

The Auditor-General
Audit Report No.13 2003–04
Performance Audit

ATSIS Law and Justice Program

Aboriginal and Torres Strait Islander Services

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of Australia 2003

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Canberra ACT
7 November 2003

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the Aboriginal and Torres Strait Islander Services in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *ATSIS Law and Justice Program*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. J. Barrett'.

P. J. Barrett
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Abbreviations/Glossary

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AGD	Commonwealth Attorney-General's Department
ANAO	Australian National Audit Office
ASIC	Australian Securities Investment Commission
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSILS	Aboriginal and Torres Strait Islander Legal Service(s)
ATSISS	Aboriginal and Torres Strait Islander Services
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CAC Orders	Commonwealth Authorities and Companies Orders
CGC	Commonwealth Grants Commission
CLC	Community Legal Centre
CDEP	Community Development Employment Projects
DIMIA	Department of Immigration and Multicultural and Indigenous Affairs
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FVPU	Family Violence Prevention Unit
GMS	Grants Management System
JCPAA	Joint Committee of Public Accounts and Audit
LAC	Legal Aid Commission
MOU	Memorandum of Understanding
NACLC	National Association of Community Legal Centres
NAILSS	National Aboriginal and Torres Strait Islander Legal Services Secretariat
NSW	New South Wales
NT	Northern Territory
OEA	Office of Evaluation and Audit
ORAC	Office of the Registrar of Aboriginal Corporations
PBS	Portfolio Budget Statements
PI	professional indemnity

QAILSS	Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat
QLD	Queensland
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
SA	South Australia
SEC	State Executive Committee
WA	Western Australia

Summary and Recommendations

Summary

Background

1. Under its Law and Justice Program, Aboriginal and Torres Strait Islander Services (ATSIS) provides legal aid to Indigenous Australians, as well as preventative and diversionary services, to reduce the rate of adverse contact of Indigenous Australians with the criminal justice system. It also supports the resolution of problems associated with family violence, and supports advocacy services representing the interests of Indigenous Australians who come into contact with the justice system.
2. The four output elements of the Program, together with the expenditure in 2002–03, are:
 - Legal Aid (\$42.8 m)—delivered through a network of 25 community based Aboriginal and Torres Strait Islander Legal Services (ATSILS), with offices and sub-offices in metropolitan, regional and some remote areas;
 - Law and Justice Advocacy (\$4.0 m);
 - Family Violence Prevention (\$4.9 m)—delivered through 13 community based Family Violence Prevention Units (FVPUs) that are located in regional and some remote locations; and
 - Prevention, Diversion and Rehabilitation (\$5.4 m).
3. With the establishment of ATSIS on 1 July 2003 there was a change in the Program administration with greater separation in the roles of the elected arm (the Aboriginal and Torres Strait Islander Commission) and the administrative arm than was the case previously. The principal impact related to this audit is that decisions on the provision of grant funding will solely be made by ATSIS (the administrative arm), whereas previously elected Regional Councils had been directly involved in approving almost half the grants by value. This change did not affect the conclusions and recommendations in this audit report.
4. The objective of the audit was to form an opinion on ATSIS' management of the Law and Justice Program having particular regard to the relative needs of Aboriginal and Torres Strait Islander peoples. The audit focused primarily on how effectively ATSIS manages and delivers the provision of legal services to Aboriginal and Torres Strait Islander people and was designed to complement but not reproduce previous audit and other evaluation activity relevant to the Program.

