

# **NATSILS Submission to the Productivity Commission**

## **Issues Paper June 2019 - Indigenous Evaluation Strategy**

**13 September 2019**



**NATSILS**

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

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## 1. List of acronyms and abbreviations

ATSILS	Aboriginal and Torres Strait Islander Legal Services
ACCO	Aboriginal Community Controlled Organisation
ALRM	Aboriginal Legal Rights Movement
ALS NSW/ACT	Aboriginal Legal Service NSW/ACT
ALSWA	Aboriginal Legal Service Western Australia
ATSILS QLD	Aboriginal Legal Service Queensland
ILAP	Indigenous Legal Assistance Programme
NATSILS	National Aboriginal and Torres Strait Islander Legal Service
NAAJA	Northern Australian Aboriginal Justice Agency
NTLAC	Northern Territory Legal Aid Commission
TACLS	Tasmanian Aboriginal Community Legal Service
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VALS	Victorian Aboriginal Legal Service

## 2. Summary and recommendations

The National Aboriginal and Torres Strait Islander Legal Service (NATSILS), the national peak body for Aboriginal and Torres Strait Islander Legal Services (ATSILS) welcomes the opportunity to respond to the Productivity Commission's Indigenous Evaluation Strategy Issues Paper.

NATSILS approach to this submission is to respond to key questions posed by the Productivity Commission's Issues Paper. NATSILS selected ten of the most pertinent questions to directly respond to and have noted where sections are also relevant to other questions from the Issues Paper.

**Section 3** sets out background information on NATSILS and ATSILS to provide the Commission the context of our work and experience. **Section 4** includes NATSILS arguments for the inclusion of self determination, strengthening of the ACCO sector and data sovereignty as key objectives for the Indigenous Advancement Strategy. This section also sets out the importance of outcomes and evaluations being defined by and for Aboriginal and Torres Strait Islander people.

**Section 5** demonstrates the importance of co-design with Aboriginal and Torres Strait Islander people in the development of the Indigenous Evaluation Strategy to support effective and sustainable delivery of programs. **Section 6** outlines the importance of measuring mainstream programs by an Aboriginal and Torres Strait Islander framework in order to evaluate them against indicators defined by Aboriginal and Torres Strait Islander people.

In **Section 7**, NATSILS provides insights into two government programs, the Indigenous Legal Assistance Programme and Closing the Gap. These case studies demonstrate the importance of co-design in reporting agreements, sustainable funding and flexibility as well as government accountability for the implementation of evaluation recommendations. Further, this section considers government expenditure on ACCOs and mainstream services for Aboriginal and Torres Strait Islander people, making the case for increased Aboriginal and Torres Strait Islander participation in government programs by amending the Indigenous Advancement Strategy and the Indigenous Procurement Policy.

**Section 8** builds on the importance of data sovereignty by outlining the recommendations for baseline research and accurate mapping of service needs and delivery in partnership with ACCOs. This section continues to demonstrate the need for transparency in data collection and analysis while moving towards a system where ACCOs are resourced to undertake the collection and analysis of data on their own terms.

In **Section 9**, NATSILS considers the need for an independent agency to coordinate a consistent national approach to policy development and data collection. This section also discusses the recommendation for an independent, community-controlled evidence intermediary which would share best practice, provide high-quality evidence and develop Aboriginal and Torres Strait Islander-led approaches to evaluation.

**Section 10** defines cultural safety and cultural competency as understood by NATSILS. This section considers the pathways to cultural safety, Aboriginal and Torres Strait Islander participation in the evaluation sector and strategies for embedding cultural safety in the Indigenous Evaluation Strategy.

## 2.1 Recommendations

**Recommendation 1: The Indigenous Evaluation Strategy has the self-determination of Aboriginal and Torres Strait Islander people as an objective.**

**Recommendation 2: The Indigenous Evaluation Strategy has an objective to support and build the capacity of the ACCO sector to develop strong applications, monitoring and evaluation as a pathway to self-determination.**

**Recommendation 3: The Indigenous Evaluation Strategy has data sovereignty for Aboriginal and Torres Strait Islander peoples as an objective.**

**Recommendation 4: That the Indigenous Evaluation Strategy reflects Aboriginal and Torres Strait Islander organisation's understandings of effective service delivery and evaluation.**

**Recommendation 5: The Indigenous Evaluation Strategy is set up to support the sustainable resourcing of an effective, innovative and adaptive Aboriginal Community Controlled sector.**

**Recommendation 6: The Commission should include a co-design stage as a main component of the Indigenous Evaluation Strategy process.**

**Recommendation 7: The Indigenous Evaluation Strategy is built around a culturally-safe, Aboriginal Community Controlled model against which mainstream programs are also evaluated.**

**Recommendation 8: The Indigenous Evaluation Strategy embeds government accountability for the implementation of evaluation recommendations.**

**Recommendation 9: Co-design reporting requirement to make them useful for ATSILS' self-determination. Embed elements that reduce the burden on organisations such as multi-year funding agreements and flexible templates.**

**Recommendation 10: The Indigenous Procurement Policy increases its target of Indigenous procurement to at least 50%.**

**Recommendation 11: The percentage of Indigenous Advancement Strategy funding received by Aboriginal Community Controlled Organisations and companies reaches at least 70% by 2021 and 100% by 2025.**

**Recommendation 12: The Indigenous Evaluation Strategy includes baselines of the needs of Aboriginal and Torres Strait Islander people for service delivery and funding allocation models.**

**Recommendation 13: That the Commonwealth Government work with ACCOs to comprehensively map the unmet needs of Aboriginal and Torres Strait Islander people.**

**Recommendation 14: That the Indigenous Evaluation Strategy include adequate resourcing into improving data collection systems and processes required to improve transparency in relation to the data collected.**

**Recommendation 15: The Indigenous Evaluation Strategy includes adequate resourcing of ACCOs to collect, aggregate, analyse, translate and report on data that is identified in partnership as useful for ongoing improvement, including meaningful strengths-based data as defined by ACCOs, and the achievement of their objectives.**

**Recommendation 16: That the Indigenous Evaluation Strategy creates data sets that are comparable and consistent for accurate analysis.**

**Recommendation 17: Jointly establish, or task, an independent central agency with Aboriginal and Torres Strait Islander oversight to coordinate a comprehensive, current and consistent national approach to data collection and policy development.**

**Recommendation 18: Establish an independent Aboriginal and Torres Strait Islander community-controlled evidence intermediary.**

**Recommendation 19: The Indigenous Evaluation Strategy includes an Aboriginal and Torres Strait Islander employment pathways program to increase the number of Indigenous evaluation commissioners and practitioners.**

**Recommendation 20: The Indigenous Evaluation Strategy includes cultural competency training for Indigenous evaluation commissioners and practitioners delivered by Aboriginal and Torres Strait Islander people.**

### 3. 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, 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 people. NATSILS represents the following ATSILS:

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

NATSILS was established as the peak body for ATSILS 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.

