

The logo consists of the text 'KWM COMMUNITY IMPACT' in a sans-serif font, with 'KWM' on the top line, 'COMMUNITY' in the middle, and 'IMPACT' on the bottom line. The text is contained within a white chevron-shaped box pointing to the right.

KWM
COMMUNITY
IMPACT

The logo features the text 'KING & WOOD MALLESONS' in a sans-serif font, with 'KING & WOOD' on the top line and 'MALLESONS' on the bottom line. Below this, the Chinese characters '金杜律师事务所' are displayed. The text is contained within a white rectangular box.

KING & WOOD
MALLESONS
金杜律师事务所

A photograph of two Indigenous children, likely from Australia, wearing traditional beaded headbands and skirts. They are standing in a modern, brightly lit interior space with large windows in the background. The child in the foreground is looking to the right, while the child in the background is looking forward.

KWM Impact Assembly

2020: Indigenous Legal Assistance Sector

Preliminary Report

CONFIDENTIAL

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What is KWM Impact Assembly 2020?

King & Wood Mallesons' Impact Assembly 2020 brings together the National, State and Territory Aboriginal and Torres Strait Islander Legal Services to explore and collaborate on large-scale sustainable change.

KWM Impact Assembly is a new pro bono initiative born out of our 2022 *Strategic Vision* which seeks to:

- Explore major challenges experienced by Aboriginal and Torres Strait Islander peoples, with a specific focus on access to justice;
- Identify, workshop, design, test and then implement new pro bono projects/initiatives led by KWM to assist and/or alter the legal justice system to promote and facilitate the best outcomes for Aboriginal and Torres Strait Islander peoples;
- Contribute to reducing structural causes of inequality and poverty;
- Assist to build even stronger relationships and partnerships between the Indigenous Legal Assistance Sector and global top tier law firm, King & Wood Mallesons.

Working together with NATSILS and the State and Territory Aboriginal and Torres Strait Islander Legal Services, KWM seeks to support long-term sustainable change through collaborative, holistic and committed partnerships.

Disclaimer

This report has been prepared on a pro bono basis for the NATSILS and the State and Territory Aboriginal and Torres Strait Islander Legal Services to summarise our preliminary research on the matters stated. It is not legal advice and does not necessarily represent the views of the partners of King & Wood Mallesons. The information contained in this report has been sourced from a desktop review of publicly available documents, as well as via consultations with representatives of NATSILS and the State and Territory Aboriginal and Torres Strait Islander Legal Services. While all due care has been taken in compiling this report, King & Wood Mallesons accepts no responsibility for the accuracy or completeness of information gained from these sources. This report is solely for internal use by KWM, NATSILS and the State and Territory Aboriginal and Torres Strait Islander Legal Services referred to. Any other use requires prior written consent by King & Wood Mallesons.

Impact Assembly 2020

KWM Impact Assembly is led by:

- Dan Creasey: Head of Pro Bono & Community Impact, Senior Pro Bono Counsel
- Chloe Johnco: Pro Bono, National Manager

Participants



Victorian Aboriginal Legal Service



NATSILS
National Aboriginal and
Torres Strait Islander Legal Services

Executive Summary

Overview

This *Research Report* provides the background research and information required to support an efficient and effective discussion at Impact Assembly 2020. Through a combination of desktop research and consultations, we have sought to address foundational questions including:

- What are the key challenges for Aboriginal and Torres Strait Islander Legal Services across Australia?
- What have been the key proposed options/solutions over the last 5 years and what can we learn from them?
- How can KWM, and our commercial clients, play a role in supporting the implementation of agreed recommendations?

Based on KWM's review of existing research and consultations with NATSILS and the ATSILS, this document identifies salient challenges for our partners and recommended approaches intended to address those challenges.

Identifying Salient Challenges

To identify salient challenges, KWM has undertaken a detailed review of existing research and consulted with NATSILS and the ATSILS'. Those challenges have been distilled into three lenses for consideration.

The three lenses we have adopted to categorise the challenges and opportunities are:

- Aboriginal and Torres Strait Islander Legal Service Providers,
- The Clients, and
- The Legal System.

In particular, we have focussed on common issues raised across the desktop review and through consultations. This is outlined in the **Summary Diagram**.

Identifying Suggested Options

We have outlined where existing research or consultations identify recommended potential options for a particular issue. In some instances, this recommendation has been implemented and possibly evaluated. In others, the option remains theoretical, awaiting further funding or action.

In either case, suggested options are useful as they present possible options, and provide lessons for further consideration. These are also outlined in the **Summary Diagram**.

The suggested recommendations are those identified by existing sources. These should not limit the options that may be available.

Where to From Here?

The final section of the report considers the framework for discussion at *KWM Impact Assembly 2020*. Based on the review and consultations summarised in this *Research Report*, this section outlines potential options for collaboration and national progress.

Further detail on issues and options is provided in the sections which follow.