Key audit findings

Program planning processes (Chapter 2)

5. Having appropriate planning processes in place, helps ATSIIS to achieve goals through the best use of staff and resources and in taking action in a timely fashion to address ongoing needs. Better practice arrangements involve strategic and business planning processes, including risk management, with associated review and monitoring processes to fulfil responsibilities efficiently and effectively with due care and diligence.
6. The ANAO found that there was no current strategic or business plan, or risk assessment plan, for the Law and Justice Program that linked the objectives and planned outcomes to tasks for implementation. However, there were some elements of a planned approach, particularly related to the Legal Aid output element. These arose from the need to report to government on reforms that had been identified by ATSIIC in 1997.
7. Some Legal Aid reforms had been implemented, including improving the access of Indigenous Australian women to legal and other services and preparing and revising a policy framework and national minimum standards for ATSIILS. For other reforms, implementation has been slow. ATSIIS' State Directions Strategy identifies a number of areas that would improve the efficiency and effectiveness of delivering the Legal Aid output element of the Law and Justice Program. However, the ANAO found that implementation of the Strategy remains largely incomplete, and to date the Strategy has had little impact on the arrangements under which ATSIILS operate. Development of a new funding formula and mapping have commenced but are yet to be completed.¹ Rationalisation of ATSIILS in Queensland remains unresolved.
8. In June 2003, the ATSIIC Board approved the expedition of the tendering for legal aid services and the entering into contracts with selected service providers. This is a substantial shift from the existing grants process and, as well as providing new opportunities, presents new risks. The timeline for the introduction of the new tendering arrangements is short and, as such, demands discipline in planning and risk management as part of a sound control environment. In progressing this new national contestability policy, it is important that a risk assessment process be undertaken to highlight particular risks associated with the tender process, and how these might be managed. Key elements of any tender and contract process should be the clear specification of the nature, type and quantity of legal services that ATSIIS wants to purchase, and communication of this to potential service providers. In response to issues

¹ The funding formula and mapping exercises are described at paragraphs 2.20–2.39.

raised by the ANAO during audit fieldwork, AT SIS has revised its proposed approach to the tendering out of legal aid services.

Relationships with other legal assistance providers (Chapter 2)

9. Legal Aid Commissions (LACs) and Community Legal Centres (CLCs), funded by State and Commonwealth governments, are in a position to deliver services to Indigenous Australians and this capability should be taken into consideration by AT SIS.² The ANAO found that AT SIS plans for legal aid within the Law and Justice Program did not take into account the extent of services able to be delivered by LACs. AT SIS planning should also take account of the State/Territory government contributions to the criminal law operations of the LACs. To do this in a systematic manner, AT SIS needs to make clear decisions on what services it wishes to provide in this environment. With the proposal to move to tendering and contract arrangements, AT SIS will need to consider how in the future it should best make sure that the legal aid services that are required, but not provided by AT SILS, are able to be provided by alternative providers such as the LACs.

Guidance for staff (Chapter 3)

10. Regional Office staff assessing grant applications were in the main guided by AT SIS' general *Grant Procedures*, which the ANAO has previously found to provide adequate support to the process of assessing grant applications. However, in this audit the ANAO found that, with the exception of Test Case Funding Guidelines, there was no documented guidance that referred specifically to the Law and Justice Program. The Output Funding Statements for the Program provided guidance as to the objectives of the funding and the types of activities that could be supported.

11. The ANAO found that many Regional Office staff considered that they did not have sufficient documented guidance and appropriate training related to the administration of the Law and Justice Program to do their job well. There is a clear need for the efforts of the National Law and Justice Policy Branch (National Office) and the Regional Offices to be better integrated, to make sure that field staff are trained, and to have sufficient formal guidance to allow them to undertake their jobs in a competent manner. Without improvements in this area, it would be very difficult to achieve consistency in behaviour and program management.

² In 2000–01, 11 per cent of the legal aid delivered to Indigenous Australians was provided by LACs.

Communicating roles and responsibilities (Chapter 3)

12. The ATSIIC and ATSIIS structure in regard to the delivery of the Law and Justice Program is complex, incorporating a separation between both policy and program management (National Office) and grants administration (Regional Offices), and between the administrative and elected arms. State Offices and State elected groups also have some impact on the Law and Justice Program, insofar as it relates to policy and advocacy at the State/Territory government level.

