

NATSILS Pre-Budget Submission 2019-20*

*NATSILS Pre-Budget Submission 2019-20 was amended on 19 February 2019 to ensure greater clarity of injection required to achieve salary parity and justice reinvestment programs.

1. Purpose:

- 1.1. 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, 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.
- 1.2. NATSILS has recently coordinated the response of the ATSILS through the Review of the Indigenous Legal Assistance Programme (**ILAP**).
- 1.3. Through this process, we have reflected upon current funding mechanisms and arrangements and arrived at joint positions on how these need to change for more effective and impactful ATSILS' services, as we strive towards:
 - 1.3.1. ensuring that all Aboriginal and Torres Strait Islander people who need a lawyer have access to culturally safe legal services; and
 - 1.3.2. ending the disproportionate contact of Aboriginal and Torres Strait Islander people with civil, family and criminal justice systems.
- 1.4. The NATSILS 2019-20 Pre-Budget Submission:
 - reiterates NATSILS recommendations to the ILAP review which relate to the funding models, mechanism and funding quantum of ATSILS and NATSILS;
 - requests an injection of \$81.351 million over 5 years for ATSILS (for a total of \$85.094 million per annum in 2019-20 including CPI) and \$4.064 million over 5 years for NATSILS (for a total of \$1.053 million per annum in 2019-20 including CPI);
 - calls for the Commonwealth Government to work with ATSILS, NATSILS and the legal assistance sector to comprehensively map the unmet legal needs of Aboriginal and Torres Strait Islander people.



2. Recommendations:

2.1. NATSILS submits that the Commonwealth Government:

Recommendation 1: The Commonwealth Government retains a separate, standalone and specific Indigenous Legal Assistance Programme which ensures that:

- ATSILS and NATSILS are not included in the National Partnership Agreement on Legal Assistance Services;
- ATSILS and NATSILS have funds distributed to them directly, not via another body nor state or territory government;
- the unique, culturally safe and community-controlled approach of ATSILS and NATSILS is retained and enhanced through funding arrangements and quantum.

Recommendation 2: The Commonwealth Government overturn the funding cuts to ILAP of \$10 million forecast in the Forward Estimates from 2020-22 and the related ongoing MYEFO Government savings measure.

Recommendation 3: The Commonwealth Government funds ATSILS to meet unmet legal need and address the overrepresentation of Aboriginal and Torres Strait Islander people in the justice system by an injection of \$81.351 million over 5 years (for a total of \$85.094 million per annum in 2019-20 including CPI) to:

- include an increase for CPI at 2.5%
- overturn \$10m funding cuts
- increase capacity in law reform and policy, and data collection and reporting
- expand geographic reach

Plus additional injections for:

- salary parity
- justice reinvestment package.

Recommendation 4: NATSILS should be funded and supported to grow and expand our size and skill to meet increased service demand and achieve identified strategic planning initiatives with an injection of \$4.064 million over 5 years (for a total of \$1.053 million per annum in 2019-20 including CPI).

Recommendation 5: The ATSILS and NATSILS receive funding upfront on at least an annual basis and for the duration of at least 5 year funding agreements.

Recommendation 6: The Commonwealth Government work with ATSILS, NATSILS and the legal assistance sector to comprehensively map unmet legal needs of Aboriginal and Torres Strait Islander people.

Recommendation 7: The Commonwealth Government work with NATSILS and the ATSILS to co-design a transparent and equitable funding model.

Recommendation 8: The Commonwealth Government supports ATSILS to self-generate funds and NATSILS to expand our funding base in a cost-effective manner.



3. The Commonwealth Government retains a separate, independent, specific and culturally safe Indigenous Legal Assistance Programme

Recommendation 1: The Commonwealth Government retains a separate, standalone and specific Indigenous Legal Assistance Programme which ensures that:

- ATSILS and NATSILS are not included in the National Partnership Agreement on Legal Assistance Services;
- ATSILS and NATSILS have funds distributed to them directly, not via another body nor state or territory government;
- the unique, culturally safe and community-controlled approach of ATSILS and NATSILS is retained and enhanced through funding arrangements and quantum.

- 3.1. In its submission to the ILAP Review, the Attorney General's Department proposed an option that ILAP be subsumed by the National Partnership Agreement on Legal Assistance Services (NPA).¹ Currently the NPA includes some commonwealth funding for Legal Aid and CLCs. In some jurisdictions funding is directed to CLCs via Legal Aid, and in others, funding is delivered via state and territory governments.
- 3.2. In contrast, ILAP funding comes direct to ATSILS and NATSILS.
- 3.3. There are a number of risks associated with ILAP being subsumed into the NPA, which includes:
 - 3.3.1. ATSILS will not have funding certainty and will not be able to ensure culturally safe services are delivered to Aboriginal and Torres Strait Islander people. A separate ILAP with funding coming direct to ATSILS is the only way to guarantee a culturally safe, community-controlled service for Aboriginal and Torres Strait Islander people.
 - 3.3.2. Inconsistencies in funding and administration across state and territories, with best practice and information not being shared, lack of national consistency, lack of clarity around the use of performance data by government at the national level.
 - 3.3.3. A reduced role of the Commonwealth Government in oversight of and engagement with the legal services.² We currently work closely with the Department and would like this to continue, without any risk to the continuation of our culturally safe and community-controlled model which works for Aboriginal and Torres Strait Islander people. Rather, we would prefer to see an increased leadership role for the Commonwealth Government in the justice sector.
 - 3.3.4. No further funding commitments from state and territory governments to legal assistance services, as with the current NPA.
 - 3.3.5. A conflict of interest (actual or potential) for Legal Aid Commissions in some jurisdictions as systems managers, as both service providers and