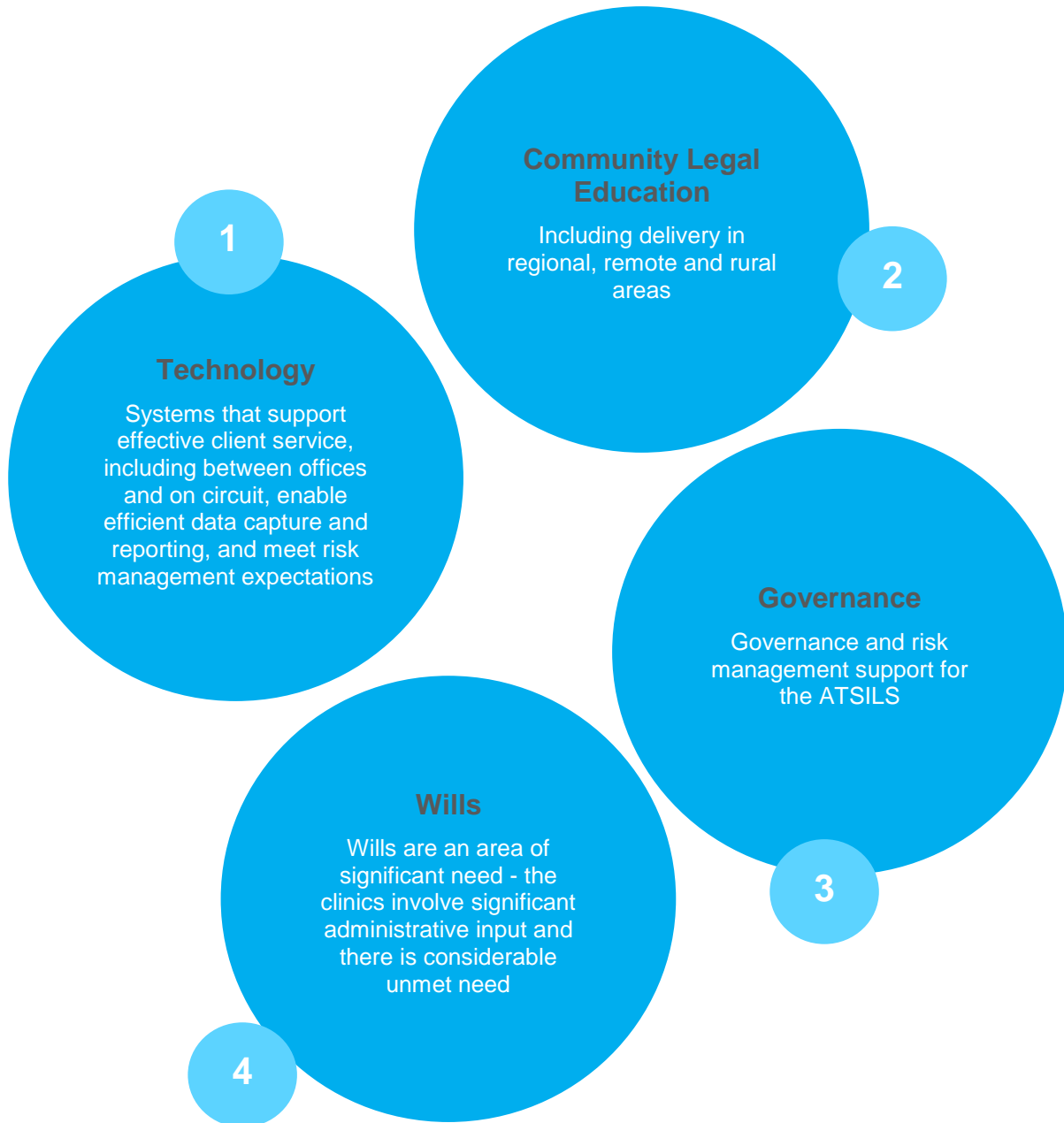
Participation in the Consultations

The following organisations participated:

1. Aboriginal Legal Rights Movement Inc (**ALRM**);
2. Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (**ATSILS QLD**);
3. Aboriginal Legal Service of Western Australia (**ALSWA**);
4. Aboriginal Legal Service NSW/ACT (**ALS NSW/ACT**);
5. National Aboriginal and Torres Strait Islander Legal Service (**NATSILS**);
6. Northern Australian Aboriginal Justice Agency (**NAAJA**);
7. Tasmanian Aboriginal Community Legal Service (**TACLS**); and
8. Victorian Aboriginal Legal Service Co-operative Limited (**VALS**).



Key Issues Summary



What Issues Have Been Identified?

Across 20 sources, 8 consultations, and 12 core themes, more than 160 issues have been identified. We outline these below through the lens of Aboriginal Legal and Torres Strait Islander Service Providers, Clients, and the legal system.

Lens 1: Aboriginal and Torres Strait Islander Legal Service Providers

Consultations and research have identified key organisational challenges for Aboriginal Legal Service Providers, largely related to technological and administrative resource limitations.

The issues have been split into three core themes: (1) administration, (2) funding and (3) technical capacity.

1.1 Administration

Administration refers to the administrative capacity of Aboriginal and Torres Strait Islander Legal Services.

Identified Issue	Brief Description	Issue ID
Time recording systems for evaluation & fee recovery	Time recording and billing systems are uncommon in the sector. Guidance on developing an effective financial case management system was raised as being useful for purposes including (i) to provide funders with more detailed data for evaluation and (ii) in some instances, to consider charging particular clients via a social enterprise model.	1.1
Conflict of Interest checks	Multiple Aboriginal Legal Service Providers reported challenges with conducting efficient and reliable conflict of interest checks across their organisation. This issue was often linked to limited access to a digitised client management system.	1.2–1.4
Data Collection and Reporting	There was an identified tension between the requirement for increased data and reporting for evaluation (mainly by Government) and the administrative capacity of the ATSILS to collect and analyse the data on top of the existing caseloads. Specific concerns were raised regarding the collection and the use of ILAP data, said to underrepresent the scope of ATSILS work and complexity of clients.	1.5–1.8
Records Retention & Destruction	Hard copy file storage, management and destruction was identified as an ongoing challenge.	1.9
Rural Regional and Remote service delivery	Although it was identified that legal need in rural, regional and remote communities was higher, there are challenges in reliably meeting that need due to limited office locations and size, conflicts of interest without appropriate referral options, infrequent travel to regional and remote locations, and limited funding. This issue was linked to 'postcode justice'.	1.10–1.18
Staff	Staff retention and capacity to offer and engage in ongoing professional development was an identified challenge across a number of consultations. This issue was linked to a desire for further HR support around performance monitoring, training and skill building, onboarding and induction.	1.19–1.21