13. However, the roles and responsibilities of the various areas of ATSIIS involved in the Law and Justice Program had not been formally articulated, as better practice would dictate. Staff and grantee organisations had mixed levels of understanding of these arrangements. Although generally adequate, there have been difficulties in communication between Regional Offices and other parts of ATSIIS. The ANAO notes that while these issues are raised in the context of the Law and Justice Program, ATSIIS structures operate in similar ways to affect the management of other programs. While the precise solution is for ATSIIS to decide, one option for strengthening communication and coordination within ATSIIS, relating to the Law and Justice Program, would be a formalised agreement between the ATSIIS program and policy areas and the Regional and State Office Network.

Budgeting and funding strategies (Chapter 4)

14. The ANAO found that current program management and funding focuses on requests for inputs from grantee organisations rather than on an assessment of the resources required to achieve outputs or outcomes. The input-based funding arrangements include top-up funding during a financial year to grantee organisations, particularly ATSIIS. The ANAO considers that this process is inefficient and is not always transparent to staff and stakeholders. The ANAO notes that the Commission's decision to expedite the tendering of legal aid services, and enter into contracts with selected service providers, is likely to lead to a changed funding approach for some service providers.

15. The ANAO found that ATSIIS has not given adequate consideration to determining the most efficient means of providing assistance to service delivery organisations. Annual funding of service providers under the Law and Justice Program (rather than multi-year funding) places an unnecessary and costly administrative burden on ATSIIS and those organisations requiring the financial assistance. There is also scope to achieve administrative economies, both by reducing the number of small grants and by addressing rapidly escalating costs, such as Professional Indemnity Insurance for ATSIIS and Family Violence Prevention Units (FVPUs).

16. Examination of the funding requirements of legal service providers with a view to moving to output-based, multi-year funding would allow grantees to develop strategies, including longer-term planning, that will allow them to target their services and better utilise resources.

Grantee organisation monitoring (Chapter 5)

17. Monitoring and evaluation are essential tools for good program management, providing management with assurance that program requirements are being met, outcomes are being achieved, and corrective action is being taken where necessary. Monitoring of grantee organisations is the responsibility of AT SIS Regional Offices.

18. The ANAO found that monitoring of grantee organisations was inconsistent. While processes to monitor the financial aspects of grants were sound, there were substantial weaknesses in processes to monitor and manage grantee organisation performance. Performance monitoring of Law and Justice Program grantee organisations through field visits was occurring but was inconsistent. This inconsistency extended to the quantity of field visits actually conducted, and the quality of resulting documentation. Many field visits were not undertaken as planned and/or were not appropriately documented, reducing assurance that the grant risks were being managed appropriately and undermining the rigour and credibility of the risk assessment process itself. Ensuring that monitoring activity by field staff complements the coverage by evaluations of grantee organisations would provide ongoing management assurance that grantee performance is appropriate and enable timely corrective action to be taken, where needed.

19. Grantee organisation performance reports were under-utilised as a source of information for monitoring purposes. In many cases, the reports were not being used at all. Owing to limitations in the performance indicators (improvements have been made for 2003–04), the information contained within the reports has been of limited value for staff in assessing grantee organisation performance.

Law and Justice Program oversight (Chapter 5)

20. Systematic program oversight enables program managers to actively track expenditure and program activities and outcomes against planned targets through the year and take corrective action where necessary. This task is the responsibility of the National Office.

21. National Office demonstrated a systematic process for monitoring grant allocations, commitments, and actual expenditure of the Program throughout

the year, as well as the administration costs of the Office. However, National Office's oversight of actual outcomes against planned activities throughout the year is less systematic. Monitoring Program performance during the year is largely ad-hoc and re-active, and available performance information does not sufficiently address service quality.

22. The absence of effective performance monitoring processes raises the risk that under-performance or poor service quality may not be identified sufficiently early to enable effective management response. Equally, it reduces the capacity of ATSIIS to identify higher performance grantee organisations that may be a source of better practice information.