#### 4. Questions on objectives

- *What objectives should a strategy for evaluating policies and programs affecting Aboriginal and Torres Strait Islander people seek to achieve?*
- *To what extent are the evaluation practices of Australian Government agencies consistent with the United Nations Declaration on the Rights of Indigenous Peoples? How could practices be improved in this respect?*

This section is also relevant to:

- Questions on the Relevant Principles of an Evaluation Framework
- Questions on Incorporating Indigenous Perspectives into Evaluation
- Questions on Determining Evaluation Priorities
- Questions on Improving Evaluation Culture, Capability and Capacity
- Questions on the Challenges of Evaluation

**Recommendation 1: The Indigenous Evaluation Strategy has the self-determination of Aboriginal and Torres Strait Islander people as an objective.**

**Recommendation 2: The Indigenous Evaluation Strategy has an objective to support and build the capacity of the ACCO sector to develop strong applications, monitoring and evaluation as a pathway to self-determination.**

The Indigenous Evaluation Strategy should have a primary objective to assist Aboriginal and Torres Strait Islander people to achieve self-determination. Australia has an obligation to ensure the right to self-determination for Aboriginal and Torres Strait Islander people in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**); the International Covenant on Civil and Political Rights (**ICCPR**) and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**). Self-determination includes:

- the right to freely determine our political status and freely pursue our economic, social and cultural development.<sup>1</sup>
- the right to autonomy or self-government in matters relating to our internal and local affairs, as well as ways and means for financing our autonomous functions.<sup>2</sup>
- the right to maintain and strengthen our distinct political, legal, economic, social and cultural institutions, while retaining our right to participate fully, if we so choose, in the political, economic, social and cultural life of the State.<sup>3</sup>

Last year, the United Nations Special Rapporteur on Indigenous Peoples Rights reported that Australia's "failure to respect [Aboriginal and Torres Strait Islander peoples] rights to self-

<sup>1</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, UN Doc A/RES/61/295 (13 September 2007) ('UN Declaration on the Rights of Indigenous Peoples') art 3.

<sup>2</sup> *Ibid*, art 4.

<sup>3</sup> *Ibid*, art 5.



determination and to full and effective participation is alarming.”<sup>4</sup>

Current evaluation practices of the Australian Government may not fulfil the objective of self-determination. Short-term funding, burdensome reporting and inflexible funding agreements are some features of governments practices that limit ACCO’s ability to implement community-control and autonomous, innovative decision-making.

In many cases, ACCOs are not sufficiently resourced to undertake detailed evaluation, and are therefore less likely to have documented and measured success required to obtain further funding. ACCOs are simply unable to compete with highly resourced non-Indigenous NGOs, who often have entire teams dedicated to monitoring and evaluation. This consistent under resourcing of ACCOs to undertake their own evaluations creates a cycle that disadvantages ACCOs in competitive tenders, making it difficult for service delivery to adapt to changing contexts, respond to community needs and innovate. This cycle is detrimental to self-determination and for communities to have meaningful decision-making power over ACCOs programs and sustainability. The Indigenous Evaluation Strategy should prioritise the capacity-building and funding of ACCOs to build a workforce that can undertake their own evaluation, monitoring and applications as a key enabler of self-determination and community-control.

Further, codifying self-determination into evaluation will mean that what is evaluated is culturally appropriate. For example, current models of evaluation do not necessarily capture elements such as ‘connection to land, community and culture’ as part of successful outcomes of programs.

In March 2019, the importance of building in self-determination to evaluation and funding programs was recognised by the independent review of the Indigenous Legal Assistance Program (**ILAP Review**), which currently funds NATSILS and ATSILS. The Review showed a correlation between effective services and self-determination, recommending that:

In order to further strengthen the delivery of culturally appropriate legal assistance services to Aboriginal and Torres Strait Islander people, the aims and objectives of the Indigenous Legal Assistance Program should be amended to promote Aboriginal and Torres Strait Islander self-determination.<sup>5</sup>

Despite this recommendation, the Government has decided to mainstream the ILAP funding, risking ATSILS and NATSILS self-determination. This decision, made despite the first recommendation of the ILAP Review to maintain a standalone dedicated Commonwealth funding program, demonstrates the importance of embedding self-determination as an objective for

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<sup>4</sup> Victoria Tauli-Corpuz, Special Rapporteur, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, UN Doc A/HRC/36/46/Add.2 (8 August 2017) para 36.

<sup>5</sup> Cox Inall Ridgeway, *Review of the Indigenous Legal Assistance Programme* (2019) p.16  
<<https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Documents/Review-of-the-ILAP.PDF>>  
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Aboriginal and Torres Strait islander programs throughout the evaluation practices of government agencies.

**Recommendation 3: The Indigenous Evaluation Strategy has data sovereignty for Aboriginal and Torres Strait Islander people as an objective.**

Data sovereignty is a defining feature of self-determination in monitoring and evaluation. The Indigenous Evaluation Strategy should build in an objective of data sovereignty as part of its broader purpose to promote Aboriginal and Torres Strait Islander self-determination.

During the ILAP Review, ATSILS and NATSILS expressed the importance of data sovereignty for improved service knowledge:

ATSILS and NATSILS 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.<sup>6</sup>

Current structures limit ATSILS and NATSILS' ability to evaluate and analyse programs against their own goals. Without access to data and the means to assess it, ATSILS cannot learn from their data, be accountable to their communities or demonstrate their impact to potential funders. ACCOs' ability to access and analyse a strong evidence base on their own terms is an integral part of creating an Indigenous Advancement Strategy that promotes self-determination.