¹ Commonwealth Department of Attorney General, Submission to the Review of the Indigenous Legal Assistance Programme, October 2018, <<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Documents/agd-submission-review-of-the-indigenous-legal-assistance-program.PDF>.>

² National Association of Community Legal Centres, Submission to Review of the National Partnership Agreement on Legal Assistance Services 2015-2020.

organisations that hold funds. Any possible changes to funding arrangements which would see ATSILS and NATSILS receive their funding via another service providers poses significant concerns and a threat to self-determination and cultural safety, and a threat to the continuation of ATSILS altogether.

3.3.6. The risk of delayed access to funds through state and territory governments or third parties which would ultimately impact on front line service delivery.

3.3.7. The risk of politicisation of funds, as seen with the NPA on Remote Housing has seen the politicisation of the rights of Aboriginal and Torres Strait Islander people to live on their homelands and traditional country, with governments in Western Australia and South Australia threatening to close remote communities and retracting services from these communities during NPA funding negotiations.³ In the lead up to the expiration of this 10-year NPA in June 2018, these negotiations have broken down so that WA, SA and Qld currently do not have agreements in place and their funding has been effectively cut from the Federal Budget.⁴ This has huge implications and uncertainty for Aboriginal and Torres Strait people living remotely in those states. NATSILS does not wish to see the same issues occur with access to critical ATSILS services.

3.4. It is NATSILS and ATSILS strong recommendation that ILAP is retained as a standalone program and funding stream.

4. The Commonwealth Government overturns projected \$10m funding cuts and ongoing savings measures

Recommendation 2: The Commonwealth Government overturn the funding cuts to ILAP of \$10 million forecast in the Forward Estimates from 2020-22 and the related ongoing MYEFO Government savings measure.

4.1. The Commonwealth Government has funded ATSILS since the 1970s under various programs and arrangements – a long-standing commitment of almost 50 years.⁵

4.2. However ATSILS have continually faced funding cut threats from governments. The ILAP is subject to an ongoing government savings measure introduced in the 2013-14 Mid-Year Economic and Fiscal Outlook (**2013-14 MYEFO**) which outlined:

³ D Harrison, Remote indigenous communities under threat, *Sydney Morning Herald* (online), 14 November 2014,

<<https://www.smh.com.au/politics/federal/remote-indigenous-communities-under-threat-20141114-11myb9.html>>; R Hirini, 'War of words continue as remote housing funding deadline looms', *NITV News* (online), 10 January 2018

<<https://www.sbs.com.au/nitv/nitv-news/article/2018/06/28/war-words-continue-remote-housing-funding-deadline-looms>>; C Wahlquist, 'WA minister says Scullion 'unsuitable' to resolve remote Indigenous housing dispute', *The Guardian* (online), 2 July 2018,

<<https://www.theguardian.com/australia-news/2018/jul/02/wa-minister-says-scullion-unsuitable-to-resolve-remote-indigenous-housing-dispute>>.

⁴ B Smee, 'Indigenous leaders say remote housing in jeopardy after 'devastating' budget cut', *The Guardian* (online), <<https://www.theguardian.com/australia-news/2018/may/10/indigenous-leaders-say-remote-housing-in-jeopardy-after-devastating-budget-cut>>.

⁵ See a detailed history of the funding of Aboriginal and Torres Strait Islander Legal Services in House of Representatives Standing Committee on Aboriginal Affairs, Commonwealth Parliament, *Aboriginal legal aid* (1980) <https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=reports/1980/1980_pp149report.htm>.

The Government will achieve savings of \$43.1 million over four years by removing funding support for policy reform and advocacy activities provided to four legal assistance programs. Funding for the provision of frontline legal services will not be affected.⁶

- 4.3. NATSILS understands that when savings measures are introduced often it is not specified if savings measures are ongoing or terminating.
- 4.4. Because the 2013-14 MYEFO savings measure introduced by the Government is ongoing, the ILAP is facing another projected \$10 million in cuts from 2020-2022. It is critical that the projected funding cuts and the ongoing government savings measure are overturned.

