

Review of the National Partnership Agreement on Legal Assistance Services NON-LEGAL SERVICE PROVIDER INPUT

The Review

The Australian Government Attorney-General's Department (AGD) has commissioned the Allen Consulting Group to undertake a Review of the National Partnership Agreement on Legal Assistance Services (the Review). The Review is assessing progress made towards the objectives and outcomes of the National Partnership Agreement on Legal Assistance Services (the NPA). This involves an assessment of the quality, efficiency and cost-effectiveness of the four Commonwealth-funded legal assistance services: Aboriginal and Torres Strait Islander Legal Services, community legal centres, family violence prevention legal services and legal aid commissions.

An Evaluation Framework that poses key evaluation questions, corresponding indicators and data sources is guiding the Review. The Evaluation Framework was developed through extensive consultation with legal assistance service providers and the legal sector more broadly and tested and refined through a pilot study. More information on the Review and the Evaluation Framework is available on the AGD website: www.ag.gov.au/ReviewofNPAonLegalAssistance.

Non-legal service provider input

The approach taken under the Evaluation Framework recognises the importance of a whole of system approach to evaluation in the justice context. As such, you are invited to participate in the Review through a submission that will be used to support analysis of the quality, efficiency and cost-effectiveness of legal assistance services and inform development of future Commonwealth policy for legal assistance services.

The submissions, along with a range of other sources of data collection, are designed to capture the perspectives of stakeholders with different experiences of legal assistance services and legal services more widely. In this instance, we are particularly interested in an industry wide perspective for Family Support Program (FSP) family law services.

Format for submissions

The submission format is intended to be flexible to account for stakeholder differences and any additional issues that may arise. However, guidance on key areas that should be canvassed is set out in the template below. A number of the questions ask you to consider variations across areas of law, service categories and client groups. Please note that a detailed response in relation to each of these issues is not required. Rather, the questions are intended to provide scope for you to describe any significant issues or variations that you are aware of. Space is also provided to supply other relevant information. Unless otherwise indicated all submissions will be treated as confidential and any information used in the Final Report will be de-identified at the individual response level.

- 1. Are legal assistance services contributing to the earlier resolution of legal problems?** *Please consider any significant variations between across Aboriginal and Torres Strait Islander legal services, community legal centres, family violence prevention legal services and legal aid commissions. Examples of cases where legal assistance services have contributed to earlier resolution of legal problems may also be provided.*

Legal assistance services do contribute to the earlier resolution of legal problems in the family law area, particularly in regions where there is an appropriate and sufficient combination of legal and relationship support services. There has been a growing sense of positive engagement between family support services and the legal sector. In particular, the funds provided to Community Legal Centres (CLCs) and some Legal Aid Commissions

to work in partnership with (and at) Family Relationship Centres (FRCs) has contributed significantly to the sense of a more cohesive 'family law sector'.

Family Dispute Resolution (FDR) practitioners report that FDR has better outcomes, and disputes have earlier resolution, when timely legal advice has been provided in conjunction with family relationship support. Being legally well informed assists clients to enter FDR with more realistic expectations and confidence to make decisions. This reduces the number of cases going to court.

However, legal assistance services are not sufficiently funded. Family and Relationship Services Australia members report an inability to meet the demand for legally assisted FDR (e.g. only able to provide fortnightly, where weekly would be ideal), resulting in a backlog of cases. FRSA is also aware of significant gaps and challenges in the area of family violence cases which will be further exacerbated following the discontinuation (rather than expansion) of the Coordinated Family Dispute Resolution (CFDR) pilot. This pilot highlighted the benefits to separating families of a more supportive, non-adversarial and multi-disciplinary approach.

Additional funding for legal assistance services and cross-disciplinary practice would mean improved responsiveness to a greater number of families, resulting in better outcomes for children and young people, particularly those who are disadvantaged or at risk. However, it is crucial that any additional funding for legal assistance not come at the expense of funding for non-legal family support services. A legal system that is effective and sufficient for families requires that both legal and non-legal avenues are adequately funded.

2. Are legal assistance services providing an appropriate amount of services in each area of law? *Please consider any significant variations across Aboriginal and Torres Strait Islander legal services, community legal centres, family violence prevention legal services, legal aid commissions and different areas of law. See attachment for relevant definitions.*

Many FRSA members have had positive experiences engaging with CLCs, but some report challenges engaging with legal aid commissions. This is partly due to the Commissions not being sufficiently resourced to work in partnership with family support services. In addition, some providers experience legal aid commissions as constrained by bureaucratic processes, which can impose barriers to engagement. By contrast, CLCs are smaller, with a more grassroots and values-based culture, meaning good personal relationships have been developed with non-legal service providers. This strengthens engagement and results in more effective outcomes for clients.

