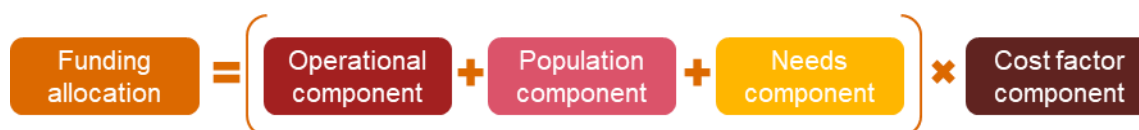
- a. It is suggested that these arrangements and the model also include provision for periodic and real time review of funding allocations driven by demand for legal assistance services resulting from changes to law and policy and identifiable through justice impact assessments.

The Funding Distribution Model and its shortcomings for ATSILSs

The FDM and arrangements under the NLAP are not serving ATSILSs or our communities. This Review provides the opportunity to rethink the FDM and recast funding policy and quantum

decision-making in partnership with ATSILSs in accordance with the National Agreement on Closing the Gap.

NATSILS has undertaken an interrogation of the FDM, which is calculated using the following equation:



Although well-intended, the FDM results in an inequitable funding allocation for ATSILSs. The key shortcomings in relation to each component are outlined below, followed by a detailed interrogation of each component.

Operational component:

- The original fixed cost base calculation is not known but does not appear to allow for the incoming condition of aging infrastructure (buildings and systems) which characterise most ATSILSs;
- In relation to the Aboriginal and Torres Strait Islander population, the LAC/CLC population component includes total population resulting in double counting of the Aboriginal and Torres Strait Islander population and additional funding being supplied to LACs/CLCs compared to ATSILSs. LACs /CLCs therefore may not experience the same cost pressures as ATSILSs. There is a need to direct additional funding to ATSILSs whilst balancing the need for service choice noting instances where ATSILSs cannot provide a service; and
- The geographic distribution of ATSILSs workforce and client base results in a decreased ability for ATSILSs to realise economies of scale that may otherwise accrue for larger organisations.

Population component:

- While the population share includes a larger age range for ATSILSs, it does not account for a substantial driver of work which relates to children and youth under 10 years of age who are at risk of offending and/or those who are involved in the child protection system;
- The Aboriginal and Torres Strait Islander population is double counted for LACs/CLCs resulting in additional funding being provided to LACs/CLCs compared to ATSILSs.

Needs component:

- No detail is provided on how the needs weight is calculated;
- The calculation does not appear to account for increased costs associated with intersectionality for clients who fall into multiple high needs categories, although it is possible this may be accounted for in the needs weight calculation;
- The categories do not account for all drivers of complexity;
- The Aboriginal and Torres Strait Islander population is double counted for LACs/CLCs resulting in additional funding being supplied to LACs/CLCs compared to ATSILSs.

Cost factor component:

- ATSILSs operations are skewed more highly to regional and remote/isolated service delivery in line with the significant Aboriginal and Torres Strait Islander populations in regional and remote areas relative to non-Indigenous people.

Operational component



Fixed cost base:

It is unclear how the fixed cost base has been originally calculated however it is described as a component to cover “rent and overheads”.

Historic under-investment particularly in relation to capital infrastructure results in higher operational costs for ATSILSs. The fixed cost base does not appear to include costs associated with the upkeep and renovation of ATSILSs’ ageing infrastructure nor the acquisition and maintenance of relevant systems (for example, data and information technology systems). Without ongoing maintenance and upkeep, ATSILSs cannot improve their facilities and provide attractive workplaces for staff to assist with recruitment and retention.

Urgent investment is required to bring ATSILSs’ buildings and systems to industry standards and increase the ongoing fixed cost base to ensure infrastructure can be maintained.

Aboriginal and Torres Strait Islander population:

For both LACs and CLCs the population component is based on total jurisdictional population. For ATSILSs this is based on the Aboriginal and Torres Strait Islander population only. As a result, Aboriginal and Torres Strait Islander people are effectively double counted and LACs and CLCs are funded to a higher level than ATSILSs by the percentage of Aboriginal and Torres Strait Islander people in their jurisdiction (on average approximately 3.8%⁷ although this would vary based on jurisdictional differences).

Economies of scale factor:

The economies of scale factor is described as accounting for the relative cost advantages of operating larger organisations and it moderates the share of funding received in jurisdictions that have larger populations. It is difficult to determine exactly how this is calculated as it is not outlined in Addendum 1 to the NLAP Issues Paper.

In general, economies of scale exist in larger organisations. However, in most instances, ATSILSs are unable to access these economies. ATSILSs in jurisdictions with larger Aboriginal and Torres Strait Islander populations are required to operate across significant geographic areas. This results in

⁷ Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (2023), <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release#:~:text=Data%20downloads-.Key%20statistics,Queensland%20and%20Western%20Australia%20combined>>.

substantial travel costs for staff and overheads associated with maintaining additional office locations which offset any economies that may otherwise result.

Population component



Population share:

As with the population aspect of the operational cost component, population shares for both LACs and CLCs are based on total Need for Legal Assistance Services (NLAS) population while for ATSILSs it is based on the Aboriginal and Torres Strait Islander population only. This results in double counting and additional funding being provided to LACs and CLCs that is not enjoyed by ATSILSs.

The NLAS (ATSILS) incorporates different criteria including people aged 10 to 17 who identify as Aboriginal and Torres Strait Islander as well as people aged 18 and over who have a low personal income and identify as Aboriginal and Torres Strait Islander.

Given a substantial portion of ATSILSs' work includes children's and family law as well as early intervention for youth justice (including for children less than 10 years old), this measure does not fully capture the population represented and supported by ATSILSs.

Needs component



Needs weight:

No detail is provided on the 'needs weight' calculation to determine its appropriateness.

Population share of high needs:

The 'population share of high needs' attempts to address differences in the cost of delivering services to clients with higher needs (as defined by the categories outlined in the FDM). In practice, the following considerations are likely to result in this component failing to fully account for additional complexity and cost:

- The calculation method counts the proportion of people in each high need category individually. It does not appear to account for the increasing complexity that results from intersectionality across multiple categories. It is well documented that the needs of clients' compound if they fall into multiple categories and that this complexity - and therefore the resulting costs associated with meeting their needs - are far greater than the sum of the individual parts. Aboriginal and Torres Strait Islander clients are more likely than non-Indigenous clients to fall into multiple categories. A well understood example is the over-representation of Aboriginal and Torres Strait Islander children on care and protection orders who are in out-of-home care and who have spent time firstly in youth detention and sadly often later in their lives in adult prison. Although it is possible that intersectionality may be accounted for in the needs weight (which is not detailed in Addendum 1 to the Issues Paper), this would require a complex calculation which multiplies (rather than sums) individuals across categories;

- The high need group categories are broad and do not account for all drivers of complexity. For example, Aboriginal and Torres Strait Islander Australians in custody are more likely than their non-Indigenous counterparts to experience a cognitive impairment.⁸ The rate and prevalence of cognitive impairment is not accounted for in the high need categories;
- As in previous components, LACs and CLCs models incorporate the proportion of Aboriginal and Torres Strait Islander people in their jurisdictions within their calculation. These people are, therefore, double counted and this results in additional funding being provided to LACs and CLCs above the share of high need clients that they are likely to service.

Cost factor component



All factors in this component are calculated in the same way for ATSILSs, LACs and CLCs (except a 'cross-border factor' which only applies for LACs related to Commonwealth law matters). While at face value this may seem equitable, it fails to account for substantial differences in the underlying cost drivers for ATSILSs particularly in relation to wage disparities and the higher proportion of work undertaken in remote and regional locations. Additionally, many ATSILSs provide cross-border services to support clients meet their needs (particularly family law) however are not funded to do so.

As discussed previously, Aboriginal and Torres Strait Islander people make up a larger share of regional and remote communities as compared to metropolitan locations. Approximately 65% of Australia's Aboriginal and Torres Strait Islander population live in regional and remote areas compared to 29% of non-Indigenous people. This difference increases even more in 'very remote Australia' where 14% of Aboriginal and Torres Strait Islander people live compared to 1% of non-Indigenous Australians.⁹

Regional factor:

This factor accounts for the proportion of each jurisdiction's total population located in regional or remote areas. Given that it is based on the total population proportion it will significantly undercount the proportion of the Aboriginal and Torres Strait Islander population who are located in these areas which are associated with higher costs of service delivery.

Service delivery scale:

This factor accounts for the proportion of each jurisdiction's total population which is located in small, isolated communities. Given that it is based on the total population proportion it will significantly undercount the proportion of the Aboriginal and Torres Strait Islander population who are located in these communities which are associated with substantially higher costs of service delivery.

⁸ Australian Institute of Criminology, *Aboriginal prisoners with cognitive impairment: Is this the highest risk group?*, (2017), <https://www.aic.gov.au/sites/default/files/2020-05/ti536_aboriginal_prisoners_with_cognitive_impairment.pdf>

⁹ National Rural Health Alliance, *Demography*, <<https://www.ruralhealth.org.au/book/demography#:~:text=While%20only%201%25%20of%20the,Very%20Remote%20areas%20is%20Indigenous.&text=Approximately%2035%25%20of%20Australia's%20Indigenous,in%20regional%20and%20remote%20areas>>

ATSILSs provide a greater share of their services in regional and remote locations compared to the distribution of services by CLCs and LACs. Utilising the same cost factor component for all providers disadvantages ATSILSs.

Preliminary view on a new, needs-based funding approach

Despite the overrepresentation of Aboriginal and Torres Strait Islander people in the justice systems, ATSILSs across Australia are underfunded. The existing FDM is unsuitable for ATSILSs as it:

- is insufficiently nuanced to reflect the actual costs of service delivery (including the additional and culturally appropriate wrap-around supports of ATSILSs) particularly in regional and remote locations;
- propagates existing inequities within the legal assistance sector (for example, the salaries of ATSILSs' staff are unfairly lower than LACs' and CLCs', therefore, resulting in lower cost factor components);
- inadequately captures the holistic legal assistance needs (that is, culturally safe legal advice, assistance, representation, education, advocacy and prisoner through-care) and expectations of Aboriginal and Torres Strait Islander communities.

Additionally, as a fixed amount is distributed over a five-year period to ATSILSs there is limited flexibility to seek more funding to meet the changing needs, demands and priorities of Aboriginal and Torres Strait Islander people engaged with the justice system. For example, if a State/Territory government changes bail laws then it will directly impact the demand for legal services provided by ATSILSs. This is also important given the lower average age profile and faster growing population compared to the non-Indigenous population.

The funding model for partnership arrangements for legal assistance should be revised to more accurately reflect legal needs and result in better outcomes for ATSILSs and their clients.

NATSILS' preliminary view on the key elements that should be taken into account when developing a new, needs-based funding approach for ATSILSs are outlined below.

Informed by existing service demand and forecasts

The revised funding model should be informed by current demand factors (for example, population growth and transience, service utilisation etc) across the criminal, civil, family and specialised services delivered by ATSILSs. While five-year funding commitments provide a degree of certainty, demand should be monitored and reviewed regularly (for example, annually) so ATSILSs are appropriately resourced year-on-year in the management of staff workplace health and safety concerns due to unacceptably low workforce levels creating, for example, high caseloads.

The model must also incorporate the drivers of legal need across the community (that is, the contextual factors and structural mechanisms contributing to socio-economic inequality) to more accurately reflect anticipated changes in demand and so ATSILSs receive funding for the work that needs to be done. One way to improve the fidelity of legal need forecasts and estimate client volumes is to construct and embed holistic indicators relating to the social determinants of justice for Aboriginal and Torres Strait Islander peoples and/or the Closing the Gap Framework. These

include education and employment, health and disability, access to stable housing, engagement with out-of-home care and child protection, and location.¹⁰

Joint responsibility between the Commonwealth and state/territory governments

The demand and need for legal assistance services in crime and child protection matters is largely driven by state and territory government decisions (for example, changes to legislation, service funding and programs). This results in moral hazard for the Commonwealth Government as it carries financial burdens based on decisions made by States and Territories.

To mitigate moral hazard and share financial burden, the Commonwealth and all State and Territory governments must take joint responsibility for the revised funding model. In line with the Closing the Gap Priority Reform One ('Formal Partnerships and Shared Decision Making'), this includes partnering with ATSILSs at the earliest opportunity on proposed legislative changes, involving ATSILSs in considerations of impacts, consistently disclosing information on justice outcomes in their respective jurisdictions and co-contributing funding and sharing proposed legislative changes and their anticipated impacts on legal needs.

Direct linkage with Closing the Gap

In addition to the four Closing the Gap Priority Reforms, the National Agreement on Closing the Gap has 19 national Socio-Economic Outcomes. The justice sector intersects with all outcomes particularly outcomes 10-13. However, progress against most outcomes by governments across jurisdictions has been minimal to date. ATSILSs have an important role in driving the Closing the Gap outcomes if they are resourced appropriately to do so. There is an opportunity to directly link legal assistance funding with progress against the Closing the Gap outcomes, for example, by including a 'Closing the Gap factor' in the revised funding equation.

Implementation Plan

ATSILSs are providing critical services for people across the country without appropriate levels of resourcing. To assist ATSILSs deliver these services and improve outcomes for Aboriginal and Torres Strait Islander peoples, NATSILS requests the Attorney-General's Department and all state and territory justice departments commit to the following two priorities phased over the next 12 months (i.e. by October 2024):

- immediate investment for operational parity; and
- co-design a future fit funding model.

Immediate investment for operational parity

An immediate investment is required to bring ATSILSs to a level of parity – so that they can better meet the needs of Aboriginal and Torres Strait Islander peoples engaged with the justice system across Australia. Specifically, there are three funding priorities over the next 6-12 months.

1. Salary Parity for staff

Legal staff at ATSILSs are paid significantly less than their peers working in the sector including private practice, LACs, Offices of the Director of Public Prosecutions (ODPPs) and some CLCs. To improve retention and recruitment, and ensure the ongoing operations of ATSILSs, it is essential that

¹⁰ See for example the contexts and structural factors described in R McCausland and E Baldry, 'Who does Australia Lock Up? The Social Determinants of Justice' (2023) 12:3 *International Journal for Crime, Justice and Social Democracy* 37 <<https://www.crimejusticejournal.com/article/view/2504>>.

the salary structures of ATSILSs' staff are adjusted to be at or above industry levels for all role types (i.e. legal and non-legal).

2. Increase the existing workforce to support safe work practices

Funding is needed to employ additional legal and non-legal staff including Aboriginal Field Officers and support staff who together provide ATSILSs' model of culturally safe legal services. The legal staff at ATSILSs currently experience unsustainable workloads and are often required to work excessive hours each week (and weekends) whilst receiving comparably lower salaries than their peers in the sector. Additionally, the matters often concern complex and confronting issues which can take a toll on the mental health and wellbeing of staff without adequate breaks and support. If no additional investment is provided to employ more legal staff, ATSILSs may be forced to temporarily suspend services to manage workplace health and safety concerns.

3. Capital injection for critical infrastructure (buildings and systems)

The buildings ATSILSs operate from have been acquired over time through a variety of means. In some instances, 'pepper-corn' loans and other caveated title arrangements resulted in the transfer of responsibility for under-repaired, aged and often not purpose-built infrastructure to ATSILSs without freehold access to the underlying financial asset.

A capital injection is needed to enable the renovation and upkeep of ATSILSs' ageing physical infrastructure and to develop and implement a capital expenditure strategy to support ATSILSs to keep up with demand, particularly in high needs locations (e.g. new buildings, IT, data systems and vehicles). This investment is necessary to modernise ATSILSs and ensure that Aboriginal and Torres Strait Islander people can access services which meet and/or exceed industry standards.

Co-design a future fit funding model

ATSILSs require more appropriate funding to ensure their ongoing operations and to meet the legal needs of the community.

An alternative legal assistance funding model for ATSILSs needs to be explored which better reflects the legal needs of Aboriginal and Torres Strait Islander peoples across Australia. However, given the absence of a national and periodic legal needs survey, accurately capturing the legal assistance needs of Aboriginal and Torres Strait Islander peoples is difficult. This is why a new and more equitable funding model should be developed through a genuine co-design process with NATSILS and its members which privileges the lived and professional experiences of their workforces and clients.

Investment is required to support comprehensive and genuine deliberation with ATSILSs on the key components of the funding model. In addition to the elements outlined in Table 2, in line with the principle of self-determination the co-design process must:

- be First Nations-led;
- include equal representation from all ATSILSs to incorporate jurisdictional perspectives and promote shared decision-making;
- occur over a 9-month period at minimum to promote genuine engagement and information sharing;
- be supported by the Attorney-General's Department and various state and territory governments justice departments.

If the co-design process is to succeed, NATSILS and ATSILSs must be provided with consistent information from the Attorney-General's Department and state and territory justice departments so

informed deliberations can occur. This includes the provision of all assumptions underpinning the existing NLAP FDM, the funding methodologies utilised by each state and territory government and partnering with ATSILSs at the earliest opportunity on proposed legislative changes and their impacts in line with Closing the Gap Priority Reform One.

As the peak body, NATSILS is well positioned to lead the co-design process in collaboration with the Attorney-General's Department. Together we can develop a new funding model which is more appropriate for ATSILSs, allocates resources efficiently and enables ATSILSs to provide effective and sustainable supports for Aboriginal and Torres Strait Islander people engaged with the justice system.

Short term and ad-hoc funding streams

While NATSILS and ATSILSs welcome the opportunity to new funding which been put to good effect, these short-term and sometimes insufficient investments and siloed approaches to service delivery are not a strategic way of working and making sustained impact.

On a practical level, short-term programmatic funding for ATSILSs presents the following challenges:

- Short term and ad hoc funding are often introduced and offered in haste, and sometimes with unrealistic deliverables in short time frames;
- Difficulties recruiting part time positions on ATSILSs' low salaries, compared to the salaries offered elsewhere, often under the same funding to other legal assistance sector providers;
- ATSILSs' relational and partnership approach means that the investment in building collaborations is jeopardised as and when short term funding dries up;
- Loss of face and reputational capital in community when a service closes;
- Additional reporting burdens; and
- For ATSILSs with small and/or emerging practices in new areas of law, comparatively limited capacity to provide professional supervision and peer support.

We support the Productivity Commission's findings in the *Draft Report – Review of the National Agreement on Closing the Gap* that ad hoc, insufficient and “short termism”:

- draws on non-Indigenous ways of framing policy solutions resulting in little change in outcomes and an increased likelihood of wasted government and community resources;
- Hinders prioritisation of efforts and can be seen as prioritising “low hanging fruit”; and
- Contributes to siloed policy and practice responses.¹¹

These streams of funding have also benefitted better-funded sub-sectors with greater organisational capacity to absorb the recruitment, on-boarding and set-up challenges. It takes time and human resources to build partnerships. Scaling up and scaling down at pace with short term funding is only achievable if the organisation receiving the funding has had sufficient investment. Phase 1 of the implementation of a needs-based funding model described above at Recommendations 5 and 6, that includes immediate funding injections to enable salary parity, increasing the workforce and building capital and infrastructure capabilities, levels the playing field by increasing ATSILSs' organisational capacity to take on new funding streams.

To bring predictability and cohesion to ad hoc funding streams, NATSILS suggest Governments work with the legal assistance sector to co-design a strategy and agreed principles for transparent allocation of short term or ad-hoc funding, that is informed by the legal need as determined through the needs-based funding model.

¹¹ Australian Productivity Commission, *Review of the National Agreement on Closing the Gap: Draft Report* (2013), 21, <<https://www.pc.gov.au/inquiries/current/closing-the-gap-review/draft/closing-the-gap-review-draft.pdf>>.

Recommendation 7:

The Commonwealth, States and Territories partner with NATSILS and ATSILSs to include long term sustainable (recurrent and sufficient funding) government investment for ATSILSs' **Custody Notification Services** in the ATSILSs' future-fit funding model, ensuring:

- a. critical lifesaving CNS services are no longer the subject of intergovernmental disagreements relating to which government is responsible for funding.
- b. 12-month funding agreements renewed weeks before they expire are a thing of the past.
- c. funding arrangements, funding quantum, monitoring and evaluations reflect the needs of Aboriginal and Torres Strait people.

Funding the CNS continues to be a political football. In our submission to the ILAP Review in 2018, NATSILS said: *“Commonwealth leadership for a whole-of-government approach to justice is critical. The siloed, handballing approach of governments to Aboriginal and Torres Strait Islander Affairs must end.”* The lack of resolution in relation to long term and sustained funding mechanism and funding quantum of the CNS remains the same today.

The ongoing success and sustainability of the CNS services is dependent on reliable and consistent funding. The current funding arrangements for the CNS vary significantly across States and Territories. In Western Australia and Victoria, the CNS is co-funded through both Commonwealth and state funding. Tasmania uses its baseline NLAP funding for its CNS. All other state and territories CNS programs, except Queensland (which receives no CNS funding) are funded by the Commonwealth. However, we understand that the Minister for Indigenous Australians has written to State and Territory governments to indicate that the funding will be a state and territory responsibility beyond 30 June 2024. NATSILS and ATSILSs are yet to have formal correspondence from state and territory governments seeking to negotiate these arrangements.

Across all jurisdictions, funding for the CNS has been through short-term arrangements resulting in uncertainty in relation to the ongoing viability of the services. Since the first injection of Commonwealth funding for CNS in 2016 for a three-year period, Commonwealth funding arrangements have continued to be for a limited period, with the most recent 2023-24 Federal Budget providing funding for only one year.

The ongoing uncertainty for the future of the CNS demonstrates the fundamental need of a shared Commonwealth, State and Territory commitment to ongoing, sustainable funding. Bringing funding for the ATSILSs' CNS services under future national partnership arrangements for legal assistance would provide greater certainty and streamline arrangements and reporting across all jurisdictions and allow all ATSILSs to consistently undertake this important work to protect the rights and ensure the wellbeing of Aboriginal and Torres Strait Islander people in custody across all of Australia.

However, this must not result in the reduction of NLAP funding for ATSILSs other important services – the total funding should be increased to ensure ATSILSs have strong, consistent baseline funding to support its services, with additional embedded core funding to support the CNS. Providing additional funding under NLAP for the CNS would assist with strengthening the Aboriginal Community Controlled Sector to provide culturally safe, holistic legal services and contribute towards achievement of targets 10 and 11 under the National Agreement on Closing the Gap and fulsome implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

CASE STUDY: NSW CNS Success story

A CNS call was taken, and upon the client's details being entered into the system, their previous call notes, namely: diagnoses of autism, were flagged on the CNS app. The Police Officer was becoming noticeably frustrated with the client appearing to be deliberately difficult. The officer advised the CNS solicitor that he would not put the client on the phone. The solicitor recounts:

I said to the officer "can you just hold up the phone, he's flagged on our system as someone who needs help" and the officer agreed to let me have one last go.