Technology	Greater access to technology was repeatedly identified as likely to address reported inefficiencies in managing correspondence and records, as well as collaboration and information sharing across offices. Technology limitations in RRR work were raised as a particular challenge, leading to double or triple handling of records and delays in accessing materials on circuit.	1.22–1.24
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1.2 Funding

Adequate funding remains an ongoing challenge for Aboriginal and Torres Strait Islander Legal Service Providers. All consultations revealed that funding was a major concern. Other sources also stated that services were currently under-resourced in terms of their capacity to address the legal need in Aboriginal communities. In particular, funding was identified as a limitation to the ability for Aboriginal and Torres Strait Islander Legal Services to begin non-criminal law work and other services (Issue ID 1.25 –1.40).

1.3 Expansion of Legal Services

Expansion of legal services refers to the capacity of Aboriginal and Torres Strait Islander Legal Service Providers to meet legal needs beyond their current core technical expertise. For example, it has been identified by several Aboriginal and Torres Strait Islander Legal Service Providers that they continue to have limited resources to meet client needs beyond criminal law issues, despite the growing demand.

Identified Issue	Brief Description	Issue ID
Non-Criminal Areas of Law	Significant challenges identified in providing legal assistance outside of criminal law, in particular for civil, family, family violence and tenancy law matters. This issue is linked to limited or no funding of non-criminal law legal services.	1.41–1.43
Submissions to Government	Identified need for further capacity to undertake targeted submissions writing and responding to proposed bills.	1.44
Strategic Litigation	The challenge of competing demands in frontline legal services has been identified as acting as a barrier limiting Aboriginal and Torres Strait Islander Legal Service Providers' ability to run strategic litigation or test cases.	1.34

Lens 2: Clients

'Clients' refers to key points of disparity or challenges experienced by the clients of Aboriginal and Torres Strait Islander Legal Service Providers. These are arranged under 5 core themes.

1.1 Access to Government & The Justice System

Sources and consultations reinforced that clients face numerous barriers to accessing government services and the justice system in Australia.

Identified Issue	Brief Description	Issue ID
Welfare Rights	Welfare rights concerns around accessibility, penalties, debts, suspension of payments, and CDP inequalities were identified as leading to financial insecurity and legal issues, particularly in the NT. Challenges with access to legal advice for appeals assistance further exacerbated these issues and the Aboriginal and Torres Strait Islander Legal Service Providers generally have no funding for specialist lawyers in this area.	2.1–2.6
Documentation	Structural barriers to obtaining identity documentation, for example, birth certificates, birth registration and later, a driver's licence. This issue was linked to further systemic barriers in access to services and increased contact with the police and criminal law system.	2.7–2.8
Education / Awareness	Identified need for greater access to culturally appropriate community legal education and capacity building on non-criminal law topics. Many civil and family law issues are typically not viewed as having a legal aspect which	2.9–2.18

	may be capable of resolution. Advice often not sought or sought very late and in conjunction with other legal issues.	
Access to Legal Advice - RRR	Geographical impact on legal needs and capacity to access justice identified as a significant barrier and linked to issues such as compounding of legal issues and an increase in clients pleading guilty to have the matters dealt with quickly.	2.19–2.23
Self-Determination	Aboriginal and Torres Strait Islander community voices are often excluded from decision making in relation to justice issues in Australia. The right to self-determination includes the right to influence policy development and its implementation and the absence of active consultation and cooperation remains a barrier to access to justice and further entrenches the disparity.	2.24–2.27
Wills	Wills was identified as a priority area of unrecognised legal need. Only a very small number of First Nations people have a valid will. Access to services is limited and can be impacted by cultural taboos and mistrust of the legal system. This issue is linked to an increase in legal issues following the passing of the person, particularly disputes around the issue of burial.	2.28–2.39

1.2 Discrimination

Numerous sources identify that clients face discrimination, particularly in employment and in health care provision (Issue ID 2.45). The discrimination was generally race-based and direct, although criminal record, age and sex discrimination has arisen (Issue ID 2.42). Generally, a small percentage of Aboriginal and Torres Strait Islander peoples experiencing discrimination seek legal or other help or advice (Issue ID 2.41). The capacity of anti-discrimination agencies has also been identified as a concern (Issue ID 2.40–2.48).

1.3 Finance / Consumer Issues

Numerous sources identified finance and consumer law issues for clients. Although numerous examples were provided, these largely related to the interconnection between consumer issues and credit/debt problems.

Identified Issue	Brief Description	Issue ID
Consumer Issues	The interconnection between consumer issues and credit/debt problems was identified as a significant issue. For example, understanding contracts, bank disputes, inducement to enter into inappropriate agreements, unsolicited sales and scams.	2.49–2.57
Credit and Debt	Linked issues of credit and debt identified as resulting in financial hardship, adverse credit reports/bankruptcy and legal issues. Most commonly around credit cards, mobile phone bills and utilities. Payday lending and book-up were also key concerns. Limited access to credit and reliance on less beneficial forms of credit increased the risk of debt issues. Similarly, limited access to services, and education around tax and super were identified as concerns.	2.58–2.63
Employment	Accessing paid employment was generally raised as an issue, particularly in the NT. Considerations of whether employment is unreasonably denied on the basis of a criminal record or under-qualification and whether there may be a legal issue with a legal remedy.	2.64

1.4 Health

Only a few sources identified health issues and its connection with the justice system. Nevertheless, health issues remain highly relevant and many sources expressed interest in health-justice partnerships.

