

Response to public consultation on the Australian Productivity Commission's review of the National Agreement on Closing the Gap

Aboriginal Family Legal Service WA

December 2022



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1 Introduction

The Western Australian Family Violence Prevention Legal Service Aboriginal Corporation, trading as Aboriginal Family Legal Service (WA) (AFLS), is a Family Violence Prevention Legal Service (FVPLS) providing specialist legal assistance and non-legal supports to Aboriginal and Torres Strait Islander victims of family violence and sexual assault across seven (7) regions in Western Australia.

With offices in Broome, Kalgoorlie, Kununurra, Port Hedland, Geraldton, Carnarvon and Perth, AFLS is the largest FVPLS unit in Western Australia. Under the FVPLS model, AFLS provides culturally appropriate, trauma informed and client centric supports for clients, including:

- Criminal Injuries Compensation applications
- Care and Protection matters
- Family Law matters
- Family Violence Restraining Order applications
- Intensive Case Management
- Court Support and Advocacy
- Community Engagement and Outreach
- Early Intervention and Family Violence Prevention
- Community Legal Education
- Referral, Information and Support.

2 Response to Consultation Questions

Questions relating to the Commission's proposed approach to the review

1. How could the Commission's approach to the review be strengthened? Are there alternative ways of assessing progress?

The proposed approach of the review to consider progress towards the Priority Reforms and factors affecting progress is adequate. Our primary concern relates to the decision making and approval processes regarding the assessment, including who is conducting the assessment (e.g. their background, their knowledge and connection of and to the communities receiving the services, their independence) and how the assessments are informed (e.g. feedback from service providers and clients directly or the Government Department's administering funding). Assessments of progress must reflect what progress against achieving the commitments and implementing actions under the National Agreement looks like to Aboriginal people and communities, and those communities' interpretations of if and how that progress will lead to the structural changes envisaged by the Priority Reforms.

We are wary of the language used throughout Section 2, particularly reference to identifying factors contributing to success and effective action by government. It is imperative that this review commences from an objective, independent, unbiased point of view; it must consider that evidence may suggest limited progress or demonstrate poor performance against the intended outcomes.

Regarding assessing progress on the socioeconomic outcomes, the selection of a subset of outcomes must be reflective of the cross-section of services provided under the Agreement.

2. How can the Commission’s review be done in a way that will complement the Aboriginal and Torres Strait Islander-led review?

The Commission’s review should really be guided by the expertise of the Aboriginal and Torres Strait Islander-led review if it were to be committed to implementing the principles of the National Agreement and its commitment to accelerating Aboriginal people’s decision making authority and contribution to self-determination. Given that the Aboriginal-led review will occur within twelve months of the review by the Productivity Commission (and not concurrently or before), the Commission’s review must be purposeful and targeted. For example, to avoid consultation fatigue, the Commission must have a targeted approach to engagement and review within specific communities, to ensure the Aboriginal-led review will receive engagement during their review. The Commission-led review should collect as much useful data as possible that can be shared with the Aboriginal-led review for their own interpretation. The Commission-led review should also seek to ensure that Aboriginal staff facilitate the review where possible.

3. Do you have any feedback on the engagement approach or how we can put those principles into practice throughout the review?

We consider that the principles of engagement should specifically include Cultural Safety. When we talk about cultural safety, we are talking about culturally safety being built into and entrenched in operational functions; not being culturally safe should be the exception. We note that this is a topic broader than the Review, but it would nonetheless be useful for the Commission to reflect on its practice and consider how to leverage its implementation and review of Closing the Gap, to ensure this is business as usual practice.

We query the Commission’s approach to remunerating stakeholders for their time and expertise in providing input into the review; specifically, we consider that remuneration should be an underlying principle for engagement of Aboriginal community members who provide advice to assist evaluation of progress of the implementation of the Agreement. This is separate to engaging with Aboriginal organisations who are recipients of funding through the National Agreement on Closing the Gap.

Regarding the principles of being open, transparent and reciprocal, we further query who will own the data collected about Aboriginal people as part of the review. We highlight the importance of Aboriginal data sovereignty and supporting Aboriginal people and communities to be able to effectively use the data collected about them, to advance their interests.

Questions relating to the selection of case studies

4. Can you provide examples of specific government policies or programs that are making a strong contribution (or are posing a barrier) to progressing the Priority Reforms or socioeconomic outcomes?