The CNS solicitor was able to speak to the client, provide a welfare check and obtain some instructions on his mental health diagnoses. Following advocacy from the CNS solicitor, the officer advised they would not seek any interview or Forensic Procedure given likely issues with informed consent and requested the Justice Advocacy Service (JAS) to attend as a support for the client (the client did not have other available support prior to JAS' involvement). Had the client's background information not been saved, his autism diagnosis may have gone un-noticed as it often does for many Aboriginal or Torres Strait Islander people in custody.

CASE STUDY: NSW CNS Success story

A CNS solicitor took a call in relation to a client from Tasmania arrested on a Saturday on the CNS for strictly indictable charges. She was the primary carer for both her parents who were very unwell back in Hobart. The client also had her own medical issues which she had booked in for specialist appointments the next week. The CNS solicitors were able to coordinate with police and advocate for the grant of bail to a relative's house in Sydney until the Monday morning.

The client attended Court on the Monday, and the CNS solicitor was able to provide the relevant background information ahead of time to the solicitor appearing at court. With that background information and preparation, the ALS solicitor appearing in Court was able to make a successful application for the client's bail to be varied to allow her to return to Tasmania.

Data, monitoring and reporting, and outcomes focused frameworks

Recommendation 8:

Commonwealth, States and Territories work in partnership with NATSILS and ATSILSs to identify the resources, including data systems, required for ATSILSs and NATSILS to collect, aggregate, analyse, translate and report on data that is identified as useful by Governments, ATSILSs and communities for ongoing service improvement, including meaningful strengths-based data identified by ATSILSs.

- a. Any new data schema in development should be co-designed with NATSILS and ATSILSs and informed by the principles of self-determination, Indigenous Data Sovereignty and Governance and Priority Reform 4 of the National Agreement on Closing the Gap.

Recommendation 9:

Commonwealth, States and Territories streamline performance monitoring and reporting processes including the frequency (bi-annually) to avoid the significant drain on resources and the detraction from a service-delivery focus.

Recommendation 10:

Commonwealth, States and Territories partner with NATSILS and ATSILSs to co-design new NLAP reporting processes which establish collaborative and outcomes-focused monitoring and reporting requirements so that expenditure can be properly monitored for its impact on the lives of Aboriginal and Torres Strait Islander peoples and communities, at the national, regional and local level. This may include ATSILSs testing the collection and internal reporting of outcomes information initially.

NATSILS and ATSILSs want the government to work with us, so we are empowered to collect, define, control and analyse our own data with true data sovereignty, to better understand our impact and effectiveness. Current reporting arrangements are focused on activities and compliance, rather than being strength-based to showcase successful outcomes for our clients and the broader community. A one-way information flow, with a heavy compliance focus, does little to showcase positive outcomes or foster innovation.

Performance monitoring and reporting challenges for ATSILSs include the content of the data and information we collect, how we collect and use information and the systems that supports the collection, analysis, reporting and translation of information.

Performance reporting, purpose and outcomes

The ATSILSs recognise that performance monitoring and reporting is important. Many of the ATSILSs employ dedicated staff to focus on the collection of data and synthesis of information for performance reporting. A large amount of senior management time is also consumed with reporting requirements. However, the focus of performance monitoring and reporting is too heavily skewed towards compliance, with limited contribution to ATSILSs' purpose.

The ATSILSs do not see that the process is being used constructively by the Attorney-General's Department (the Department) as a basis for policy development, program improvement or performance enhancement. Furthermore, the focus on service delivery targets can undermine culturally safe service delivery and does not accommodate complexity, trauma or the need to maintain trust with our clients and communities over time.

There is also little value in the way of insights delivered back to the ATSILSs. In this way, NLAP reporting is not driving improvement and does not help service design. Some of our members have suggested that the Department should provide analysis of the national data for significant issues (for example, 10-14-year-olds being charged or diverted), and share topic-based information with ATSILSs. Some ATSILSs find their own data is more helpful for service design and improvement and gives a clearer picture of needs. ATSILSs and NATSILS want the Department to work in partnership with us to overcome these hurdles, and to be more transparent about how our data is being used and interpreted.

The National Legal Assistance Data Standards Manual has been a helpful process, however there is much room for improvement. More standardised data has helped to demonstrate that ATSILSs deliver a cost-effective service through the NLAP. However, there are challenges around how data is collected, counted, reported and analysed, as well as the systems behind this. The Manual focuses solely on activities and outputs.

Funding has previously been provided to each ATSILSs to implement a database/software, so there are multiple systems in use amongst the ATSILSs, and different configurations even where the same software has been implemented. This makes it extremely difficult to share data. In addition, when there are updates to be made to the databases/software (for example, to revise a field), it is not always possible to roll out a single change across all systems – instead, each ATSILSs often has to

invest in their own system to make this change. Change requests for data fields can cost thousands of dollars.

As we noted in our submission to the ILAP Review, it would likely have been more economical and effective to build a single, common system, and pool all ATSILSs' resources to ensure that the appropriate design/requirement definition, testing and implementation took place. In the absence of this coherent system approach, the Department could support the ATSILSs and NATSILS to identify good practice in data systems. Any new data schema in development should be co-designed with ATSILSs informed by the principles of self-determination, Indigenous Data Sovereignty and Governance and Priority Reform 4 of the National Agreement on Closing the Gap.

ATSILSs and NATSILS want to develop an outcomes framework, in collaboration with the Department. However, this change should be co-designed with us and must not create additional reporting burdens for ATSILSs. Any change in policy and processes in relation to data should be informed by principles of self-determination, Indigenous Data Sovereignty and Governance and Priority Reform 4 under the National Agreement on Closing the Gap.

NATSILS submits there is potential for the ATSILSs to test the collection and internal reporting of outcomes information. Whilst the ATSILSs do not wish to initiate additional reporting requirements or database changes without concurrent investment in ATSILSs' data systems and personnel, there may be an opportunity for the Department to rationalise some of the detailed activity and output reporting to allow for a small number of outcomes-based measures to be tested through a program logic or theory of change.

ATSILSs currently collect some outcome-related data as part of service delivery that is not part of reporting to the Department. The Department should support the ATSILSs to collect their own data and work with ATSILSs to determine whether these outcomes measures can, in time, replace the more 'compliance-based' reporting of activity and outputs. Supporting ATSILSs to collect cogent, relevant data that is meaningful to the sector and which is a fair reflection of what outputs and outcomes the sector is delivering will work towards self-determination and Indigenous Data Sovereignty in line with Priority Reform 4 under the Closing the Gap Agreement.

ATSILSs should define what meaningful strengths-based data would look like in this sector, to complement the necessary existing deficit metrics of the justice sector. The ATSILSs should be properly resourced to collect that data. The ATSILSs do not wish to initiate additional reporting requirements or database changes, so thought will have to go into how strengths-based data can be introduced without creating additional burden.

Along with the Aboriginal Medical Services and the Indigenous Land Councils, ATSILSs arguably have their own data sovereignty. However, there are a number of reforms which could help overcome barriers to true data sovereignty for ATSILSs. ATSILSs should be supported to collect, define, analyse and control data.

Further, given Aboriginal Data Sovereignty is about our right as Aboriginal peoples to own, access, control and make decisions about our data, this is not just about the data that ATSILSs collect – it is about all justice related data that belongs to Aboriginal and Torres Strait Islander People. 'Data' goes beyond just information and statistics – Aboriginal data can include our Lore, knowledges, stories, customs, art and ways of life.

There is a lot of work to be done in relation to justice sectors and Closing the Gap Priority Reform Four. NATSILS and ATSILSs must be resourced to do this work in partnership with governments.

There is a role for NATSILS to play – if adequately resourced – to aggregate, analyse, translate and report that data for the benefit of the ATSILSs, their communities, other community-controlled organisations and peaks and the mainstream service system (including government).

ATSILSs have identified the need for evaluation of programs to build the evidence base of what is working. ATSILSs and NATSILS should be resourced to undertake internal and external evaluations.

Reporting burdens

Current frequent NLAP reporting processes are unduly burdensome on ATSILSs, taking away from frontline services. NATSILS and ATSILSs believe that this process could be streamlined to be more efficient and maximise available resources.

Ad hoc funding often creates additional reporting burdens. For example, under a new round of coronial inquest funding provided to ATSILSs in 2023, the Government requested an amended approach to reporting, effectively asking us to provide separate reports from different streams, despite both funding streams being under NLAP. The new funding asked us to:

1. retain the existing reporting requirements under the (original) expensive complex cases and coronial inquiries funding stream; and
2. introduce additional client and service count reporting requirements under the new coronial inquiries funding stream (with no case study component).

This meant ATSILSs were being asked to separately provide for each coronial funding stream (1) the number of individual family members supported and (2) the number of matters open/new, ongoing and closed.

CASE STUDY: Improving data quality and service planning capacity through integrating legal assistance data with existing and emerging data source providers

There are instances where NATSILS could utilise existing data sources to better represent the work that is being done by solicitors and automate administrative processes undertaken by NATSILS providers. One opportunity identified by NATSILS is the use of 'Law Part Codes' in NSW. In NSW, the Judicial Commission of New South Wales maintains a database of 'Law Part Codes' which provides unique codes for all New South Wales offences and Commonwealth offences dealt with in New South Wales (Judicial Commission Reference). The ALS (NSW/ACT) currently utilises these codes by recording every offence code into its own database for each criminal matter. Practically, this means that administrative staff manually enter the law part codes for each criminal charge from police fact sheets into its database for each criminal matter.

As well as maintaining Law Part Codes as they enter in and out of force in NSW, the Judicial Commission also maps each offence code to a criminal classification within the Australian and New Zealand Standard Offence Classification (ANZSOC). For example, s 10(1) of the *Drug Misuse and Trafficking Act 1985* (NSW) has Law Part Code 3145. This code is then mapped to the ANZSOC category ANZSOC-2011/ASOC-2008 - 1041 - Possess illicit drugs. In practice, this means that through data analytics tools, the ALS (NSW/ACT) could classify NSW criminal matters in line with the ANZSOC categories. The ANZSOC categories provide a more comprehensive and standardised mechanism for criminal law problem types.

At present, the National Data Standards Manual asks legal providers to record a legal problem type for each service delivered against a list of problem types that applies to all ATSILSs, CLCs and LACs nationally. In a criminal context, this means that staff are often required to manually determine the most appropriate legal problem type, often for matters which often involve multiple charges and problem types. In an environment in which our staff are dealing with a high volume of matters, this means that such problem types are inevitably going to be subject to human error and places a high administrative burden on our staff to make such determinations. Furthermore, such practice requires significant training for new and existing staff.

Utilising existing data sources through the example described highlights an opportunity where NATSILS and other legal providers could automate processes on the back of existing data sources that creates data that is more consistent and is more representative of the work that is being done. Utilising such sources would require significant investment to NATSILS to undertake this kind of work, however it is likely that such work would provide significant benefits in the long-term.

Whilst the administration of offence codes is something is only currently publicly available in the NSW jurisdiction, it is an example of how with the right amount of investment NATSILS could utilise existing resources to better improve its data quality.

CASE STUDY: Efficiencies through investment in data capability and capacity

NATSILS is of the view that investing in NATSILS to develop data capacity and capability could significantly outweigh existing inefficiencies that exist within manual and resource intensive processes. At present, many ATSILSs still maintain paper-based, analogue workflows which require a high degree of manual data entry to maintain records and to comply with the National Data Standards Manual. Each ATSILS has different mechanisms for record keeping and data collection and different degrees to which they rely on paper-based records. There is likely considerable opportunity to improve organisational efficiency through investment in funding for staff, training, IT infrastructure and administrative systems.

The improved outcomes that could be achieved can be illustrated in an example from when the ALS (NSW/ACT) moved from paper-based records to digital records for its CNS.

In 2021, the ALS (NSW/ACT) partnered with UTS Rapido and secured grant funding to build a new CNS web application. The CNS web application provides a solution for solicitors to be able to digitally record notifications as they speak to clients in custody in real time. Prior to the development of the web application, record-keeping processes for the Custody Notification Service involved a workflow in which solicitors answered calls from police stations and then filled out paper forms which were then subsequently manually entered by administrative staff into an ALS database. Due to the high volume of CNS calls taken by solicitors and the resourcing constraints this would mean that there would often be a delay in logging calls into the database and that calls were not able to be accurately reported on in time for reporting requirements. It was also more likely to produce human data entry errors and was ultimately a duplication of data entry.

This change from a largely analogue based process to a digital one ultimately led to a reduction in workload for administration staff, more accurate data recording processes and an easier workflow for solicitors to be able to find previous CNS notifications when appropriate. Furthermore, this change led to an environment in which the ALS is able to reliably track real-time CNS data across both NSW and the ACT for Aboriginal people who are coming into contact with the criminal legal system.

Whilst the transformation from paper-bases to digital court files is a considerably more difficult challenge, it is clear that with appropriate investment there is an opportunity to reduce record keeping inefficiencies that currently exist throughout the sector that would likely deliver long-term benefits.

By investing in IT infrastructure and systems there is an opportunity to develop automated systems that improve administrative processes and more reliably record work that is already

being done but gets missed due to resourcing constraints. This would develop more reliable data across the sector as legal providers with more sophisticated IT infrastructure have greater capacity to record services through automated processes. This is one issue that creates issues in comparing legal service data across the sector.

CASE STUDY: Building governance and Indigenous Data Sovereignty on criminal justice data

The NSW Bureau of Crime Statistics and Research (BOCSAR) and the ALS (NSW/ACT) have been working with Aboriginal consultancy Kowa Collaboration to establish Aboriginal and Torres Strait Islander data governance and leadership to guide the ethical administration of Aboriginal and Torres Strait Islander justice data in NSW. This project is informed by Priority 4 of the National Agreement, whereby Aboriginal and Torres Strait Islander people have access to, and capability to use, locally relevant data.

Following a series of collaborative and exploratory workshops on Indigenous Data Sovereignty (IDS) and IDS frameworks, a protocol for the governance of justice data is being developed through a community-organising process under which “The Governance” group has been established. The Governance group, comprising Aboriginal and Torres Strait Islander leadership, will now meet regularly to guide BOCSAR in its use of Aboriginal and Torres Strait Islander adult and youth justice data.

Recommendation 11:

While NATSILS would like to investigate the utility for priority client categories in a future-fit funding model which better reflects the legal needs of Aboriginal and Torres Strait Islander people across Australia, additional priority client categories of Aboriginal and Torres Strait Islander people with disability and Aboriginal and Torres Strait Islander people caught up in the care and protection systems be added in the context of the existing framework.

NATSILS and ATSILSs acknowledge the importance of prioritising client groups for service delivery. Given the significant over-representation of Aboriginal and Torres Strait Islander people with disability in the criminal justice and child protection systems, and the over-representation of Aboriginal and Torres Strait Islander people in the child protection systems, we submit that additional categories that acknowledge the intersectionality of these issues for Aboriginal and Torres Strait Islander people is warranted.

NATSILS submits that a future-fit needs-based funding model would be an appropriate mechanism to more comprehensively investigate priority client groups under future partnership arrangements for legal assistance.

CASE STUDY: VALS Balit Ngulu Program

A VALS lawyer once heard a 16-year-old in Victoria’s youth detention system say, “I’m a lost cause, aren’t I?”. At the time VALS was having to refer out Aboriginal children and young people involved in child protection and youth justice systems because of conflicts of interest. Due to this, Aboriginal young people were receiving inconsistent legal representation, and as a result were disproportionately getting lost in the system with little positive outcomes.

In response, in 2017 VALS launched a separate legal service called Balit Ngulu, which means “strong voice” in Wurundjeri, to provide legal assistance exclusively to young people. Balit Ngulu now provides holistic, integrated and culturally appropriate services to 100 Aboriginal young people to

address issues such as recidivism, cultural needs, connection to family, educational and employment needs.

Advocacy provided by Balit Ngulu has made the difference between having children placed in out-of-home care or within their kinship networks. Moreover, it provides services in leadership, so that young Victorian Aboriginal people can be assured that they are not a lost cause, and they can have a strong voice in their own affairs.

CASE STUDY: ALS NSW/ACT Success in the Children’s Court for an Aboriginal young person with an intellectual disability

The ALS represented a 14-year-old charged with serious offences. He had an intellectual disability and was living in out of home care. He had a history of absconding from his OOHC placement. In custody, he was being bullied extensively and struggling to cope. The Children’s Court refused bail. The ALS lodged a Supreme Court bail application. The matter was listed before the Supreme Court on a number of occasions as ALS negotiated extensively with DCJ regarding additional intensive mental health supports and an overhaul in accommodation. After this negotiation, he was able to be granted bail with an entirely new support arrangement.

7 Substantially increase access to effective, culturally appropriate, and comprehensive legal assistance for Aboriginal and Torres Strait Islander people – in recognition and fulfillment of the right of all Aboriginal and Torres Strait Islander people to access justice through culturally appropriate and community-controlled legal help

Addressing legal need through expanding ATSIILs’ services

Recommendation 12:

Commonwealth, States and Territories invest in expanding the geographical reach of ATSIILs, ensuring all Aboriginal and Torres Strait Islander people, regardless of their postcode have the choice of culturally safe place-based community-controlled legal assistance services within metropolitan, regional, rural, and remote locations.

Gaps in legal services include locations where there is no ATSIILs presence (including where there are staff vacancies) as well as areas of law which are not provided by an ATSIILs.

The demand for ATSIILs’ legal services is growing and our ability to meet demand with our current resources is limited. This is particularly challenging in remote areas, but also in areas of high population growth. ATSIILs’ offices are often located in remote areas where many of our communities live. Even though we have a remote office, ATSIILs’ staff habitually drive or fly thousands of kilometres to attend to our clients and Courts.

The Aboriginal and Torres Strait Islander population across Australia identified in the 2021 Census was 812,730 representing a 25.2% increase from the previous Census in 2016. Many of the more significant population increases were in regional and remote areas.

Across jurisdictions, some of the LACs’ civil and family law work in regional, rural and remote areas (often in locations where ATSIILs already have offices) is done through a siloed and costly fly-in fly-

out outreach service. In some cases, those outreach services have leaned on the local ATSILSs' office to host clinics, make appointments and undertake initial client intake. Our existing clients tell us that they would like ATSILSs to provide these services, regularly, and in community.

Some ATSILSs have indicated that they would like to expand their mainly criminal law practices in regional and remote offices to include civil, family and child protection solicitors and support staff.

Our ability to extend our reach into more locations is hampered by our lack of funding, and challenges in recruiting and retaining staff on current salaries. Recruitment and retention are particularly challenging in regional and remote areas, where:

- The labour market is thin;
- High disadvantage is often concentrated, making for more challenging living and work conditions;
- Caseloads carried by ATSILSs' lawyers and support staff are large;
- Matters are often more complex; and
- Clients' justice-related non-legal needs are high but ATSILSs' capacity to build and sustain partnerships to provide or refer to wraparound support is limited.

NATSILS has prepared the maps, found in the Appendices below, mapping the significant distances covered by ATSILSs' staff who travel to regional and remote locations to assist our clients.

Gap locations

NATSILS has worked with our membership to ascertain locations with service gaps. Some of these locations are areas that are currently un-serviced by ATSILSs, and some are locations where the ATSILSs may have an office, but it is currently underserviced due to staff vacancies.

We understand individual ATSILSs have discussed the gap locations with the Review team directly, and this list should be read alongside those direct ATSILSs' communications.

Jurisdiction	Gap locations
Western Australia- serviced by ALSWA	Metro: Midland, Fremantle, Joondalup, Rockingham Regional: Onslow, Exmouth, Mt Tom Price Magistrates Courts, Busselton Regional/remote: Meekatharra, Newman, Fitzroy Crossing (re-open ALSWA's currently unstaffed office), Narrogin, Esperance and Karratha
South Australia - serviced by ALRM	Mt Gambier, Bordertown, Millicent, Naracoorte, Christie's Beach
NSW and ACT – serviced by ALS (NSW/ACT)	Central Coast Southwestern Sydney Port Macquarie Grafton Tweed Heads Albury AND Needs staff to fill vacancies to cover current locations
Victoria – serviced by VALS	Geelong, Frankston, Bairnsdale, Western Melbourne, Wodonga and Horsham
Northern Territory – serviced by NAAJA	Needs staff to fill vacancies to cover current locations
Tasmania – serviced by TALS	Needs staff to fill vacancies to cover current locations
Queensland – Serviced by ATSILS Qld	The Gulf, Cape and Torres Strait regions

ATSILSs are often the only legal assistance service in many regional or remote locations. In the absence of ATSILSs' culturally appropriate support, some Aboriginal and Torres Strait Islander people may not turn up to Court, risking arrest on a bench warrant and time in custody. Others may turn up, but without ATSILSs' advocacy may risk poor outcomes, including incarceration that may have been avoided with representation.

The burdens of travel also impact on our staff's wellbeing and contribute to staff burnout and retention challenges for ATSILSs.

Postcodes should not be determinative of our communities' right to equitable access to justice through comprehensive legal assistance. With ATSILSs' already extensive geographic reach and connectivity into communities, ATSILSs would like to do more, including expanding our capacity in civil, care and family law. The geographical gaps need to be filled, and ATSILSs need to be able to offer competitive salaries and conditions to overcome recruitment and retention challenges.

In more remote locations, our clients benefit from more senior, experienced solicitors. Regional and remote office staff wellbeing is also improved through on the ground, senior supervision and care.

Higher Education Contribution Scheme (HECS) debt forgiveness could also be pursued by the Commonwealth Government. We note, however, that many senior, more seasoned lawyers may not, by definition, be carrying HECS debts. This means we need other benefits in the toolkit to incentivise recruitment and retention in regional, rural and remote locations.

Along with HECS debt forgiveness and salary parity, other incentives could include:

- Relocation allowance;
- Remote allowance;
- Rental subsidies;
- Regular home travel reimbursement;
- Electricity and air-conditioning allowance;
- Family reunion and school holiday travel allowance;
- Subsidised membership to well-being and fitness facilities;
- Subsidised allowances to attend conferences, training and other Continuing Professional Development (CPD) activities;
- Periodic rotations to other ATSILSs' offices; and
- Back-up fly in fly out relief, in times of high demand.

Importantly, ATSILSs also need funding to support relief teams comprising senior practitioners to backfill solicitors periodically using those benefits or taking leave.

NATSILS and ATSILSs call for significant investment in our organisations to maintain and expand ATSILSs' geographic reach, which include many areas that other legal services do not service. NATSILS and ATSILSs call for funding to be based on the comprehensive mapping of legal need and the true cost of delivering Aboriginal and Torres Strait Islander legal services.

CASE STUDY: ATSILS QLD – Challenges facing regional and remote communities

ATSILS QLD solicitors are only funded enough to attend remote communities on their scheduled court days. This is an issue as lawyers show up to the court on the day and are seriously limited in time to engage with clients, seek instructions and provide advice on legal matters.

Often clients wait for several hours at court to speak with one ATSILSs' solicitor then need to leave as they have care or work commitments that they cannot miss. As a result, a large number of ATSILSs' matters are adjourned, prolonging an Aboriginal or Torres Strait Islander person's interaction with the legal system.