Identified Issue	Brief Description	Issue ID
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Health-Justice Partnerships (HJPs)	Some sources were already involved in HJPs or actively considering one. All consultations revealed an interest in this evolving/growing area.	2.65
Other Health Issues	Problems with accessing health services, discrimination, cultural issues, and access to health services in prison, were all identified as concerns.	2.66

1.5 Housing

Several sources identified housing as an area of legal concern. This ranged from overcrowding to eviction to repairs and maintenance. Neighbourhood disputes were also identified by multiple sources as an area of concern due to its relationship to various types of restraining orders.

Identified Issue	Brief Description	Issue ID
Housing and Tenancy	Housing and tenancy issues were identified as a predominant legal issue. Generally, these related to social housing repairs, maintenance, rent and bond. Limited access to legal advice and assistance with resolving these issues (rather than turning to 'authorities') was identified across a number of sources, and this appears to have a disproportionate impact on Aboriginal and Torres Strait Islander women. This issue was also linked to structural barriers to home ownership.	2.67–2.76
Neighbourhood Disputes	Disputes with neighbours were identified as an example of unresolved civil issues escalating to restraining orders and evictions. Complaints appear to be more common against Aboriginal and Torres Strait Islander occupants. Some neighbourhood issues said to involve potential racially discriminatory actions by other neighbours or racially discriminatory responses by authorities.	2.77–2.80

Lens 3: The Legal System

This lens contains issues relating to the legal system in its entirety. It has 4 core themes, 3 of which refer to areas of legal need and 1 of which refers to the operations of the legal system.

1.6 Compensation, Employment Law & Civil Claims

Employment law and victim compensation were identified by several sources as a major area of concern. Civil claims also featured as an issue, particularly in the Northern Territory.

Identified Issue	Brief Description	Issue ID
Victim Compensation	Majority of those identifying as being victims of crime do not access compensation. Reasons identified include long delays in being informed of the right to seek compensation, procedural challenges in the application process (including reliance on documentation) and relevance of compensation tied to payment of treatment rather than financial compensation (particularly for remote communities without these services). This appears to disproportionately impact on Aboriginal and Torres Strait Islander women.	3.1–3.3
Employment Law	Employment related issues and disputes were frequently identified, in particular wages, unfair dismissals and unpaid superannuation. The data indicates that men are disproportionately less likely to access legal assistance for employment law issues. Sources also identified Stolen Wages claims. Limited education and information on how to undertake a claim for stolen wages and costs associated with pursuing claims, were raised as barriers.	3.4–3.9

Civil Claims	Accident and injury claims were identified as a significant area of concern, particularly in the NT. Most commonly identified as motor vehicle accidents and work injury.	3.10
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1.7 Criminal Law

Criminal law was identified by many sources as an area of major concern. Issues were identified across most parts of the criminal justice system.

Identified Issue	Brief Description	Issue ID
Bail & Diversion	Access to diversion, bail and the bail regime were identified as issues leading to higher rates of incarceration across the States and Territories. Numerous casual factors were identified, which included a lack of cultural sensitivity around bail conditions, regard to practical barriers such as housing, absence of effective bail support programs and language barriers to education around bail conditions. The data indicates that Aboriginal and Torres Strait Islander peoples were less likely to be granted bail than non-Indigenous peoples.	3.11–3.14
Custody Notification System	The availability of Custody Notification Services in all States and Territories was raised as a concern.	3.15
Fines & Infringements	Fines were raised as an important issue because of the possibility of escalation to criminalisation and the disproportionate impact on low-income individuals. Imprisonment for fine default identified as a significant issue in WA. Frequently raised issues in connection with fines was motor vehicle-related infringements and offences. Limited education and support to deal with fines identified as an exacerbating factor on top of over policing/discrimination.	3.16–3.20
Incarceration	The significant over-representation of Aboriginal and Torres Strait Islander peoples in prison and detention conditions were raised as a key ongoing concern across States and Territories. This issue was linked to the critically high numbers of Aboriginal and Torres Strait Islander people with disability imprisoned within the adult and juvenile system, and the inadequacy of the system to offer appropriate responses and/or rehabilitation.	3.21–3.28
Policing	Discrimination, over-policing (particularly against youth) and mistrust have been identified as policing issues leading to increased criminalisation, particularly of young people.	3.29–3.35
Rehabilitation	A lack of rehabilitative services was linked with high levels of recidivism. In particular, the lack of appropriately designed criminal justice responses for Aboriginal and Torres Strait Islander women was identified as a significant issue.	3.36–3.38
Sentencing	Numerous areas of sentencing were raised as a concern. This included intermediate sentencing options, regimes leading to indefinite sentencing, short-term prison sentences, mandatory sentencing, and minimum sentencing requirements.	3.39–3.50
Youth Diversion	Raising the age of criminal responsibility was identified as current priority/focus area as was addressing the disproportionately lower rates of diversion of Aboriginal and Torres Strait Islander young people. The inadequacies in the application of the presumption of doli incapax were also highlighted.	

1.8 Family Law & Child Protection

Family law and child protection were two areas of concern raised by numerous sources. This is not only because of the impact it may have on the child, but because of the potential impact on families and the broader community.