**Recommendation 4: That the Indigenous Evaluation Strategy reflects Aboriginal and Torres Strait Islander organisation's understandings of effective service delivery and evaluation.**

The Indigenous Evaluation Strategy should be built on a framework of effective service delivery as defined by Aboriginal and Torres Strait Islander people. An Indigenous Evaluation Strategy should fundamentally differ from mainstream evaluation frameworks to accurately capture views on service needs, capability and performance for Aboriginal and Torres Strait Islander communities.

NATSILS and ATSILS have developed a shared outcomes framework that includes measures of effective service delivery as defined by ATSILS. Outcomes included in the framework that capture data that many mainstream frameworks would not, these include outcomes such as:

- Legal services are accessible to Aboriginal and Torres Strait Islander people. Quality legal support can be accessed regardless of geography (urban, regional & remote) and regardless of gender, age, language skills and disability.

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<sup>6</sup> NATSILS *Submission to the Review of the Indigenous Legal Assistance Programme* (2018) p.79  
<<http://www.natsils.org.au/portals/natsils/submission/NATSILS%20ILAP%20Submission%20For%20Website.pdf?ver=2018-10-29-161426-540>>

- Community members have access to holistic support. Community members have access to support from ATSILS that may extend beyond their immediate legal needs.
- Aboriginal and Torres Strait Islander families stay together.
- Community members have a culturally safe legal experience.
- Increased Aboriginal and Torres Strait Islander employment and leadership pathways in the justice sector.
- A strong Aboriginal and Torres Strait Islander voice is being heard and contributes to change within the system.
- Authorities and decision makers transform the justice system to be holistic and fair for Aboriginal and Torres Strait Islander peoples.<sup>7</sup>

An important element of the Framework is its ability to be adapted by different ATSILS. This acknowledges the importance of localised, place-based evaluation, reflecting the diversity of communities. This sets the Framework apart from a ‘one size fits all’ approach to evaluation while also empowering local communities to define the outcomes they want to measure and achieve. The Indigenous Evaluation Strategy should support processes used for this framework, which involved ACCOs defining their own outcomes, measurements and concepts of best practice service delivery.

The Bourke Maranguka Justice Reinvestment project is also measured by indicator categories identified by the community leadership, they are:

- Family strength: building wellbeing and relationships within the family units.
- Youth development: building youth engagement, education and the prevention of youth imprisonment.
- Adult empowerment: increasing opportunities for healing, connection to Country, rehabilitation, community engagement and employment.<sup>8</sup>

It is integral that the Indigenous Evaluation Strategy supports Evaluation Frameworks designed by and for Aboriginal and Torres Strait Islander people. An example of such a Framework is the Ngaa-bi-nya framework developed by Megan Williams. Williams developed the framework in response to the lack of evaluation of Aboriginal and Torres Strait Islander health and social programs and the need for practical tools to support monitoring evaluation within this context<sup>9</sup>. William’s framework considers the interconnected contexts within which Aboriginal and Torres Strait Islander people live, stating,

[Ngaa-bi-nya] prompts the user to take into account the historical, policy, and social landscape

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<sup>7</sup> NATSILS and Social Ventures Australia Consulting, *ATSILS Shared Outcomes Report*, unpublished (2018)

<sup>8</sup> KPMG, Maranguka Justice Reinvestment Project Impact Assessment (2018) p.6

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

<sup>9</sup> M. Williams, *Ngaa-by-nyaa Aboriginal and Torres Strait Islander program evaluation framework* (2018) p. 1

<<https://journals.sagepub.com/doi/pdf/10.1177/1035719X18760141>>

of Aboriginal and Torres Strait Islander people’s lives, existing and emerging cultural leadership, and informal caregiving that supports programs. Ngaa-bi-nya’s prompts across four domains—landscape factors, resources, ways of working, and learnings—provide a structure through which to generate insights necessary for the future development of culturally relevant, effective, translatable, and sustainable programs required for Australia’s growing and diverse Aboriginal and Torres Strait Islander populations.<sup>10</sup>

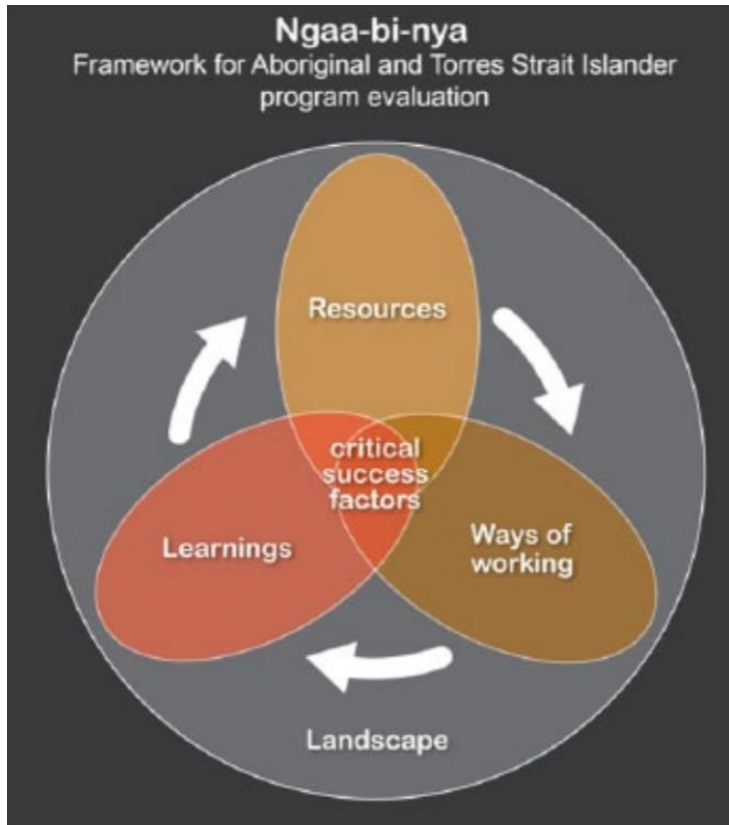


Figure 1: Ngaa-bi-nya framework.<sup>11</sup>

One way the Ngaa-bi-nya framework differs from mainstream approaches is its accessibility. Designed for use by communities and ACCOs, Ngaa-bi-nya aims to empower communities to perform their own evaluations, challenging the common practice of using consultant evaluators, often from outside communities, Williams explains,