If ATSILS QLD was sufficiently funded to send more solicitors out to regional and remote communities in the week prior to court days, lawyers would have the opportunity to establish a real presence and relationships of trust within the community, improving their ability to provide quality legal advice and representation for clients, resolve legal matters in less time and improve outcomes for clients.

Additionally, with an increased presence in regional and remote areas, clients would be able to come to see ATSILSs' solicitors and ask for advice or updates between court dates, improving their likelihood of following any bail conditions and avoiding further legal issues down the line.

Recommendation 13:

Governments invest in ATSILSs' long-term organisational capacity to provide comprehensive holistic and culturally appropriate legal assistance services, and address state/territory wide legal need in:

- a. Criminal law, including Children's law;
- b. Civil law, including Commonwealth administrative review;
- c. Family law;
- d. Child protection law.

It is beyond doubt that unaddressed civil, care and family law needs can escalate into downstream interactions with the criminal justice system. However, most ATSILSs have no capacity to expand their services to meet existing legal need by undertaking civil, family and care work (in metro, regional and remote areas) within current funding quantum. For ATSILSs to expand their services to meet existing legal need across practice areas with current resources, they would need to divest their criminal law practices, which is untenable.

The immediate investment referred to above will position ATSILSs as stronger organisations better equipped to meet current demand and enable our sector to retain current staff and fill current vacancies. However, meeting unmet legal need and demand means investing in ATSILSs' longer-term capacity to increase legal assistance and wraparound support across key legal practice areas, including criminal, civil, care and protection, and family law by increasing ATSILSs' workforce.

The gap created by ATSILSs' inability to provide the assistance across all practice areas results in demand being filled by mainstream services, who do not possess the same cultural knowledge and who may not be able to provide culturally safe services. As noted earlier, even though self-determination is referred to in the NLAP, it is not being substantively applied. The absence of a genuine collective choice for communities' flies in the face of self-determination for Aboriginal and Torres Strait Islander people and ATSILSs as ACCOs.

ATSILSs are acutely aware that our clients have unmet legal needs beyond our core criminal law work. ATSILSs already have a solid footprint across communities, including in regional and remote areas. ATSILSs' extensive reach through our expansive network of offices and circuits across Australia and the trust in ATSILSs as community-controlled organisations at the service of their communities, means we are well-placed to build and expand civil, care and family law practices, including early intervention and wraparound support, with the right investment.

Investing in ATSILSs not only brings cost benefit but also promotes a cohesive and holistic approach to service delivery. This investment would greatly benefit criminal lawyers, as they would be able to refer their clients to address underlying civil, care, and family law issues that may contribute to their involvement in the criminal justice system. By achieving broader justice outcomes, this approach helps break the cycle of further criminal interactions. Additionally, civil, care, and family teams

would have direct access to their clients, eliminating the need to seek out alternative mainstream providers. And importantly, investment in ATSILSs to provide comprehensive and culturally safe legal support to our clients would operationalise the National Agreement on Closing the Gap commitment to invest in ATSILSs as preferred providers to make progress on the justice (and related) targets, most of which are falling behind.

NATSILS further submits that prospective ATSILSs' work in the Administrative Appeals Tribunal (the AAT) would enhance the cultural understanding and sensitivity within the AAT. This, in turn, would create a safer and more inclusive environment for Aboriginal and Torres Strait Islander people to seek resolution for their disputes. The AAT would benefit from the diverse perspectives and expertise, ensuring fair and equitable outcomes for all parties involved.

To meet the legal needs of Aboriginal and Torres Strait Islander people – and close the gap on justice outcomes, Governments must substantially increase their investment in ATSILSs as preferred providers of assistance across all areas of legal practice. This investment must include sufficient quantum, with shared funding commitments from the Commonwealth, States and Territories, to increase all ATSILSs' capacity to provide expanded culturally safe services in:

- Criminal law;
- Specialist Children's criminal law – noting the significant intercensal increase in the number of Aboriginal and Torres Strait Islander children and young people;
- Care and protection;
- Family law – noting the benefits of helping our families with safer family law remedies with child protection issues; and
- Civil law.

Many reports have highlighted the levels of unmet needs for civil and family law in Aboriginal and Torres Strait Islander communities, and that addressing civil and family law issues early can prevent other legal issues from escalating.¹² The Productivity Commission has previously quantified the increased investment in required to broaden the scope of legal assistance services in the civil and family sectors.¹³

Given the high rates of Aboriginal people with disability in the criminal justice system (see Recommendations 11, 14 to 17), ATSILSs should also be funded to increase our capacity to provide culturally safe legal assistance in Commonwealth administrative reviews and appeals in relation to NDIS, social security, child support and freedom of information matters.

Workforce needs would be determined and informed by the national legal needs analysis and the needs-based funding model discussed above at Recommendations 5 to 7.

CASE STUDY: ALS NSW/ACT Bail Project in Mount Druitt – Successful outcomes for young people

In 2023, the ALS received funding for the Bail Project in Mount Druitt, New South Wales. The ALS used that funding to improve outcomes for young Aboriginal people. As part of the bail pilot, specialist ALS children's court lawyers are provided with access to the details of charging of children and opportunity to conference young people in police custody at an early stage, to ensure that issues with police bail can be sorted quickly and charges can be resolved where possible.

Tyeisha was arrested by Mt Druitt police for a charge of shoplifting. The offence involved filling a trolley at Woolworths with items and attempting to leave without paying. Tyeisha was stopped just outside the store by loss prevention officer. She was arrested and taken back to Mt Druitt police

¹² See, for example, the Indigenous Legal Needs Project at <<https://www.jcu.edu.au/indigenous-legal-needs-project>>.

¹³ Australian Productivity Commission, *Inquiry into Access to Justice Arrangements* (2014), Recommendation 21.4, <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>>.

station. Her mother attended as a support person. Her mother asked police to impose a bail condition requiring Tyeisha to spend each night at her accommodation outside of Sydney, even though Tyeisha hadn't been living with her mother consistently due to complex family issues.

Tyeisha's police bail and court papers were sent to the ALS as part of the Bail Pilot. The ALS lawyer reviewed the papers and called Tyeisha via the numbers provided by police. The ALS lawyer read the allegations to Tyeisha. She instructed the lawyer to plead guilty. When asked about the bail conditions, Tyeisha said she wasn't staying with her mother, that her mother was possibly losing her accommodation in a few weeks. Tyeisha said she couldn't always stay with her. In order to avoid Tyeisha breaching her police bail when she cannot stay with her mother, the lawyer suggested they bring the matter forward to finalise the bail.

The matter was brought forward, and Tyeisha attended court. Her guilty plea was entered, and the matter was finalised with a short bond. While at court, Tyeisha met an Aboriginal caseworker from the Western Sydney CLC who purchased her some groceries, a phone (she had been using a friend's) and referred her on to a culturally appropriate antenatal worker.

The increased funding for the bail pilot meant Tyeisha avoided being at risk for breaching her bail prior to her first court appearance. Bringing the matter to the ALS's attention early also meant Tyeisha could access support services without delay.

Ensuring holistic and culturally safe wraparound support through investing in ATSILSs' workforce and partnerships capacity to obtain justice

Recommendation 14:

Commonwealth, State and Territory governments invest in ATSILSs to support and enhance their unique position to provide holistic, culturally appropriate wraparound support to Aboriginal and Torres Strait Islander people. This includes:

- a. the next national partnership arrangements on legal assistance, and overarching frameworks, agreements and funding arrangements should recognise the interconnected nature of legal issues with broader societal factors that drive Aboriginal and Torres Strait Islander people into the legal systems.
- b. a whole-of-government approach including cross-portfolio funding commitments between the justice sectors and other key sectors to ensure holistic and integrated responses which address underlying socio-economic issues, including: Disability (including Mental Health) and the National Disability Insurance Scheme; Cultural, Social and Emotional Wellbeing; Family Violence; Education; Housing; Health; Care and Protection; and Social Services.
- c. ATSILSs are appropriately funded through NLAP to provide holistic legal service delivery for Aboriginal and Torres Strait Islander people to address over-representation in the justice system by adequately resourcing ATSILSs' capacity to embed early intervention and wrap-around, prevention, diversion, rehabilitation, through-care and therapeutic measures.
- d. the integration and expansion of ATSILSs' in-house non-legal roles into the legal assistance strategic and funding framework that recognises the interconnected nature of legal issues with broader community and social dynamics. This should include resourcing and embedding trauma-informed and culturally appropriate Frameworks into ATSILSs' service delivery models under the NLAP including opportunities to sustainably embed:
 - i. Aboriginal Field/Court Officers across all practice and relevant program areas
 - ii. Aboriginal Disability advocates
 - iii. Mental health advocates and Coordinators
 - iv. Social workers
 - v. Financial counsellors
 - vi. Civil law workforce with expertise in disability-related matters including NDIS, DSP, mental health tribunal and guardianship matters.
- e. increasing investment in the vital support provided by ATSILSs' Aboriginal Field Officers, Court Officers and Community Engagement specialists through new positions in underserved and new locations, with greater career advancement opportunities.

The interconnected nature of legal and non-legal issues and the care and support workforce

ATSILSs' model of service delivery has always included culturally appropriate, holistic, wraparound care and support for our clients. This recognises that Aboriginal and Torres Strait Islander people access justice in ways that are *different* to other Australians. ATSILSs' clients need culturally appropriate and holistic services that work to individual and community strengths while also addressing underlying needs and trauma which are often a consequence of colonisation and subsequent policies.

ATSILSs' client interactions with the justice and child protection systems rarely are solely driven by legal issues. Many of our clients have underlying issues that keep them trapped in the legal systems – including undiagnosed or untreated disability, mental health and alcohol and other drug issues,¹⁴ as well as unaddressed need for secure housing, fairer access to social security entitlements including NDIS and financial hardship support. This speaks to the need for ATSILSs to work in culturally safe ways that help address issues that, if left unaddressed, may escalate into legal issues that draw them into the crime and child protection legal systems, and with a workforce that understands the broader systemic issues impacting on our clients.

We also know that the care and support workforce has been historically undervalued even though it is a significant contributor to societal well-being in Australia.¹⁵ The National Agreement on Closing the Gap provides the rationale for, and commitment to, enhancing the beneficial role of the Aboriginal Community-Controlled workforce in getting better results for Aboriginal and Torres Strait Islander people.

However, the capacity of many ATSILSs to fully embrace wraparound, therapeutic, early intervention and prevention services are not supported through current NLAP funding arrangements nor funding quantum. Not only do we need to value and build ATSILSs' care and support workforce, we need investment to build and sustain cross-sector partnerships to structurally address and redress the systems that continue to hold disadvantage in place. The potential for building stronger cross-sector partnerships is discussed further at Recommendation 15.

The schema below, prepared by the NSW Bureau of Crime Statistics and Research shows, by way of example, the breadth of some of the related non-legal issues that might be impacting on young Aboriginal and Torres Strait Islander people in custody in NSW.¹⁶ We note that this does not illustrate the deeper structural issues including service-sector failures, discrimination, or over-policing in our communities.

¹⁴ See, for example, research and findings at E Baldry, R McCausland and L Dowse et al., 'A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System' (2015) Sydney: UNSW <https://www.mhdcd.unsw.edu.au/sites/www.mhdcd.unsw.edu.au/files/u18/pdf/a_predictable_and_preventable_path_final.pdf>.

¹⁵ see, the Department of the Prime Minister and Cabinet, National Care and Support Economy at <<https://www.pmc.gov.au/resources/draft-national-strategy-care-and-support-economy/economic-impact-care-support>>

¹⁶ See also Youth Justice NSW, *Young People in Health Custody Survey* (2015) <<https://www.nsw.gov.au/legal-and-justice/youth-justice/about/research/custody-health-survey>> which refers to the health, education and wellbeing issues that young people present with when entering youth custody.

As noted above, the work underway under the National Agreement on Closing the Gap and the JPP does not sit outside the legal assistance arrangements, and the next national partnership arrangements on legal assistance should reflect this transformative way of doing business with and across government sectors.

NATSILS submits that the future partnership arrangements for legal assistance frameworks and agreements should align with the frameworks and strategic initiatives under the JPP. This includes incorporating the need for and practice of holistic legal service delivery for Aboriginal and Torres Strait Islander people to address their over-representation in the justice system in those frameworks and agreements, as well as adequately resourcing ATSILSs' to provide services in early intervention, wrap-around, prevention, diversion, rehabilitation, through-care and therapeutic measures. We also see opportunity to align with current whole-of-government wellbeing strategies and frameworks discussed below.

We agree with the view of the Productivity Commission in its Draft Report on the Review of the National Agreement on Closing the Gap that governments must:

“move away from transactional forms of contracting of community services that focus on narrow problem solving, towards fostering a broader understanding of the wellbeing of Aboriginal and Torres Strait Islander people. This requires government agencies to work collaboratively with ACCOs and communities to define service and program outcomes and to ensure that ACCOs have a secure base through appropriate funding.”¹⁸

The Wellbeing Framework and the National Strategy for the Care and Support Economy

NATSILS submits there are clear and direct alignments with Treasury's *Measuring What Matters* framework,¹⁹ the Department of Prime Minister and Cabinet's (PMC) National Care and Support Economy Strategy²⁰ and the wraparound care and support ATSILSs' aim to provide to the communities ATSILSs serve. A whole-of-government approach is required to improve the justice and justice-adjacent outcomes for ATSILSs' clients, to address the individual and structural determinants of justice that pull our communities into the legal system.²¹

A goal of the JPP Strategic Framework is to deliver holistic, integrated and inclusive services and ensuring inclusive approaches to meet the diverse needs, priorities and wellbeing of all Aboriginal and Torres Strait Islander communities. A key priority is to establish and strengthen new cross-sector partnerships between the justice sector and other key sectors to ensure holistic and integrated responses which address underlying socio-economic issues, including disability (including mental health), cultural, social and emotional wellbeing, family violence, education, housing, health and care and protection. Inclusive approaches involve building intersectional frameworks, justice policies and programs to meet the specific needs, priorities and physical, social, mental and cultural wellbeing of all Aboriginal and Torres Strait Islander people and breaking down traditional government siloed approaches.

NATSILS and ATSILSs are conscious of, but not surprised about, the findings of the Disability Royal Commission which pointed to the “hidden national crisis” reflected in the proportion of Aboriginal

¹⁸ Australian Productivity Commission, *Review of the National Agreement on Closing the Gap: Draft Report* (2013), 41, <<https://www.pc.gov.au/inquiries/current/closing-the-gap-review/draft/closing-the-gap-review-draft.pdf>>

¹⁹ Australian Treasury, *Measuring what matters* <<https://treasury.gov.au/policy-topics/measuring-what-matters>>.

²⁰ See the Australian Department of the Prime Minister and Cabinet, *Draft National Strategy for the Care and Support Economy* (2023) <<https://www.pmc.gov.au/resources/draft-national-strategy-care-and-support-economy>>.

²¹ See R McCausland and E Baldry, 'Who does Australia Lock Up? The Social Determinants of Justice' (2023) 12:3 *International Journal for Crime, Justice and Social Democracy* 37 <<https://www.crimejusticejournal.com/article/view/2504>>.

and Torres Strait Islander people with disability in adult and youth custody,²² and the need for care and support from ACCOs to prevent people with disability from entering the criminal justice system. NATSILS recommendations for investment in our care and support workforce and a Disability Framework later in this submission at Recommendation 17.

NATSILS submits that the commitments under National Agreement to work in partnership with Aboriginal and Torres Strait Islander communities and organisations to share in decision-making on policies and programs that have a significant impact on them includes that the policies underpinning the Measuring What Matters Framework and the Care and Support Economy Strategy, and what flows from these. As a member of the Coalition of Peaks, NATSILS submits there are welcome and important opportunities to integrate whole-of-government and cross-portfolio approaches to better justice and related outcomes to improve the lives of Aboriginal and Torres Strait Islander people.

Further, we submit that there may be opportunities to reflect this alignment in the development of partnerships and funding arrangements with ATSILSs under the next iteration of national partnership arrangements on legal assistance.

Supporting the ATSILSs' workforce - Aboriginal Field Officers, Court Officers and Community Engagement Specialists

ATSILSs are local Aboriginal community-controlled organisations and, through their community-controlled Boards, are responsive and accountable to the communities they serve. As is reflected in the National Agreement on Closing the Gap, ATSILSs (as ACCOs) are often preferred over mainstream services because they are accessible to Aboriginal and Torres Strait Islander peoples. By being community members themselves, ATSILSs' Aboriginal and Torres Strait Islander staff understand the unique needs and challenges faced by their clients. This leads to improved outcomes for clients and culturally safe legal experience. ATSILSs also empower their clients by increasing their sense of agency, helping them make decisions and support them to navigate the justice system confidently. ATSILSs ensure that clients have a greater understanding of their legal rights and obligations.

Our Aboriginal and Torres Strait Islander staff are the backbone of our organisations and as members of the communities we work in, have valuable lived experience and expertise to support our clients (and staff). ATSILSs need to embed their expertise and support their development – and Government needs to recognise the intrinsic and fundamental value of their contribution to ATSILSs' culturally safe service delivery. It is a workforce that needs to be invested in and expanded across all Aboriginal and Torres Strait Islander communities.

Traditionally, ATSILSs' Field Officers and Court Officers' official duties have been to assist ATSILSs' clients with their Court obligations. However, we know that our Field Officers and Court Officers are often "on call" 24/7 in their communities. They adopt a holistic approach to helping community members, addressing not only legal issues but also social, cultural, and emotional needs. Much of our Field Officers and Court Officer work could be considered early intervention, because attending to our communities' broader social and cultural needs could help circuit-break or de-escalate downstream and more costly legal issues.

There is an enormous, untapped potential to build the cultural capacity of the whole legal assistance sector (as well as broader justice sector agencies and the private legal profession) through an expanded Field Officer and Community Engagement workforce.

An expanded Field Officer/Court Officer and Community Engagement workforce across Australia could have a significant impact on justice outcomes for our communities. An expanded Field Officer

²² Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 9*, (2023), 139 <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>>.

and Community Engagement workforce that has more capacity to help our clients navigate non-legal issues would additionally free up solicitors' time that may otherwise be spent helping clients navigate the service systems that habitually fail our communities. In working directly with ATSILSs' clients, this workforce would also be improving our clients' capabilities to more confidently navigate the systems and advocate for themselves and potentially ease pressure on downstream legal issues.

ATSILSs recognises the invaluable contribution of Aboriginal and Torres Strait Islander staff in providing culturally safe services. However, ATSILSs are losing these crucial team members to other legal assistance providers. These organisations, with their superior resources and ability to offer higher salaries, are enticing our staff away. This loss not only affects the individuals who leave but also weakens the foundation of ATSILSs' culturally safe service delivery model.

ATSILSs' Aboriginal and Torres Strait Islander cultural knowledge must be recognised and valued as a specialised field, with commensurate remuneration. This acknowledgment reinforces the significance of preserving and utilising cultural knowledge within the legal sector.

We also need to strengthen the Aboriginal and Torres Strait Islander workforce by creating pathways into tertiary education, facilitating employment opportunities, and supporting ongoing career development. It is a workforce that needs to be invested in and expanded across all Aboriginal and Torres Strait Islander communities.

NATSILS submits that the future partnership arrangements for legal assistance explicitly acknowledges our staff's cultural expertise and provides appropriate funding quantum to help ATSILSs retain these experts and grow this specialist workforce.

Building our allied workforce

Similarly, ATSILSs would like to build our capacity to expand our in-house workforce to meet our clients' needs for social work, mental health and financial counselling support, and co-located disability advocates, and integrate this workforce into the broader legal assistance strategic and funding frameworks. NATSILS and ATSILSs aim to invest in care and support roles for embedded and co-located Disability Advocates is discussed in detail at Recommendation 17.

Embedding these roles within ATSILSs, or through partnerships with external allied professionals, goes to the heart of an integrated and culturally safe and trauma-informed practice that more fully meets our clients legal and non-legal needs.

Expanded civil law workforce

ATSILSs' non-legal workforce should be complemented by an expanded civil law solicitor workforce (see Recommendation 13). Specialist civil law teams would work to protect our clients' legal rights in relation to disability and related matters. expertise in disability-related matters including NDIS, DSP, mental health tribunal and guardianship matter. These integrated teams could also assist with preventative and early intervention CLE activities and systemic advocacy, that aims to empower our communities to navigate the complex service systems and enforce their rights as well hold those systems accountable to community.

An enhanced civil law service would also enable ATSILSs to undertake administrative review work in the AAT in relation to social security and NDIS reviews in relation to disability, but also the AAT's jurisdiction in Freedom of Information matters that may help ATSILSs' systemic advocacy work. The need to take on NDIS work and disability advocacy work reflects the findings of the Disability Royal Commission and work in guardianship and mental health recognises the likely need for legal assistance due to the prevalence of disability in the Aboriginal and Torres Strait Islander community.

ATSILSs' workforce and career progression

As recognised by the PMC National Care and Support Economy, the care and support workforce should be better valued through higher salaries, less challenging working conditions and supported

in career progression opportunities through better training – which will cumulatively have a positive impact on productivity. NATSILS agrees.

Positions including Field Officers, Court officers and other Aboriginal and Torres Strait Islander identified advocates, justice warriors and critical support staff need to receive better salaries, training and opportunity for career progression within ATSILSs. Due to the systemic undervaluing of ATSILSs by successive parliaments, our Aboriginal and Torres Strait Islander workforce can frequently find better working conditions at LACs and some CLCs than what may be available at many ATSILSs. As discussed at Recommendation 18, to attract and retain our Aboriginal and Torres Strait Islander advocates, justice warriors, strategists, cultural supervisors as part of our care and support workforce, we need to be competitive employers of choice. ATSILSs also need investment in their organisation capacity and infrastructure, and improved investment generally to ensure our Aboriginal and Torres Strait Islander workforce can be supported and rewarded to move into senior leadership roles within ATSILSs.

CASE STUDY: QLD ATSILS Throughcare and local partnerships

The Through Care program provided by ATSILS QLD is a preventative, long term program that has produced real changes and improved outcomes for clients and their families.

The aim of the program is to provide support to prisoners and youth detainees, both pre and post release, to address their offending behaviour. This includes supporting clients to transition successfully back into the community and support the changes needed in their lives that can greatly reduce the prospects of them returning to prison. The program has continued to grow and has expanded to include several new positions in targeted locations across the state, dedicated to family and domestic violence prevention and diverting high risk youth away from the justice system.

In conjunction with the Through Care Program, ATSILS QLD has a close partnership with Mossman Community Justice Elders Group. ATSILS QLD has been working with the Elders group for several years with the aim of assisting Aboriginal and Torres Strait Islander offenders and victims within the criminal justice system with services that can improve the quality of life and increase cultural understanding in the courts system. Mossman Elders Justice Group is supported by dedicated Elders who have helped to increase awareness and in-depth knowledge of Aboriginal history which has fostered better relationships between the various family groups, the Magistrates Court, Queensland Police Service, Queensland Corrective Services, Douglas Shire Council and other Government services such as Alcohol, Tobacco and Other Drugs and Health Services.