Identified Issue	Brief Description	Issue ID
Child Protection	Disproportionately high rates of contact with child protection services and removal and the significant negative impact that this has on young people, families and the community was raised across sources and consultations. Contributory factors include limited education of the legal dimensions of child protection processes, lack of cultural competence and racism, failure to adhere to Child Placement Principles, absence of scrutiny by the courts to ensure fulfilment of statutory requirements and failure or absence of early intervention and strengths-based supports for families. Links between out-of-home care and the criminal justice system were identified as related issues.	3.51–3.58
Family Law	Sources stated that the family law system didn't adequately address the needs of Aboriginal peoples. Moreover, there was a lack available legal representation for family law matters.	3.59–3.60

1.9 Operations

The way in which the legal system operates was also identified as a key concern. The issues identified varied considerably, depending on the source. Coordination, data, geography, and cultural information were repeatedly raised. The absence of an Aboriginal Justice Agreement and criminal justice targets was also highlighted.

Identified Issue	Brief Description	Issue ID
Aboriginal Justice Agreement & Targets	The need for the renewal or the development of an Aboriginal Justice Agreement was identified as a barrier to effective implementation of key reforms and evaluations. This issue was linked to the need for criminal justice targets, developed in partnership with Aboriginal and Torres Strait Islander peoples.	3.61; 3.80
Accountability & Implementation	Coronial Inquest work and the Coronial Court identified as not conducive of outcomes for community, as recommendations are often ineffective and are not implemented. There is little accountability and review of recommendations.	3.63
Co-ordination	Limited information-sharing in some jurisdictions and an apparent reluctance of selected government agencies to involve Aboriginal and Torres Strait Islander Legal Service Providers in service planning or policy reform at an early stage, impedes effective coordinated improvements.	3.62–3.64
Culturally Informed Legal System	Limited Aboriginal and Torres Strait Islander employees and lawyers, and culturally sensitive Alternative Dispute Resolution services, were all raised as serious concerns. Culturally appropriate courts and tribunals, and culturally competent judicial officers and court staff, were identified as key features of an accessible, responsive and fair justice system. Sensitivities to differences and the experiences within cultural groups (for example, by gender) was also identified as an area of need.	3.65–3.75
Interpreter services	Many sources identified a lack of funding available to engage interpreters and a lack of qualified interpreters available in many areas as key access to justice concerns.	3.67 – 3.69; 3.75
Data	Significant gaps in data were raised as issues. This made it difficult to research and provide support for access to justice, legal assistance, and civil justice. These gaps hinder attempts by government and service providers to efficiently and effectively design services.	3.76–3.78
Rural, Regional & Remote	In some jurisdictions, a city-centric focus of legal services delivery was identified because of resource limitations. The source noted that this results in regional participants feeling isolated and unable to access legal help.	3.79
Governance	Some of the consultations identified a significant need to ensure directors and leaders of the ATSILS better understand their legal and fiduciary	

	<p>responsibilities, as well as how to support the operational components of the organisations. A related theme was risk assessment and risk mitigation. The consultations identified a desire to be more proactive rather than reactive.</p>	
<p>Non-Legal Services</p>	<p>One consultation identified that a key challenge for their organisation was related to the expansion of services to include non-legal services (such as Youth Engagement Program and Bail Support Service, and current negotiations for a service to assist fine defaulters). It was identified that these services presented a number of challenges including (a) additional and different reporting obligations; (b) new technology requirements (staff doing a lot of outreach work but onerous data entry requirements at the same time); (c) different disciplines such as social work; and (d) new professional considerations (eg, ethical issues, training, processes).</p>	

What Options Have Been Proposed?

Some sources we examined, and via the consultations we held, recommendations were made in response to the issues identified above. Where recommendations have been identified for an issue, we have included them in the tables below. The evaluation of, and mechanisms to implement, the recommendations is intended for detailed discussion at the Impact Assembly.

Lens 1: Aboriginal and Torres Strait Islander Legal Service Providers

1.10 Administration

Suggested options for addressing the administration challenges of Aboriginal and Torres Strait Islander Legal Service Providers included:

Identified Issue	Suggested options	Issue ID
Billing / Timekeeping	KWM could assist by providing guidance to establish an effective financial case management system and related procedures.	1.1
Data Collection & Reporting	The Government/funders to actively engage in partnerships with Aboriginal and Torres Strait Islander Legal Service Providers to improve the collection, use, and reporting of data. Additional capacity and/or funding to be provided to facilitate this process.	1.6
	Reporting requirements for funding of the Aboriginal and Torres Strait Islander Legal Service Providers should be better streamlined and evaluated to prevent under-reporting or administrative overburden.	1.7
	The future funding of the Aboriginal and Torres Strait Islander Legal Service Providers should establish clear agreements about the use and control of data provided in accordance with the principle of self-determination.	1.8
Rural, Regional & Remote	Additional capacity support to deliver effective advocacy/community campaigns to bring information and legal education to RRR communities.	1.16
Staff Retention	Increasing salaries was suggested as a method to attract more Aboriginal lawyers back to the CLC sector. More performance monitoring, more training, and more assistance with onboarding processes and induction was also suggested.	1.19–1.20
	KWM could support the development of legal education sessions and training programs to offer continuing professional development.	1.21
Technology	Technology to automate correspondence, appointment reminders and manage client relations (CRM) was identified as likely to have a significant impact on service delivery and minimising administration time. This included being able to conduct efficient and reliable conflicts checks and accessing client material remotely. Access to design services for producing CLE content, such as animations, was also suggested.	1.22–1.24

1.11 Funding

The suggested solution for lack of funding was, put simply, increased funding (Issue ID 1.25, 1.27, 1.30, 1.34–1.36), assistance in grant-writing to enable enhanced access to government funding (Issue ID 1.31), and co-developed frameworks for ILAP service delivery to allow comparable workload expectations across legal assistance programs (Issue ID 1.26, 1.37–1.38). This would support wrap-around holistic services (Issue ID 1.33), strategic litigation, and interpretation services (Issue ID 1.25–1.40).