The funding restrictions imposed on Family Violence Prevention Legal Services in Western Australia specifically, including the resistance of the State Government to make the services eligible for funding administered through the National Legal Assistance Partnership despite being accredited as Community Legal Centres, is imposing barriers to achieving progress against targets 10-13 of the National Agreement. As specialist legal assistance and social support providers for Aboriginal victims of family violence, Family Violence Prevention Legal Services are best placed to provide programs for Aboriginal people targeted at making sure families are safe and Aboriginal people stay out of the criminal justice and away from the child protection section. The exclusion of FVPLS units from funding eligibility, for example, for funding administered through the Vulnerable Women’s stream of the

National Legal Assistance Partnership, is a missed opportunity by the Federal and State Governments to ensure the best placed and most appropriate service providers deliver services to one of the most vulnerable cohorts of women being Aboriginal women experiencing family violence.

More broadly, the approach of the State Government to engaging with Aboriginal young people and families in Western Australia, specifically in the child protection and criminal justice systems, is imposing severe barriers to progress on socioeconomic outcomes of the National Agreement on Closing the Gap. For example, the State Government's reluctance to introduce a Commissioner for Aboriginal Children and Young People role to complement the existing Commissioner for Children and Young People and hold the Government to account for their treatment of Aboriginal children and young people, despite calls from the legal assistance, Aboriginal community controlled and child protection sectors, demonstrates this Government's approach to protecting the rights and interests of Aboriginal people. Recent revelations about the treatment of youth inside Banksia Hill Detention Centre, where Aboriginal children and disproportionately represented, and entrenched racism within the Department of Communities which provides care and protection services, family violence services and housing services for Aboriginal people at disproportionate rates, are evidence of a State Government with no clear desire to improve outcomes for Aboriginal people and families.

The lack of investment from the State Government in Aboriginal expertise and Aboriginal Community Controlled Organisations to deliver services to Aboriginal people is problematic and is the reason why Western Australia's performance against almost all of the targets within the National Agreement is considered 'highly aspirational'.

5. What criteria should the Commission use to select case studies? Are the Commission's suggested criteria in section 2 appropriate? Are there other criteria the Commission should use?

We consider the use of case studies to be an effective way to demonstrate and understand progress. With regard to the intention of the Commission to use criteria to select case studies, we consider that the approach of prioritising policy actions which have more resources allocated to them could minimise the potential for seeing the achievements of and scaling up actions which have originally been allocated less money, but which have the potential to achieve great impacts for communities. We consider that the Commission should be wary not to allocate insufficient attention to case studies for such actions.

We additionally consider that while choosing to prioritise actions for case studies related to the sectors targeted for strengthening would provide a useful picture of the impacts of the National Agreement, diving deeper into the five policy priority areas identified in the Agreement (justice, social and emotional wellbeing, housing, early childhood care and development, Aboriginal and Torres Strait Islander languages) would provide a bigger picture for analysis, as those priority areas cut across a broader range of services than if the review were to prioritise only case studies on the sectors targeted for strengthening.

Questions relating to Priority Reform One

This is a collective response to questions relating to Priority Reform One.

Response:

Genuine partnership with Aboriginal people, which means adequately investing in the expertise of Aboriginal people in their communities and their capacity to make their own decisions, is critical

because Aboriginal people know best what their needs are, what services will help them and their families, and who should deliver those services.

In our experience, government agencies are failing to genuinely share decision making with Aboriginal people; if we look at any advice which is made to the State Government by Aboriginal organisations, communities and people, it is always at the discretion of the agency to take that advice into account and/or act on it. Decision making capacity always rests with the state.

This is reflective of a system which does not genuinely trust in the capabilities of Aboriginal people to make what the Western systems and institutions consider to be the “right” choices for their communities, despite those communities being best placed to identify what they need. As an Aboriginal organisation, we often feel as though our perspective is considered briefly for the purposes of ‘ticking the box’ regarding consultation with Aboriginal people, and then the government chooses to continue to follow its chosen agenda.

It is appropriate to say that partnerships are developed and operationalised in a transactional, rather than relational, way. For example, AFLS was recently involved in the development of the Department of Justice’s Legal Assistance Strategy and participated in consultation on the draft Action Plan Framework which will complement the Strategy. AFLS’s involvement in the development of the Strategy was sought by the Department of Justice, despite AFLS not being eligible for funding provided from the Department through the National Legal Assistance Partnership, which was the main focus of the Strategy. This participation, which was largely for the benefit of the Department by providing ideas from the sector to inform and shape the development of the Strategy, required significant resourcing and engagement from an understaffed and overwhelmed AFLS, which will receive limited benefit in the short-term from the development and implementation of the Strategy.