In collaboration with local service providers, the team at Mossman Elders Justice Group runs programs to improve the quality of life for disadvantaged Aboriginal people or those impacted by domestic violence and homelessness. Their Life Skills Program has proved to be very beneficial in providing practical support to our clients in the Mossman community. The educational workshops cover topics like

- Independent living skill: Household management, tenancy;
- Awareness on achieving good health, practical application to improved wellbeing, exercises;
- Skills and training to secure employment;
- Computer and technology skills;
- Personal and family development to healthier lifestyles;
- Budgeting & Money management to reduce debt and increase personal savings; and

- These wrap-around, holistic partnerships and support services are not replicable and have actively prevented a large number of ATSILS QLD clients from entering or returning to prison.

CASE STUDY: NAAJA Kunga Program for Women

NAAJA receives funding under the General Grants Safety and Wellbeing Program from the Department of Prime Minister and Cabinet to fund the Kunga Program.

The Kunga program delivers pre and post release through care services to female prisoners in custody at the Alice Springs Correctional Centre, to reduce recidivism rates, support women to transition back into the community, and increase safety of women and children. From 1 January 2018 to 30 June 2018 the Kunga program worked with 50 women over the reporting period providing pre and post release throughcare case management.

In February 2018 the Kunga staff delivered a four-week (20 day) trauma specific program in Alice Springs Correctional Centre for 11 women who have been incarcerated for violent offending. This was delivered in collaboration with Prof. Judy Atkinson. These women have continued to receive pre and post release case management.

The Kunga program maintains office space in the Centre of Alice Springs as an easy family friendly drop in space for clients. This has continued to be a successful way of providing trauma informed engagement and is a safe and accessible point of contact that client and their family members use on a daily basis.

The Kunga staff also conduct client visits both in Alice Springs and in remote areas. The Kunga program staff have continued to work collaboratively with many government and nongovernment partners to help provide holistic support to women and their families.

CASE STUDY: ALS NSW/ACT – Community care and support partnership success story

A 16-year-old ALS client in a regional area was charged with some public order and arson offences. The solicitor engaged the Aboriginal Medical Service to meet with the client and prepare a report. The report indicated the client has autism spectrum disorder and severe cognitive function impairments. After considering the report, the Magistrate dismissed the charges without conviction under s 14 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

Recommendation 15:

Governments invests in ATSILSs' organisational capacity (people and infrastructure) to develop, establish and maintain cross-sector partnerships across the community-controlled sector. This includes increasing the Aboriginal and Torres Strait Islander workforce to establish and maintain health justice, disability, housing and education partnerships to take a multi-faceted approach to addressing legal issues at their roots.

ATSILSs' models of service delivery have always included holistic and wraparound support for our clients' strengths as well as their cultural, social, emotional and well-being needs.

Not only do we need to build our in-house care and support workforce as set out in Recommendations 14, we also need to build and sustain cross-sector partnerships with other

organisations and share our respective areas of expertise to achieve better, shared outcomes for our clients.

ATSILSs want to forge partnerships across the disability sector, recognising that early assistance for people with disability that includes working in partnership with disability advocates, referring clients with disability to culturally safe disability support and increasing our capacity to provide support for disability-related legal assistance (including NDIS review in the AAT) may help avoid later, more harmful interactions with the legal system.

We would also like to build partnerships across other sectors that could collaborate to address the complex needs of our clients across the health, housing and education sectors. This is in recognition that our clients criminal law issues often have unaddressed health or housing issues at their root. In the case of education, we know there is a direct correlation between school exclusions and interactions with the youth justice system.²³ Cross-sector partnership and supports that result in our clients' health, housing and education needs being addressed may mean fewer criminal justice and child protection system interactions.

NATSILS acknowledges the interest in Health Justice Partnerships as a way of working across sectors to address the coalescing health and social and emotional wellbeing issues that impact on individuals' justice outcomes. ATSILSs have been informally creating health justice partnerships for many years.

In the overarching context of the National Agreement on Closing the Gap and the role of ACCOs as preferred providers for Aboriginal and Torres Strait Islander people, NATSILS submits that there is enormous potential for ATSILSs to further develop Health Justice Partnerships across Aboriginal Community Controlled Health Organisations (ACCHOs) and the huge network of Aboriginal Medical Services across Australia.

However, partnerships cannot and will not happen without people and time to find the right organisation to partner with, build trust and grow the relational foundations of the partnership and nurture and maintain the partnership relationship. To leverage the opportunities like Health Justice Partnerships with ACCHOs, we need to build our staff and organisational capacity, in particular, in regional, rural and remote locations where the complex needs of our clients might be more pressing.

A partnership approach could also help ATSILSs address contextual factors and structural mechanisms that contribute to socio-economic inequality that must also be addressed to turn around poor and unequal outcomes including structural racism and discrimination (including policing).²⁴

Strengthening ATSILSs' capacity to partner with other ACCOs across other Closing the Gap socio-economic outcomes domains to provide holistic, wrap around and early intervention support and referrals will help de-escalate legal issues that prevent downstream interactions with the criminal and care systems. Partnership could, for example, include collaborations to co-locate with disability and mental health services, or building partnerships with Aboriginal community-controlled education organisations to address discrimination at school, and help children stay more engaged in school and away from youth justice. Other partnerships might include, for example, partnerships with Aboriginal Land Councils, Traditional Owners and improving access to cultural programs and support for people in and leaving custody; or "justice reinvestment" partnerships between local communities and Police to forge diversionary and support options for young people away from police-led interventions.

²³ See Youth Justice NSW, *Young People in Health Custody Survey* (2015) <<https://www.nsw.gov.au/legal-and-justice/youth-justice/about/research/custody-health-survey>>.

²⁴ See R McCausland and E Baldry, 'Who does Australia Lock Up? The Social Determinants of Justice' (2023) 12:3 *International Journal for Crime, Justice and Social Democracy* 37 <<https://www.crimejusticejournal.com/article/view/2504>>.

If ATSILSs had greater capacity to build and grow partnerships with non-legal services including ACCOs and ACCOs to help us build and sustain better culturally safe wraparound supports, our clients and families may avoid the cost and harms of the criminal justice and child protection systems.

ATSILSs would also benefit from increased organisational capacity that would allow us to foster new cross-sector partnerships and maintain and grow new collaborations across the academic, pro bono and philanthropic sectors.

ATSILSs need support to build cross-sector partnership to help address the underlying issues that drive our clients into the criminal and child protection systems. This includes fostering Aboriginal Health Justice Partnerships, disability partnerships, and education partnerships to address legal issues at their roots.

As noted earlier, a strategic initiative of the JPP is ‘Delivering Holistic and Integrated Services’ which involves establishing and strengthening new cross-sector partnerships between the justice sector and other key sectors to ensure holistic and integrated responses which address underlying socio-economic issues including disability (including mental health), family violence, education, housing, health and care and protection.

The future partnership arrangements for legal assistance frameworks and agreements should align with the work currently underway through the JPP. Future arrangements should also incorporate the need for holistic legal service delivery for Aboriginal and Torres Strait Islander people to address their over-representation in the justice system by adequately resourcing ATSILSs to build and sustain partnerships for wraparound supports for our clients and build broader partnership across academic, pro bono and philanthropic sectors.

CASE STUDY: NAAJA & Miwatj Health Justice Partnership

In 2017, senior representatives of NAAJA travelled to Nhulunbuy (650 km by plane) to a 1-day workshop with senior representatives of Miwatj Health Aboriginal Corporation (Miwatj) to discuss developing a Health Justice Partnership (HJP). This led to establishing the Māwaya HJP focusing primarily on unmet civil legal needs as a social determinant of health. A pilot was put in place where Miwatj set aside funds to employ a HJP Social Worker for 6 months. The pilot led to improved coordination of legal services at Nhulunbuy, more holistic responses for mutual clients/patients, greater knowledge and awareness amongst health professionals of legal issue spotting and collaborations between NAAJA’s CLE practice and Miwatj.

CASE STUDY: ALS NSW/ACT Partnerships to provide holistic disaster recovery assistance

The ALS (NSW/ACT) received some funding related to bush fire recovery on the NSW South Coast. With these funds, the ALS partnered with Waminda, a Specialist Aboriginal community-controlled women’s health and welfare service provider in Nowra. The ALS worked collaboratively with Waminda’s case workers to provide a holistic legal service, and social work support to community members in bushfire affected communities, which included attending fortnightly outreach clinics to Wreck Bay Aboriginal Community Village, Ulladulla Waminda Outreach Office, and Nabu Office Nowra Lane.

Providing these outreach services to communities affected by the 2019 bushfires enabled the ALS to resolve family law matters at the early intervention stage, before escalating through the legal system, delivering cost-effective and autonomous justice options. The ALS was able to provide a responsive and adaptive service in collaboration with case workers, counsellors, and health

professionals. The multifaceted response to clients in crisis meant that together we could address the entirety of the clients' needs and provide a prompt comprehensive response.

A major benefit of the bush fire funding was the strengthened relationships with local ACCOs (like Waminda), NGOs, networks, and stakeholders. The ALS observed that after the CLE sessions, family law referrals were being made directly to the ALS before a matter escalates. The approach to the delivery of these CLEs (for example, over lunch, or during an art class) was instrumental in building trust and early engagement.

CASE STUDY – pro bono assistance to ATSILSs

In the financial years ending 2022 and 2023, Gilbert + Tobin Lawyers (G+T) provided the following types of assistance to ATSILSs around Australia:

- advice on legal practice management including file management, information barriers and on the establishment of a civil practice;
- legal project management assistance;
- advice on leases;
- corporate governance advice such as reviewing constitutions, advice on policies and other governance matters;
- advice to ATSILSs on client matters including support in a coronial inquiry, legal research and other advice;
- supporting ATSILSs to draft submissions to inquiries;
- other miscellaneous advice (not captured by the total hours and value set out below)

This amounted to 946.8 hours of pro bono work, valued at \$577,058

In the same period, G+T accepted 14 referrals from ATSILSs to provide direct assistance to clients in estate planning and discrimination matters for individuals and for an Aboriginal corporation.

This amounted to 155 hours of pro bono work, valued at \$65,000.

*NOTE: more than 50% of G+T's pro bono work is for First Nations clients and the full scope of that work is not reflected in the above figures which only reflects work undertaken for, and that has come through, ATSILSs.

While pro bono assistance is greatly appreciated, NATSILS and ATSILSs would like to have sufficient organisational capacity and funding to undertake some of this kind of work from our own resources.

Recommendation 16:

Commonwealth, States and Territories should invest in ATSILSs' capacity to enhance intersectional practice and inclusive frameworks which includes tailored supports and lived experience advisory functions to meet the specific and often complex needs of diverse groups including women, children, Elders and older people, people in custody, members of the LGBTIQ+ community, people impacted by disasters, and people with disability.

Our clients with diverse backgrounds and intersectional needs may not be well-served by a one size fits all approaches to legal assistance.

With increased funding, ATSILSs would strengthen services for each group through increasing service capacity, any relevant actions listed below including:

- Developing and establishing client frameworks to ensure services are tailored to meet specific needs;
- Training;
- Developing and establishing lived experience guidance panels;
- Building partnerships with other ACCOs and sector experts;
- Sourcing and maintaining brokerage funds to access support services and housing;
- Establishing partnerships with pro bono firms for referrals (eg, wills for Elders and older people);
- Establishing visiting legal and support services (for people in detention);
- Establishing legal clinics, partnerships and referral pathways for the LGBTIQ+ community;
- Advocacy.

Our clients with diverse backgrounds and intersectional needs may not be well-served by one size fits all approach which may result in poorer justice outcomes.

ATSILSs need investment to develop and expand legal services and non-legal support for sub-sections of the Aboriginal and Torres Strait Islander communities, to address intersectional needs and priorities. This involves investment in ATSILSs to:

- Establish partnerships with relevant local, State/Territory and National organisations that possess specialised expertise in catering to the diverse requirements of our clients (see Recommendation 15);
- Collaborate with these organisations to develop “one-stop shop” models, ensuring culturally safe and integrated legal assistance across all areas of law for ATSILSs’ diverse client groups;
- Build internal expertise by providing training and employment opportunities for individuals with lived experience (see Recommendation 14);
- Increase staffing levels to facilitate advice, early intervention and prevention support; and
- Strengthen ATSILSs’ advocacy capabilities to eliminate barriers, discrimination, and injustices within the legal systems for diverse client groups.

ATSILSs need to be resourced to enable them to develop and enhance inclusive frameworks and tailored supports which meet the specific needs of diverse groups including women, children, Elders and older people, people in custody and members of the LGBTIQ+ community.

NATSILS notes the Reviewers’ interest in individuals and communities impacted by disaster as an emerging disadvantaged cohort. We refer to the Australian Legal Assistance Forum (ALAF) Joint Submission from NATSILS, National Legal Aid, Community Legal Centres Australia and the National Family Violence Prevention and Legal Services Forum on Disaster Recovery forwarded to the Reviewer. We reiterate that any disaster funding should support local, place-based responses, be informed by the principles and Priority Reforms in the National Agreement, with funds quarantined for ATSILSs and Family Violence Prevention Legal Services. In light of some Aboriginal and Torres Strait Islander people’s experience of disaster recovery and relief, we support the view that governments must resource Aboriginal first responders to provide culturally safe and appropriate support.²⁵

²⁵ See NSW Parliament Select Committee, *Response to major flooding across New South Wales in 2022*, (2022), 67 <<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2866/Report%20No%201%20-%20Response%20to%20major%20flooding%20across%20New%20South%20Wales%20in%202022.pdf>>.

Investment in the development of a needs-based funding model will help ATSILSs and all legal service providers better consider and determine new priority client groups.

Recommendation 17:

As an urgent priority and recognising the significant number of Aboriginal and Torres Strait Islander people with disability in justice systems, the Commonwealth, State and Territory governments work in partnership with NATSILS, ATSILSs and the First Peoples Disability Network to develop an Aboriginal and Torres Strait Islander Disability Framework and operational plan which would co-locate disability advocates within NATSILS, ATSILSs and First People's Disability Network.

Aboriginal and Torres Strait Islander people living with disability

It is evident that there is a significant lack of culturally safe disability support within the community, which has resulted in many individuals not receiving the appropriate assistance they require. The correlation between undiagnosed and untreated disability is correlated with high interactions with the criminal and care legal systems.²⁶

NATSILS notes the release of the final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission). We share the expectation from the First People's Disability Network's expectation that given the DRC's Terms of Reference considered the Convention on the Rights of Persons with Disabilities (CRPD), "that the CRPD will underpin the response to the Disability Royal Commission, with people with disability's leadership at the centre".

The Disability Royal Commission's final report found that Aboriginal and Torres Strait Islander people with disability are "uniquely marginalised" in Australia,²⁷ and that there is a "*hidden national crisis that is the proportion of First Nations people with cognitive disability in custody, particularly youth detention*,"²⁸ The Disability Royal Commission found that the needs of First Nations people with disability are "*largely overlooked by national policy frameworks*."²⁹ The final report characterises this lack of meaningful, culturally appropriate and trauma informed support services for First Nations people with disability as "*institutional neglect and a denial of the rights of First Nations people with disability*."³⁰

The Disability Royal Commission found that ACCOs and ACCHOs are a critical component of the solution, and that "sustainable long-term funding" is necessary to increase the availability of First Nations-specific services.³¹ The Disability Royal Commission's final report also makes clear that "*structural reform that recognises the importance of enhancing the capacity of the existing community-controlled sector around disability is crucial*."³²

²⁶ E Baldry, R McCausland, L Dowse et al, 'A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System', (2015) Sydney: UNSW, <https://www.mhdcd.unsw.edu.au/sites/www.mhdcd.unsw.edu.au/files/u18/pdf/a_predictable_and_preventable_path_final.pdf>.

²⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 9*, (2023), 28 <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>>.

²⁸ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 9*, (2023), 139 <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>>.

²⁹ Ibid 28.

³⁰ Ibid 52.

³¹ Ibid 91.

³² Ibid 53.

Research commissioned by the Disability Royal Commission found that “when a person is identified as First Nations in criminal justice settings, any support needs associated with disability tend to become less of a priority”, and that this “may be exacerbated by limited access to advocacy and legal services with disability expertise.”³³ The Disability Royal Commission found that “measures to reduce the over-representation of First Nations people in the criminal justice system are crucial”, and that it is vitally important to invest in specific, disability-related measures to prevent First Nations people with disability from entering the criminal justice system, and to address their disability support needs once they are in the criminal justice system.³⁴

The Disability Royal Commission’s findings on the crisis of over-representation of Aboriginal and Torres Strait Islander people with disability in the criminal justice system and the imperative to invest in specific, disability-related measures to prevent Aboriginal and Torres Strait Islander people with disability from entering the criminal justice system underscores the importance of ATSILSs partnering with other ACCOs and co-locating Disability Advocates within ATSILSs.

ATSILSs’ unique model of service delivery integrates legal and non-legal support, embedded in ATSILSs’ practices in a culturally safe manner and recognises the importance of addressing the diverse needs of Aboriginal and Torres Strait Islander communities.

Building a care and support workforce framework through the next partnership arrangements for legal assistance would incorporate early intervention, wrap-around, prevention, diversion, rehabilitation, through-care and therapeutic measures for holistic legal service delivery for Aboriginal and Torres Strait Islander people, as a “business as usual” approach.

By addressing the non-legal drivers into the criminal justice and child protection systems, this approach would address over-representation in the justice and child protection systems – and contribute to shifting the dial on the Closing the Gap justice targets.

Through this approach, ATSILSs would be resourced to develop and embed a trauma-informed and culturally safe Disability Framework into ATSILSs’ service delivery model under the NLAP. The model under the Disability Framework includes investment in a specialist care workforce that includes:

- Co-located Disability Advocates to enable ATSILSs to work with clients with disability interacting with the care and criminal systems;
- An enhanced civil law workforce for culturally safe representation in NDIS matters before the AAT, and capacity to participate in other civil law matters including guardianship proceedings and mental health tribunal matters;
- co-located Mental Health Advocates and Coordinators;
- increased Mental Health Coordinators Positions; and
- increased Social Workers Positions.

This Framework aligns with findings from the Disability Royal Commission that found that “measures to reduce the over-representation of First Nations people in the criminal justice system are crucial”, and that it is vitally important to invest in specific, disability-related measures to prevent First Nations people with disability from entering the criminal justice system, and to address their disability support needs once they are in the criminal justice system.”³⁵

³³ Ibid 38.

³⁴ Ibid 39.

³⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 9*, (2023), 39 <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>>.

8 Building ATSILSs' long-term organisational capacities and capabilities to ensure an efficient, strong and sustainable sector

Immediate investment in ATSILSs

Recommendation 18:

As an immediate foundational step and to address the critical organisational and operational needs of ATSILSs to enable them to meet the demand for, and right of Aboriginal and Torres Strait Islander people to access culturally appropriate services, the Commonwealth, State and Territory governments invest in ATSILSs by increasing funding quantum in the 23/24 Financial year to enable ATSILSs to:

- a. Provide staff with salary parity with LACs (at a minimum);
- b. Increase their existing workforce to support safe work practices; and
- c. Improve ATSILSs' capital and operational infrastructure including the need to:
 - i. repair existing ATSILSs owned buildings to make them safe and fit for purpose;
 - ii. expand into new permanent and shared office locations;
 - iii. update information technology infrastructure and data systems which will allow and support staff to deliver efficient and effective services;
 - iv. enhanced cybersecurity measures to ensure the integrity and security of information and services;
 - v. upgrade and purchase vehicles, particularly vehicles fit for purpose and safe for travel to and within regional and remote locations.

ATSILSs are currently facing immense challenges, and some are on the verge of a breaking point. The demand for legal services is overwhelming, leaving ATSILSs struggling meet the current needs, let alone address the unmet needs and gaps in service delivery. With challenging working conditions and uncompetitive salaries, ATSILSs face an ongoing struggle to recruit and retain staff and are left with consistently high vacancy rates. This places compounding pressures on existing staff to meet the demand in our practices across Australia.

Historic under-investment in ATSILSs, particularly in relation to capital infrastructure results in higher operational pressures and costs for ATSILSs. Without ongoing maintenance and upkeep, ATSILSs cannot improve their facilities and provide attractive workplaces for staff. This compounds ATSILSs challenges with recruitment and retention. Under-resourcing in critical and essential infrastructure results in reduced business efficiencies, low staff satisfaction, exposure to cybersecurity threats and potentially serious occupational, health and safety risks.

Salary parity

Some ATSILSs' uncompetitive salaries for both legal and non-legal staff are well below salaries available to our colleagues at LACs, some CLCs and the ODPP. The pay disparity not only leads to high turnover rates but also perpetuates workforce stresses and burnout. It is essential for ATSILSs to address this imbalance in pay parity in order to attract and retain talented individuals who are dedicated to serving the community.

Offering salary parity and improving work conditions will help retain experienced staff, ensuring continuity and expertise. Remediating and enhancing ATSILSs' capital and infrastructure will provide a conducive environment for all our staff to work more efficiently and effectively. Ultimately, these investments will not only address the existing legal needs but also build ATSILSs' capacities and strengths to allow us to expand our services to meet unmet legal need, promoting justice and equality in Australia.

As set out in Recommendation 5 above, increasing access to effective culturally appropriate and comprehensive legal assistance can only happen with an immediate and substantial investment in ATSILSs to provide legal assistance services.

Salary parity is beyond ATSILSs' control to remedy under current funding quantum and arrangements. Any proposal 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, ATSILSs could be competitive with other legal service providers.

Increased workforce

Investment in increasing ATSILSs' workforce is a necessary and threshold issue: without investment in ATSILSs' workforce and supporting ATSILSs' organisational capabilities to support that workforce, ATSILSs' capacity to meet the growing demand for culturally safe services is not achievable.

Corporate services

ATSILSs require investment in their corporate services and governance organisational capabilities to ensure effective, efficient, and sustainable operations across human resources, information technology, finance, project management, training, and organisational frameworks. As ATSILSs grow, new organisational roles and functions may be needed to support growth and new demands on us. These roles and functions may include, for example:

- Executive Project Management Office;
- A service development/service innovation team to handle service development and improvement, policy development, service coordination and stakeholder coordination;
- Project grant teams;
- An expanded Executive or 'CEO's office';
- Additional shared services – IT, facilities, comms, HR;
- Inhouse counsel unit – policies, inhouse legal, legal compliance etc;
- Additional data management, reporting and monitoring/evaluation roles; and
- Cultural business/service unit – to support cultural capability strengthening and support to staff.

Capital and infrastructure

NATSILS members have provided the Review team with information on capital and infrastructure needs.

NATSILS submits that the National Agreement on Closing the Gap Priority Reforms provide the foundational rationale as well as mechanics for equitable investment in ATSILSs as preferred providers of legal assistance services for Aboriginal and Torres Strait Islander people.