1.12 Capacity

Suggested options for increasing the Aboriginal and Torres Strait Islander Legal Service Providers' capacity involved the assistance of other organisations as collaborative partners. For example, some sources suggested that non-Indigenous services could play a role in supporting non-criminal areas of law and submissions to government.

Identified Issue	Suggested options	Issue ID
Non-Criminal Areas of Law	Consider options for capacity in civil law to be provided through collaborative partnerships with non-Indigenous organisations, for example, through Health Justice Partnerships and secondments. This needs to be supported by competency training and an increased willingness of non-Indigenous services to work with Indigenous clients, without making an assumption about what is best for that particular client. More holistic services were also suggested as worth exploring, with different services operating under a single roof, or through improved collaboration between services.	1.41–1.42
Submissions to Government	Increased support from KWM to assist the Aboriginal and Torres Strait Islander Legal Service Providers to write submissions and respond to proposed bills. This allows for greater representation and community consultation in policy-making processes.	1.44

Lens 2: Clients

1.13 Access to Government / Legal Systems

Suggested options for client access to government / legal systems were as follows:

Identified Issue	Suggested options	Issue ID
Welfare Rights	Sources identified the need for independent legal advisors to connect community members with Centrelink and enhance knowledge of welfare rights and entitlements. Although there are services that provide support (e.g. the VLA Commonwealth Entitlements team), there appears to be limited knowledge of how to access this regime.	2.4
	Invest in comprehensive community legal education for affected communities on the CDP which includes an explanation of the penalty system. This should be linked to funding of specialist social security legal services to service communities where the CDP program operates to ensure there are services with the capacity and expertise to deal with CDP and Centrelink matters in general.	2.5
Documentation	Governments should work with relevant Aboriginal and Torres Strait Islander organisations to identify areas without services relevant to driver licensing, and to provide those services, particularly in regional areas.	2.7
	The Indigenous Access Fund has been effective in assisting Indigenous peoples with the costs of obtaining a birth certificate. One source recommended that criteria for fee waivers be made explicit and available electronically.	2.8

Education / Awareness	Legal education around civil law and family law issues could be increased through collaborative partnerships with law firms like KWM and other legal services to facilitate the development of appropriate materials.	2.10–2.11, 2.18
Regional, Rural & Remote	Explore increasing availability of services through technology, for example, by videoconferencing. Challenges raised by internet connections, privacy, access to technology and reported reluctance around engaging remotely will need to be considered and addressed. It is recognised that it is almost essential to have a local person facilitating the contact being made.	2.21
	Explore enhanced capacity to deliver outreach through long-term relationships with local community. This could be via employing local residents to work with legal services and increased community justice groups. Consider the use of train-the-trainer style delivery of legal education and support in the interim between circuit visits.	2.22
Self-Determination	Further develop mechanisms for Government's active consultation and cooperation with communities and the Aboriginal and Torres Strait Islander Legal Service Providers in justice reforms. Innovative, place-based, systems change models are of key interest, including collective impact and Justice Reinvestment initiatives. Consider how corporates and KWM can support the extension of these initiatives through funding and pro bono support.	2.25–2.26
Wills	Increase and, in some cases, develop, legal education on wills and end of life documentation, together with the availability of culturally appropriate wills drafting services. Explore collaborative partnerships between the Aboriginal and Torres Strait Islander Legal Service Providers and other legal services, such as Legal Aid, law firms, Public Trustee, to develop working models for each State and Territory. Consider the capacity of KWM and others to provide pro bono assistance with training and development of materials, where necessary.	2.30–2.36, 2.38–2.39.
	It was also suggested that a will registry be developed where not just the whereabouts, but also the will itself, can be stored.	2.38

1.14 Consumer Issues

In relation to consumer issues, the suggested options largely relate to systematic change, greater community education, and better access to support services.

Identified Issue	Suggested options	Issue ID
Consumer Issues	Explore options for strategic advocacy and greater policing of unconscionable behaviour by traders and lenders. Pro bono support from KWM could be considered to assist with strategic cases. The onus should not be on vulnerable consumers, including Indigenous consumers, to always be the ones to come forward with and to pursue a complaint. Enhanced education of service providers to better respond to legal issues arising for Aboriginal and Torres Strait Islander peoples, including through tailored cultural competency training.	2.51
	Greater community legal education regarding people's ongoing obligations when they access credit and the management of finances. This includes the liability of family members for debts of a deceased and resolving bills. Explore options for pro bono support and collaborative partnerships with, for example, Telcos and other key service providers, to support the development of CLE resources.	2.60–2.61
	Greater access to financial services and Indigenous-specific advocacy and support. Explore further collaborations with financial services to develop their capacity to assist and advocate.	2.61

1.15 Housing

Suggested options for addressing housing and tenancy issues revolved around increased information and advocacy.

Identified Issue	Suggested options	Issue ID
Tenancy	Increased information about tenancy rights and more available, effective advocacy at all stages of the dispute process are required, particularly at early stages to reduce escalation and homelessness risk. Explore how collaborative support from other legal services and housing providers could be utilised to develop and deploy these materials and advocacy support.	2.70–2.71
Neighbourhood Disputes	Greater information about neighbourhood disputes and effective mediation options at an early stage.	2.79–2.80

Lens 3: The Legal System

1.16 Compensation, Employment Law & Civil Claims

Suggested options to address compensation and civil claims largely entailed the development of further information and resources.