Effectiveness evaluations (Chapter 5)

23. ATSIIS had a satisfactory process for conducting evaluations of its larger grantee organisations (i.e. ATSIIS and FVPUs) within the Law and Justice Program. However, the evaluations could be refined to enhance the focus on service quality and to improve support to Regional Offices in managing evaluation contracts. There were substantial deficiencies in the processes to follow-up evaluations, resulting in incomplete implementation of recommended actions. ATSIIS had no management assurance about the extent of implementation of evaluation recommendations nor whether implementation had been effective in addressing the identified problems. This reduced the value to ATSIIS of conducting evaluations.

Monitoring and reporting program performance (Chapter 6)

24. The ANAO found that while there have been deficiencies with the performance measurement and reporting framework for the Law and Justice Program, ATSIIS has recognised these and taken steps to address some of them. The performance indicators were revised for the 2003–04 Portfolio Budget Statements. However, the ANAO considers that further development of the performance indicators would enhance the reporting framework and add valuable information regarding the performance of the Program.

25. Performance reporting from grantee organisations is a grant requirement for further funding releases. The frequency with which reporting was required differed amongst Regional Offices. Currently there is a large set of performance indicators against which grantee organisations are required to report. The ANAO found that there is considerable effort and resources expended by ATSIIS, FVPUs and ATSIIS to collect the data. However, most of it is not used by ATSIIS.

Overall audit conclusion

26. The ANAO concluded that there is a need for considerable improvement in the management of the Law and Justice Program. ATSIIS has effective processes in place regarding the oversight of grant allocations, commitments and actual expenditure. However, there are weaknesses in the Program's planning processes, the communication of roles and responsibilities between the National Office and the Regional Offices, and the monitoring of the Program's performance. The growing volume of services being delivered by ATSIIS is being achieved on the basis of the efforts of individuals working within those organisations. From an overall Program perspective, ATSIIS has little information or assurance on the quality of the services being provided.

27. Planning for the Program should take account of the services provided by the LACs and, in consultation with relevant Commonwealth and State government agencies, adopt a whole-of-government approach to providing quality legal services for Indigenous Australians. Unless ATSIIS acts to provide realistic specifications for the services ATSIIS are to provide, there are clear risks that there will be continued reductions in ATSIIS ability to deliver quality services.

28. Within ATSIIS, it is important that steps are taken to improve the guidance and training available to field staff undertaking much of the monitoring activity; and to better communicate between the National Office and the Regional Offices what areas are responsible for particular matters, including performance monitoring. These matters may be equally applicable to other ATSIIS programs.

29. The ANAO made seven recommendations to improve ATSIIS' management of the Law and Justice Program. ATSIIS agreed with all seven audit recommendations.

Agency response

30. ATSIIS' full response to the section 19 proposed audit report can be found at Appendix 1. ATSIIS advised the ANAO that the following was its summary response:

ATSIIS, while accepting the report and agreeing with its recommendations, points out that it is already addressing the issues raised and would have done so as part of its revision of agency wide program administration and management policies and procedures; and in complying with the Ministerial Directions to its Chief Executive Officer as a result of the separation of powers between ATSIIS and ATSIIS from 1 July 2003.

The Law and Justice Policy reform process which ATSIIS is pursuing has been considered by Government and the ANAO report will give added impetus.

31. The ANAO notes that its fieldwork for the Law and Justice Program performance audit pre-dated the decision to separate ATSIC and ATSIIS, and the resulting Ministerial Directions. The ANAO kept ATSIIS informed of the emerging audit findings through the audit fieldwork, and provided ATSIIS with its draft audit findings and possible recommendation in early June 2003. The ANAO is pleased that many of the emerging audit concerns were able to be considered as a part of agency-wide reforms, including the Ministerial Directions which were issued after the ATSIIS/ATSIC separation in 1 July 2003.