ATSILSs require investment in their corporate services and governance organisational capabilities to ensure effective, efficient, and sustainable operations across human resources, IT, finance, project management, training, and organisational frameworks.

With annual indexation on NLAP funding not aligned to growth indicators such as the consumer price index, the funding fails to meet operational expenditure let alone investment expenditure critical to support the aging ATSILSs' infrastructure.

As well as leased premises, ATSILSs own buildings acquired by legacy grants, some of which are 20+ years old and have not received any investment since that time of acquisition. These buildings are not fit-for-purpose and issues are not superficial and include significant concerns around the structural integrity of the buildings. The lack of capital support for ATSILSs' buildings must be addressed with one-off injections to ensure they are fit-for-purpose, staff and clients are safe on site and services can be provided. Future partnership arrangements for legal assistance and funding models must also incorporate a mechanism to allow the support of capital works over the duration of the grant term.

The absence of capital investment is also impacting the ability of ATSILSs to use fit-for-purpose and best practice technologies. This lack of investment impacts both service delivery and corporate services. ATSILSs are using Client Management Systems (CMS) that were established many years ago when the ATSILSs were smaller, managed less programs and had fewer and less onerous reporting requirements. Investing in a fit-for-purpose CMS solution for all ATSILSs will support best-practice case management and client management and ensure data collection, storage and reporting is efficient and effective. Replacing legacy corporate service applications also requires investment which includes finance and human resource management systems. Most ATSILSs are using standalone software that most corporate organisations would have unified – such as payroll, and finance software. These legacy applications are not appropriate to manage ATSILSs back-office operations given the increase in staff and increased reporting obligations. Increased funding is required to support the replacement of legacy applications, necessary to strengthen the corporate services IT environment.

With funding stretched ATSILSs have not been able to invest in corporate services teams at an appropriate level notwithstanding the importance of these teams' role in overseeing service delivery, providing back-office services, and managing reporting, compliance, and regulatory responsibilities. Future partnership arrangements for legal assistance funding must consider the importance of growth in the corporates services team when managing additional programs and reporting. Additionally, future funding must allow the ATSILSs to fill gaps in the current organisational structures including project teams to manage infrastructure projects for service development and innovation, policy development, service coordination and stakeholder and partnership engagement and coordination.

Information technology and data systems

ATSILSs need better information technology and data systems so our staff can be more efficient in service delivery and data collection and monitoring.

Increased funding to update the information technology infrastructure which will allow more efficient processes for better service delivery and enhanced cybersecurity measures to ensure the integrity and security of information and services is required.

Vehicles

Many ATSILSs carry substantial costs associated with maintaining vehicles used to travel long distances to regional and remote Courts (see **Appendix A**). This includes travel on unsealed roads, adding to wear and tear costs of maintaining fleets.

CASE STUDY: ATSILS QLD recruitment and retention of staff

ATSILS QLD had consistently struggled with recruitment and retention of solicitors due to lack of funding.

In the past few months, following the one-off funding provided to ATSILSs from the Commonwealth Attorney General's department, the salary ranges for all ATSILS QLD jobs advertised were increased which has shown a significant improvement in the levels of experienced applicants applying for the roles.

Specifically, lawyers with more experience who are more suited to working in regional and remote areas have been applying for positions. While not all positions have yet been filled, the improvement in attraction of talent to regional and remote areas has been significant.

Recommendation 19:

Investing in ATSILSs' capacity to strengthen culturally appropriate operating models and build partnerships to strengthen our dedicated and identified Aboriginal and Torres Strait Islander workforce including:

- a. dedicated resources for cultural training, support and supervision;
- b. partnering with tertiary education providers to grow the Aboriginal and Torres Strait Islander legal assistance sector profession;
- c. enhancing recruitment strategies and dedicated resources for outsourcing recruitment;
- d. expanding secondment opportunities across the private, non-government organisations and government sectors.

Most ATSILSs employ a very high proportion of identified positions and staff, however, this proportion for some ATSILSs has been decreasing over time as we lose dedicated staff to alternative legal assistance providers who can offer substantially higher salaries. Other legal assistance providers are able to use their "market power" to regularly attract and recruit ATSILSs' Aboriginal and Torres Strait Islander staff. In effect, ATSILSs are sometimes a training ground and talent pool for other legal assistance providers.

As noted at Recommendation 5, ATSILSs need increased investment generally to ensure our Aboriginal and Torres Strait Islander workforce can be supported and rewarded to move into senior leadership roles within ATSILSs.

ATSILSs need investment to increase our capacity to strengthen culturally appropriate operating models and strengthen our Aboriginal and Torres Strait Islander workforce. Having high numbers of Aboriginal and Torres Strait Islander staff delivering front line services, including solicitors and Field Officers and Court Officers, as well as identified justice programs, engagement, support and strategy roles means that there is a guaranteed level of understanding of the local community and culture, language, strengths and issues that Aboriginal and Torres Strait Islander people face in their lives and specifically, within the justice system on a local level.

To increase our capacity to strengthen and sustain or culturally appropriate operating models and keep our dedicated staff, ATSILSs need immediate and sustained investment to achieve salary parity with LACs, at a minimum.

As with our justice programs, engagement, support and strategy workforce, we need to reward all our Aboriginal and Torres Strait Islander staff in a way that values and reflects the unique skills and qualifications required to work with ATSILSs and in service of the communities in which we work.

We also need investment to build and provide culturally safe processes and pathways from initial recruitment, through to training and on-boarding, professional development, career progression and promotion opportunities.

This might include the following:

Partnerships with tertiary education providers to grow the Aboriginal and Torres Strait Islander legal assistance sector profession.

This includes traditional partnership with tertiary providers, but also partnerships with Aboriginal and Torres Strait Islander law students and lawyer associations across the country. These include, for example, Tarwirri in Victoria,³⁶ Ngalaya in NSW³⁷ and ILAQ in Queensland,³⁸ amongst others. NATSILS understand that some legal assistance providers have set up partnerships with universities. While NATSILS are pleased these opportunities for Aboriginal and Torres Strait Islander people are being made available, NATSILS would like to have the capacity and opportunity to support our ATSILSs to forge these kinds of partnerships with the tertiary education sector so we can grow and sustain our culturally safe workforce to continue to serve our communities.

Enhancing recruitment strategies and dedicated resources for outsourcing recruitment

With the current recruitment and retention challenges requiring ATSILSs' human resources (HR) managers to focus on operational matter, additional funding is required for HR professionals to focus on building out recruitment strategies. This is critical if ATSILSs are to source, engage and attract top talent and build a strong and capable workforce.

In the case of recruitment, retention and development of ATSILSs' Aboriginal and Torres Strait Islander workforce, ATSILSs want to always be innovating their culturally safe recruitment policies and processes that include, for example, peer support, leadership development and pathways for career progression, Aboriginal graduate and cadetships and other partnerships across the broader education sector, cultural supervision, as well as inbuilding feedback loops to measure effectiveness of their initiatives.

Expanding secondment opportunities across the private, non-government organisations and government sectors.

The establishment of a secondment program to provide opportunities across the private, non-government organisations and government sectors would allow the ATSILSs' Aboriginal and Torres Strait Islander workforce to build on their skills, expand their networks and provide a deeper understanding of the sector. Further, such a program would allow ATSILSs to access Aboriginal and Torres Strait Islander staff from other organisations and benefit from their expertise. ATSILSs do not currently have the funding, scale or size to establish such a program.

³⁶ See Indigenous Law Students and Lawyers Association of Victoria at <<https://au.linkedin.com/company/tarwirri>>

³⁷ See Ngalaya – Indigenous Lawyers and Law Students at <<https://www.ngalaya.org.au/>>

³⁸ Indigenous Lawyers Association of Queensland, at <www.indigenoulawyersqueensland.com.au>

Resources for cultural training, support and supervision

While ATSILSs ensure cultural competency through recruitment practices, training and mentoring, this is the baseline activity for a culturally appropriate model. To strengthen ATSILSs' culturally appropriate operating models, ATSILSs need dedicated resources to provide expert cultural training, support and oversight of their practices and programs. Setting up a cultural support unit in each ATSILSs would allow more targeted management of cultural learning and training and also provide the opportunity for practice and program staff to access cultural specialists to provide advice, insights and support. Led by Aboriginal and Torres Strait Islander professionals, these units could assist with ensuring positive and appropriate communications and engagement with employees, clients and stakeholders.

ATSILSs may also want to create collaborative engagement opportunities for Aboriginal and Torres Strait Islander staff through Aboriginal staff networks, peer to peer coaching, and culturally safe spaces for peer support and yarning circles.

We also note the role of the Sector Strengthening Plans at Recommendation 22.

Recommendation 20:

The development and funding of ATSILSs' governance frameworks to ensure strong connections between cultural, strategic and corporate governance improving decision making processes by defining clear responsibilities and roles and allowing ATSILSs to provide the best quality service to community.

The National Agreement sets out the elements needed for a strong community-controlled sector as follows:

- Sustained capacity building and investment;
- A dedicated and identified Aboriginal and Torres Strait Islander workforce;
- Community-controlled organisations are supported by a Peak Body which has strong governance and policy development and capacity to influence; and
- Community-controlled organisations have a dedicated, reliable and consistent funding model designed to deliver the types of services required by communities.

Priority Reform 2 of the National Agreement on Closing the Gap sets out commitments by Governments to build the strengths of the community-controlled sector to deliver services to support Closing the Gap and includes a commitment to building the governance strengths of the community-controlled sector. Clause 45 acknowledges that strong Aboriginal and Torres Strait Islander organisations require sustained capacity building and investment.

Significantly, and unlike mainstream organisations, ATSILSs are governed by Aboriginal and Torres Strait Islander boards or executives who are connected to and within the communities the ATSILSs serve. This responsibility to the community is in addition to traditional corporate governance responsibilities.

ATSILSs require sustained investment in the development and funding of their governance frameworks, to ensure they have capacity and capability to assist them to manage and strengthen the complex obligations to both the communities they serve and their mainstream corporate responsibilities.

Recommendation 21:

ATSILSs are supported by a Peak Body, NATSILS, which has strong governance and policy development and capacity to influence and that ATSILSs are also invested in as jurisdictional peaks in their own right.

The National Agreement on Closing the Gap sets out the elements needed for a strong community-controlled sector and commitments to support these strengths. Clause 45(c) provides that “Aboriginal and Torres Strait Islander community-controlled organisations which deliver common services are supported by a Peak Body, governed by a majority Aboriginal and Torres Strait Islander Board, which has strong governance and policy development and influencing capacity”.

NATSILS targets its efforts to coordinate members’ common interests and activities, drive improved delivery of culturally appropriate legal services and advocate for systemic changes to the justice system to make it fairer for Aboriginal and Torres Strait Islander people. Some of our strategic goals include:

- Reimagining the justice system: We catalyse and facilitate rigorous conversation and collaboration amongst the ATSILSs, the Legal Assistance Sector and relevant stakeholders from across portfolios to design justice system reforms and initiatives that work for our people;
- Improving members’ operating conditions: We work to improve the current legislative and policy environment as well as members’ funding positions and resources;
- Enhancing member services: We support members to continue to deliver efficient and effective services;
- Building a strong funding base;
- Expanding our size and skills; and
- Understanding our impact: We monitor and report on the impact of our work.

It is good to see an increasing recognition and importance of the need for strong peak bodies and we believe this has largely come about due the commitments made by Australian Governments under the National Agreement on Closing the Gap. However, this will not be turned around overnight and there needs to be sustained resources and effort to the build the capacity of NATSILS including for NATSILS to become incorporated and a stand-alone organisation, that is not so heavily reliant on its members’ capacity to auspice.

Further, NATSILS and ATSILSs agree that individual ATSILSs should be supported as jurisdictional peaks in their own right, with sufficient investment to do so.

Supporting a Justice Sector Strengthening Plan

Recommendation 22:

The next national partnership arrangements on legal assistance should support and adopt the measures identified in the Closing the Gap Justice Sector Strengthening Plan that is currently being developed.

As noted earlier at Recommendation 1, in June 2023, the Closing the Gap National Joint Council agreed to prioritise the establishment of a Justice Sector Strengthening Plan in recognition of the need to grow the community-controlled law and justice sector.

Building the Justice Sector Strengthening plan will be achieved through the JPP, who will lead a national plan to grow the Aboriginal and Torres Strait Islander community-controlled law and justice sector, including coordinating jurisdictional plans. The JPP will provide evidence based best practice guidelines to the jurisdictions to facilitate the development of their sector strengthening plans.

As part of the National Sector Strengthening Plan, State and Territory governments will work in partnership with ATSILs and ACCOs to develop specific plans to strengthen community-controlled law and justice sector in their state/territory. Each jurisdiction's plan will align with the overarching JPP-led national plan accountable to (Joint Council, themselves, each other, etc) for the creation and adherence to the sector strengthening plans.

Subject to further design work through the JPP, the Justice Sector Strengthening Plan could include a focus on:

- Sustained capacity building and adequate investment in ATSILs, including increased funding for core legal services and holistic non-legal supports;
- Investment in a dedicated and identified Aboriginal and Torres Strait Islander workforce with wage equity based on workforce modelling commensurate with legal need and which reflects the unique skills and qualifications;
- Developing workforce strategies for both Aboriginal and non-Aboriginal staff for retention and recruitment to ensure stability of service provision. Elements of workforce strategies include:
 - Strong governance, corporate services and policy and advocacy development;
 - Dedicated, reliable and consistent funding model designed to suit the types of services required by communities;
 - Building capacity of Aboriginal and Torres Strait Islander organisations and communities to collect, access, control and use justice data, and embedding Indigenous data sovereignty concepts; and
 - Alignment with government funding cycles and mechanisms, including the National Legal Assistance Partnership.

NATSILS submits that new partnership arrangements on legal assistance objectives would be better realised by supporting NATSILS and ATSILs to partner with Governments on the Justice Policy Partnership Priority Strategic priority of Building Community-Control which involves strengthening ACCOs, including ATSILs and FVPLs across law and justice sectors under the Justice Sector Strengthening Plan.

As the new partnership arrangements on legal assistance will be developed at the same time as the Justice Sector Strengthening Plan, we recommend that there be a mechanism for the future legal assistance arrangements to consider relevant actions from the Justice Sector Strengthening Plan.

9 Advocating for systemic change and supporting communities in their fight for justice

Enhancing ATSILSs' policy and advocacy capacity

Recommendation 23:

Enhancing ATSILSs' capabilities in policy development and advocacy through a multifaceted approach that aims to empower the sector and build capacity for strategic and impactful initiatives. This includes resourcing ATSILSs with core funding to conduct specialist advocacy and law reform activities on matters affecting Aboriginal and Torres Strait Islander people and in recognition of the increased benefits to the broader non-Indigenous population.

ATSILSs have over 50 years' experience representing Aboriginal and Torres Strait Islander people on a daily basis. ATSILSs are also representative of, and accountable to, our communities through our governance arrangements. This makes us well placed to provide expert advice that can assist in developing reforms and practices that make systems fairer for our communities, and which can put downward pressure on the demand for frontline services.

Through our work in policy, legislative reform, advocacy and campaigning, ATSILSs make an impact on laws, policies and practices that do not just impact on Aboriginal and Torres Strait Islander people – our advocacy makes the justice systems better and fairer for all.

In 2014, the Productivity Commission concluded that “strategic advocacy and law reform that seeks to identify and remedy systemic issues, and so reduce the need for frontline services” should be a core activity of legal service providers, including LACs, CLCs and ATSILSs. In particular, ‘by advocating on issues relating to matters such as racial discrimination and child protection, [ATSILSs] activities can also reduce the need for frontline services.’³⁹

There are also occasions when ATSILSs are excluded from consultation because ATSILSs are not part of Government. Some ATSILSs report being invited to participate in policy and program development, only to be excluded from the subsequent programmatic funding. These practices run counter to the principles and priorities underpinning the National Agreement on Closing the Gap.

The volume of requests, the breadth of policy issues, and short turnaround times to respond to policy changes and legislative reforms, in the absence of specific policy and advocacy funding, is challenging for many ATSILSs. **Appendix B** represents a “snapshot” of 3 months of requests for input into policy and legislative reform to the ALS (NSW/ACT). The snapshot illustrates the volume and variety of requests from a single ATSILS as well as the sometimes-unreasonable timeframes expected for responses.

ATSILSs are regularly invited to participate in roundtables, inquiries, law reform and policy development processes. State and territory policy and legislation has perhaps the single biggest impact upon ATSILSs' service delivery environment by driving up demand for legal assistance services.

Conversely, ATSILSs exclusion from policy and program development is a missed opportunity for Government (and the justice system more broadly) to benefit from ATSILSs' expertise in developing safe, fair and more effective and efficient policy and legislative reform.

³⁹ Australian Productivity Commission, *Access to Justice Arrangements: Inquiry Report (Volume 2)* (2014), 771, <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>>. Australian Productivity Commission, *Access to Justice Arrangements: Inquiry Report (Volume 2)* (2014), 771, <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>>.

However, the quantum of funding, and the ever-increasing demand on our core legal representation services, significantly detracts from our capacity to participate in and contribute to policy and advocacy.

Policies, practices and legislative reforms often have quick and detrimental impacts on our communities, and often have immediate impact on ATSILSs' services, driving up demand for assistance. When discriminatory and harmful aspects of laws, policies and practices are dismantled through advocacy, the demand for legal assistance to protect our clients from the impact and harms from those laws, policies and practices is reduced and costs to the State are lowered or avoided.

Good policy is best informed by practice. However, many ATSILSs do not have capacity to participate in advocacy, with few funded or filled policy and advocacy positions. Court matters must often take precedence, and solicitors are often too overworked to participate in policy and legislative reform work, especially in unreasonable timeframes, despite many ATSILSs' staff interest in advocating for changes in laws and practices that impact on our clients daily, and which would help drive down demand.

The Productivity Commission, in 2014, considered that strategic advocacy and law reform should be a core activity of legal assistance services, recognising that in seeking to identify and remedy systemic issues, this work reduces the need for frontline services.⁴⁰ NATSILS agrees.

NATSILS also notes the JPP initiative for developing justice impact assessments referred to at Recommendation 6. Funding ATSILSs to support staff to participate in advocacy and law reform activities as well as justice impact assessment processes will be essential to progressing the aims of Closing the Gap, including in reducing the over-representation of Aboriginal and Torres Strait Islander people in the criminal justice and care and protection systems. As part of the spectrum of activities and actions essential to protect the rights of Aboriginal and Torres Strait Islander people, advocacy should be a core part of ATSILSs' everyday business.

CASE STUDY: ALS NSW/ACT Collaborative advocacy on child protection

The Family is Culture (FIC) Advocacy Working Group is made up of the ALS (NSW/ACT), AbSec (the NSW peak body for Aboriginal children), the Public Interest Advocacy Centre and an academic expert from the Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney.

This initiative was formed in 2019 in response to the Family is Culture Review report on problems with the child protection system for Aboriginal and Torres Strait Islander people in NSW and built on existing partnerships and existing relationships with the peaks working in child protection in NSW. The FIC Working Group draws on the expertise of each of the peaks and the academic and strategic litigation expertise of our collaborative partners, in shaping the advocacy and accountability work that we are doing in NSW. As part of this collaboration, we have prepared joint submissions and briefing notes, formed political alliances that have provided for greater parliamentary support for our advocacy positions, generated media on child protection issues and have ensured that we have had the opportunity to have wider community input on child protection matters affecting Aboriginal families.

Initially in response to the NSW governments response on the implementation of the FIC Report reform recommendations, the Working Group produced the initial "*Honouring Family is Culture: Aboriginal community monitoring and reporting framework*" outlining five implementation priorities that have now formed the basis of the implementation and review work being

⁴⁰ Australian Productivity Commission, *Access to Justice Arrangements: Inquiry Report (Volume 2)* (2014), 771, <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>>.

undertaken with the NSW government. Since that November 2021 report card, we have collaboratively produced two further community report cards in November 2022 and September 2023, during times when there has been no public reporting by the NSW government on their implementation of the FIC recommendations.

The working group has also allowed us to draw on the time capital and collaborate to save costs – for example, using sector forums to do community consultation on legislative reforms directly with ACCOs. The FIC Working Group has gained a reputation for being the first-stop by government and other stakeholders for input in relation to child protection and out-of-home care issues for Aboriginal and Torres Strait Islander families in NSW, which has raised the profile of the ALS in the community services sector. It is self-determination in practice.

The success of the FIC Working Group is found in the shared goal of keeping the NSW Government to account for their work with Aboriginal and Torres Strait Islander families and the shared deliverables outlined in the 126 recommendations of the FIC Review report. There is no greater stimulus than a shared goal of self-determination and the achievement of a road map for reform.

CASE STUDY: ALS NSW/ACT Advocacy to address systemic discrimination and police misconduct in the use of the Suspect Targeting Management Plan (STMP)

For several years, the Aboriginal Legal Service NSW/ACT has supported and represented young people who have been directly targeted under the NSW Police Force Suspect Targeting Management Plan (STMP). The policy, identified by the Law Enforcement Conduct Commission (LECC) in October 2023 as ‘highly intrusive’ proactive policing of children, was first investigated by the LECC in 2018, under *Operation Tepito*. The policy was investigated due to a degree of public debate and commentary pointing to the concerns about the application of the policy to children and young people, and vulnerable groups including Aboriginal and Torres Strait Islander people.

In October 2023, NSW Police announced the discontinuation of use of a controversial proactive policing strategy. Two reports by the NSW Law Enforcement Conduct Commission in 2020 and 2023 made significant observations about the disproportionate burden of harm to Aboriginal and Torres Strait Islander young people, and ultimately recommended the abolition of the STMP. ALS NSW/ACT played a pivotal role in advocacy for repeal of the STMP through a 6-year collaboration between the Public Interest Advocacy Centre, Redfern Legal Centre, Shopfront Youth Legal Centre and Dr Vicki Sentas from the Faculty of Law & Justice at UNSW, along with youth workers, children’s lawyers and academics under the banner of the Youth Justice Coalition (YJC) STMP working group. The YJC published an extensive report in 2017 detailing unreasonably oppressive policing practices and the racially biased impacts of the STMP on Aboriginal young people, and has continually advocated to keep the issue on the radar with government, as well as supported clients to challenge the use of the STMP and stop ongoing harassment by police.

ALS (NSW/ACT), like other ATSILSs, was established in line with the principle of self-determination to address the impacts of lack of access to culturally responsive legal assistance services on Aboriginal and Torres Strait Islander communities. The ALS’ (NSW/ACT) specialised knowledge combined with its large service delivery footprint across NSW meant it was uniquely placed to advocate for reform from the evidence base it was able to draw on from its practice, and to ensure an Aboriginal youth voice was platformed in this advocacy.

CASE STUDY: Ensuring policy and legislative reform is informed by practice expertise

The ALS (NSW/ACT), as with other ATSilSs, is often called upon to provide input into policy, practice and legislative reform. However, our solicitors are too often involved in court and case work and do not have time to be involved.