[Ngaa-bi-nya] seeks to avoid a researcher-researched divide and to transform relationships and processes in order to bring about more Aboriginal and Torres Strait Islander people involved in evaluation and interpreting program successes in relevant ways—culturally,

<sup>10</sup> Ibid

<sup>11</sup> Ibid p.10

historically, socially, and economically, and through collective effort.<sup>12</sup>

The Ngaa-bi-nya framework is a strong example of holistic evaluation based in Aboriginal and Torres Strait Islander knowledge. The framework's departure from mainstream practices demonstrates the need for the Indigenous Evaluation Strategy to fundamentally differ from mainstream approaches in order to support these tools.

**Recommendation 5: The Indigenous Evaluation Strategy is set up to support the sustainable resourcing of an effective, innovative and adaptive Aboriginal Community Controlled sector.**

Current monitoring and evaluation practices often present challenges for ACCOs, rather than supporting them to achieve their objectives. Funding often sees ACCOs burdened with reporting requirements, short-term funding and unsustainable 'pilot' funding. Evaluation overburden may also include requiring organisations to report to separate agencies on programs with overlapping objectives, while the data and learnings from evaluation may not be shared. These issues can be particularly challenging for evaluation in remote communities. Aboriginal and Torres Strait Islander community organisations themselves may lack the funding, incentives or support to develop an internal evaluation or data capacity, while the day-to-day demands of service delivery can detract from efforts to assess the value of those services.<sup>13</sup> Further, if external consultants are used, they may not have adequate local knowledge to ensure effective engagement.

Each of these practices are detrimental to a building strength in the ACCOs sector, they affect services' ability to innovate, adapt to clients' needs and build trust through long-term reliability. Conditions of funding can require excessive spending on reporting - in some cases, reporting costs are so high they exhaust the majority of the program funding that they exist to support.

The 2018 evaluation of the Maranguka justice reinvestment project identified key attributes of success for long-term results that shift away from funding and reporting systems that ATSILS are often required to participate in. The evaluation identified funding models that best facilitate community-led impact over time. These included long term, flexible funding that can be redirected under community-led decision-making processes.<sup>14</sup>

Notably, this evaluation demonstrates the way that funding, reporting and evaluation can support effective, community-controlled programs. Evaluation timeframes must factor in the need for genuine relationship building and community participation.<sup>15</sup> The Maranguka evaluation was

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<sup>12</sup> Ibid p.18

<sup>13</sup> (Muir and Dean 2017).

<sup>14</sup> KPMG, op.cit. pp. 27-32.

<sup>15</sup> (Hudson 2017, p. 6).

undertaken in the project's fifth year, which recognises the time required to build community leadership structures and achieve impact. Flexibility and sustainability of funding and reporting meant that the first three years of the project were spent embedding community leadership structures before the design and delivery of programmatic and procedural change activities. The evaluation demonstrates the benefit of taking this long-term view as KPMG estimates a gross economic impact of \$3.1 million (with operational costs of \$0.6 million).<sup>16</sup>

The Indigenous Evaluation Strategy should understand the impact of reporting and evaluation methods to assist and hinder ACCOs and communities. In order to achieve the best outcomes for Aboriginal and Torres Strait Islander clients, the Indigenous Evaluation Strategy should support the ACCO sector with reporting and evaluation practices that enable services to achieve their outcomes: flexibility, knowledge-sharing, sustainability and community-control.

##### **5. Question on components of the Indigenous Evaluation Strategy**

- *Do you agree with the main components of an Indigenous Evaluation Strategy suggested by the Commission? Should other components be included? If so, why?*

This section is also relevant to:

- Questions on Relevant Principles for an Evaluation Framework
- Questions on Incorporating Indigenous Perspectives into Evaluation
- Questions on the Key Enabling Mechanisms for Effective Evaluation
- Questions on Determining Evaluation Priorities
- Questions on Improving Evaluation Culture, Capability and Capacity

**Recommendation 6: The Commission should include a co-design stage as a main component of the Indigenous Evaluation Strategy process.**

NATSILS is of the view that embedding a resourced, meaningful co-design process is essential to an effective Indigenous Evaluation Strategy. The Issues Paper identifies “the role of Aboriginal and Torres Strait Islander people in evaluation will be an essential component,”<sup>17</sup> so a dedicated co-design stage is necessary to ensure these voices are active in decision-making processes.

The ILAP Review also recognised the importance of co-design for the development of Aboriginal and Torres Strait Islander programs, recommending that:

To strengthen and streamline the future Indigenous Legal Assistance Program, the Commonwealth Government, Aboriginal and Torres Strait Islander Legal Services and the

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<sup>16</sup> KPMG, op.cit. p. 6

<sup>17</sup> Productivity Commission *Indigenous Evaluation Strategy Issues Paper* (2019) p.4

<https://www.pc.gov.au/inquiries/current/indigenous-evaluation/issues/indigenous-evaluation-issues.pdf>

National Aboriginal and Torres Strait Islander Legal Services should work in partnership to co-design aspects of the future funding model, including but not limited to the program logic, program benchmarks, program objectives and outcomes.<sup>18</sup>

Embedding co-design as a key component of the Indigenous Evaluation Strategy will strengthen the strategy's ability to support effective, long-term service delivery of Aboriginal and Torres Strait Islander programs.