The best way to measure progress on Priority Reform One is to respectfully engage with Aboriginal organisations and communities regarding their experiences of being involved in partnerships and decision making with their respective governments and holding governments accountable for their delegation of decision making authority and investment in the expertise of Aboriginal people.

Formal partnerships and shared decision making requiring funding arrangements which are not entirely at the discretion of the government agency to dictate; the reality is that when governments are in the position of delegating decision making authority and making investments, there is already a level of inequity which limits capacity for genuine partnership and shared decision making. Funding arrangements must be adequate, sustainable and predictable so that Aboriginal organisations and communities are not at the whim of the government agency should they change their mind, which could impact genuine participation by Aboriginal people and organisations.

Questions relating to Priority Reform Two

This is a collective response to questions relating to Priority Reform Two.

Response:

Aboriginal controlled services such as AFLS provide better outcomes compared to mainstream service providers because they are more accessible, culturally safe and appropriate for Aboriginal people. At AFLS, for example, we employ local Aboriginal staff in each of the regional areas we operate, to engage with the community, provide information on the services AFLS providers, and bring clients to the service as required and necessary. The capacity for local Aboriginal staff to enter their local communities where they are known and trusted, speak to local people who may be at-risk of, experiencing or have previous experiences of family violence and sexual assault, and develop trusting

relationships that encourage and enable clients to seek the services of the organisation, is unparalleled.

The impactful role of Aboriginal organisations for Aboriginal people was recently highlighted by the awarding of the tender for the Perth Metropolitan Family Violence Prevention Legal Service to AFLS and Southern Aboriginal Corporation. The two FVPLS units successfully submitted a joint-tender to shift the control of FVPLS services in the Perth Metropolitan from mainstream service providers to Aboriginal organisations. Since commencing service delivery in July 2022, the Metropolitan service has already reached capacity. This demonstrates a significant demand for what are understood to be culturally safe services for Aboriginal people, by Aboriginal people.

The funding models that work well for ACCOs are those which are long-term, sustainable, and predictable. Funding arrangements which lack these qualities create uncertainty for ACCOs, reducing the amount of attention that can be paid to client facing service delivery, and increasing the demands on those organisations to continue to competitively tender for funding. Long-term funding models are critical to ensuring the employment of the best possible staff within those services; this is because staff tend to lack interest in short-term contracts when they have longer term opportunities elsewhere.

We consider that there is positive collaboration between ACCOs within the sector, which is an example of something ACCO-led that is working well. This is not necessarily collaboration which is facilitated by or involves government. Nevertheless, the daily impacts of inadequate funding and limited resourcing means that the overall capacity for ACCOs to engage with other services in positive and helpful ways is restricted.

The approach of the Commission should be to recognise that there are already strong organisations within the ACCO sector, which have the expertise and capability to deliver long lasting impacts for Aboriginal communities that contribute to Closing the Gap. It is the role of governments to invest in that expertise in increase the capacity of the services to deliver that progress and the outcomes desired.

Questions relating to Priority Reform Three

This is a collective response to questions relating to Priority Reform Three.

Response:

Government policy and service provision has rarely improved to better meet the needs of Aboriginal people. In Western Australia, the criminal justice and child protection systems continue to perpetrate institutionalised racism and discrimination against Aboriginal people every day.

For example, the interest of the Department of Communities, the government agency responsible for providing child protection services, in removing Aboriginal children from their families at disproportionate rates, displacing them from their communities and their cultures, and failing to provide adequate oversight of the safety and development of children in their care, provides evidence of the problematic approach to protecting the rights and interests of Aboriginal people by the State Government of Western Australia. At its core, the integration of care and protection services within the same agency that has responsibility for removing children from their families is a fundamentally flawed approach. Recent revelations of entrenched racism and discrimination within the Department, for example those by Dr Tracey Westerman, do not come as a surprise.

Similarly, the way the criminal justice system in Western Australia treats Aboriginal young people and adult offenders demonstrates entrenched racism and discrimination. The failure of the justice system to engage with Aboriginal people in culturally appropriate and safe ways, including its ignorance of the impact of FASD on Aboriginal offenders, failure to cater to the reality that Aboriginal people walk between the two worlds of Aboriginal Law and Western Law, and general level of cultural incompetence of staff and systems, is evidence of a government organisation in desperate need of deep transformation.