Recognising the value and importance of input into law reform from practising solicitors, the ALS set up an after-hours and online “Crime Policy Committee” that convenes on an opt-in and as-needed basis to provide the opportunity for collective expert input on policy. Over 30 solicitors put up their hands to be involved. Convening the Committee after hours and online means we can increase the opportunity for input after Court hours, and benefit from input from regional and remote offices, where solicitors can speak to how laws and policies have particular impact on our clients in rural, regional and remote (RRR) areas. Having multiple solicitors simultaneously considering policy and legislative reform also means that policy positions can be efficiently considered from multiple perspectives, and Committee participants can quickly sense-test positions together.

The ALS (NSW/ACT) also trialled a hybrid policy and legal practice solicitor position. The position-holder retained a part time legal practice and had part time responsibility for input into law reform and policy. The ALS benefitted from increased policy capacity and practical, grounded experience due to the solicitor’s practice expertise. Regrettably, the position was not continued due to the demands in the ALS’ criminal practice.

If we had more capacity, the ALS (NSW/ACT) would like to explore and formalise other kinds of committees and partnerships across the academic and pro bono sectors to support our policy and advocacy work.

Supporting and investing in ATSilSs to partner on Closing the Gap initiatives

Recommendation 24:

Governments support and fund NATSILS and ATSilSs to partner on Closing the Gap initiatives. This includes resourcing ATSilSs to co-design and lead formal partnerships with justice agencies to progress the aims of Closing the Gap, including in reducing the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice and care and protection systems as well as victims of family violence. This would include funding for policy staff, commissioning of reviews and to co-design Closing the Gap strategies, plans and proposals.

The National Agreement on Closing the Gap and the Priority Reforms represent a fundamental shift in how Government and government funded agencies must support and work with ACCOs, like ATSilSs and FVPLSs. The National Agreement on Closing the Gap is focused on wholesale transformation of government agencies to be accountable for Closing the Gap.

To achieve the commitments made by all levels of governments in the National Agreement on Closing the Gap, governments must make substantial new investments in community-controlled legal services. Failure to provide the necessary resourcing will risk jeopardising Governments’ ability to fulfill its commitments, including both the Priority Reforms and Socio-Economic Outcomes.

NLAP Government parties and the funded legal assistance sector need to do more to align their approaches, programs, policies and funding decisions with the partnership and shared decision-making principles, priorities and commitments under the National Agreement on Closing the Gap.

Policy changes and legislative reforms, sometimes implemented without ATSILSs' input, and program design and funding without including ATSILSs run counter to the practices of partnership and shared decision-making and can result in increased demand for ATSILSs' services.

Closing the Gap involves governments and government funded agencies making transformative changes to address the over-representation of Aboriginal and Torres Strait Islander people in the criminal and child protection systems. By not aligning with the work underway, including the work of the Justice Policy Partnership, and not adopting or implementing the transformative approaches set out in the Priority Reforms under the National Agreement on Closing the Gap, Government parties and the mainstream legal assistance sector, there is a risk that the commitments and outcomes may not be realised.

Policy changes often have disproportionate and detrimental impacts on Aboriginal and Torres Strait Islander people and drag them into the justice systems and before the Courts. These changes often drive immediate demand for our already stretched services.

In any future partnership arrangements for legal assistance, ATSILSs across Australia should be resourced to co-design and lead partnerships with justice agencies to progress the aims of Closing the Gap, including in reducing the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice and care and protection systems. This would include funding for staff, projects and commissioning. This will ensure that parties to the future arrangements, and the legal assistance sectors' practices, policies, programs and funding allocations are aligned with the principles and priorities under the National Agreement on Closing the Gap.

Supporting and investing in ATSILSs' lived experience expertise

Recommendation 25:

The next national partnership arrangements on legal assistance embeds and amplifies the lived experience and expertise of ATSILSs and our communities to lead change by investing in ATSILSs' community organising, campaigning, and strategic communications capabilities, to better enable ATSILSs to:

- a. work in partnership with communities to campaign for structural changes across justice systems,
- b. increase accountability of jurisdictional to local justice responses,
- c. ensure genuine co-design on new policies and programs, and
- d. provide tailored, accessible, and culturally appropriate legal education.

Our communities are our backbone. They carry our history and our stories. They have vast and untapped lived experience expertise that can guide and lead structural change. Communities know the issues and problems in their communities and have the solutions that will help stop them getting stuck in the justice systems. ATSILSs want to partner with their communities, to platform and amplify their voices.

Through co-designing localised justice models and legal education resources with communities that respond to local justice issues, we will see increased accountability and shared investment in reaching better justice outcomes. Failing to meaningfully co-design localised solutions will result in failure of policies and programs and wasted resources.

The missed opportunities to amplify community voices and community-led solutions with ATSILSs through justice reinvestment initiatives is discussed below at Recommendation 27.

We need to support and leverage our community expertise through investing in ATSILSs' community organising, campaigning and strategic communications capabilities and capacities. This will enable

ATSILSs to work with our communities to self-determine, develop and implement local justice initiatives that will lower interactions with the criminal justice and child protection systems.

An additional component of this recommendation is self-empowerment of communities and investing in ATSILSs to work with communities to co-design locally relevant and tailored, accessible and culturally appropriate CLE resources. This investment will support Priority Reform 1 of the National Agreement on Closing the Gap under which justice systems are transformed so that they work for, and not against Aboriginal and Torres Strait Islander people.

This recommendation supports the principles and practice of self-determination, community development and genuine co-design, as set out in the JPP Strategic Framework Priority 1.1 Embedding Self-Determination which provides:

All Governments embed self-determination within justice systems to recognise Aboriginal and Torres Strait Islander people are best placed to make decisions about themselves including the safety, wellbeing and protection needs of their children, including by ensuring Aboriginal and Torres Strait Islander autonomy in the design and delivery of systems, services and statutory functions.

This JPP priority involves putting this principle into practice through transforming justice models by working with communities to design, test, and implement Aboriginal and Torres Strait Islander justice models and systems, including testing and implementing community-led approaches to policing, diversion processes, court processes and sentencing, parole, monitoring of orders and breach proceedings and independent oversight bodies.

All levels of government, and government funded services, in the design, delivery and funding of policy and program initiatives and partnerships, including the future partnership arrangements for legal assistance, should partner with ATSILSs (and our communities) and make meaningful and active efforts to embed community expertise.

CASE STUDY: ALSWA's engagement with communities

ALSWA has continued to work closely with the Kanyirninpa Jukurrpa (KJ) Martu Rangers Men's and Women's Leadership groups, comprising senior Martu men and women from the Western Desert. An important focus of the relationship is the provision of culturally appropriate early intervention and prevention strategies as both Leadership groups have expressed profound concerns about the ever-increasing numbers of Martu being imprisoned. Self-evidently, it is often too late to endeavour to educate Martu about legal issues when they have already been charged by police, pleaded guilty, have relevant prior convictions and are facing a term of imprisonment. The underlying theme of the relationship is to engage and empower Martu outside an often very stressful circuit court setting so that real learnings can be achieved which reduce the rate of Martu imprisonment.

To further this objective, ALSWA lawyers attended a four-day camp, run by the KJ Martu Leadership Program, at Yulpu, which is deep in Martu country, close to the Parnngurr community, in the Western Desert. The camp was attended by over 100 Martu people, including elders, ALSWA lawyers, the Pilbara based Magistrate, WA Police and staff from Roebourne Regional Prison.

The camp involved an unprecedented opportunity for Martu to explore on country with key stakeholders in the justice system new early intervention and prevention strategies aimed at achieving better outcomes for Martu and reducing the number of Martu being imprisoned.

CLE sessions were conducted by ALSWA in relation to driving offences, extraordinary driver's licences, police relations and complaints, the court system, compliance with court and parole orders and domestic violence laws, including how to obtain and comply with a restraining order.

Increasing accountability and addressing racism

Recommendation 26:

Increasing accountability and addressing racism across justice systems by funding ATSILSs to establish dedicated services and programs aimed at holding government agencies to account in areas like police misconduct, mistreatment in custodial settings, strengthening support for families in coronial inquests and exploring new opportunities to address systemic issues through strategic litigation.

To make the transformative change required to meet commitments under the Priority Reforms of the National Agreement on Closing the Gap, ATSILSs need to be resourced to drive efforts across justice systems so that those systems:

- work for, and not against, Aboriginal and Torres Strait Islander people, by eliminating racism;
- embed self-determination across the justice systems as an essential pillar of reform;
- embed practices to ensure policies and programs are culturally safe and designed in partnership with communities; and
- embed and ensure all justice agencies engage with families and individuals in a strengths-based way.

Accountability against these transformative commitments is weak, which impacts on the wellbeing of our communities and jeopardises progress on the socio-economic targets. Our communities want ATSILSs to act on the systemic issues, laws, policies and practices that contribute to their over-representation in the justice systems and that continue to hold disadvantage in place. Under current NLAP funding arrangements and funding quantum, this kind of work is not possible.

To make transformative changes that will increase accountability and eliminate racism, ATSILSs need to be resourced to establish services and programs that will address police misconduct, mistreatment in custody, strengthen support for families in coronial matters – as well as increase our capacity to explore systemic litigation.

This recommendation is supported by the JPP Strategic Framework’s Priority Initiative 2.2 “Establishing Accountability” under which jurisdictions agree, amongst other things,

- to establish mechanisms for ACCOs to provide feedback on government organisations to have complaints independently investigated and addressed in a culturally safe way;
- to adopt approaches to ensure ACCOs and communities are engaged in the assessment, development and review of policies;
- to monitor the implementation of key reviews and inquiries, including RCIADIC; and
- to monitor existing mechanisms for investigating deaths in custody and complaints about police.

This JPP Priority also involves developing recommendations for, and monitoring progress to deliver priority policy reforms in key areas required to achieve Closing the Gap justice targets, including prevention and early intervention, justice reinvestment, alternative and therapeutic responses, sentencing regimes, bail frameworks, conditions in detention, including increasing access to universal healthcare in prison, raising the minimum age of criminal responsibility and key recommendations of RCIADIC.

ATSILSs require investment to work with communities on these foundational objectives and priorities that are directly related to Closing the Gap justice target outcomes.

CASE STUDY: ALS NSW/ACT Ensuring policy accountability through CNS operations

The recent decision of *R v Nean*: [2023] NSWDC 34 is a published judgment articulating the significant work ALS solicitors are doing on the CNS. Notably at paragraph [137] the Court established that the Custody Manager was in breach of their obligations under Law Enforcement (Powers and Responsibilities) Act 2002 NSW ('LEPRA'). The grounds of those findings related to the CNS contemporaneous notes and CNS solicitor advocacy.

It is a demonstration of the ability for CNS to hold to account the police and Custody Managers on behalf of vulnerable Aboriginal and Torres Strait Island clients in custody. The judgment goes into detail and makes positive comments in relation to the CNS operation and denotes some of the challenges that the CNS solicitors faced in the police conduct in this case. The challenges are consistent patterns that CNS solicitors deal with, which highlights the significant accountability role the CNS plays.

Rethinking justice reinvestment

Recommendation 27:

Commonwealth, State and Territory governments ensure NATSILS and ATSILSs play a key role in the policies, design, funding and delivery of justice reinvestment initiatives across Australia. This should include:

- a. Genuine partnership with NATSILS and ATSILSs to align government funded justice reinvestment initiatives with the Closing the Gap architecture;
- b. Ensuring justice reinvestment initiatives are linked to the current NLAP and future partnership arrangements for legal assistance; and
- c. Embedding and funding organisational and operational support for ATSILSs' involvement in justice reinvestment.

Justice Reinvestment is a place-based, data-driven and community-led approach to addressing the underlying drivers that pull people into the criminal justice and care systems. A justice reinvestment approach recognises that Aboriginal and Torres Strait Islander people hold the solutions and communities devise locally designed initiatives and partnerships to lower harmful interactions and keep young people out of prisons and keep communities safe.

The ground-breaking Maranguka Justice Reinvestment initiative in Bourke, NSW, was incubated by the ALS (NSW/ACT) and developed in partnership with the leadership of the Bourke Aboriginal and Torres Strait Islander community.

In the October 2022–23 Budget, the Australian Government announced \$81.5 million for up to 30 place-based justice reinvestment initiatives and the establishment of a Justice Reinvestment Unit and consequently announced a further \$10 million for justice reinvestment in Central Australia. The Attorney-General's Department (the Department) with the National Indigenous Australians Agency are implementing these commitments.

As experts and leads in justice issues impacting on their communities, ATSILSs are uniquely placed to work and walk alongside communities to implement community-led "justice circuit breakers" under justice reinvestment models.

At present, funding for these new justice reinvestment initiatives is being made available to communities by the Commonwealth government through a grants process. While NATSILS are pleased that the Commonwealth is committed to justice reinvestment initiatives, the processes, design, and funding decisions have not been undertaken with adequate regard to the partnership

and share decision-making principles and Priority Reforms under the National Agreement on Closing the Gap.

NATSILS holds concerns about the likelihood of funding going to non-ACCOs under the grants process. This is a missed opportunity to link into the Justice Policy Partnership's Sector Strengthening Plan which would create a mechanism to embed ATSILSs' involvement.

Justice reinvestment goes directly to Closing the Gap Priority Reforms and socio-economic outcomes targets. However, there has been little appetite from the Attorney-General's Department in linking justice reinvestment to the Closing the Gap architecture, nor sufficient recognition of the role of ATSILSs as experts in the field of justice reinvestment.

NATSILS acknowledges the political imperative to spend funds quickly under this significant election commitment. However, NATSILS is concerned with the Government's failure to adhere to the spirit and principles of shared decision-making or transforming government. This illustrates a way of doing business with the sector that was roundly criticised in the CTG Draft Report. By reducing justice reinvestment to a traditional open grants program, the Commonwealth has missed the opportunity to partner with the ACCO sector including ATSILSs, and implement transformative practice as set out in the National Agreement.

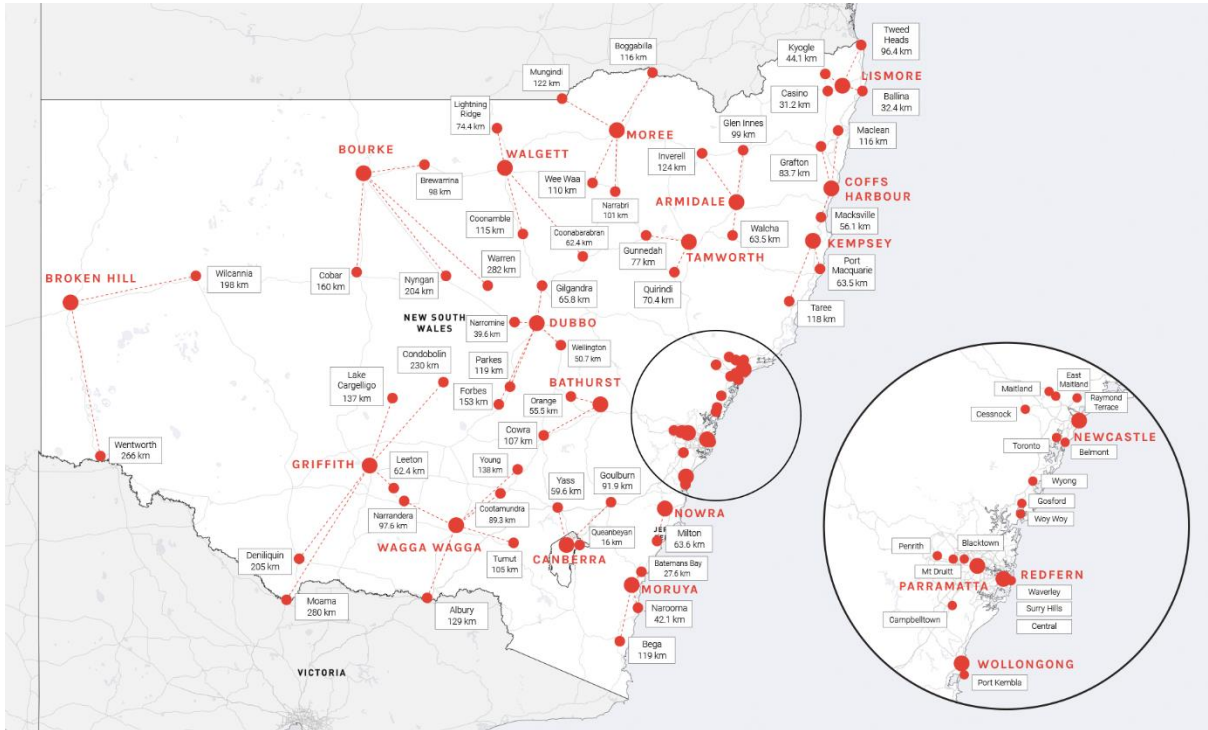
Going forward, NATSILS submits that the Commonwealth should work in genuine partnership with NATSILS and ATSILSs to align government funded justice reinvestment initiatives with the National Agreement and Closing the Gap architecture including the JPP. Governments should ensure that justice reinvestment initiatives and funding are linked to the NLAP and future national partnership arrangements on legal assistance. This should include embedding and funding organisational and operational support for ATSILSs' involvement in justice reinvestment.

The funding commitment under National Justice Reinvestment is ongoing. NATSILS and ATSILSs submit there should be an opportunity in the future to rethink how National Justice Reinvestment might develop and evolve into a more innovative and sustainable model to achieve lasting outcomes to improve the life outcomes for Aboriginal and Torres Strait Islander people.