Identified Issue	Suggested options	Issue ID
Victim Compensation	Greater support for Indigenous peoples who are eligible to apply for compensation. This requires improved community education about the availability of the scheme, a commitment by police to notify victims of their entitlements, and better resourcing of legal services in pursuing compensation. Explore how collaborative work with the police and communities could enhance pathways and support to accessing compensation.	3.1–3.2
Civil Claims	Consider models for delivery of greater community legal education and remote support/templates to increase community awareness and contact between the legal service and other potential claimants around civil legal issues.	3.10

1.17 Criminal Law

Many sources suggested options for the criminal justice system, some of which may have been implemented since their original publication. Nevertheless, these options vary depending on the identified issue.

Identified Issue	Suggested options	Issue ID
Bail & Diversion	Bail and parole laws should be reformed to consider the needs of Aboriginal and Torres Strait Islander peoples. For example, state and territory bail laws should be amended to include standalone provisions that require bail authorities to consider any issues that arise due to a person being Aboriginal and Torres Strait Islander.	3.12–3.13
	Governments should work with relevant Aboriginal and Torres Strait Islander organisations to develop guidelines on the application of bail provisions and identify gaps in the provision of culturally appropriate bail support programs and diversion options.	3.14
Custody Notification Scheme	All governments should immediately introduce a statutory requirement for police to contact an Aboriginal and Torres Strait Islander Legal Service Provider, or equivalent service, as soon as possible after an Aboriginal or Torres Strait Islander person is detained in custody for any reason.	3.15

	Consider avenues at the CNS level for increasing diversion, bail and accountability of the police through effective templates prompting justification for particular decisions of the police.	3.11
Fines & Infringements	Immediate abolition of remaining provisions in fine enforcement statutes that provide for imprisonment resulting from unpaid fines (for example, the advocacy undertaken in WA). They should also work with Aboriginal and Torres Strait Islander to develop options that address fines and infringements issues.	3.16–3.17, 3.54
	Governments should review the effect on Aboriginal and Torres Strait Islander peoples of statutory provisions that criminalise offensive language with a view to repealing provisions or narrowing the application of those provisions.	3.18
Incarceration	Governments should provide funding support for the establishment of an independent Justice Reinvestment body. This should be overseen by a board with Aboriginal and Torres Strait Islander leadership. Governments should also support Justice Reinvestment trials initiated in partnership with Aboriginal and Torres Strait Islander communities.	3.22
	Explore further targeted advocacy avenues for law reform at the federal and state levels. This includes around sentencing, police protocols prioritising warnings over arrest, culturally competent prison rehabilitation programs, parole, and targets.	3.24–3.25
	State and territory corrective services agencies should develop prison programs with relevant Aboriginal and Torres Strait Islander organisations that address offending behaviours and/or prepare people for release.	3.26
	Governments and the broader justice sector should work together to address the intersectional needs of Aboriginal and Torres Strait Islander people experiencing disability by developing informed and culturally competent responses throughout the criminal justice system.	3.28
Policing	Police engaging with Aboriginal and Torres Strait Islander people and communities should receive instruction in best practice for handling allegations and incidents of family violence—including preventative intervention and prompt response—in those communities. Explore options for greater collaboration with community in responding to these areas.	3.30
	Commonwealth, State and Territory governments should review police procedures and practices so that the law is enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples. They should also review their police complaints handling mechanisms.	3.31–3.32, 3.35
	Review of the evidence base for particular changes to police practice, including increasing Aboriginal and Torres Strait Islander employment within police, specific cultural awareness training, lessons from successful cooperation, and careful and timely succession planning for the replacement of key personnel with effective relationships in the community.	3.33
Rehabilitation	One source suggested implementing a ‘bail house’ to offer rehabilitation services for at-risk communities.	3.36
	Prevention programs should be put in place and sentencing guidelines should account for the impact of imprisonment of a primary care-giver on dependants.	3.37–3.38
Sentencing	There should be an increase in community-based sentencing, appropriate measures where a person is found unfit to stand trial, and partnership between governments and Aboriginal and Torres Strait Islander organisations to develop effective programs.	3.39–3.42

	Suspended sentences, in lieu of community-based sentencing options, should not be abolished. There is ongoing debate whether short-term sentences should be abolished. Mandatory sentencing regimes should be abolished.	3.43–3.47
	Sentencing legislation should require courts to consider unique systemic and background factors affecting Aboriginal and Torres Strait Islander peoples.	3.49–3.50

1.18 Family Law & Child Protection

Suggested options to address the issues with the family law and child protection systems were as follows:

Identified Issue	Suggested options	Issue ID
Child Protection	The Commonwealth Government should establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children, which considers national model rules and processes developed with key stakeholders.	3.52
	It was suggested that Child Safety should contact ATSILS (or the local ACCHO) when initiating an action against Indigenous parents.	3.55
	One source suggested that there was a need to develop a child protection system that was more aligned with the values of Indigenous self-determination. This could be done, for example, by increasing support services to families and increasing Aboriginal and Torres Strait Islander mediators or information through trained liaison officers.	3.56
	Systemic review and policy implementation required at a national level to reduce the number of Aboriginal and Torres Strait Islander children placed in out-of-home care should be implemented. Greater collaboration with the ATSILSs, ACCHOs and child protection peaks, such as SNAICC.	3.58
Family Law	One source suggested that Governments should give priority to providing adequate funding to Aboriginal community-controlled organisations for culturally appropriate legal services in the family law space.	3.60

1.19 Operations

Suggested options to address deficiencies in the operation of the legal system were as follows:

Identified Issue	Suggested options	Issue ID
Aboriginal Justice Agreements & Targets	Where not currently operating, State and Territory governments should renew or develop an Aboriginal Justice Agreement in partnership with relevant Aboriginal and Torres Strait Islander organisations.	3.61
	The Commonwealth Government, in consultation with state and territory governments, should develop national criminal justice targets. These should be developed in partnership with peak Aboriginal and Torres Strait Islander organisations, and should include specified targets by which to reduce the rate of: incarceration of Aboriginal and Torres Strait Islander people; and violence against Aboriginal and Torres Strait Islander people.	3.80
Co-ordination	KWM and other firms could assist in providing more legal representation in coronial cases. There also needs to be legislative and/or changes regarding coronial processes to increase accountability and implementation of recommendations.	3.63
	The Commonwealth Government should work with Aboriginal and Torres Strait Islander Legal Service Providers to facilitate greater consistency of Collaborative Service Planning.	3.64

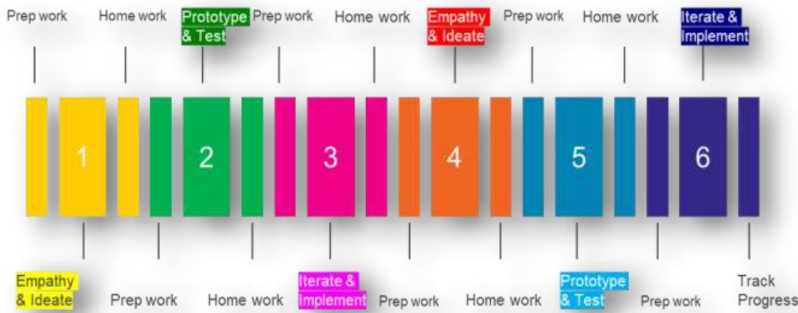
Culturally Informed Legal System	One source suggested expanding culturally appropriate dispute resolution, particularly at the Victorian Civil and Administrative Tribunal.	3.66
	State and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to establish interpreter services within the criminal justice system where needed; and monitor and evaluate their use. More interpreters need to be properly trained with it being offered as a career. For example, one source suggested a National Justice Interpreter Scheme.	3.67–3.69, 3.72, 3.74–3.75
	Further consider the attraction and retention of Aboriginal and Torres Strait Islander legal staff working in the system to address barriers relating to communication.	3.71, 3.73
Data	Governments should lead a coordinated and sustained effort, collaboratively with Aboriginal Legal Service Providers and other CLCs, to improve data collection about the justice system.	3.76–3.78
Rural, Regional & Remote	Establishment of regional ‘Aboriginal Legal Advice Units’ was suggested as a way of meeting this community need, which appear to fall somewhere between a legal practice and information service. Such a service might deal with applications for birth certificates, referrals, form-filling, and other tasks which might be non-legal or quasi-legal.	3.79



Where To From Here?

First Workshop: Thursday, 30 July 2020

Impact Assembly Approach



Assumptions:

- Sessions 1 – 3 will focus on 4 issues and should where possible be attended by the same participants
- Sessions 4 – 6 will focus on another 4 issues and should where possible be attended by the same participants

Appendix A – References

Articles / Books / Reports

Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017).

Chris Cunneen, Fiona Allison, Melanie Schwartz, *The Civil and Family Law Needs of Indigenous People in Queensland* (Report, 2014).

Cox Inall Ridgeway, *Review of the Indigenous Legal Assistance Program (ILAP) 2015-2020* (Final Report, February 2019).

Fiona Allison, Melanie Schwartz and Chris Cunneen, *The Civil and Family Law Needs of Indigenous People in Western Australia* (Final Report, 2014).

Fiona Allison, Melanie Schwartz, Chris Cunneen and Larissa Behrendt, *Indigenous Legal Needs Project: Northern Territory Report* (Report, 2012).

Law Council of Australia, *The Justice Project* (Final Report, August 2018).

Lisa Toohey, Monique Moore, Katelane Dart and Daniel J. Toohey, 'Meeting the Access to Civil Justice Challenge: Digital Inclusion, Algorithmic Justice, and Human-Centered Design' (2019) 19 *Macquarie Law Journal* 133.

Melanie Schwartz, Fiona Allison and Chris Cunneen, *The civil and family law needs of Indigenous people in Victoria* (Report, 2013).

Prue Vines, *Aboriginal Wills Handbook* (The NSW Trustee and Guardian, 2013).

Prue Vines, 'The NSW Project on the Inheritance Needs of Aboriginal People: Solving the Problems by Making Culturally Appropriate Wills' (2013) 16(2) *Australian Indigenous Law Review* 18.

The Law Society of Western Australia, *Access to Justice Issues Faced by Aboriginal and Torres Strait Islander Peoples in Western Australia* (Briefing Paper, October 2017).

Victorian Department of Justice & Regulation, *Access to Justice – Review* (Volume 1 Report and Recommendations, August 2016).

Consultations

Aboriginal Legal Rights Movement Inc (**ALRM**)

Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (**ATSILS QLD**)

Aboriginal Legal Service of Western Australia (**ALSWA**)

Aboriginal Legal Service NSW/ACT (**ALS NSW/ACT**)

National Aboriginal and Torres Strait Islander Legal Service (**NATSILS**)

Northern Australian Aboriginal Justice Agency (**NAAJA**)

Tasmanian Aboriginal Community Legal Service (**TACLS**)

Victorian Aboriginal Legal Service Co-operative Limited (**VALS**)

Appendix B – Matrix of Sources

See accompanying document

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