

Dear Cox Inall Ridgeway team,

Review of the Indigenous Legal Assistance Program (ILAP)

Thank you for the opportunity to contribute to the review of the ILAP. The ILAP is an essential programme that should be designed and resourced to provide support to the Aboriginal and Torres Strait Islander Legal Services across Australia. The unique and acute justice issues faced by Aboriginal and Torres Strait Islander peoples make a standalone programme like the ILAP necessary – so we need to get it right. For this reason, ANTaR believes ILAP should remain as a specific, fit for purpose program that supports self-determination. Justice for Aboriginal and Torres Strait Islander people is too important to be rolled into a mainstream funding program.

ANTaR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Peoples. We do this primarily through campaigns, advocacy and lobbying.

We engage in national advocacy across a range of policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including native title, languages and cultures, economic and community development, remote communities services and infrastructure, health, justice and human rights.

ANTaR is a foundational member of the Change the Record (CTR) Campaign Steering Committee. We are committed to providing support and working with Aboriginal and Torres Strait Islander peak organisations, through coalitions like the CTR Campaign to change the story of justice for First Peoples in Australia.

It begins with self-determined, Aboriginal and Torres Strait Islander led solutions. It is critical that we get support for Aboriginal and Torres Strait Islander community controlled legal services right as they are central to reducing the staggeringly disproportionate rates of incarceration between First Peoples and non-Indigenous Australians. As stated in the CTR Campaign's 2016 Blueprint for Change:

*'In the past 10 years we have seen a 88% increase in the number of Aboriginal and Torres Strait Islander people ending up in prison, with Aboriginal and Torres Strait Islander people now 13 times more likely to be imprisoned than non-Indigenous people. Being placed in prison is all too common for Aboriginal and Torres Strait Islander people. But the impact of being in prison can be severe - not just for the individual but also for their family and the whole community.'*ⁱⁱ

ANTaR cannot state strongly enough our support for Aboriginal and Torres Strait Islander Legal Services (ATSILS) and the work of their national peak body, the National Aboriginal and Torres Strait Islander Legal Service (NATSILS). Aboriginal and Torres Strait Islander Legal Services are community based and controlled organisations that have operated across Australia for over 40 years. They were made necessary because the justice system in Australia has not been able to appropriately serve the First Peoples of this continent.

ATSILS provide culturally safe services and there is plenty of evidence that shows their unique value and contribution. While mainstream community legal services do as much as they can, it is the ATSILS that are uniquely placed to give support to Aboriginal and Torres Strait Islander people in a culturally safe way. Like other community controlled services, the wrap around services offered by ATSILS are a reflection of the multi-faceted, intersectional issues and barriers faced and a holistic approach to the underlining social determinants.ⁱⁱ

Reports drawn from sources such as the Law Council of Australia's 'The Justice Project', also make it clear why ATSILS must be at the core of the response to providing legal support for Aboriginal and Torres Strait Islander peoples.ⁱⁱⁱ In her End of Mission Statement after visiting Australia in early 2017, the United Nations Special Rapporteur on the rights of Indigenous Peoples stated that 'high quality and culturally competent legal

assistance services are critical to ensure access to justice for Aboriginal and Torres Strait Islanders and to reduce imprisonment.^{iv}

Furthermore, the specific role and value of NATSILS as the national peak body cannot be overstated. Like the sectors, NATSILS, fills a gap in coordinating across all the ATSILS and leading the national conversation in justice issues on behalf of First Peoples. The ILAP's own guidelines state that:

'The objective of the ILAP is to ensure Indigenous people are able to access justice and exercise their rights in the same way as other Australians. The intractable disadvantage experienced by Indigenous people impacts on the rates of offending, violence and incarceration experienced by them. ILAP addresses this aspect of their disadvantage by providing the culturally appropriate legal assistance services necessary to ensure that Indigenous people can effectively access justice.'

The objective is right, the application – in terms of investment – falls short of being able to deliver to that objective. It is imperative that the ILAP significantly lift direct funding support of the ATSILS and the national peak body to come much closer to matching the need. Aboriginal and Torres Strait Islander peoples suffer the consequences of the program's disconnect between objective and implementation.

Accordingly, ANTaR proposes the following priorities be addressed by the ILAP and should be considered by this review:

- **Start properly resourcing ATSILS** – the current forecasts show \$10m in cuts coming in 2020-21 and 21-22. There is a disconnect between the enormous need and the lack of funding to help address the need. Under the current funding projections, ATSILS will have to further reduce staffing levels, programs, expertise, advocacy and capacity to run front line services.
- **Map unmet legal need** – It is the responsibility of Government programs like ILAP to do the necessary mapping of unmet legal need. ANTaR is confident that any mapping analysis will clearly show the disparity between current funding levels and the actual investment needed. Once the need is mapped for legal services, the ILAP must be able to administer needs-based funding in a model that is equitable and sustained.
- **NATSILS must be funded to expand** - NATSILS as the representative peak body must be supported to grow and expand its size, to do more advocacy on law reform and legal rights, and to achieve its identified strategic planning activities. NATSILS are the experts, are representative of community, and it is important for their voice to be heard in order to address the disadvantage of Aboriginal and Torres Strait Islander peoples in the justice system.

Thank you again for the opportunity to provide a submission to this important review.

ANTaR offers our ongoing support to a process that meets the expectations of Aboriginal and Torres Strait Islander peoples and we would also welcome the opportunity to meet with the Review Team to discuss any of the points raised in this submission.

Sincerely

Paul Wright
National Director, ANTaR

ⁱ Change the Record (2015) *Blueprint for Change*

ⁱⁱ Australian Law Reform Commission, Pathways to Justice Report (2018) - <https://www.alrc.gov.au/publications/legal-services-and-other-supports>

ⁱⁱⁱ Law Council of Australia (2018), The Justice Project – Final Report (Part 1) Aboriginal and Torres Strait Islander People - <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf>

^{iv} End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Australia (2017) - <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21473&LangID=E>

^v Indigenous Legal Assistance Programme Guidelines 2015-16, Attorney General's Department - <https://www.ag.gov.au/LegalSystem/Legalaidprogrammes/Pages/Indigenous-Legal-Assistance-Program.aspx>