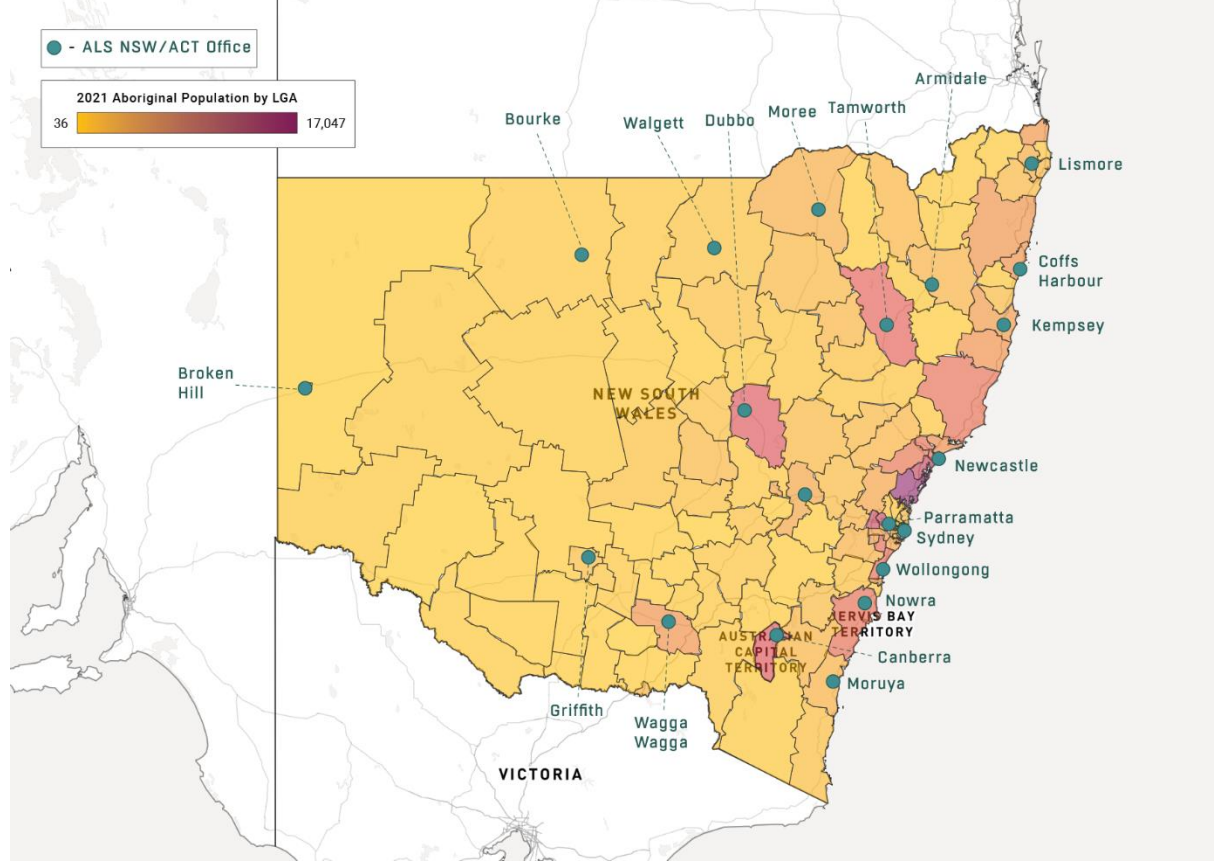
10 Appendices

Appendix A: Maps

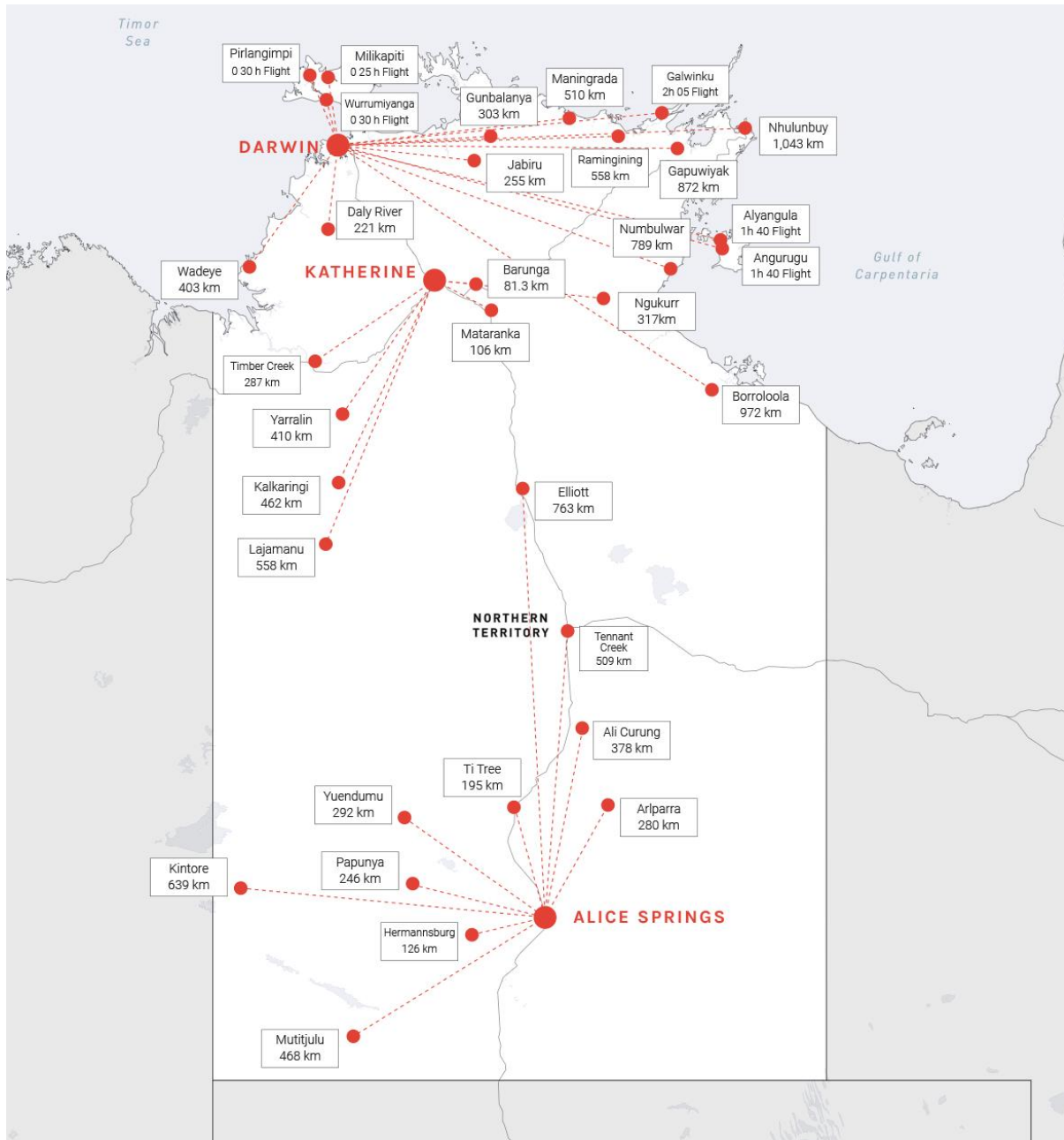
ALS NSW/ACT Distances



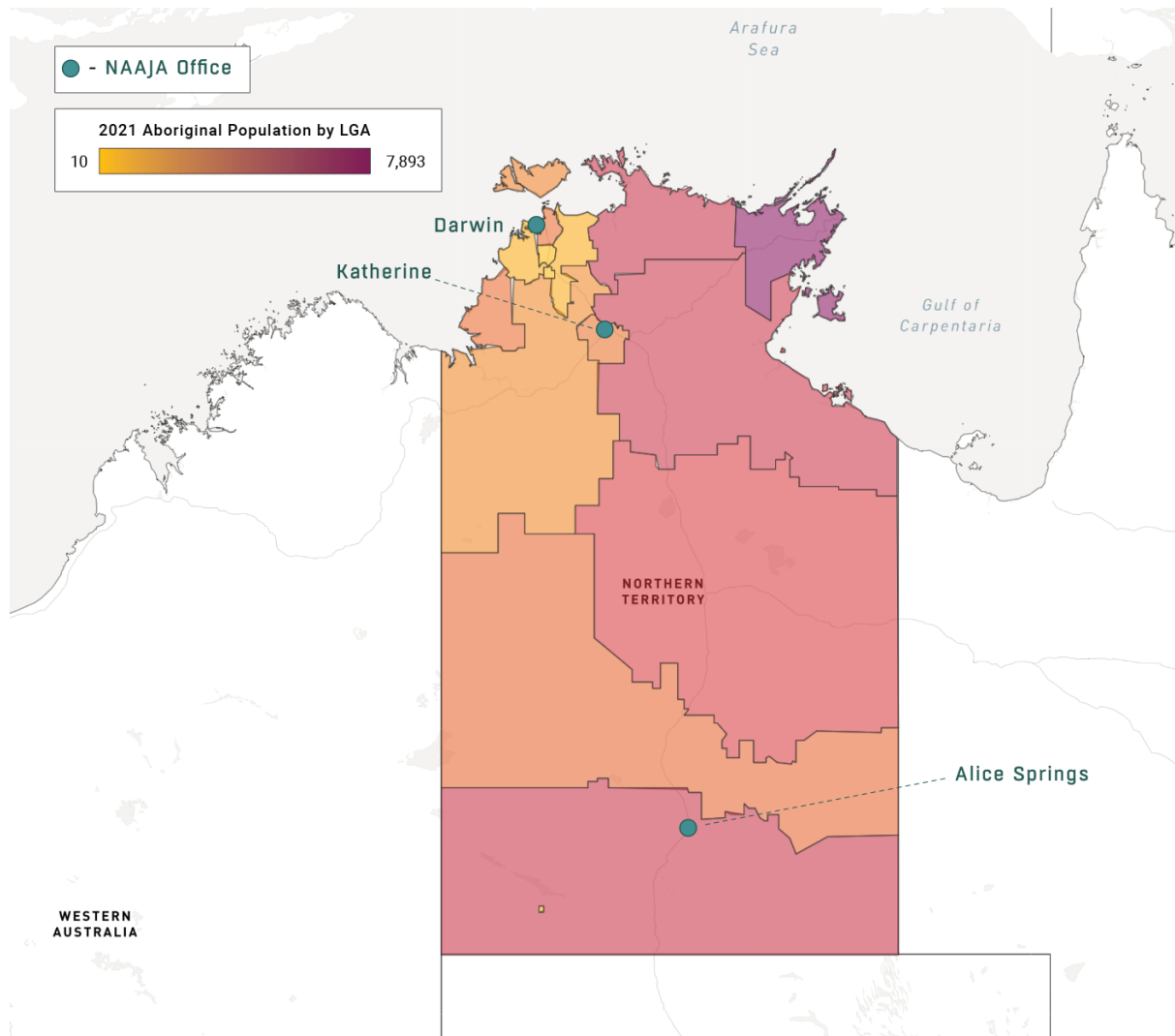
NSW/ACT Heat Map



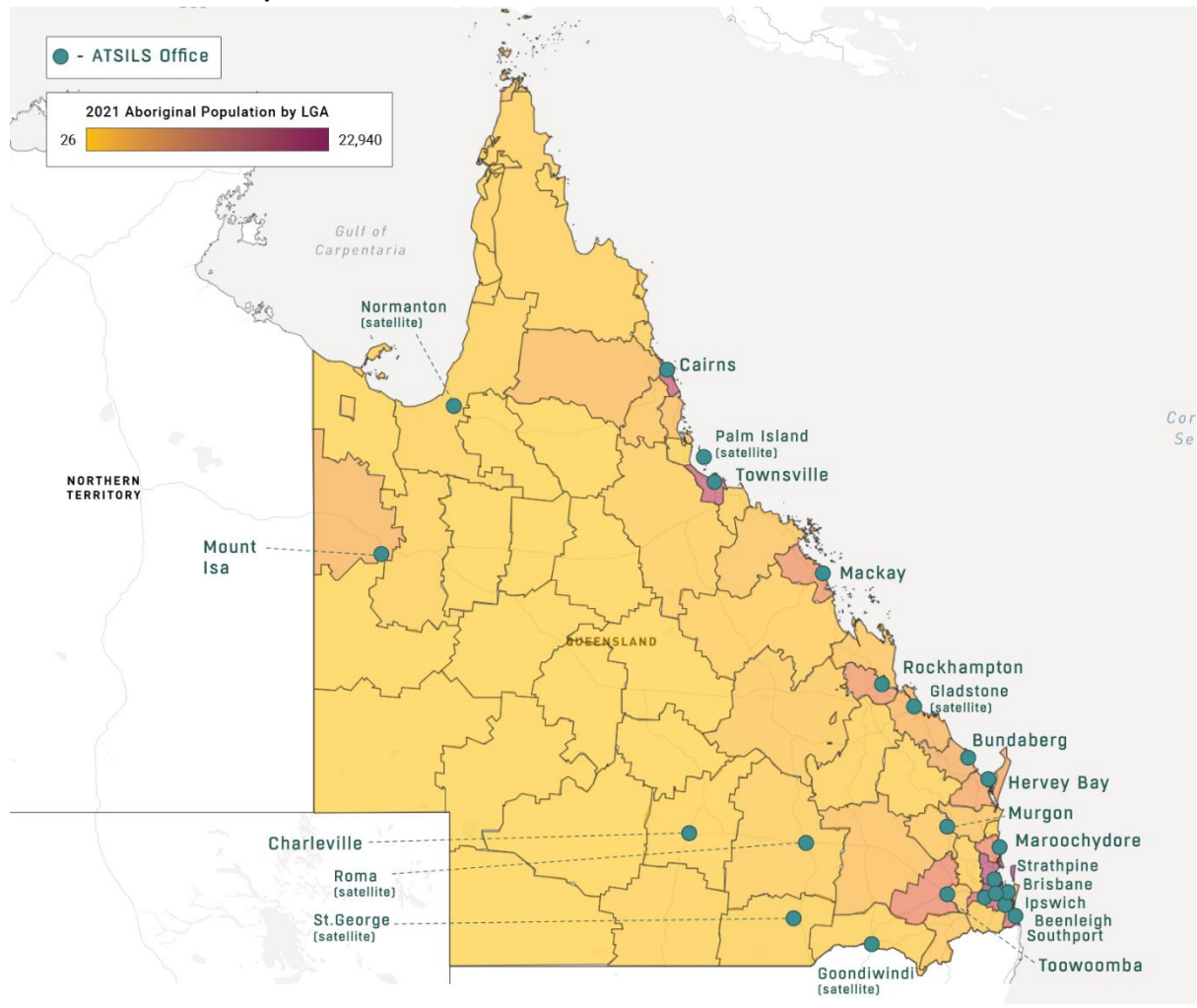
NAAJA Distances



Northern Territory Heat Map



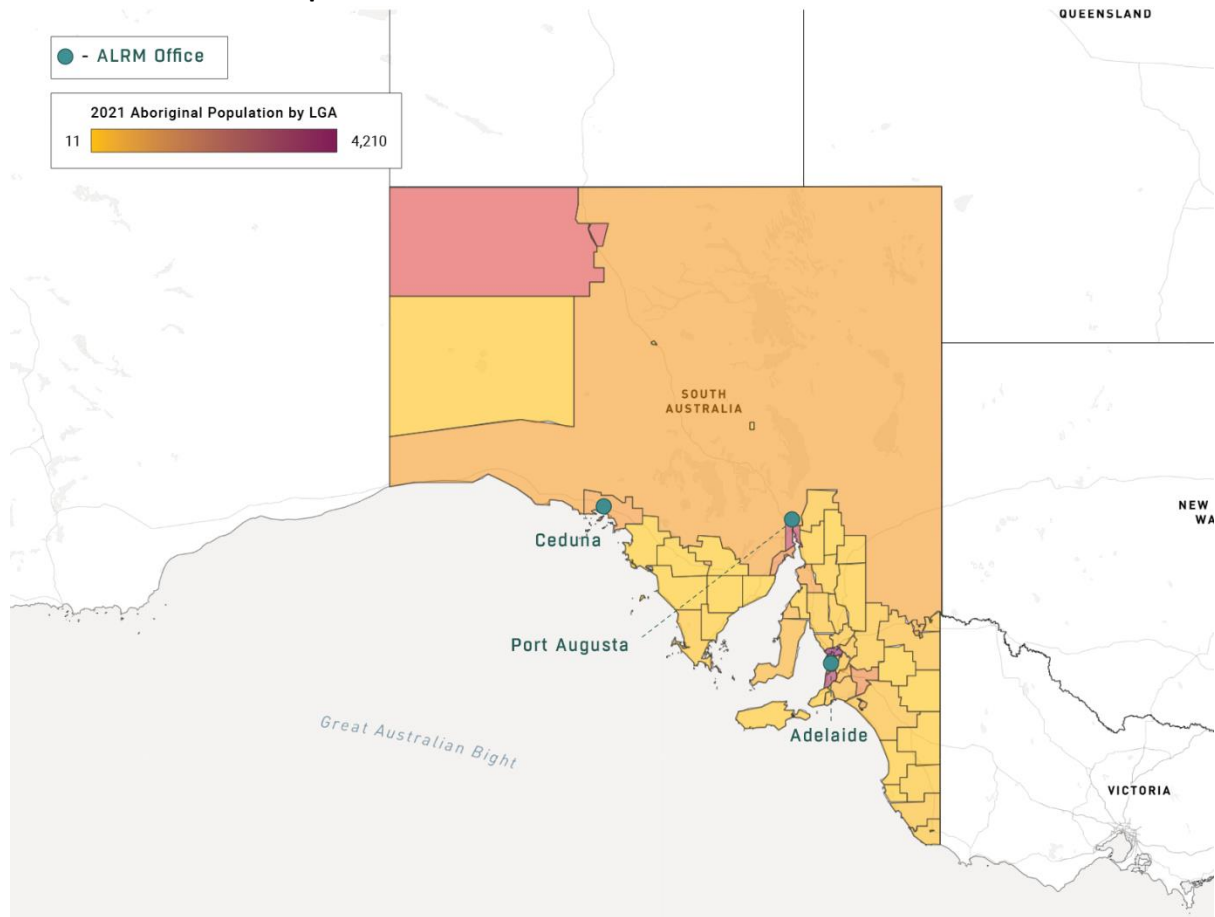
Queensland Heat Map



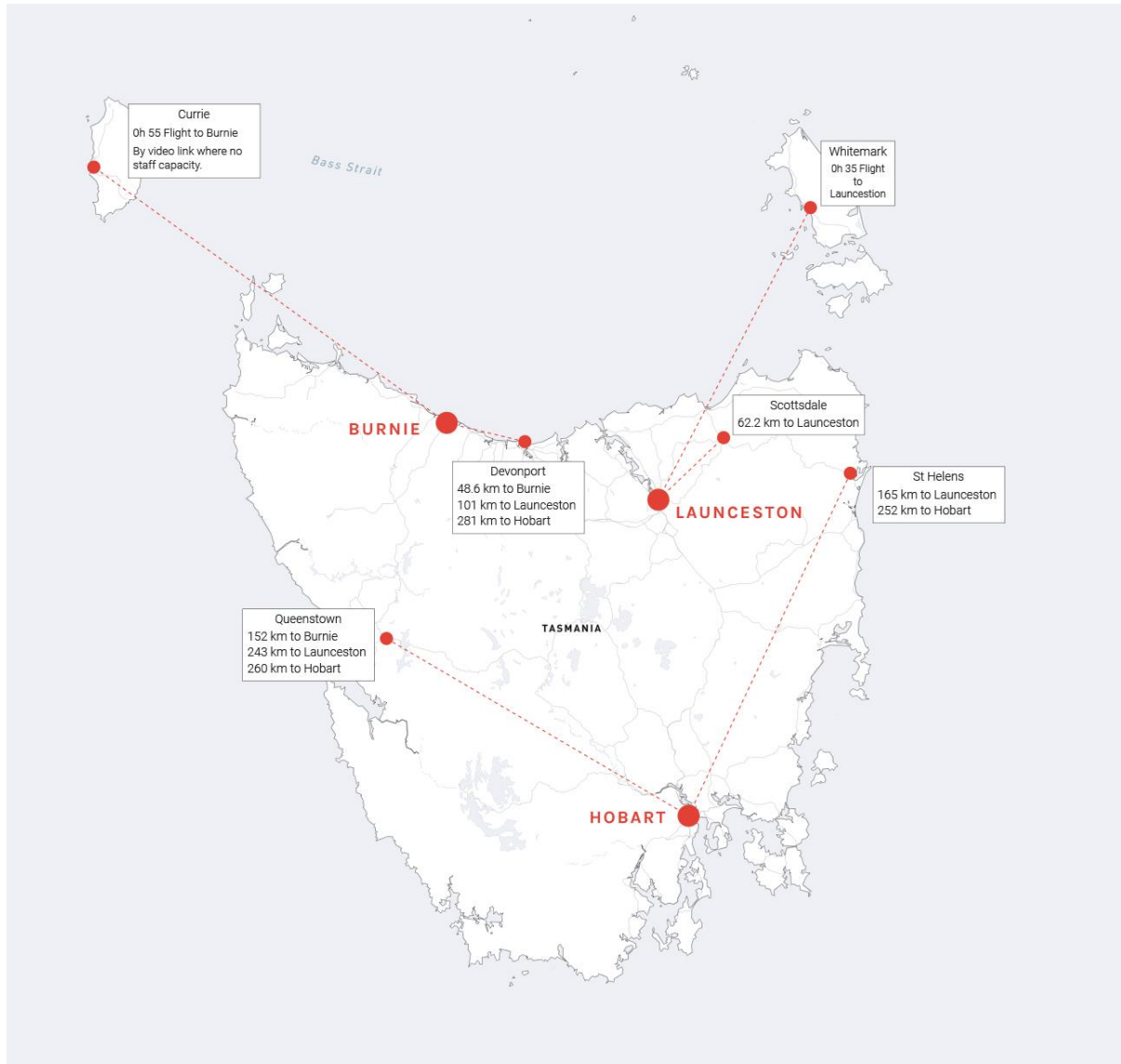
ALRM Distances



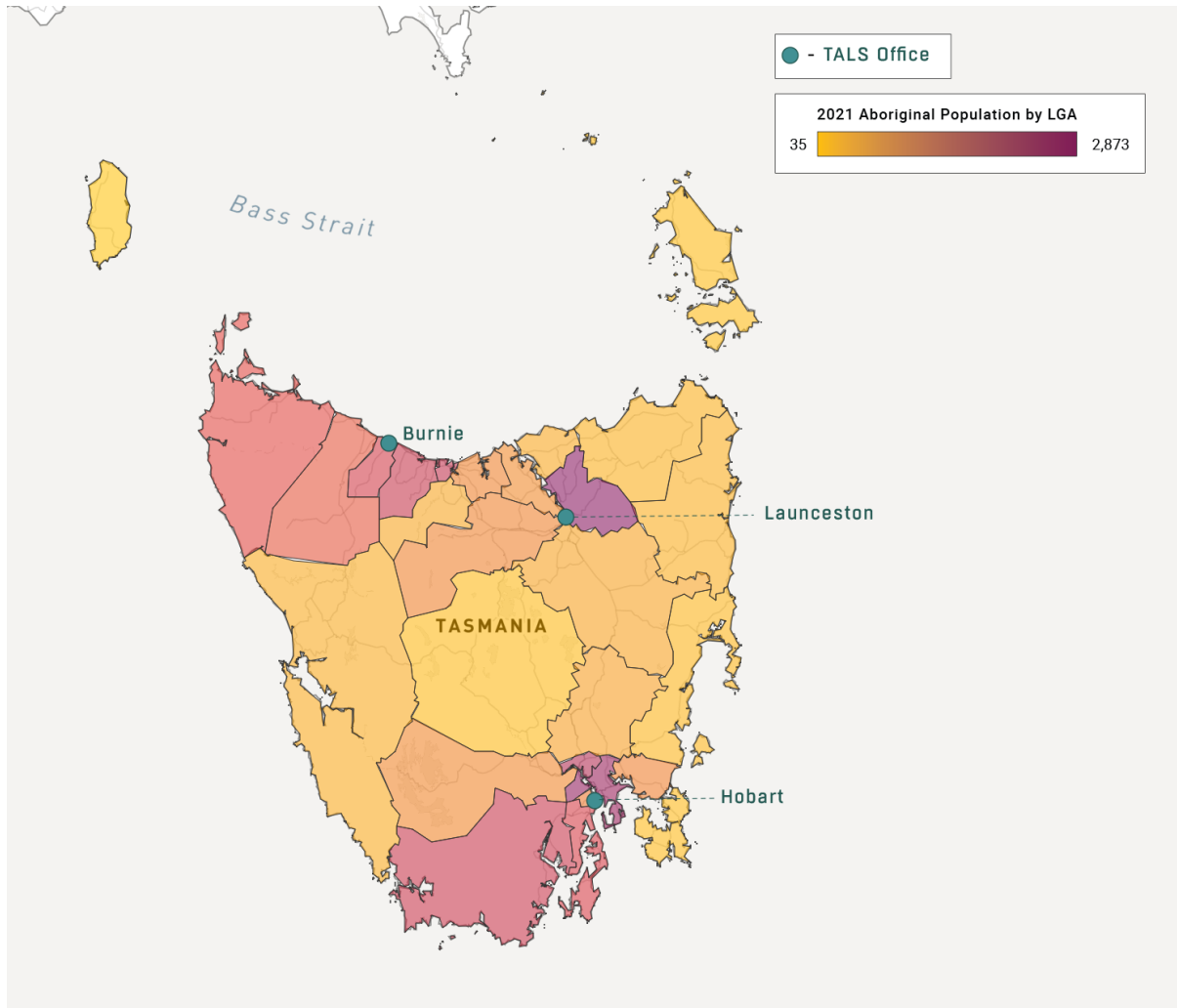
South Australia Heat Map



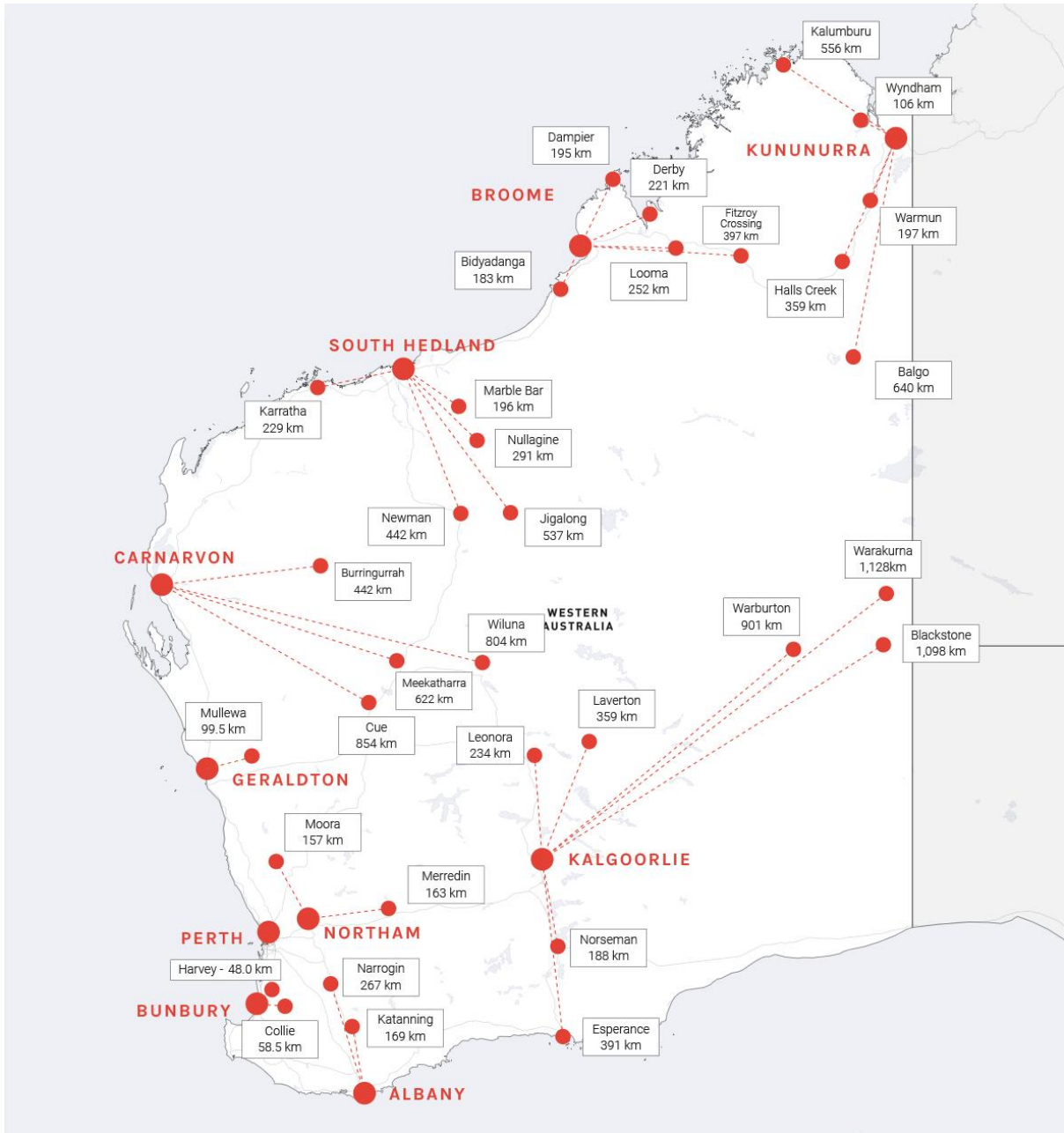
TALS Distances



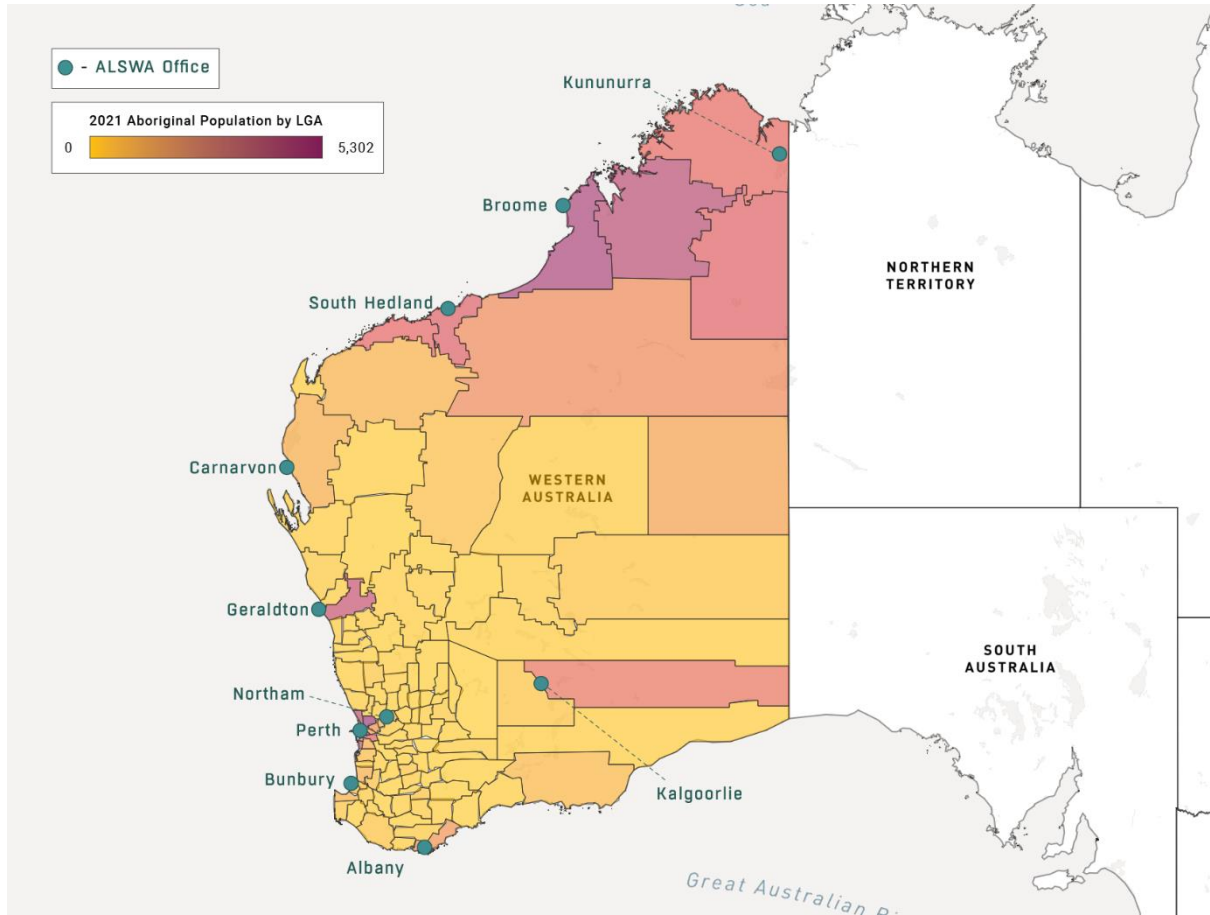
Tasmania Heat Map



ALSWA Distances



Western Australia Heat Map



Appendix B: Policy Snapshot

Engagement – name	Request from /whose agenda?	Time provided to respond	Potential impact on CTG outcomes	Our output (what we did/what we do)	Purpose and impact we seek – why we should be involved
<p>Review of the National Agreement on Closing the Gap</p> <p>Providing recommendations and feedback on the National Agreement on Closing the Gap with the goal of reaching the projected outcomes/targets.</p>	Productivity Commission	5 weeks	Targets 10, 11, 12, 13 and Priority Reforms	Written submission	To raise concerns about Governments' accountability under their commitments on the National Agreement on Closing the Gap Priority Reforms and justice and related targets
<p>Crimes Legislation Amendment Bill 2023 (No 2) Draft Bill</p> <p>ALS provided feedback on proposed changes to ACT bail laws, laws concerning unfitness to plea and laws concerning the Child Protection Register.</p>	ACT Justice and Community Safety Directorate (JACS)	10 Days	Target 10	Written submission	<p>To prevent the number of people in the ACT subjected to onerous bail conditions or remanded in custody for minor offending.</p> <p>To ensure that vulnerable people charged with minor offences who have cognitive impairments or mental health issues are not needlessly subjected to severe outcomes by the courts.</p>
<p>Justice Legislation Amendment (Misc) Bill 2023 (No 2)</p> <p>ALS provided feedback on proposed changes to the administration of sentences, criminal procedure and a variety of other miscellaneous crime/justice laws</p>	NSW Department of Communities and Justice (DCJ)	8 days	Target 10	Written submission	<p>To prevent domestic violence perpetrators from being able to monitor their victims when a victim of domestic violence is incarcerated.</p> <p>To ensure that any voluntary delay in release of prisoners at the end of their sentence is conducted with requisite consent and understanding from incarcerated people.</p>
National Urban Policy	Murawin (consulting)	N/A	N/A	Unable to participate as outside subject matter expertise of ALS	N/A

<p>Justice Legislation Amendment (Misc) Bill 2023 (No 1)</p> <p>ALS provided feedback on proposed inclusion of a possible accompaniment requirement for bail in NSW and other criminal justice sector proposed reforms.</p>	DCJ	5 days	Target 10	Written submission	<p>To ensure that vulnerable people in regional and remote communities are not forced to travel significant distances to accompany a person on bail as a pre-release requirement.</p> <p>To advocate for the preventive detention order scheme in NSW to be discontinued until the NSW Police comply with the improvements noted by LECC that are required for them to be operationally ready to use such powers</p>
<p>Jury Amendment Bill</p>	DCJ	8 days	Target 10	Written response via email	<p>To ensure that changes to the jury system in NSW do not undermine the fundamental right to a fair trial, and that any move to digitize the jury summons system does not lead to unintended net-widening of fine debt for vulnerable or transient people in the state</p>
<p>Respect @ Work Community of Practice</p>	National Legal Aid	2 weeks 2 days	PR 5	Provide comment on draft statement	<p>To ensure ATSILSs are represented in future funding and coordination for the Respect @ Work funding, and noting importance of intersectionality in workplace harassment</p>
<p>Justice Misc. Bill</p> <p>Response regarding s77 of the <i>Bail Act 2013</i> proposals</p>	DCJ	2 weeks	Target 10, 11	Written submission	<p>To provide feedback and advocate against proposed changes to sentencing law that would disproportionately impact the incarceration rate of Aboriginal and Torres Strait Island people</p>
<p>Statutory reviews of Part 4.6 of the Crimes (Sentencing) Act 2005 and sections 35A (2) and (3), and 35AA of the Crimes Act 1900</p> <p>ALS providing feedback on the workability of the Part 4.6 and affray provisions in the <i>Crimes (Disrupting Criminal</i></p>	JACS	6 weeks	Target 10	Written submission	<p>To provide feedback from our crime solicitors in Canberra to inform law reform that may not be working as intended in practice – and that these laws disproportionately impact on Aboriginal and Torres Strait Islander people.</p>

<i>Gangs) Legislation Amendment Bill 2019</i> (the Bill), which commenced in 2020 and 2019 respectively.					
Sentencing for Weapons Offences	NSW Sentencing Council	2.5 months	Targets 10	Written submission	To highlight the reality of knife offences in NSW for law makers, particularly highlighting that those charged are often young people or homeless people who are disproportionately disbelieved about their legitimate purpose for carrying a knife (e.g. homeless people often possess a knife to prepare food).
Consultation on draft legislation to establish new federal administrative review body Statistics consistently show Aboriginal and Torres Strait Islander people are low users of Tribunals. AAT must be more culturally safe and accessible.	Federal Attorney General's Department (AGD)	48 hours	Target 8, 17	Unable to participate due to resourcing constraints	If we had capacity to attend, we would have made the case for increased accessibility to administrative review for our clients, in relation to NDIS reviews, and to advocate for an ALS (NSW/ACT) civil law service
Blueprint to boost capacity and capabilities of Australian Charities	Assistant Minister for Competition, Charities and Treasure – Andrew Leigh	N/A	N/A	Unable to participate as outside the scope of our expertise	N/A
Technical Roundtable on Improving NSW Rental Laws	NSW Rental Commissioner	8 days	Target 9	Attendance at 3-hour roundtable; attendance at 1-hour stakeholder pre-meeting	To advocate for an end to 'no grounds' evictions as they are being used discriminatorily, for example, when the lease ends, to circumvent requests for maintenance, when children or pets are unwanted. The impact of this on our clients is huge and can result in homelessness, child removal, etc.
Family is Culture (FIC) Advocacy Group FIC group ensures the recommendations of the FIC Report are	Public Interest Advocacy Centre	Ongoing regular meetings	Target 12	Advocacy, including Report Card	To advocate for reducing the number of Aboriginal and Torres Strait Islander children in out of home care and continue to hold DCJ to

implemented (including producing the FIC Report Card)					account to implement the FIC recommendations. Produces regular "Report Card" on progress of FIC reforms.
NSW Parliamentary Roundtable on the right to protest	NSW Greens MP	2 business days	Target 10 PR 1, 3	Unable to attend due to short notice and resourcing constraints	If we had capacity to attend, we would have advocated for redressing discriminatory policing practices and the importance of the right to protest in pursuing self-determination
Mandatory Disease Testing Act	NSW Ombudsman	7-8 weeks	Target 10	Written submission	To provide experiences of the Mandatory Testing Scheme for ALS clients as part of the Ombudsman's obligation to review the functioning of the Act.
JACS (ACT) – Majority verdicts	JACS	4 business days	Target 10	Written submission	To advocate for maintaining the requirement of unanimous verdicts in the ACT, which are a foundational concept in our criminal justice system, are protective of the rights of accused persons and ensure that people charged with criminal offences are afforded a trial process that ensures the prosecution must prove their guilt beyond reasonable doubt for all jurors. This, in turn, may lower instances and rates of incarceration for clients, and protects the rights of Aboriginal and Torres Strait Islander people facing trial in the ACT.
Review of the Young Offenders Act	DCJ	2 weeks	Target 11	Written submission	To advocate for greater protections to divert young people under the <i>Young Offenders Act</i> and expand the scope of offences eligible for diversion.
Anti-Discrimination Act 1977 (NSW) Review	NSW Law Reform Commission	6 weeks	PR 3	Written submission	To use plain language, expand grounds (similar to other jurisdictions) and streamline processes in the <i>Anti-Discrimination Act</i> . These changes would make the Act more accessible for our clients to address discrimination. We

					also advocated for improved community education to ensure people are aware of their rights.
Review of the Inspector of Correctional Services Act 2017 (ACT)	Mick Gentleman MLA (ACT member)	4 weeks	Target 10	Written submission	To advocate for the recommendations made by Deadly Connections (employing Aboriginal staff, working with Aboriginal community-led organisations and collaborate with people in custody to ensure programs and services offered are culturally responsive, meaningful, useful and effective). To reiterate the importance of the role of the Inspector of Correctional Services in the ACT and as fulfilment of Australia's OPCAT requirements.
Crimes Legislation Amendment Bill 2023	JACS	4 days	Target 10, 11	Written submission	To respond to proposed amendments to Crimes legislation that would otherwise unfairly and disproportionately impact Aboriginal and Torres Strait Islander people in custody and provide no broader public benefit.
Feedback to Australia's 3rd Universal Periodic Review Mid-Term Report (Cth)	AGD	3 weeks, 2 days	Target 10	Written submission	To advocate for improved human rights protections for Aboriginal and Torres Strait Islander people in Australia. To call Australian governments to task on failings identified in the Productivity Commission's report on Closing the Gap (e.g., overrepresentation of Aboriginal people in custody, violence against Aboriginal women, police brutality against Aboriginal people, etc.) and advocate for action on the international commitments made.