Where a region lacks an appropriate combination of legal assistance services, challenges are more likely to arise. For example, a single legal assistance service operating in an area must manage conflict of interest concerns, thus they are able to provide only one party to a matter with legal advice. In the case of a separating couple, this can result in only one person being legally well informed. Unless the services of a pro bono lawyer can be engaged, and this is often not possible, the other party may be disadvantaged due to inadequate legal information.

3. Are legal assistance services providing an appropriate amount of legal assistance to meet the needs of people in specific client groups in each area of law? *Please consider any significant variations across client groups and areas of law. See attachment for relevant definitions.*

Inadequate resources means legal assistance is not always available in appropriate amounts

to meet the needs of specific client groups in the area of family law. FRSA members work with vulnerable and disadvantaged client groups, including CALD, Aboriginal and Torres Strait Islander clients, as well as clients dealing with family violence and facing financial hardship among other challenges. All these clients are strongly encouraged to seek legal assistance, and family support service providers would like clients to have greater access to on-site legal information and advice.

Tight timeframes are problematic, and 30 minute legal assistance appointments can prove inadequate in complex cases such as those involving family violence. Insufficient time to interview a client can result in inadequate legal advice, for example relating to FDR exemption. In other cases, the client may not feel comfortable to disclose details of their case to a lawyer over such a brief meeting.

Some CLCs do not have a family lawyer on staff at all. This is a source of frustration for local service providers.

Some FDRPs reported an impression that the legal profession does not give them credibility, assuming they don't have adequate knowledge of the family law system. This highlights the need for more engagement and collaborative training.

4. Are there ways the legal assistance services sector can further engage with the FSP family law services to help move forward to meet the needs of disadvantaged Australians?

There are ways in which legal assistance services can further engage with Family Support Program family law services to help meet the needs of disadvantaged Australians; suggestions include:

- Continuation and expansion of funds for legal assistance services. For clients facing multiple issues, often including homelessness, poverty, mental health and substance abuse issues and family violence, and who therefore do not have access to private legal services, inadequate funding for legal assistance compromises the capacity of an effective but already stretched system. It is important that any additional funding not come at the expense of other vital family support services.
- Provision of more community education sessions targeted to specific regional/ community client needs (e.g. provision of information to CALD groups on how to access and engage with the legal system, and their obligations within the Australian legal system).
- More information sharing between the legal sector and family support services, for example through forums and symposia.
- Guidelines around the sharing of information. For example, service providers would find it useful if legal aid released a clear set of guidelines relating to referral.

5. To what extent are collaboration and referral arrangements between FSP family law services and legal assistance services appropriate and effective? *Please consider any significant variations across Aboriginal and Torres Strait Islander legal services, community legal centres, family violence prevention legal services and legal aid commissions.*

The legal sector and FSP family law services have been increasingly and more positively engaged over the last 4-5 years. Specifically, the FRC-CLC partnership funding has provided more direct incentive and assistance to further a more integrated family law system. One weakness in the NPA is how it was set up and funded, in many cases with no additional resources provided for legal aid commissions.

The overarching message from FRSA members is that the FRC-CLC partnership is a good model which could be replicated in other areas of law to strengthen the NPA. Extra funding

would allow collaboration and referral to be much more effective. Services report that there are many more family law clients who could benefit from legal advice. For example, some clients must make do with telephone conversations or very brief appointments insufficient for their needs.

6. Please provide any other relevant information or comments here.

The NPA has shown significant positive impact in areas where resources are sufficient. Additional funding for legal assistance services and family relationship services would support cross sector engagement. This would improve responsiveness to a greater number of families, resulting in better outcomes for children and young people, particularly those who are disadvantaged or at risk. It is crucial that any additional funding for legal assistance not come at the expense of funding for non-legal family support services. A legal system that is effective and sufficient for families requires that both legal and non-legal avenues are adequately funded.

FRSA would like to reiterate that many Indigenous Australians have experienced the 'white' legal system primarily through child removals, dispossession and disenfranchisement. Thus it is vital that Indigenous family support service providers and Aboriginal and Torres Strait Islander legal services are able and adequately resourced to work with Aboriginal and Torres Strait Islander clients.