Table 1: ILAP Funding Quantum and Estimates⁷

	2014-15 Actual \$'000	2015-16 Actual \$'000	2016-17 Actual \$'000	2017-18 Budget \$'000	2018-19 Budget \$'000	2019-20 Forward Estimate \$'000	2020-21 Forward Estimate \$'000	2021-22 Forward Estimate \$'000
Indigenous Legal Assistance Programme	75,161	72,385	74,365	74,463	74,365	75,202	70,173	71,155

- 4.5. This will impact on ATSILS front line service delivery resulting in cuts to staffing, programs, expertise, law reform, coverage area and capacity to run front line services.
- 4.6. NATSILS estimates that the \$10m cuts will result in the following impacts for ATSILS:
- 4.6.1. Significant cuts of staff across criminal, family and civil lawyers and non-legal positions across ATSILS;
- 4.6.2. Salaries will not be competitive with other legal services providers, and continue to be 15-20% less than other legal service providers;
- 4.6.3. Approximately 6% decrease on current number of legal assistances provided;
- 4.6.4. Reduction in criminal, family and civil services and support programs;
- 4.6.5. Over-representation of Aboriginal and Torres Strait Islander people in prison will continue to rise;
- 4.6.6. Many Aboriginal and Torres Strait Islander people with legal need will not have access to culturally safe legal services;

⁶ Mid-Year Economic and Fiscal Outlook 2013-14, page 19, available at: https://budget.gov.au/2013-14/content/myefo/download/2013_14_MYEFO.pdf

⁷ Attorney General's Department, *Portfolio Additional Estimate Statements 2015-16 to 2018-19* and Attorney General's Department Portfolio, *Budget Statement 2018-19*, available at <<https://www.ag.gov.au/Publications/Budgets/Pages/default.aspx>>.

- 4.6.7. ATSILS will be unable to provide to governments law reform advice to overcome systemic issues;
- 4.6.8. Reduction in community legal education including early intervention and prevention activities;
- 4.6.9. ATSILS will be unable to provide holistic legal services;
- 4.6.10. Uncertainty when negotiating contracts and employment, including an impact on morale and continued service of ATSILS employees who begin to look for alternate employment as a result of the funding uncertainty;
- 4.6.11. Uncertainty in planning processes for service delivery.
- 4.6.12. A further illustration from NAAJA estimates that the funding cuts will force NAAJA to make unavoidable reductions in front line service delivery in 2020-21:
 - Staff reduced by at least 7 criminal lawyers;
 - Cessation of duty lawyer service;
 - Staff reduced by at least 7 civil lawyers;
 - Reduction in civil law service to remote communities.
- 4.7. While ATSILS have so far not allowed for threatened funding cuts to disrupt service delivery, significant time and energy has been dedicated over the years to resisting proposed funding cuts and demonstrating the devastating impact they would have if they go ahead. With time and energy spent planning for funding cuts and providing feedback on service delivery impacts to governments since 2013, it would be more efficient to use public money to adequately resource the ATSILS through ILAP and reduce the downstream costs.
- 4.8. We recommend that this ongoing savings is overturned.

5. The Commonwealth Government inject significant funding into ATSILS

Recommendation 3: The Commonwealth Government funds ATSILS to meet unmet legal need and address the overrepresentation of Aboriginal and Torres Strait Islander people in prison by an injection of \$81.351 million over 5 years (for a total of \$85.094 million per annum in 2019-20 including CPI) to:

- include an increase for CPI at 2.5%
- overturn \$10m funding cuts
- increase capacity in law reform and policy, and data collection and reporting
- expand geographic reach

Plus additional injections for:

- salary parity
- justice reinvestment.

- 5.1. Overturning the funding cuts alone will not be sufficient to meet legal demand for Aboriginal and Torres Strait Islander people nor to end the over-representation of our

people in the justice system. ILAP funding must be sustainable and secure, long-term, and must be sufficient to meet unmet legal need.

- 5.2. This includes an urgent injection of \$200 million as recommended by the Productivity Commission to begin meeting this unmet *civil* legal need.⁸ In 2018, the Law Council of Australia's Justice Project recommended that Commonwealth, state and territory Governments should invest significant additional resources in the legal assistance sector to address critical need for civil and criminal legal assistance services, suggesting that at a minimum this should include \$390 million per annum.⁹
- 5.3. NATSILS reiterates that comprehensive mapping of the unmet legal need of Aboriginal and Torres Strait Islander people must be undertaken in order to understand the sufficient funding quantum needed meet this demand. Therefore, these figures provided are estimates only.
- 5.4. *CPI:*
 - 5.4.1. Indexation for ILAP should be aligned with annual CPI increases (calculated in these estimates at a nominal figure of 2.5%).
- 5.5. *Increase capacity in law reform and policy, and data collection and reporting:*
 - 5.5.1. ATSILS and NATSILS create systemic change through community-informed strategic litigation, law and policy reform and advocacy. Whilst the ATSILS ILAP funding agreements do not formally restrict advocacy, advocacy is not formally supported through funding quantum, nor funded activities. This places limitations on the ability to meet ILAP objectives which require a systems-based approach and pushing forward a reform agenda not only within the legal assistance sector but also the community services sector.
 - 5.5.2. We are the experts based on over 40 years' experience of representing Aboriginal and Torres Strait Islander people. Further, we are representative of, and accountable to, our communities through our governance arrangements. It is important for our voice to be heard by decision makers to address the disadvantage of Aboriginal and Torres Strait Islander people in the justice system and to reimagine what the justice system looks like.
 - 5.5.3. Based on this expertise, ATSILS and NATSILS are commonly asked and expected to input into government and sector reform inquiries and projects, yet we are not provided additional resourcing to do so. It is critical that this changes.
 - 5.5.4. NATSILS recommends an additional \$250k per annum per ATSILS for law reform and policy officers.
 - 5.5.5. Further, there is a need to increase the capacity and resources of ATSILS to work with the Commonwealth to increase the consistency of data for monitoring and reporting, and to analyse, collect and communicate our own data and impact.
- 5.6. *Expand geographic reach:*
 - 5.6.1. The ATSILS service many remote and regional areas that others do not, which involves considerable cost and challenges. On the basis that we are the only legal assistance service in many regional or remote locations, if our

⁸ Productivity Commission, *Access to Justice Arrangements, Inquiry Report Overview* (2014) 24.

