



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC:RHvk1959962

7 August 2020

Mr Romlie Mokak
Commissioner
Productivity Commission
4 National Circuit
Barton ACT 2600

By email: indigenous.evaluation@pc.gov.au

Dear Commissioner,

Draft Indigenous Evaluation Strategy

The Law Society of NSW writes in support of the draft Indigenous Evaluation Strategy (“Strategy”). This submission is informed by the Law Society’s Indigenous Issues Committee.

In our view, adoption of the draft Strategy would be consistent with Australia’s obligations under the UN Declaration on the Rights of Indigenous Peoples, particularly in respect of articles 18 (representation and decision making), 19 (governments consulting and cooperating with Indigenous peoples in good faith), 20 (recognition of Indigenous people’s own institutions), 21 (right to the improvement of Indigenous peoples’ economic and social conditions), and 23 (recognition of importance of Indigenous self-management and control over programs and services).

Making evaluation core business for government agencies in the way broadly proposed by the draft Strategy is likely to result in better outcomes for Indigenous people and represents better practice in the public policy process.

The Law Society makes the following comments for consideration:

1. Evaluation (of a credible, useful, ethical and transparent nature) is critical to driving evidence-based government decision making. However, such an approach also places a far greater data management and reporting burden on already resource-strained organisations in the Indigenous service system. We suggest that the Productivity Commission highlight and address this risk in the draft Strategy, perhaps at Action 5. While placing Indigenous people at the centre of a highly evaluative (and hence data driven) government policy and program framework is positive, unless governments are willing to properly resource and build capacity in the Indigenous service system, they need to be careful not to burden it with undue data collection and reporting requirements.
2. We note that, given that state and territory governments will ultimately be responsible for delivering on a number of the identified priority areas, we suggest that in addition to having

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oversight and reporting responsibilities in respect of Australian Government agencies, the governance body or bodies established to oversee the draft Strategy also have a coordination and information sharing function with relevant state and territory government agencies. This will require adequate resourcing of the oversight body or bodies.

3. We support the Action 2 proposal of introducing Indigenous Evaluation Threshold Assessments (IETA). As with environmental impact statements and regulatory impact statements, IETAs should be made publicly available. At a minimum, IETAs should be made available to key Aboriginal stakeholders for comment prior to finalisation of the relevant policy/program. This would align with the intention of the draft Strategy to place Indigenous peoples, perspectives, priorities and knowledges at the centre of government decision making on Indigenous program and policy evaluation.
4. We support the priority reform areas identified in the draft Strategy and note that the areas identified have been done so on an interim basis. We suggest including as a system priority the evaluation of the funding strategies relevant to Indigenous programs. This may include evaluation of funding for legal assistance. It would also be of use to have a standing evaluation process for the Indigenous Advancement Strategy.

It may be that, consistent with the “maturity approach” discussed at p 20 of the Draft Strategy, evaluation outcomes carried out under the draft Strategy will become directly pertinent to funding decisions, and that future iterations of the draft Strategy will include an Action for the making of funding recommendations in respect of existing programs and policies (see pp 25-30 of the draft Strategy).

Thank you for the opportunity to comment. Questions may be directed at first instance to Vicky Kuek, Principal Policy Lawyer, at victoria.kuek@lawsociety.com.au or (02) 9926 0354.

Yours sincerely,



Richard Harvey
President