Disability Inclusion Bill 2023 (ACT)	Suzanne Orr MLA – Labor ACT	7 weeks 4 days	Target 10, 11	Written submission	To provide feedback on a draft bill and offer insights into how the bill could be more inclusive for Aboriginal people. Specifically, to

					advocate for someone with lived experience of the criminal justice system to be included on the Council.
TBC: ACT – Independent review to reduce First Nations over representation in the ACT Justice System	JACS	5.5 months	Target 10, 11	Written submission	The ALS NSW/ACT will provide a submission to the review in 2024 to draw attention to the current and past drivers of Aboriginal and Torres Strait Islander overrepresentation in the ACT Justice System and identify ways to reduce this disproportionate number.
ACT Parliamentary Inquiry into penalties for minor offences & vulnerable people	Legislative Assembly for the ACT	Not notified	Target 10	Watching brief only – and sharing statistics and case studies as ALS is not funded for fines work in the ACT	Penalties and minor offences impact vulnerable groups including Aboriginal and Torres Strait Islander people.
Amending the ACT Children and YP Act	JACS	4 weeks	Target 11, 12	Written submission	To advocate for critical structural and practical changes required to modernise the legislation, which will address the overrepresentation of Aboriginal and Torres Strait Islander children, young people and their families, in the child protection system (e.g., amending s 10A to include the right of Aboriginal and Torres Strait Islander children to enjoy community and culture).
Youth Justice and Child Wellbeing Reform Project	Australian Human Rights Commission	8 weeks	Target 11, 12	Written submission	To advocate for the Human Rights Commission to take a principles-based approach to youth justice and child wellbeing reform. Specific principles were recommended, such as recognition of the significance of community and culture in Aboriginal and Torres Strait Islander communities. To advocate for widescale reform to address the underlying drivers or interactions with the criminal justice system.

Justice Misc. Bill Initial proposals for NSW Cabinet	DCJ	2 weeks	Target 10	Written submission	Providing feedback on the Justice Misc bill proposals and advocating for amendments to the bill, such as amending the definition in s 16B of the Crimes Act 1900 to 'serious indictable offence' to reduce the number offenders on remand and reduce the number of Aboriginal and Torres Strait Islander people in custody for low level offending.
Coroner's Act Review Providing feedback to the statutory review response and recommendations and to the discussion paper and questions.	DCJ	3 weeks	Target 10	Written submission	To advocate for personnel within the coronial system to be equipped to understand and cater to the special position of the families, especially Aboriginal families and communities and the impact a death in custody has.
National Justice Reinvestment – Design Reference Group (DRG) and Grants Opportunities Guidelines Working Group (GOGWG) - (NATSILS)	AGD	Regular 2-hour meetings –	Target 10, 11 CTG Priority Reforms	Fortnightly and weekly meetings over 3 months	NATSILS advocating for the processes including working in partnership and shared decision-making to align with Priority Reforms under Closing the Gap.
ACT Day Bail A letter to Justice and Community Safety Directorate (ACT) opposing abolishing the practice of day bail	JACS	4 weeks 1 day	Target 10	Written submission	To advocate for continuing the practice of Day Bail, as it provides a mechanism for Aboriginal and Torres Strait Islander people in custody to attend events when leave sought under the Corrections Management Act 2007 is refused.
Criminal Procedure Amendment (Child Sexual Offence Evidence) Bill 2023	DCJ	2 weeks (extended by 5 days upon request)	Target 10, 11	Written submission	To provide recommendations on the child sexual offence evidence pilot to reduce difficulties and stress to child witnesses in trials involving alleged child sexual offences and improve the accuracy and quality of their evidence without impinging upon the defendant's right to a fair trial.
s58 Review	DCJ	4 weeks	Target 10, 11	Written submission	To oppose reforms that may undermine existing processes and lead to

A letter outlining ALS' opposition to the proposed reforms on s58 of the <i>Crimes (Sentencing Procedure) Act 1999</i> , (limitations on sentences imposed by the Local Court).					increases in sentence length, increased uncertainty for clients, increased delays and increases in appeals, resulting in significant impact on Aboriginal and Torres Strait Islander clients.
NSW LRC – roundtable – Serious Road Crime review	NSW Law Reform Commission	1 week	Target 10	In person round table	ALS NSW/ACT raised the importance of reforming low-level driving offences that significantly impact on Aboriginal and Torres Strait Islander people's ability to remain with their families, in community and in secure employment.
Minimum age of criminal responsibility workshop – service system design in the ACT	ACT Government and JACS	1-2 weeks	Target 11	In person workshop	Participation to ensure Aboriginal and Torres Strait Islander children and young people are considered in the service delivery and support service framework design for raising the minimum age of criminal responsibility in the ACT. The aim is to ensure Aboriginal and Torres Strait Islander children don't fall through the gaps in accessing services for children who are no longer to be found criminally responsible (under the new Act) but require support services.
Bureau of Crime Statistics and Research researching Judge-alone trials BOCSAR interviewed two solicitors (with direct experience with both judge-alone and jury trials).	Bureau of Crime Statistics and Research (BOCSAR)	N/A	N/A	Consultation	Participation in research to understand the difference between judge-alone and jury trials for Aboriginal and Torres Strait Islander clients.
ALS consultation on Family Law Amendment Bill To provide an overview of ALS family and care and protection service to the AGD (Cth)	AGD	-	Target 12, 13	Presentation	To identify key challenges that need to be addressed when responding to the Family Law Amendment Bill submission
Raise the Age – National, NSW and ACT campaigns	Cross-sector and cross-	Ongoing, regular meetings	Target 11	Advocacy on law reform	Joint service and sector-wide advocacy to raise the age of criminal responsibility

	agency collaboration				to 14 – to protect children from the harms of policing and detention and to progress towards achievement of Target 11 under the National Agreement on Closing the Gap.
Independent Review of the NLAP – DCJ meetings ALS attended 5 meetings and a workshop. Meetings ranged from 2 hours – half day workshop.	DCJ	-	NLAP and CTG	Meetings and workshop	ALS NSW/ACT attended to (re)state our position as ACCOs and preferred legal service provider for Aboriginal and Torres Strait Islander people
Disaster Legal Advisory Group (NATSILS)	AGD	-	CTG PR 1, 2	Quarterly meetings	NATSILS attended to advocate for the need for ACCOs as preferred providers for services to Aboriginal and Torres Strait Islander people. ATSILSs are often overlooked.
NSW Legal Assistance Forum (NLAF) – Plenary	NSW Legal Assistance Forum (NLAF)	-	Target 10, 11, 12, 13	Planning Priority workshop	To ensure the legal needs of Aboriginal and Torres Strait Islander people are recognised and ATSILSs are recognised as preferred providers.
NSW Legal Assistance Forum (NLAF) – Fines and Traffic Matters Working Group	NLAF	-	Target 10, 11	Quarterly meetings	Aboriginal and Torres Strait Islander people are over-represented in traffic matters and fines matters. We participate in collaborative advocacy and law reform in relation to fines and traffic matters, how matters are treated by Revenue NSW and Courts and to lower the impact of fines.
NSW Legal Assistance Forum (NLAF) – Prisoners Forum	NLAF	-	Target 10, 11	Quarterly meetings convened by the ALS	To advocate for improved outcomes in relation to Aboriginal and Torres Strait Islander prisoner’s health, treatment and wellbeing within and while transitioning out of prison, particularly noting the over-representation of Aboriginal and Torres Strait Islander people in prisons.
NLAF Healthcare of Prisoner’s sub-Working Group	NLAF	-	Target 10, PR 2	ad hoc meetings and advocacy	To partner with others to advocate for reform to the <i>Health Insurance Act</i> to enable access to Medicare services for prisoners

					(Medicare currently unavailable to prisoners) and availability of Aboriginal Healthcare Assessments for prisoners
NSW Legal Assistance Forum (NLAF) – Closing the Gap Working Group	NLAF	-	CTG Priority Reforms	Attend quarterly meetings	To create shared Statements of Principles and Commitments for the legal assistance sector to support ACCOs/ALS (NSW/ACT)
Justice Health Forum With Justice Health, Legal Aid & others	Justice Health	-	Target 10	Attend quarterly meetings	To address systemic issues for lawyers working with clients in prison, including ensuring access to medical care and records
Australian Council of Social Services (ACOSS) disaster recovery to inform ACOSS' submission to the Independent Review of Commonwealth Disaster funding	ACOSS	-	CTG Priority Reforms	workshop	To table the need for cultural safety in delivering support to communities, and role of ACCOs/ATSILSs as preferred providers (Closing the Gap)
BOCSAR Bail Research Request to participate in BOCSAR research for adults in the Local Court	BOCSAR	-	Target 10	Consultation	BOCSAR interviewed 7 solicitors for 45 minutes between June and August 2023 regarding disparity between police and court bail decisions, to show the necessity of bail reform.
Consultation on NCAT Indigenous List Greater Sydney Aboriginal Tenancy Service (managed by ALS) participate in the list by providing duty services.	NSW Civil and Administrative Tribunal (NCAT)	-	Target 9	Consultation	To advocate for a culturally appropriate design and establishment of the NCAT Indigenous List to ensure best practice delivery with and for Aboriginal people.
National Indigenous Legal Conference 2023 Prepared a session on lived experience of ALS (NSW/ACT) workers	Ngalaya	10-12 weeks	Targets 10, 11, 12	Cancelled attendance - no capacity	Planned session with ALS' Aboriginal staff to discuss what drives our clients into the criminal and child protection systems.