We have seen examples of efforts from government to operate and work with Aboriginal people differently. For example, AFLS recently entered into a partnership with the Department of Justice to co-develop the Department's Aboriginal Family Safety Strategy, which is intended to make the criminal justice system more responsive to the needs of Aboriginal families experiencing violence. This is a paid arrangement which has seen an AFLS staff member seconded to the Department for 6 months to lead development of the Strategy. This is a positive example of partnership between a government agency and an organisation within the ACCO sector. Nevertheless, as the Aboriginal Family Safety Strategy is being developed for the Department, the capacity of AFLS to genuinely influence the final form of the Strategy and the commitments the Department makes to actions to implement the Strategy, is minimal.

Regarding how governments can deliver on the commitment within Priority Reform Three to transform the services that they fund, this requires a shift in commissioning and procurement processes to prioritise service delivery for Aboriginal people by Aboriginal organisations. Funding to deliver services to Aboriginal communities must be quarantined for ACCOs, including where possible through non-competitive tender processes.

Independent mechanisms to support, monitor and report on the transformation of mainstream agencies and institutions must be Aboriginal-led and must report directly to their respective State Parliaments. This should include a Commissioner for Aboriginal Children and Young People and an Office of Accountability in Aboriginal Affairs in every state and territory. An Office of Accountability, for example, should be a separate statutory body designed to strengthen government accountability to Aboriginal people in Western Australia and advocate for Aboriginal people's interests in government policy and performance. The Office should provide an Aboriginal-led, independent and transparent oversight and review mechanism with the capacity and resources to track the performance of government at every point where government intersects with the lives of Aboriginal people, including but not limited to government action to enable Aboriginal self-determination. The non-Indigenous population has access to a range of advocacy bodies for adults as well as children and it seems reasonable to provide the equivalent for the Aboriginal population.

Questions relating to Priority Reform Four

This is a collective response to questions relating to Priority Reform Four.

Response:

As previously discussed in response to questions relating to the Commission's proposed approach to the Review, Aboriginal data sovereignty and supporting Aboriginal people and communities to be able to effectively use the data collected about them, to advance their interests, is highly important. Enabling shared access to data to support shared decision making and build the capability of the ACCO sector is a key component of autonomy and self-determination for Aboriginal people. We refer, for example, to Recommendation 5 of the National Family Violence Prevention Legal Service Forum's

submission to the Department of Social Services on developing the next National Plan to reduce violence against women and their children (2021):

Aboriginal and Torres Strait Islander data sovereignty is a key tenet of self-determination. That is, the right of Aboriginal and Torres Strait Islander people to exercise authority over and govern the creation, collection, ownership and use of their data.

Government creation and ownership of data that pertains to Aboriginal and Torres Strait Islander people and communities raises a number of issues. For example, it often:

- *removes a community's ability to define what success looks like for them and diminishes the right to self-determination;*
- *limits the ability of Aboriginal and Torres Strait Islander communities to access relevant data that is collected;*
- *has a focus on deficit, disadvantage and difference to justify the introduction of Government policies that have historically had negative impacts; and*
- *fails to recognise broader social, cultural and political drivers.*

It is critical for the next National Plan to recognise Aboriginal and Torres Strait Islander data sovereignty and shift ownership of data from the Commonwealth Government to Aboriginal and Torres Strait Islander Community Controlled Organisations (ACCOs), FVPLSs and Aboriginal and Torres Strait Islander communities. This must be supplemented by increased funding dedicated to building the capacity of these organisations and communities to collect and engage effectively with data.ⁱ

The government's plan under Priority Reform 4 of Closing the Gap for State and Federal Government's to collect, handle and report data, and provide communities and organisations with access to data, is inconsistent with the approach suggested by the National Forum. The approach of states and territories Australia-wide must be to prioritise Aboriginal community ownership of the data collected about them, which can be used to define what services they need and how those services will look for them. This will be critical to supporting Aboriginal and Torres Strait Islander communities and organisations to "build capability and expertise in collecting, using and interpreting data in a meaningful way", and to supporting Aboriginal and Torres Strait Islander communities to "use data to help drive their own development".ⁱⁱ

Data is needed for Aboriginal people to participate in shared decision making in all policy areas and geographic locations. Data is essential to enabling place-based decisions which reflect the genuine needs of local communities.

ⁱ National Family Violence Prevention Legal Services Forum, 'Submission to the Department of Social Services: Developing the next National Plan to reduce Violence against Women and their Children', July 2021, [Year \(nationalfvpls.org\)](https://nationalfvpls.org)

ⁱⁱ Australian Government, 'Closing the Gap in Partnership', [Priority Reforms | Closing the Gap](#)