⁹ Law Council of Australia, *Justice Project* (2018), rec 2.1.

services were not there our clients would go unrepresented. In some cases, ATSILS appear in arrest courts for non-Indigenous people as friends of the court due to this fact. ATSILS have the cultural expertise and local knowledge to meet the challenges of providing services in remote and regional areas and bush courts.

- 5.6.2. However, ILAP funding quantum currently does not go far enough to support ATSILS to do this crucial work in remote and regional areas. With further funds, ATSILS could significantly expand their reach into regional and remote communities.
- 5.7. In addition to the figure provided for urgent injections of funding, NATSILS calls for further injections to achieve salary parity with Legal Aid Commissions and for justice reinvestment programs.
- 5.8. *Salary parity:*
 - 5.8.1. A culturally safe and competent legal service is also limited by funding to recruit and provide pathways for Aboriginal and Torres Strait Islander lawyers. This includes the need to be able to offer competitive salaries - currently ATSILS salaries are approximately 15-30% less than the equivalent at Legal Aid.¹⁰
 - 5.8.2. The Australian Productivity Commission Inquiry into Access to Justice Arrangements found:

The scale of providers does not just affect administrative costs; it can also affect career progression opportunities and the support that providers can offer for staff training. These compound other difficulties providers face in recruiting and retaining legal practitioners including comparatively low salaries and high workloads, funding uncertainties and the demands of remote travel and work.¹¹
 - 5.8.3. This salary parity is beyond ATSILS control to remedy under current funding quantum and arrangements. Any proposals to reduce staff to increase salaries of the remaining would have a devastating impact on Aboriginal and Torres Strait Islander people accessing justice due to the withdrawal of front line services. With greater funding, ATSILS could be competitive with other legal service providers.
 - 5.8.4. NATSILS recommends an additional 15-20% increase in funding to achieve salary parity.
- 5.9. *Justice reinvestment package:*
 - 5.9.1. Aboriginal and Torres Strait Islander people need to access justice in ways that are *different* to other Australians. Our people have disproportionate rates of, for example, incarceration/child removal/experiences of family

¹⁰ Parliament of Australia, *Inquiry into Legal Aid and Access to Justice* (2004), ch 5, [5.14]-[5.17]; NAAJA, *Submission to the Australian Productivity Commission Inquiry into Access to Justice Arrangements*, 2014, 29
<<https://www.pc.gov.au/inquiries/completed/access-justice/submissions/submissions-test/submission-counter/sub095-access-justice.pdf>>.

¹¹ Australian Productivity Commission, *Inquiry into Access to Justice Arrangements* (2014), 799,
<<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>>.

violence/experiences of racism, live in more remote locations with more disadvantage and complex needs and therefore need greater access to lawyers. In addition, we need culturally safe services, and holistic services that address underlying needs and trauma which are a consequence of colonisation and subsequent policies. Long term relationships are critical.

- 5.9.2. ATSILS' holistic approach to legal service means that our clients are connected with other supports to deal with issues in their lives that are trapping them in the justice system (both civil and criminal). This leads to better outcomes for people because we get to the heart of matters and can resolve them fully, which reduces ongoing legal need and recidivism.
- 5.9.3. It is important to note that many of ATSILS' early intervention and prevention, rehabilitation and throughcare services are not currently possible under current ILAP funding arrangements and have been funded through other sources. However, ATSILS see a holistic approach as pivotal to achieving ILAP's goals.
- 5.9.4. However, we know that ATSILS holistic approach to justice is a cost-effective one. Change the Record and PWC Indigenous Consulting's 'Unlock the Facts' report found that Indigenous incarceration is costing the Australian economy \$7.9 billion per year and this cost rise to \$9.7 billion per year in 2020 and \$19.8 billion per year in 2040. The modelling found that:

Annual savings to the economy of nearly \$19 billion could be achieved by 2040 if the gap between Indigenous and non-Indigenous rates of incarceration were closed. This is based on the implementation of specific evidence-based recommendations including; putting Indigenous self-determination at the heart of the solution; establishing a set of national targets against which progress can be measured; improving cultural awareness across the system; investing more in prevention and early intervention; designing better throughcare and reintegration programs to reduce recidivism, and; investing more in innovation and evaluation to better identify what really works.¹²

- 5.9.5. Recent evidence from Bourke shows the power of justice reinvestment models. The 2018 Bourke KPMG Impact Assessment shows the following impact in 2017:
 - 5.9.6. Family strength: 23% reduction in police recorded incidence of domestic violence and comparable drops in rates of re-offending
 - 5.9.7. Youth development: 31% increase in year 12 student retention rates and a 38% reduction in charges across the top five juvenile offence categories
 - 5.9.8. Adult empowerment: 14% reduction in bail breaches and a 42% reduction in days spent in custody.

