



NATSILS
NATIONAL ABORIGINAL & TORRES
STRAIT ISLANDER LEGAL SERVICES

22 August 2014

Warren Mundy
Presiding Commissioner
Access to Justice Arrangements Public Inquiry
Productivity Commission

Via email at access.justice@pc.gov.au

Dear Commissioner,

**RE the impact of announced funding cuts on access to justice for Aboriginal
and Torres Strait Islander peoples**

In my capacity as Chairperson, I write on behalf of the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) which is comprised of the following Aboriginal and Torres Strait Islander legal services (ATSILS):

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

I am writing to provide you with additional updated information as to the impact of announced funding cuts to NATSILS and ATSILS as it relates to the Commission's inquiry into Access to Justice Arrangements.

The announced funding cuts

NATSILS and our members are solely funded by the Commonwealth Attorney-General's Department (AGD) under the Indigenous Legal Aid and Policy Reform Program. On Tuesday 17 December 2013, Treasurer Joe Hockey announced in his Mid-Year Economic and Fiscal Outlook that \$43.1m was to be cut across the legal assistance sector over the next four financial years. The AGD has since confirmed that \$13.34m will be cut from the Indigenous Legal Aid and Policy Reform Program between the 2013-14 and the 2016-17 financial years. The Government has stated that these cuts are aimed at defunding law reform and advocacy activities.

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Under these funding cuts, the very small amount of funding provided to NATSILS will be cut, meaning that NATSILS will be defunded. The remaining funding cut will be spread across individual ATSILS. Information clarifying how the funding cuts will be spread across ATSILS and how such will be implemented has not been provided by the AGD to date.

Law Reform and advocacy

The Attorney-General has made it clear that the funding cuts are aimed at directly targeting the ability of NATSILS and individual ATSILS to undertake law reform and advocacy work. This targets our ability to work with governments to address the underlying causes of why Aboriginal and Torres Strait Islander peoples are so disproportionately represented in our justice system. There is no one else to fulfil this role if we are prohibited from doing so.

Without the law reform and advocacy work undertaken by NATSILS and ATSILS, governments around Australia will have no access to informed, evidenced based frontline advice in regards to the effectiveness of the justice system. Justice related costs are spiralling out of control around Australia, and removing the ability of frontline services to provide government agencies with accurate policy advice will only serve to make our system more ineffective, inefficient and increasingly costly.

Impact on 'frontline' services

As confirmed by the AGD during recent Senate Estimates hearings, the funding of ATSILS cannot be easily separated between 'frontline' service and 'policy' activity. Law reform and advocacy is undertaken within ATSILS by a range of staff. Rather than having full time staff solely focused on law reform and advocacy, it is more often the case that such activities are undertaken by staff in combination with numerous other responsibilities such as community legal education or by solicitors, managers and Principal Legal Officers in addition to their main roles. For this reason, implementing the announced funding cuts cannot simply be done by removing dedicated law reform and advocacy positions. Given how law reform and advocacy work is shared amongst multiple people with responsibility in areas of frontline services, the implementation of the announced funding cuts will mean that cuts to frontline service delivery will have to be made. Furthermore, ATSILS allocate very few resources to law reform and advocacy work, and the size of the announced funding cuts far exceed what is spent in this area meaning that in order to implement such, other frontline services are going to have to be withdrawn.

The lack of information as to how the announced funding cuts are going to be implemented is causing a great deal of concern amongst ATSILS. Without information as to how the funding cuts are going to be implemented, ATSILS are unable to appropriately plan ahead and provide staff with direction and employment certainty. ATSILS around the country are already losing staff as a result of the uncertainty in employment security created by the announced cuts. Furthermore, in order to avoid being left in a situation where they have to undertake strategic decision-making 'on the run' at the last moment, our members are being forced to make difficult decisions without the necessary

information to safeguard the future of their services. NAAJA, for example, has had to make the decision to close their Nhulunbuy office, and ATSILS Qld have had to close their Warwick, Cunnamulla, Chinchilla, Dalby and Cooktown offices. After consultation with individual ATSILS as to what additional cut backs are likely going to have to be made to incorporate the funding cut we can advise that around the country such would necessitate:

- Reduction of legal assistance service delivery across all types of law - criminal, civil and family;
- Complete cessation of legal assistance services in family law;
- Cessation of duty lawyer services;
- Cessation of assistance to Parole Boards;
- Further office closures in metropolitan, regional, and remote areas; and
- Scaling back of community legal education programs.

It is very clear that despite public assurances by the Attorney-General that the funding cuts will not affect 'frontline' service delivery, they will indeed do precisely that.

Impact on the wider justice system and increased costs to government

The announced funding cuts to NATSILS and individual ATSILS, and the resulting cut backs to service delivery that such will necessitate, will only serve to pull more Aboriginal and Torres Strait Islander peoples into all areas of the justice system. As such, in regards to the Government's aim of making cost savings, it will be entirely counter-productive. Service cut backs will result in higher rates of unmet legal need, more people coming into contact with the formal justice system to resolve minor matters, greater escalation of minor matters into more serious and more costly ones, increased imprisonment, and a greatly diminished capacity to identify and manage the systemic issues that contribute to this dreadful cycle. These consequences translate to a real cost for government. That cost would surely far exceed the short-term savings that would be achieved from implementing the announced funding cuts.

Evidence, consultation and decision-making

NATSILS and our members were not consulted prior to the announcement of these cuts and are not aware of what evidence the decision was based upon. Given the recent release of the Review of the National Partnership Agreement on Legal Assistance Services, as well as the Draft Report from this very inquiry, both of which identify a significant shortfall in funding for legal assistance services, including ATSILS, and a significant level of unmet legal need amongst Australians and Aboriginal and Torres Strait Islander peoples in particular, it is clear that a decision to cut funding to NATSILS and its members is wholly unwarranted and ill-advised.

Conclusion

The level of need amongst Aboriginal and Torres Strait Islander peoples for culturally competent legal services is critical and is only growing. The recent review of the National Partnership Agreement on Legal Assistance Services, in addition to research conducted by the Productivity Commission itself, both confirm this. These Government commissioned reviews have found that there is a significant level of unmet need and that rather than system reform, it is in fact an injection of additional resources that is needed in order to meet demand. The Government's decision to cut funding from legal assistance services, and ATSILS in particular, completely goes against this evidence.

We are unaware of what evidence was used by the Government to calculate the amount of funding that could be cut while only affecting law reform and advocacy activities undertaken by NATSILS and our members. As demonstrated above, the Government's calculation is clearly incorrect and the impacts of the funding cuts will go well beyond law reform and advocacy activities and will force significant withdrawal in critical service delivery areas such as criminal, civil and family law, assistance to Parole Boards and the provision of community legal education as well as office closures in metropolitan, regional and remote areas, which are presently at the coalface of our work.

Ultimately the Government's decision to cut funding from NATSILS and its members is a short-sighted false economy which will only serve to increase costs to the justice system overall. It is in the Government's best interest to understand that the relatively small investment made in funding NATSILS and its members, provides a far greater return in terms of savings to the justice system overall.

Yours sincerely,

Shane Duffy
Chairperson
NATSILS