Recommendations

Set out below are the ANAO's recommendations and ATSiS' abbreviated responses. ATSiS' more detailed responses are shown in the body of the report immediately after each recommendation.

Recommendation No. 1
Para. 2.54 The ANAO recommends that in order to maximise the efficient and effective use of program resources ATSiS should develop strategic and business plans, including risk management, for the Law and Justice Program. Planning should take account of:

- the need to promote a whole-of-government approach, determined in consultation with relevant State and Commonwealth agencies, to achieve equitable access to legal aid services by Indigenous Australians;
- the specifications of contractual arrangements with ATSiLS under the ATSiS policy relating to tendering for legal aid services; and
- the roles of LACs and CLCs, and the potential for them to deliver services to Indigenous Australians.

ATSiS response: Agree.

Recommendation No. 2
Para. 3.32 The ANAO recommends that, in order to effectively integrate National and Regional Office contributions to program management, ATSiS introduce mechanisms to clarify the roles and responsibilities of its National and Regional Offices involved in the operation of the Law and Justice Program, including such matters as communication, guidance and training of staff.

ATSiS response: Agree.

Recommendation No. 3
Para. 4.31 The ANAO recommends that ATSiS review the funding arrangements under which assistance is provided to grantee organisations under the Law and Justice Program with a view to providing assistance on an output basis, extending the length of grant agreements, and setting clear criteria for top-up funding.

ATSiS response: Agree.

Recommendation No. 4
Para. 5.41 The ANAO recommends that ATSYS (through its Regional Network) strengthen its processes to monitor grantee performance by:

- using performance information as an integral part of monitoring activity;
- providing feedback to grantee organisations about their performance reports;
- complementing the coverage of effectiveness evaluations with monitoring activities by staff; and
- conducting field visits as planned and documenting results on corporate information systems.

ATSYS response: Agree.

Recommendation No. 5
Para. 5.54 The ANAO recommends that ATSYS (through the National Law and Justice Policy Branch) systematically monitor the Law and Justice Program performance against planned targets, including service quality, and take corrective action where the targets are not being met.

ATSYS response: Agree.

Recommendation No. 6
Para. 5.80 The ANAO recommends that ATSYS develop:

- comprehensive guidance for Regional Offices to follow in overseeing effectiveness evaluations and their outcomes; and
- processes to provide management with assurance that evaluations are being implemented and are achieving intended results.

ATSYS response: Agree.

Recommendation No. 7
Para. 6.40 The ANAO recommends that, to meet the Law and Justice Program's management, monitoring, and reporting needs, ATSYS review the reporting frequency, and quality and quantity performance indicators, and collect only essential data required for program management.

ATSYS response: Agree.

Audit Findings and Conclusions

1. Introduction

Background

1.1 The Aboriginal and Torres Strait Islander Commission's (ATSIC) vision is to help Indigenous Australians³ and communities exercise their legal, economic, social, cultural and political rights. One means of achieving this is by providing financial assistance to community-based organisations to provide culturally appropriate services to Indigenous Australians.

1.2 In 1991, the principal finding of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was that Indigenous Australians are substantially over-represented at every stage of the justice system. Governments around Australia made commitments to address this in response to the Royal Commission. In 1991–92, funding to ATSIC's Law and Justice Program⁴ was increased to around \$36 million from \$18 million in 1990–91.

1.3 From 1 July 2003, the Aboriginal and Torres Strait Islander Services (ATSIS) was established as an independent Executive Agency within the Immigration and Multicultural and Indigenous Affairs Portfolio. ATSIS has the role of administering programs, while ATSIC (the board of the Commission and Regional Councils) will set national and regional policies and priorities for programs to be delivered by ATSIS. For the purposes of this report the Program generally will be referred to as being an ATSIS Program (including for the period prior to 1 July 2003). In discussing administrative arrangements, some references will be made to the Board and Regional Councils.