¹² PWC, 'Closing the gap on Indigenous incarceration could save almost \$19bn in 2040', Media Release, 25 May 2017, <<https://www.pwc.com.au/press-room/2017/indigenous-incarceration.html>>.

5.9.9. KPMG estimated an economic impact of \$3.1 million in 2017 – and if just half of the results achieved in 2017 continued, an additional impact of \$7 million over the next five years.¹³

- 5.9.10. Examples of ATSILS programs with a justice reinvestment approach:
- Disability support workers co-located in ATSILS and FPDN;
 - Youth justice diversion caseworkers linking kids with holistic supports;
 - Throughcare intensive case management for adults and children beginning in prison continue until clients are living a safe, fulfilling and trouble free life back out in the community;
 - Legal and health partnerships;
 - Domestic violence support workers & Local Justice workers;
 - Aboriginal justice leadership programs and advisory groups;
 - Advanced community legal education projects ie Justice Bus.

5.9.11. NATSILS recommends an additional \$5-15m per annum for a justice reinvestment package.

5.10. *Summary (nb. this does not include figures for salary parity or justice reinvestment):*

	Option A Increase in funds & reversal of cuts ‘\$000s	Option B Status quo incl ongoing cuts ‘\$000s
Per annum in 2019-2020	\$85,094 incl CPI	\$75,202 ¹⁴ no CPI Projected cuts due to ongoing savings measure: \$10 million over 2020-21- and 2021-22
Govt injection over 5 years	\$81,351 (incl \$10m for reversal of cuts)	N/A
Staffing	Medium increase in staff: across criminal, family and civil lawyers and non-legal positions across ATSILS (including policy, CLE, justice reinvestment and data). Salaries are not competitive with other legal services providers (further 15-20% required)	Significant cuts of staff across criminal, family and civil lawyers and non-legal positions across ATSILS Salaries are not competitive with other legal services providers
Number of legal assistances	Medium increase in assistances	209,844 matters pa in 2016/17 (cuts will see approximately 6% decrease on current)
Programs & services offered	Current community justice programs offered are expanded to have more reach Medium capacity in data collection and analysis Medium policy capacity	Reduction in criminal, family and civil services and support programs
Impact	Over-representation levels are stemmed A medium amount of Aboriginal and Torres Strait Islander people with legal need have access to	Over-representation levels continue to rise Many Aboriginal and Torres Strait Islander people with legal need do not have access to culturally

¹³ KPMG, *Maranguka Justice Reinvestment Project KPMG Impact Assessment* (2018) <http://justreinvest.org.au/wp-content/uploads/2018/11/Maranguka-Justice-Reinvestment-Project-KPMG-Impact-Assessment-FINAL-REPORT.pdf>.

¹⁴ *Attorney General's Portfolio Statement 2018-2019*, 19, forward estimate for 2019-2020.

	<p>culturally safe legal services</p> <p>ATSILS advance law reform agenda</p> <p>ATSILS provide holistic, wrap-around services in partnership</p>	<p>safe legal services</p> <p>ATSILS unable to advocate on law reform</p> <p>ATSILS are unable to provide holistic services</p>
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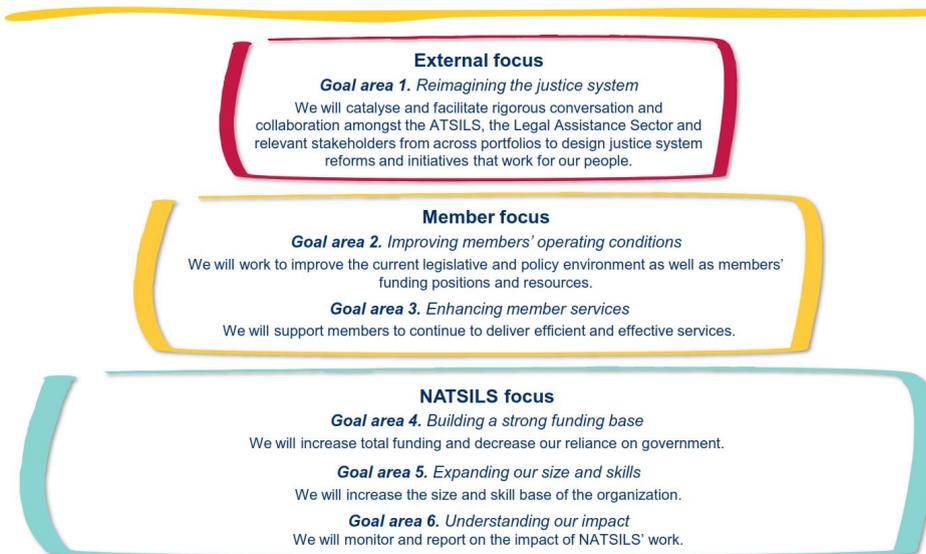
6. The Commonwealth Government funds and supports NATSILS to grow and achieve strategic planning initiatives

Recommendation 4: NATSILS should be funded and supported to grow and expand our size and skill to meet increased service demand and achieve identified strategic planning initiatives with an injection of \$4.064 million over 5 years (for a total of \$1.053 million per annum in 2019-20 including CPI).