#### **6. Questions on applying the strategy to mainstream programs**

- *What is the best way to address mainstream programs in the Indigenous Evaluation Strategy?*

This section is also relevant to

- Questions on Evaluation Practice in Australia
- Questions on Incorporating Indigenous Perspectives into Evaluation

**Recommendation 7: The Indigenous Evaluation Strategy is built around a culturally-safe, Aboriginal Community Controlled model against which mainstream programs are also evaluated.**

An Indigenous Evaluation Strategy should measure programs, including mainstream programs, by frameworks developed by and for Aboriginal and Torres Strait Islander people. An Indigenous Evaluation Strategy should evaluate programs according to the priorities of Aboriginal and Torres Strait Islander communities when accessing a service and what they consider best practice. This requires evaluating areas of the service that mainstream evaluations may not always assess. The ILAP Review identified aspects of best practice for legal service provision to Aboriginal and Torres Strait Islander clients as:

Key aspects of best practice legal assistance to Aboriginal and Torres Strait Islander clients include but is not limited to:

- appropriate legal expertise,
- culturally appropriate service delivery,
- cultural safety,
- trauma informed approaches,
- holistic service delivery,
- community-control, participation and governance,
- culturally aware/trained workforce,
- joined up and or collaborative service delivery with other support services,
- strength-based approach to addressing clients' needs, and
- ability to encourage or require more culturally appropriate responses from the justice system to clients.<sup>19</sup>

Mainstream evaluation methods often fail to measure these aspects of service delivery that make

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<sup>18</sup> Cox Inall Ridgeway, op.cit. p.17

<sup>19</sup> Ibid pp. 12-13

ACCOs effective. The Review of ILAP found that important aspects of ATSILS service delivery are not measured. The Review represented views from AGD, ATSILS and NATSILS, noting that:

[P]erformance measures should better acknowledge and capture the breadth of ATSILSs' culturally safe and holistic service provision, including the range of supports provided to clients beyond direct legal advice, representation in court and case length.<sup>20</sup>

Where this information is not captured and evaluated, ACCOs may not be evaluated favourably, while mainstream programs, evaluated by mainstream evaluation frameworks, may appear effective despite lacking qualities important to Aboriginal and Torres Strait Islander communities.

While NATSILS acknowledges that mainstream organisations can never be truly culturally safe, it is integral that their levels of cultural competency and the experience of Aboriginal and Torres Strait Islander clients is measured and valued by evaluations. This approach marks an important shift in the evaluation paradigm, moving away from using mainstream approaches to evaluate Aboriginal and Torres Strait Islander best practice to using Aboriginal and Torres Strait Islander approaches to evaluate programs for Aboriginal and Torres Strait Islander clients.

#### **7. Question on government programs**

- *What lessons from these and other major Australian Government programs impacting on Aboriginal and Torres Strait Islander people would be useful in developing an Indigenous Evaluation Strategy?*

This section is also relevant to

- Questions on Evaluation Practice in Australia
- Questions on Planning for Evaluation Early in the Policy Cycle
- Questions on the Independence of Evaluations and Evaluators
- Questions on the Key Enabling Mechanisms for Effective Evaluation
- Questions on Identifying and Translating Knowledge from Evaluation

**Recommendation 8: The Indigenous Evaluation Strategy embeds government accountability for the implementation of evaluation recommendations.**

**Recommendation 9: Co-design reporting requirements to make them useful for ATSILS self-determination. Embed elements that reduce the burden on organisations such as multi-year funding agreements and flexible templates.**

NATSILS' members have identified reporting burden and government accountability as key lessons to inform the Indigenous Evaluation Strategy. The following case studies demonstrate the implications of these issues for ATSILS and their clients. Evaluation is pointless and a waste of resources unless

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<sup>20</sup> Ibid, p. 109



recommendations are adopted and implemented by Governments.

#### *Lessons from the Indigenous Legal Assistance Program*

NATSILS and ATSILS are currently funded under the Indigenous Legal Assistance Program (ILAP). Current processes such as short-term funding agreements and administrative costs put significant burden on ATSILS to report to funders, often diverting resources from service delivery.

NATSILS and ATSILS spent 10 months contributing to the ILAP Review. The review was extremely resource intensive from NATSILS and ATSILS perspective, meaning that other work had to be deprioritised.

The ILAP review recommends:

In order to further enhance performance monitoring and reporting, the Commonwealth Government, Aboriginal and Torres Strait Islander Legal Services and the National Aboriginal and Torres Strait Islander Legal Services should work collaboratively to identify ways to streamline reporting and increase funding transparency and certainty.<sup>21</sup>

The Indigenous Evaluation Strategy should ensure that principles that reduce reporting burden on organisations are included in the Indigenous Evaluation Strategy. This would improve both the effectiveness of reporting and organisation's ability to focus on improving service delivery. Issues of funding transparency and certainty are particularly pertinent to the Indigenous Evaluation Strategy, considering the Government's decision to end the standalone ILAP in favour of mainstream funding. This decision was made despite the ILAP review's recommendation that:

To facilitate a sustainable, community-controlled Indigenous legal assistance sector, Commonwealth Government funding should continue to be delivered through a standalone, specific purpose funding program with minimum five-year funding terms.<sup>22</sup>

The Government's decision to mainstream NATSILS and ATSILS' funding disregards the ILAP review's first recommendation.

This demonstrates the lack of influence that evaluations can have on government decision-making and points to the importance of the Indigenous Evaluation Strategy including government accountability mechanisms.

#### *Lessons from Closing the Gap*

NATSILS' experiences in Closing the Gap structures demonstrate the need for systemic reform for

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<sup>21</sup> Ibid, p.17

<sup>22</sup> Ibid, p.16

Government practices in Aboriginal and Torres Strait Islander programs. NATSILS is a member of the Coalition of Peaks, a group of nearly 40 members of National and State/Territory Aboriginal and Torres Strait Islander Peak Bodies. The Coalition represents ACCOs that deliver and monitor a range of services as part of Closing the Gap. NATSILS has also been elected to the Joint Council, its role is to support national leadership, coordination and cooperation on Closing the Gap and provide advice to COAG.

The Coalition of Peaks and Joint Council structures aim to provide unprecedented voice and self-determination for Aboriginal and Torres Strait Islander organisations in Closing the Gap. Despite significant NATSILS involvement in these structures the government has decided to mainstream the ILAP, posing a serious risk to NATSILS and ATSILS self-determination. This demonstrates the need for accountability measures to hold governments to account on self-determination.

The history of Closing the Gap provides important examples of the need for long-term accountability from government. For Closing the Gap, or any program, to be effective it needs commitment from governments that last beyond election cycles.

