

Our ref: IIC:JBsb240225

24 February 2025

Dr. James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON, ACT 2612

By email: [REDACTED]

Dear Dr Popple

MEASURING OUTCOMES FOR FIRST NATIONS COMMUNITIES

The Law Society of NSW is grateful for the opportunity to inform the Law Council's submission to the Senate Select Committee on Measuring Outcomes for First Nations Communities (**Select Committee**). The Law Society's Indigenous Issues Committee contributed to this submission.

We consider it essential for the Select Committee to foreground the National Agreement on Closing the Gap (**National Agreement**) in its analysis, and ensure that any recommendations respond directly to the four Priority Reform outcomes of the National Agreement. The Productivity Commission's Final Report on its Review of the National Agreement on Closing the Gap found, among other things, that the transformation of government organisations has barely begun, that government policy does not reflect the value of the community-controlled sector and that accountability for delivering on the commitments in the National Agreement is lacking.

In addition, we suggest that the current inquiry focus on the issues detailed below.

Endorsing Productivity Commission recommendations on data

Many of the terms of reference of the Select Committee's inquiry have been addressed by the Productivity Commission in its final report on the *Review of the National Agreement on Closing the Gap* (**Final Report**). In particular, we note that the Final Report highlighted several challenges related to data collection, including deficits in the design and implementation of arrangements to monitor performance and publicly report on the progress toward socio-economic outcomes and the Priority Reforms.¹

Importantly, the Final Report emphasised the need for Indigenous Data Sovereignty (**IDS**) to be recognised and supported. It highlighted that, while IDS is central to achieving Priority Reform Area 4, IDS is, concerningly, not acknowledged within the National Agreement. There are also significant barriers to accessing existing data, as well as a lack of decision-making power and arrangements for communities 'to

¹ Productivity Commission 2024, Review of the National Agreement on Closing the Gap, Study report, Volume 1, 6: <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report/closing-the-gap-review-report.pdf>

determine what other data they need to support their interests, values and priorities'.² In this respect, the Productivity Commission recommended that Parties to the National Agreement commit to establishing a Bureau of Indigenous Data.

The Law Society considers that these recommendations, which are accompanied by specific actions, are sound and should be endorsed by the Select Committee.

Legal Assistance Funding

We recommend that the Select Committee also reiterates the importance of needs-based and sustainable funding of Aboriginal and Torres Strait Islander Legal Services (**ATSILS**) and Family Violence Prevention Legal Services (**FVPLS**). The *Independent Review of the National Legal Assistance Partnership (NLAP) 2020-25 (Mundy Review)* found that ATSILS and FVPLS are critically underfunded. In particular, the current funding envelopes and distribution models fail to provide sustainable, needs-based investment, forcing ATSILS to turn away clients and to impose service freezes.³ We are concerned that while the new National Access to Justice Partnership 2025-30 (**NAJP**) has provided some certainty to legal assistance services, it fails to implement the recommendations of the Mundy Review in full, and continues to be based on a funding model that does not make a meaningful assessment of the legal needs of Aboriginal and Torres Strait Islander peoples. Failure to meet the legal needs of Aboriginal and Torres Strait Islander people will further contribute to failure to address the justice targets. This will continue to compound the life expectancy gap between Aboriginal and Torres Strait Islander peoples and other Australians. We note, for example, a recent study providing more evidence in respect of an "incarceration gap" within Aboriginal and Torres Strait Islander populations.⁴ 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 that incarceration itself is a risk factor affecting educational outcomes, labour force participation and drug and alcohol problems.

The Mundy Review also made recommendations to improve the implementation of the National Agreement Priority Reforms in legal assistance funding, and increase Aboriginal and Torres Strait Islander self-determination in existing services.⁵ We endorse the recommendations made in that report to improve access to justice and outcomes for Aboriginal and Torres Strait Islander people, including recommendations 9 and 11.

² Ibid., 15.

³ Dr Warren Mundy, Independent Review of the National Legal Assistance Partnership 2020-25 – Final Report, 165 & 169 See: <https://www.ag.gov.au/sites/default/files/2024-06/NLAP-review-report.PDF>

⁴ 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>.

⁵ Dr Warren Mundy, Independent Review of the National Legal Assistance Partnership 2020-25 – Final Report, Recommendations 9 and 11. See: <https://www.ag.gov.au/sites/default/files/2024-06/NLAP-review-report.PDF>

Case studies from Indigenous court lists in NSW

The Select Committee also may wish to consider the benefit of various initiatives implemented by NSW Courts and Tribunals to further progress toward targets under the National Agreement, including through specialised Indigenous lists.

For example, in 2023, the NSW Civil and Administrative Tribunal (**NCAT**) established the Aboriginal Tenancy List in its Consumer and Commercial Division. Our members report that there has been an unprecedented level of engagement by tenants in the Aboriginal Tenancy List, and that the outcomes have significantly improved for both tenants and landlords. In particular, our members have noted its success in addressing the downstream effects of homelessness and housing instability, such as child removal, loss of employment and compliance with bail conditions for those tenants. Given its success, the Aboriginal Tenancy List may be a viable model from which to further develop other initiatives that improve access to justice for Aboriginal and Torres Strait Islander people, consistent with the requirements of the National Agreement and Priority Reform areas.

Similarly, the Federal Circuit and Family Court of Australia (Division 2) runs a specialised Indigenous List in ten registries nationally. The Indigenous List assists Indigenous family members to exercise greater agency and control, which in turn leads to better outcomes as Aboriginal children, on application by their family members, are removed from potentially risky circumstances and cared for within their own families, without the intervention of the State's child protection agencies. The intensive, therapeutic approach, coupled with the ability to transfer matters from the child protection to the family jurisdiction, supports Indigenous families to take proactive, protective steps to avoid the damaging effects of child removal, while keeping children safe, and within family and culture.

Other initiatives implemented in NSW Courts and Tribunals that may be considered by the Select Committee include the Youth Koori Court in the Children's Court of NSW, Circle Sentencing in the Local Court of NSW, Walama List in the District Court of NSW and the Winha-nga-nha List, in the care jurisdiction of the Children's Court of NSW.

In the experience of our members, these initiatives are impactful as they are designed by Aboriginal and Torres Strait Islander members of the community in partnership with relevant Aboriginal organisations, and services to the lists are provided by Aboriginal service providers, and Aboriginal Elders. We consider it vital that these programs are allocated sufficient resources and funding so that they can be sustained into the future and meet demand for culturally-safe, wraparound support when addressing complex legal and non-legal needs.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,



Jennifer Ball
President