



THE LAW SOCIETY  
OF NEW SOUTH WALES

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29 September 2023

Dr James Popple  
Chief Executive Officer  
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Dear Dr Popple,

### **Review of the National Agreement on Closing the Gap**

The Law Society thanks the Law Council for the opportunity to contribute to a submission in respect of the review of the National Agreement on Closing the Gap (**National Agreement**). The Law Society's submission is informed by its Indigenous Issues Committee.

We have considered the Productivity Commission's Draft Report into its review of the National Agreement on Closing the Gap (**Draft Report**). In the view of our members, and in particular our members who work for the Aboriginal Legal Service (NSW/ACT) (**ALS**), the Draft Report is an accurate reflection of their experience. We support the draft recommendations made in the Draft Report.

The National Agreement on Closing the Gap is a significant positive conceptual development in respect of efforts to close the gap. The identification and articulation of the priority reform areas, and the recognition that governments must address the priority reforms in order to be able to meet the targets, is critical. The recognition of Aboriginal peak organisations as a partner in these efforts is also a significant and welcome development. However, we agree with the views expressed in the Draft Report that there is a significant amount of work that is still to be done in this regard by governments, and that the level of transformation that must happen in order to meet the targets is yet to occur.

We agree that improvements to funding and contracting of Aboriginal Community Controlled Organisations (**ACCOs**) are necessary and agree that funding arrangements must cover the full costs of services provided. Funding arrangements for ACCOs should also be provided for a longer term, and be more flexible. We understand that short term (three years or less) funding cycles create significant administrative burdens, and are a barrier to long term and sustainable planning. It is very difficult for ACCOs (or any organisation subject to short term funding cycles) to implement full-service, wraparound programs, which, in our view, are necessary for the effective and culturally safe delivery of services, including legal services, to Indigenous people.

By way of example of appropriately covering the full cost of services provided, we note that there have been a number of pleasing developments in NSW in respect of improving access

to justice for Indigenous people. These include the establishment and commencement of an Indigenous tenancy list in the NSW Civil and Administrative Tribunal and the Winha-nga-nha list in the care and protection jurisdiction of the Children's Court in Dubbo, NSW (a busy regional centre). Both of these lists have adopted a therapeutic wraparound model for the delivery of legal and other services. We understand from our members that services relied upon in the tenancy list include the ALS and local ACCOs, including Aboriginal tenant advocacy services. However, the new workload is being supported out of the existing funding envelopes of these services. Without sufficient resourcing, the efficacy of these initiatives cannot be sustained, which may threaten their viability, and, from the NSW Government's perspective, the likelihood of renewing or expanding this approach altogether.

We suggest that properly meeting priority reform 2 is the key for successfully meeting the other priority reform areas, and ultimately in delivering on the targets. The aspirations of the National Agreement cannot be achieved without adequate resourcing of, and capacity building for, ACCOs. Relevant to the legal sector, and to meeting the justice and care and protection targets, the importance of adequate funding of Aboriginal and Torres Strait Islander Legal Services (**ATSILS**), at comparable levels with other providers in the legal assistance sector, cannot be overstated.

The 2018 Australian Law Reform Commission *Pathways to Justice* report noted at [10.23] that:

More broadly, stakeholders submitted that barriers to access to justice can be reduced by collaborations between non-Indigenous legal assistance providers and Aboriginal and Torres Strait Islander organisations. The importance of collaboration was linked to addressing some Aboriginal and Torres Strait Islander peoples' reluctance to use mainstream services because of a history of racism and culturally insensitive service provision.

In our view, this view continues to hold true. In NSW, we understand that it is very difficult for the ALS to recruit and retain staff, given the disparity between salaries and working conditions with other legal assistance providers. This has consequences for the ability of the ALS as an organisation to thrive, and this has significant implications for services available to Aboriginal and Torres Strait Islander peoples, for whom, as the literature suggests, better outcomes are obtained if assisted by ATSILS.<sup>1</sup> This also has consequences for the general integrity of justice, care, family and civil law systems, which cannot function effectively without there being a healthy market of legal assistance providers available.

In our view, there must be recognition that the services provided by ACCOs (and other community organisations) cannot be sustainable if they are continually asked to stretch without additional resourcing.

In our view, the requirements of the National Agreement are urgent. Failure to address the justice targets alone will continue to compound the life expectancy gap between Aboriginal

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<sup>1</sup> We note that there is an enormous amount of literature supporting this point, and provide for example Mick Gooda's evidence to the 2017 Senate Inquiry into Legal Assistance Services, as cited in the inquiry report at [3.46]:

It is particularly important that ATSILS and [Family Violence Prevention Legal Services] be adequately resourced because Aboriginal and Torres Strait Islander people need not just any legal services, but culturally competent legal services. There are many complex factors involved in the contact between Aboriginal and Torres Strait Islander people and the justice system.

and Torres Strait Islander peoples and other Australians. We note for example a recent study<sup>2</sup> providing more evidence in respect of an “incarceration gap” within Aboriginal and Torres Strait Islander populations. That is, substantial disparities were observed within Aboriginal and Torres Strait Islander populations across a number of important health and socio-economic markers by incarceration status. The study is evidence of the fact of incarceration itself as a risk factor affecting educational outcomes, labour force participation and drug and alcohol problems.

Thank you for the opportunity to contribute to this submission. Questions at first instance may be directed to Vicky Kuek, Head of Social Justice and Public Law Reform, on 02 9926 0354 or [victoria.kuek@lawsociety.com.au](mailto:victoria.kuek@lawsociety.com.au).

Yours sincerely,

A handwritten signature in black ink that reads "CBanks". The signature is written in a cursive, flowing style.

Cassandra Banks  
**President**

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<sup>2</sup> Shepherd, S.M., Spivak, B., Ashford, L.J. et al. Closing the (incarceration) gap: assessing the socio-economic and clinical indicators of indigenous males by lifetime incarceration status. *BMC Public Health* 20, 710 (2020). <https://doi.org/10.1186/s12889-020-08794-3>.