*Government expenditure on mainstream and ACCO programs*

**Recommendation 10: The Indigenous Procurement Policy increases target of Indigenous procurement to at least 50%.**

**Recommendation 11: The percentage of Indigenous Advancement Strategy funding received by Aboriginal community-controlled organisations and companies reaches at least 70% by 2021 and 100% by 2025.**

Details of government expenditure on Aboriginal programs demonstrates the need for the Indigenous Evaluation Strategy to support ACCOs to be preferred providers for government funding for Aboriginal programs. Similarly, only 60% of the Indigenous Advancement Strategy funding ACCOs<sup>23</sup>. The Issues Paper demonstrates that mainstream organisations are being funded instead of ACCOs, stating that in 2015-16, 82% of government expenditure on Aboriginal and Torres Strait Islander people went to mainstream services, with the remaining 18% funding Indigenous specific services. This means that \$4 of every \$5 of Indigenous Expenditure is going to non-Indigenous organisations.

The Indigenous Evaluation Strategy should ensure that ACCOs are supported to be preferred service providers in two key ways. Firstly, the Strategy should support ACCOs with funding and capacity to do evaluation and applications that are competitive with mainstream service providers. ATSILS often have one staff member managing applications, tenders and evaluations, while mainstream organisations have an entire team doing this work. This disparity, often seen across the sector, is detrimental to ACCOs'

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<sup>23</sup> Estimates, Senate of Australia, Finance and Public Administration Legislation Committee, (22 February 2019) Senator Scullion, p.36

ability to demonstrate the effectiveness of their work and gain contracts.

Secondly, the Strategy should hold governments accountable to recognising ACCOs' unique work by making them preferred providers of Indigenous services. The Indigenous Procurement Policy (IPP) has a target of 3% for Indigenous participation in organisation-based assessment.<sup>24</sup> NATSILS recommends this target is raised to at least 50% to move towards substantive equality.

#### **8. Questions on evaluation methods and data**

- *What types of evaluation approaches and methods are currently used to evaluate Indigenous programs? How could evaluation methods be improved to ensure robust and reliable evidence is produced?*
- *To what extent does a lack of high-quality, accessible data, including data gaps, act as a barrier to undertaking effective evaluation of policies and programs affecting Aboriginal and Torres Strait Islander people?*

This section is also relevant to:

- Questions on Evaluation Approaches and Methods
- Questions on Planning for Evaluation Early in the Policy Cycle
- Questions on the Key Enabling Mechanisms for Effective Evaluation
- Questions on Determining Evaluation Priorities
- Questions on Improving Evaluation Culture, Capability and Capacity
- Question on Data for Evaluation

**Recommendation 12: The Indigenous Evaluation Strategy includes baselines of the needs of Aboriginal and Torres Strait Islander people for service delivery and funding allocation models**

**Recommendation 13: That the Commonwealth Government work with ACCOs to comprehensively map unmet needs of Aboriginal and Torres Strait Islander people.**

The Indigenous Evaluation Strategy should consider the development of baseline evidence and bridging knowledge gaps that affect the relevance and quality of evaluation. With respect to civil and family law services, a number of reports have highlighted the levels of unmet needs for civil and family law in Aboriginal and Torres Strait Islander communities.<sup>25</sup> It has been noted that an increasing proportion of

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<sup>24</sup> Department of Prime Minister and Cabinet *Indigenous Procurement Policy Overview* n.d. <<https://www.pmc.gov.au/ipprs/ipp-overview>>

<sup>25</sup> F Allison, M Schwartz and C Cunneen, 'The Civil and Family Law Needs of Indigenous People in WA (A report of the Australian Indigenous Legal Needs Project)' (2014); C Cunneen, F Allison and M Schwartz, 'Access to Justice for Aboriginal People in the Northern Territory' (2014) 49(2) *Australian Journal of Social Issues* 219.

services delivered by ATSILS relate to civil and family matters.<sup>26</sup> For example, the Productivity Commission recommended in 2014:

Commonwealth funding for the providers of legal assistance services should be allocated: according to models that reflect the relative costs of service provision and indicators of need; to encourage funding participation by state and territory Governments. Funding allocation models currently used to determine LACs and ATSILS funding should be updated to reflect more contemporary measures of legal need.<sup>27</sup>

High-quality baseline evidence is key to evaluation, yet, in the justice space, there has been no mapping of key baselines such as unmet legal need of Aboriginal and Torres Strait islander people. Without this knowledge, produced by the Commonwealth Government in partnership with ATSILS, it is impossible to truly measure the extent of need and the ability of services to meet this need. This baseline data is important to inform the cost of meeting unmet legal need, demonstrating the case for increased support for ATSILS. If ATSILS had access to this data, it would inform and strengthen applications for funding. Maps of unmet legal needs would also provide an understanding of where ATSILS are most needed and how services are meeting this need. This is particularly important to understand the impact of ATSILS programs that focus on prevention and reducing recidivism, such as Community Legal Education and prison Throughcare programs.

**Recommendation 14: The Indigenous Evaluation Strategy include adequate resourcing into improving data collection systems and processes required to improve transparency in relation to the data collected.**

**Recommendation 15: The Indigenous Evaluation Strategy includes adequate resourcing of ACCOs to collect, aggregate, analyse, translate and report on data that is identified in partnership as useful for ongoing improvement, including meaningful strength-based data as defined by ACCOs, and the achievement of their objectives.**

NATSILS is of the view that mainstream evaluation and data collection tends to focus on deficit-based or activity based measures. While some deficit measures are important, strengths-based methods are required to provide a more complete portrayal of ACCO's work and client experience. Strengths-based data collection can also measure the holistic services that ATSILS provide and measures such as cultural safety. The NATSILS and ATSILS Outcomes Framework includes strengths-based measures, such as:

- Legal services are accessible to Aboriginal and Torres Strait Islander peoples;
- Community members receive improved court outcomes;

<sup>26</sup> See NATSILS, Submission to the Senate Legal and Constitutional Affairs Committee: Inquiry into Access to Legal Assistance Services, April 2015, 4, which noted that “[c]urrently 13% of the ATSILS legal assistances are civil needs and 9% are family law matters”.