- 6.1. Funding of the NATSILS Secretariat is also a major concern. As the peak body for the ATSILS, the NATSILS plays a critical role in providing national coordination, strategic leadership, and capacity building to ensure that our members benefit from a nationally coordinated network of service providers.
- 6.2. Further, the NATSILS Secretariat works to support the Attorney General's Department in their administration of the ILAP program and provides a streamlined and efficient mechanism (where appropriate) for government engagement and coordination of the sector.
- 6.3. The NATSILS Secretariat works extremely hard to promote collaboration and best practice across Indigenous legal assistance providers. However, the NATSILS Secretariat has only two staff members and therefore the ability of the NATSILS to conduct performance improvement projects and any projects outside of secretariat support is inconceivable.
- 6.4. NATSILS Secretariat funding is currently set at \$295,000 p.a. This budget must cover all expenses including staff salaries, performance improve projects, technology requirements, and travel expenses, including those to participate in government meetings and respond to government inquiries. The NATSILS struggles to cover these basic expenses, severely curtailing the NATSILS capacity to effectively engage with ATSILS members, the wider sector and other relevant government agencies and peak bodies.
- 6.5. During 2017 the NATSILS was provided with grant funding from the Attorney General's Department to undertake a strategic planning process with the ATSILS which identified six strategic goals, consistent with our vision and purpose, to guide our work over the next five years.

Figure 1: NATSILS strategic planning goals

NATSILS has identified six strategic goals, consistent with its vision and purpose, to guide its work over the next five years



6.6. Specifically, the Strategic Planning process surfaced eleven strategic initiatives which can be categorised as business as usual, enabling or flagship initiatives which include:

- Developing performance improvement projects
- Building shared Monitoring & Evaluation (M & E) Framework to evidence the impact of ATSILS' work:
 - Work with members to create logic model defining short to medium term outcomes and impact of ATSILS' services.
 - Develop metrics and indicators common across all members to track progress of ATSILS' work towards achieving those outcomes.
 - Develop data collection tools and processes.
 - Develop analysis, reporting and learning processes.
- Building shared M & E Framework to evidence the impact of the NATSILS work:
 - Develop metrics and indicators to track NATSILS' progress towards achieving targeted outcomes and impact.
 - Develop data collection tools and processes.
 - Develop analysis, reporting and learning processes.
- Developing and defining a better justice system for Aboriginal and Torres Strait Islander people:

6.7. These initiatives will be staggered, allowing NATSILS to bring in the necessary resources to deliver the initiatives over time. In order to achieve these initiatives, the NATSILS team will need to grow from 2 to 8.4 full time equivalent by 2023.

Figure 2: NATSILS team will need to expand to 8.4 FTE

In order to achieve these initiatives, the NATSILS team will need to grow to around 8.4 FTE by FY23

Role / Function	FTE (Full Time Equivalent) Resourcing						Assumptions
	FY18	FY19	FY20	FY21	FY22	FY23	
Executive Officer <i>(existing role)</i>	1.0	1.0	1.0	1.0	1.0	1.0	
Legal Secretariat Officer <i>(existing role)</i>	1.0	1.0	0.8	0.8	0.8	0.8	• Role can be scaled back marginally as additional resources come on board
Communications Manager		1.0	1.0	1.0	1.0	1.0	• Critical role to come online early to free up capacity of EO and LSO to allow them to pursue initiatives.
Partnerships Director		1.0	0.8	0.8	0.8	0.8	• Critical to build funding relationships immediately, but can scale back from FY19
Research and Data Officer		0.6	0.6	1.0	1.0	1.0	• Role ramps up when reimagining work commences
Finance Officer			0.8	0.8	0.8	0.8	• Financial activities will need to be dealt with internally when staffing grows to 8 FTE in FY20
Policy and Advocacy Director			1.0	1.0	1.0	1.0	• Critical role, but can only come online once resources identified
M&E Support Officer			1.0	1.0	1.0	1.0	• Critical role, but can only come online once resources identified
Performance Enhancement Support Director			1.0	1.0	1.0	1.0	• Critical role, but can only come online once resources identified
	2.0	4.6	8	8.4	8.4	8.4	