Family Law Pathways Networks play an important and mostly very successful role in facilitating cross sector knowledge and skills sharing. It would be beneficial to harness these regional networks to encourage national sharing of best practice and integration. This could take place through a variety of means, for example FLPN conferences, webinars or forums.

Please complete this template and return to npareview@allenconsult.com.au by 28 March 2013.

If you have any questions or require any further information please contact the Allen Consulting Group via npareview@allenconsult.com.au.

ATTACHMENT A — DEFINITIONS

Legal Assistance Services

For the purposes of the NPA Review, legal assistance services is defined by services offered through each of the legal aid commissions, community legal centres, Aboriginal and Torres Strait Islander legal services and family violence prevention legal services.

These services receive Commonwealth funding and contribute to the achievements of the objective of the NPA. The objective has been agreed by the Council of Australian Governments and seeks:

- A national system of legal assistance that is integrated, efficient and cost-effective, and focused on providing services for disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficiency and effectiveness

Outcomes of the National Partnership Agreement on Legal Assistance Services

The NPA seeks to contribute to the following stated outcomes:

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- Earlier resolution of legal problems for disadvantaged Australians that, when appropriate, avoids the need for litigation
- More appropriate targeting of legal assistance services to people who experience, or are at risk of experiencing, social exclusion
- Increased collaboration and cooperation between legal assistance providers themselves and with other service providers to ensure clients receive 'joined up' service provisions to address legal and other problems
- Strategic national response to critical challenges and pressures affecting the legal assistance sector

Client groups

Specific client groups should cover those specifically targeted by legal assistance services, including:

- Aboriginal and Torres Strait Islander peoples
- Financially disadvantaged people
- Homeless people
- People experiencing or at risk of family violence including children
- People from culturally and linguistically diverse backgrounds
- People living in remote areas
- People with a disability
- People with a mental illness
- People in custody
- War veterans
- Other – please specify

Areas of law

Areas of law should cover the types of legal issues commonly presented to legal assistance services. These include:

- Criminal
- Civil
 - Consumer
 - Debt
 - Employment, equal opportunity and discrimination
 - Guardianship
 - Housing and tenancy
 - Migration and refugee
 - Neighbourhood disputes

- Social security
- Other
- Family
 - Child protection
 - Family
 - Family and domestic violence

Service categories — Legal Assistance Data Working Group

Service category	Service types	Definition
Individual services		
Information and referral	<ul style="list-style-type: none"> • Information • Referral 	<p>Information and referral is the provision of information and referral services to individuals in response to their request or inquiry.</p> <p>These services may be provided at any location, including at a court or tribunal by a duty lawyer.</p>
Discrete task assistance	<ul style="list-style-type: none"> • Non-legal assistance • Legal task assistance • Non-legal advice • Legal advice 	<p>Discrete task assistance is the provision of advice and/or task assistance to a service user in relation to a specific problem. These services may be provided at any location, including at a court or tribunal by a duty lawyer.</p>
Dispute resolution	<ul style="list-style-type: none"> • Dispute resolution conference • Arbitration 	<p>Dispute resolution services involve the provision of a Dispute Resolution process for parties in dispute.</p>
Legal representation	<ul style="list-style-type: none"> • Legal representation for dispute resolution • Duty lawyer appearances • Legal representation for a case 	<p>Legal Representation is where the service provider provides legal representation for a service user in an Alternative Dispute Resolution Process or in a matter before a Court, Tribunal or Inquiry.</p>
Non-individual services		
Community education	<ul style="list-style-type: none"> • Community education resources • Community education and development programs 	<p>Informs and builds individual and community resilience by enhancing:</p> <ul style="list-style-type: none"> • awareness and understanding about the law and how to prevent and deal with problems; • awareness of the help available from legal and support services. <p>Services are provided to the general community and groups within the community. They are not targeted to individual needs.</p>
Policy and law reform	<ul style="list-style-type: none"> • Policy and law reform • Stakeholder liaison 	<p>Policy and Law Reform services are activities to influence and effect changes to the law and legal process so as to improve equitable access to and the effectiveness of the justice system.</p>

Source: Legal Assistance Data Working Group, National Legal Assistance Data Reporting Standards, Draft September 2012, Version 2 Draft 17 October 2012.