<sup>27</sup> 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>> para 21.6.

- Community members have access to a culturally safe legal experience;
- Community members feel increased sense of agency by making own decisions;
- Community members have access to a culturally safe legal experience;
- Community members have a greater understanding of their legal rights and obligations; and
- Community members are empowered to confidently navigate the justice system.<sup>28</sup>

NATSILS recognise the large amount of work that went into the development of the National Legal Assistance Data Standards Manual over a five year period by AGD. Yet there are a number of significant barriers to obtaining consistent and comparable data under ILAP. There are challenges around how data is collected, counted, reported and analysed, as well as the systems behind this. NATSILS and ATSILS 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.

NATSILS believe it is important for the Indigenous Evaluation Strategy to empower ACCOs 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. The Indigenous Evaluation Strategy should support ACCOs with resources to define and use strengths-based methods without adding to net reporting burden.

**Recommendation 16: That the Indigenous Evaluation Strategy creates data sets that are comparable and consistent for accurate analysis.**

Current monitoring and evaluation practices use mainstream data sets as frameworks to measure ATSILS work. This approach fails to capture many features of ATSILS work and this makes comparisons with other services unreliable. The following case study from Northern Australian Aboriginal Justice Agency demonstrates how the disparity in counting matters between NAAJA and NTLAC influence analysis.

#### **Case study: NAAJA LAWYER CASELOAD**

In 2016/2017 NAAJA had 22 lawyers working on a total of 5303 casework matters. NAAJA lawyers therefore attended to an average of 241 casework matters in 2016/2017. In 2016/2017 NTLAC had 15 lawyers working on a total of 2946 casework matters. NTLAC lawyers therefore attended to an average of 196 casework matters each in 2016/2017.

- On this count, average NAAJA caseload exceeds that of NTLAC by 45 clients per year.
- The average NAAJA caseload represents approximately 23% of the average NTLAC caseload.

In fact, the disparity is likely to be far greater than these figures suggest. Because of the

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<sup>28</sup> NATSILS and Social Ventures Australia Consulting op.cit.

different ways in which NAAJA and NTLAC count matters, the NTLAC figures for casework include matters that have already been counted as duty matters. At NAAJA, matters are counted as either duty matters or casework matters, but not both. It is also vital to recognise the greater complexity in much of the work that we do, relative to mainstream legal aid providers:

- Because it is often necessary to use an interpreter, taking instructions and giving advice takes much more time;
- Cross-cultural issues may significantly add to the complexity of a matter. For example, it may require basic legal concepts and court processes to be explained in detail, or for a lawyer to spend time understanding cultural issues relevant to the client and their legal problem;
- Taking instructions from clients or witnesses in remote areas raises logistical challenges and can be very time-consuming; and
- Remoteness also often requires more time and energy being put into aspects of legal representation, such as developing a bail plan to reside at a remote outstation.<sup>29</sup>

The Indigenous Evaluation Strategy should enable data sets that use Indigenous evaluation methods, yet are also comparable with other organisations in relevant sectors.

#### 9. Questions on evaluation transparency

- *What are the current arrangements and requirements (if any) for publishing Australian Government evaluation reports? How are agencies held accountable for responding to evaluation recommendations or findings?*
- *Should all evaluation reports be published? In what circumstances might it be appropriate to not publish evaluation reports?*
- *What mechanisms currently exist for sharing evaluation results and data with Aboriginal and Torres Strait Islander evaluation participants? Are these effective? How could they be improved?*

This section is also relevant to:

- Questions on the Relevant Principles of an Evaluation Framework
- Questions on Incorporating Indigenous Perspectives into Evaluation
- Questions on the Independence of Evaluation and Evaluators
- Questions on the Key Enabling Mechanisms for Effective Evaluation
- Questions on Improving Evaluation Culture, Capability and Capacity
- Questions on Identifying and Translating Knowledge for Evaluation

**Recommendation 17: Jointly establish, or task, an independent central agency with Aboriginal and Torres Strait Islander oversight to coordinate a comprehensive, current and consistent national approach to data collection and policy development.**

<sup>29</sup> NATSILS op.cit. p.76

Using an intergovernmental agreement, create an intergovernmental agency to direct (among other things) the collection and publication of data on all thematic areas of the Redfern Statement including, for example, in relation to health and wellbeing, law enforcement, prison and corrective services. The Central Agency should focus on the acquisition of qualitative as well as quantitative data from all states and territories to ensure that the unique and complex trends affecting Aboriginal and Torres Strait Islander people's contact with the justice system are captured. Currently most metrics in the justice system are deficit based. However, as well as identifying service delivery gaps in the justice system, there should be an emphasis on acquiring data that details and identifies positive outcomes and trends in our communities.

**Recommendation 18: Establish an independent Aboriginal and Torres Strait Islander community-controlled evidence intermediary.**

There are few examples of Aboriginal and Torres Strait Islander community designed outcomes frameworks and evaluation methods. Evaluations of Aboriginal and Torres Strait Islander initiatives are often conducted by Government-appointed consultants that do not understand the unique holistic methods and cultural protocols of service delivery designed and delivered by Aboriginal and Torres Strait Islander community-controlled organisations.

While there is evidence to support the achievement of positive outcomes within Aboriginal and Torres Strait Islander communities, it too often fails to influence smarter policy and commission decisions, which in turn prevents a number of Aboriginal and Torres Strait Islander organisations being able to deliver effective programs and service delivery on the ground.

The Indigenous Evaluation Strategy should support the creation of a resourced network to share insights and evidence of 'what works' in Aboriginal and Torres Strait Islander service delivery. This would provide an opportunity for Aboriginal and Torres Strait Islander organisations to articulate and share the effective measures of elements such as cultural immersion and cultural strengthening.