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6.8. *Summary:*

	Option A Substantial increase ‘\$000s	Option B Status Quo ‘\$000s
Per annum in 2019/2020	\$1,053 incl CPI	\$295
Additional 5 year injection	\$4,064	N/A
Staffing	Growth to 8.4 FTE across communications, partnerships, data, policy and advocacy.	Retain 2.0 FTE Staff burnout and turnover remains high
Offices and desks	6-8 desks rented	In-kind through auspice
Operational	Financial officer employed - possibly auspiced	Auspiced
Strategic Projects	Develop M&E frameworks for NATSILS & ATSILS Scope accreditation scheme Develop performance improvement projects Develop and define a better justice system for Aboriginal and Torres Strait Islander people	Little capacity to progress strategic projects
Impact	<p>Hold national forums at least three times per year</p> <p>Co-design performance enhancement projects with ATSILS</p> <p>High research and policy staff to facilitate feedback to the Government on its priorities and seek to address underlying causes of the overrepresentation of Aboriginal and Torres Strait Islander people in the justice system;</p> <p>High participation in Parliamentary roundtables and submit to Government inquiries;</p> <p>High legal rights awareness raised;</p> <p>Medium administrative support for the NATSILS and the ATSILS;</p> <p>Medium travel expenses;</p> <p>More opportunities for professional development.</p> <p>Identify challenges to access to justice and suggest solutions.</p> <p>Create cultural resources.</p> <p>Governance, management and technical training for members.</p>	<p>Provide secretariat support</p> <p>Hold national forums at least twice per year;</p> <p>Minimum research and policy staff to facilitate feedback to the Government on its priorities and seek to address underlying causes of the overrepresentation of Aboriginal and Torres Strait Islander people in the justice system;</p> <p>Minimum participation in Parliamentary roundtables and submit to Government inquiries;</p> <p>Minimum legal rights awareness raised;</p> <p>Minimum administrative support for the NATSILS and the ATSILS;</p> <p>Minimal travel expenses;</p> <p>Limited opportunity for professional development of staff.</p>

7. The Commonwealth Government continues 5 year funding agreements

Recommendation 5: The ATSILS and NATSILS receive funding upfront on at least an annual basis and for the duration of at least 5 year funding agreements.

- 7.1. NATSILS welcome ILAP moving toward the provision of five year minimum funding agreements under ILAP.
- 7.2. However, the ATSILS receive funding no more than six months in advance even if their risk rating is low and has been for consecutive periods. We suggest that the ATSILS must receive funding upfront on at least an annual basis.
- 7.3. Despite the work of ATSILS in collaboration with the broader legal assistance sector, inadequate funding means significant service gaps remain for Aboriginal and Torres Strait Islander people. The quantum of funding under the ILAP does not support the achievement of its objectives and outcomes. With more, and sustainable, secure funding, ATSILS could have greater impact with additional lawyers, programs and support officers. Inadequate funding means providers must make internal adjustments or cut front line services.

8. The Commonwealth Government maps unmet legal need

Recommendation 6: The Commonwealth Government work with ATSILS, NATSILS and the legal assistance sector to comprehensively map unmet legal needs of Aboriginal and Torres Strait Islander people.

- 8.1. The higher levels at which Aboriginal and Torres Strait Islander peoples experience legal issues across all areas of the justice system is well documented.¹⁵ The Senate's 2016 Inquiry into Access to Legal Assistance Services found that the "current breadth and depth of unmet legal needs for Aboriginal and Torres Strait Islander people is completely unsatisfactory".¹⁶ From significantly higher rates of imprisonment and involvement with child protection systems, to vast unmet need for civil and family law

¹⁵ See Australian Senate, Finance and Public Administration References Committee, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016), chs 2, 8, <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Legalassistanceservices/Report/c08>; Australian Productivity Commission, *Inquiry into Access to Justice Arrangements* (2014), 767, <<https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>>; the publications of the Indigenous Legal Needs Project, <<https://www.jcu.edu.au/indigenous-legal-needs-project>>; Commonwealth, Royal Commission into Aboriginal Deaths in Custody, 1991; Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2018), 41-45, <https://www.alrc.gov.au/sites/default/files/pdfs/publications/final_report_133_amended1.pdf>.

¹⁶ Australian Senate, Finance and Public Administration References Committee, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services* (2016) [8.3] <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Legalassistanceservices/Report/c08>.

services, access to justice directly impacts upon Aboriginal and Torres Strait Islander people's physical, emotional and social wellbeing.

- 8.2. The ability for Aboriginal and Torres Strait Islander people to access to legal assistance services is far from adequate, given the extent of legal need in Aboriginal and Torres Strait Islander communities. Whilst this is undoubtedly the case in a criminal law context, the Indigenous Legal Needs Project has also found that civil and family law problems are experienced with considerable frequency in Indigenous communities and often in conjunction with several legal matters at one time.¹⁷
- 8.3. NATSILS and ATSILS 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, both of which require the Commonwealth to commission independent research. So far, the ILAP has not resulted in this occurring. There continues to be an inequality in funding between legal assistance providers (and all require greater resourcing), despite the over-representation of Aboriginal and Torres Strait Islander people in the justice system and recognised lack of access to culturally safe legal services.

9. The Commonwealth co-design an equitable and transparent funding model with ATSILS and NATSILS

Recommendation 7: The Commonwealth Government work with NATSILS and the ATSILS to co-design a transparent and equitable funding model.