As discussed at the workshop for the Redfern Statement Alliance, an independent Aboriginal and Torres Strait Islander community-controlled evidence intermediary is an important recommendation that requires broader consultation to define its design and implementation. Discussion about the evidence intermediary with some Aboriginal and Torres Strait Islander peak bodies demonstrated the power that controlling data, evidence and evaluation gives to governments<sup>30</sup>. For the evidence intermediary to be effective, it must shift power from governments to communities and ACCOs, working towards data sovereignty and capacity-building for self-determined evaluation.<sup>31</sup>

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<sup>30</sup> Inside Policy and Social Ventures Australia *First Australians Evidence Intermediary Workshop*, unpublished (2017).

<sup>31</sup> *ibid.*

#### 10. Question on cultural capability

- *How can the cultural capability of evaluation commissioners and practitioners and their respect for Aboriginal and Torres Strait Islander culture, knowledges, history and values be demonstrated and improved?*

This section is also relevant to:

- Questions on Incorporating Indigenous Perspectives into Evaluation
- Questions on the Key Enabling Mechanisms for Effective Evaluation

**Recommendation 19: The Indigenous Evaluation Strategy includes an Aboriginal and Torres Strait Islander employment pathways program to increase the number of Indigenous evaluation commissioners and practitioners**

**Recommendation 20: The Indigenous Evaluation Strategy includes cultural competency training for Indigenous evaluation commissioners and practitioners delivered by Aboriginal and Torres Strait Islander people**

NATSILS uses the terms ‘cultural safety’ and ‘cultural competency’ to discuss the ability of a service to cater to the needs of Aboriginal and Torres Strait Islander people, though the use of the term ‘cultural capability’ throughout the Issues Paper is noted.

Whether a service is ‘culturally safe’ is determined by the experience of Aboriginal and Torres Strait Islander people. As described by Maori nurses in New Zealand, cultural safety is:

[A]n environment that is safe for people: where there is no assault, challenge or denial of their identity, of who they are and what they need. It is about shared respect, shared meaning, shared knowledge and experience of learning, living and working together with dignity and truly listening.<sup>32</sup>

The Victorian Aboriginal Child Care Agency outlines cultural safety in the context of family violence as:

[R]e-claiming cultural norms and creating environments where Aboriginal people transition; first from victimhood to survivors of oppression, through to seeing themselves and their communities as achievers and contributors. Through this transition Aboriginal and Torres Strait Islander peoples can reclaim their culture.<sup>33</sup>

The Australian Human Rights Commission has described cultural safety as requiring the creation of:

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<sup>32</sup> R Williams, ‘Cultural Safety – what does it mean for our work practice?’ (1999) 23(2) Australian and New Zealand Journal of Public Health 213, p 213

<sup>33</sup> Victorian Aboriginal Child Care Agency, ‘This is Forever Business: Cultural Safety in Aboriginal Victoria PowerPoint Presentation’ (2011), as cited in NATSILS, NFVPLS and SNAICC, Strong Families, Safe Kids: Family violence response and prevention for Aboriginal and Torres Strait Islander children and families (2017),

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- environments of cultural resilience within Aboriginal and Torres Strait Islander communities;
- cultural competency by those who engage with Aboriginal and Torres Strait Islander communities.<sup>34</sup>

For legal services, NATSILS is of the view that cultural safety for Aboriginal and Torres Strait Islander people includes:

- feeling heard, believed and understood, including in your own language;
- being able to seek service without fear of mistreatment, repercussions or misunderstanding of cultural needs;
- not having to justify your experience of systemic or cultural barriers or discrimination to your lawyer;
- having a shared understanding between community member and lawyer that your legal issue has arisen in the context of a culturally incompetent legal system;
- knowing that your legal representative will endeavour to overcome those barriers to get you a fair hearing and outcome.<sup>35</sup>

An integral feature of a culturally safe service is one that pushes the justice system to be more inclusive and understanding of Aboriginal and Torres Strait Islander culture.

‘Cultural competence’, on the other hand, is not about the experience of an Aboriginal person receiving the service but is about the values and abilities of the person, organisation or system delivering the service. ‘Cultural competence’ is usually used in the context of discussing non-Indigenous people.

The National Health and Medical Research Council define cultural competence as: Cultural competence is a set of congruent behaviours, attitudes, and policies that come together in a system, agency or among professionals and enable that system, agency or those professions to work effectively in cross-cultural situations. Cultural competence is much more than awareness of cultural differences, as it focuses on the capacity of the health system to improve health and wellbeing by integrating culture into the delivery of health services. To become more culturally competent, a system needs to:

- value diversity;
- have the capacity for cultural self-assessment;
- be conscious of the dynamics that occur when cultures interact;
- institutionalise cultural knowledge;
- adapt service delivery so that it reflects an understanding of the diversity between and

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<sup>34</sup> Australian Human Rights Commission, Social Justice Report 2011 (2013), ch 4.2, <<https://www.humanrights.gov.au/publications/chapter-4-cultural-safety-and-security-tools-address-lateral-violencesocial-justice#Heading56>>.

<sup>35</sup> NATSILS, op.cit. p.24

within cultures.<sup>36</sup>

Embedding and supporting cultural safety should be a focus of the Indigenous Evaluation Strategy, it is fundamental to best practice in any Aboriginal and Torres Strait Islander service. It is NATSILS view that only Aboriginal and Torres Strait Islander community-controlled services can be truly culturally safe. Our recommendations reflect the need to not only increase cultural competency for Indigenous evaluation commissioners, but to also create pathways to evaluation practice for Aboriginal and Torres Strait Islander people.

One example of a professional pathways program for Aboriginal and Torres Strait Islander people is the Bilata Legal Pathways Program coordinated by the Northern Australian Aboriginal Justice Agency (NAAJA). Bilata provides a range of supports and encouragement for Aboriginal and Torres Strait Islander people interested in studying law, with the aim of increasing the number of Aboriginal and Torres Strait Islander lawyers.<sup>37</sup> The recommendation to create a pathway for Aboriginal and Torres Strait Islander people into evaluation practice provides a crucial link to achieve cultural safety in evaluation practice at ACCOs, in government programs and the evaluation sector.

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<sup>36</sup> National Health and Medical Research Council, *Cultural Competency in Health: A guide for policy, partnerships and participation* (2006), 7, as cited in Australian Human Rights Commission, *Social Justice Report 2011* (2011).

<sup>37</sup> Bilata Legal Pathways Program <<https://www.bilata.org.au/>>