- 9.1. NATSILS believes the funding allocation model must be transparent and equitable, evidenced based following comprehensive mapping of legal need by government, reflect the true cost of delivering legal services to Aboriginal and Torres Strait Islander people and be co-designed in partnership with ATSILS and NATSILS.
- 9.2. Funding models and arrangements for ATSILS and NATSILS must be based on the following principles:
- *Evidence based:* Funding is evidence-based following the government comprehensively mapping legal need and the true cost of delivering legal services (**see section 7**)
 - *Adequate:* Funding is adequate for ATSILS and NATSILS to meet need and grow (**see sections 7, 15**).
 - *Sustainable:* ATSILS and NATSILS are supported to expand their funding sources to more sustainable options (**see section 15**).
 - *Co-designed:* Funding models must be meaningfully co-designed with ATSILS and NATSILS.
 - *Transparent:* It must be clear what evidence and reasoning the funding allocation model is based on.
 - *Equitable:* Funding models are fair compared with other legal services providers, the cost of legal services and the mapping of legal need. The two-tiered priority client requirement should be removed.
 - *Secure:* Funding agreements are long-term, with funds provided annually for at least 5 years.

¹⁷ Indigenous Legal Needs Project, Submission to the Senate Inquiry into Access to Legal Assistance Services, <https://www.jcu.edu.au/__data/assets/pdf_file/0008/119843/jcu_147272.pdf>.

- *Quarantined*: Funding amounts must be quarantined for each individual ATSILS and NATSILS.
- *Community controlled*: the ATSILS must continue, as preferred providers, to receive funding to deliver services to Aboriginal and Torres Strait Islander people.

10. The Commonwealth supports ATSILS to self-generate funds and NATSILS to expand its funding base

Recommendation 8: The Commonwealth Government supports ATSILS to self-generate funds and NATSILS to expand our funding base in a cost-effective manner.

- 10.1. Further, ATSILS and NATSILS wish to be able to self-generate funding for their self-determination, independence and stability. The Commonwealth Government should remove all barriers to ATSILS self-generating income and support our endeavours to do so. ATSILS who have the capacity to self-generate funds via external mechanisms must be able to do so. Policy restrictions within the grant funding must be removed to support funding income streams that are separate to funds received under grant contracts. Grant funding to explore market appetite and analysis for future business opportunities must be supported by the Commonwealth Government. The decision to support external business income is on the basis that public funds are limited.
- 10.2. ATSILS firmly believe that ILAP funding should not be reduced as a result of this innovation, as we are already drastically underfunded. It is important to note that the government must not penalise our organisations for undertaking other business strategies and income streams by decreasing public funds under grant funding when restrictions are lifted. The ability to self-generate funding allows ATSILS to further increase frontline service delivery and support individuals and communities with legal need, particularly in areas where there is currently no legal presence.
- 10.3. NATSILS has limited resources and a high volume of work, creating an unsustainable workload, a reduced ability to respond to important matters and the risk of missed opportunities. As such, one of the activities outlined in the Strategic Plan is that of building the funding base for the NATSILS executive, including allocating FTE to that function. However, NATSILS understands that this is not strictly an activity set out in the current NATSILS ILAP funding agreement and so other resourcing for this activity would need to be allocated or otherwise NATSILS is prevented from innovating.

11. Additional feedback

- 11.1. Further, NATSILS endorses the following calls from the National Family Violence Prevention Legal Services Forum (NFVPLS):
 - **Increased funding and CPI:** Thirteen of the fourteen FVPLS have had no increase in core funding since 2013-14. Further, over the last five years, not one FVPLSs' funding has been increased to match Consumer Price Indexation ('CPI'). The lack of CPI alone represents a cumulative loss of \$9.7 million. Currently all FVPLSs and the National FVPLS Forum Secretariat are subject to a two-year funding contract, which ceases in 2020. Ongoing

uncertainty over funding, causes undue stress to the staff of FVPLSs, and affects their ability to deliver consistent services to highly vulnerable clients.

- **Expansion of reach** - FVPLSs collectively service an area that currently only covers approximately half of the Aboriginal and Torres Strait Islander population. This means that there are a number of areas throughout regional, remote and urban Australia where Aboriginal and Torres Strait Islander victims/survivors have no access to a culturally safe family violence prevention legal service, despite high rates of family violence. There needs to be an expansion of their services to enable true national coverage, including urban areas and other rural and remote areas not currently covered by the 14 FVPLSs.
- **Stand-alone national justice and family violence prevention targets:** The draft Closing the Gap Refresh Targets set through COAG currently has a family violence prevention target as a possibility under the area of child protection. There must be a stand-alone family violence prevention target that is in the area of family violence prevention and not under child protection. Both the justice and family violence prevention targets must also be for all levels of government take responsibility for – Federal, State and Territory governments.

2.2. NATSILS also endorses the recommendations in the pre-budget submission from the National Association of Community Legal Centres, including:

- Implementation of the Productivity Commission's recommendation for an immediate injection of at least \$120 million per year funding into the legal assistance sector;
- Five-year funding arrangements for legal assistance providers;
- A Commonwealth funding commitment for community legal centres beyond 2020 at a minimum baseline of \$50.7 million;
- Additional funding for NACLCC and State and Territory community legal centres as peak bodies;
- Additional funding for legal centres assisting with the Royal Commission into Aged Care Quality and Safety;
- Additional funding for a regular national survey of legal need.