1.4 The Law and Justice Program was established to provide culturally appropriate, equitable and accessible legal aid to Indigenous Australians, as well as preventative and diversionary services, to reduce the rate of adverse contact of Indigenous Australians with the criminal justice system. It also assists with the resolution of problems associated with family violence, and supports advocacy services representing the interests of Indigenous Australians who come into contact with the justice system. The National Law and Justice Policy Branch administers four output elements under the Law and Justice Program:

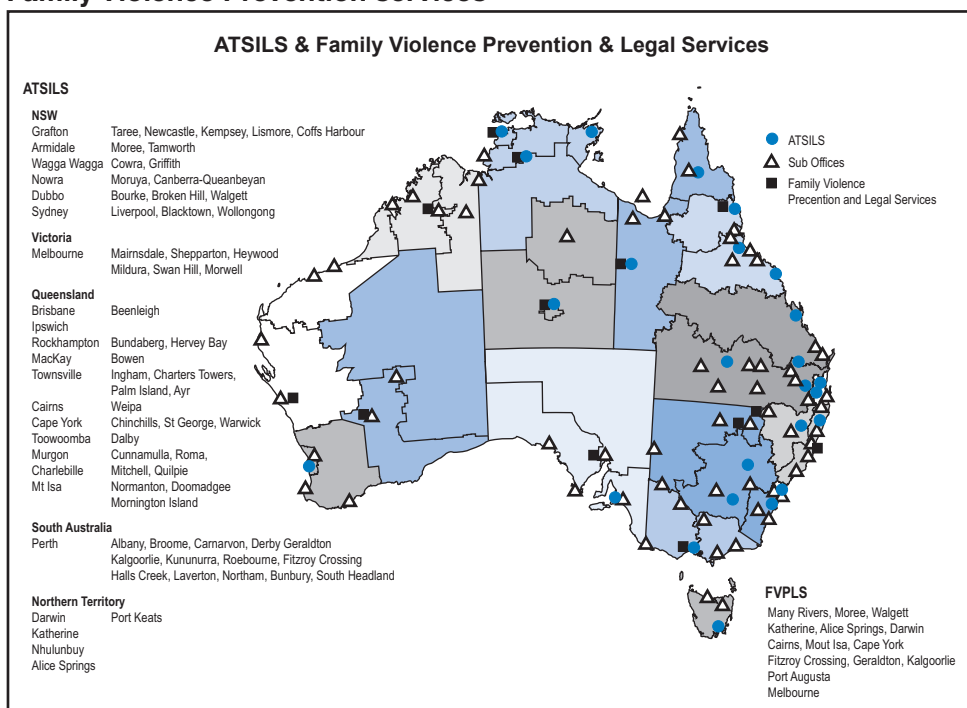
- Legal Aid—ATSIS provides grant funding to a national network of 25 community-based Aboriginal and Torres Strait Islander Legal Services (ATSILS) with sub-offices in 96 rural and remote localities (see Figure 1);

³ 'Indigenous Australians' in this report means Aboriginal and Torres Strait Islander peoples.

⁴ The program was called 'Law and Justice' until 2000. At that time it was renamed 'Legal and Preventative', before reverting to 'Law and Justice' in 2003.

- Law and Justice Advocacy—two legal service secretariats, the National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS)⁵ and the Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat (QAILSS) have provided lobbying, advocacy and research and technical support services to the ATSILS network. Two Deaths in Custody Watch Committee organisations monitor recommendations of the RCIADIC. Five State-based Aboriginal Justice Advocacy Committees advise State governments on law and justice issues and monitor implementation of the RCIADIC. Funding is also provided for test cases;
- Family Violence Prevention—13 Family Violence Prevention Units (FVPUs) provide assistance to Indigenous victims of family violence and sexual assault, (primarily women and children); and
- Prevention, Diversion and Rehabilitation—this element supports over 120 organisations delivering prevention projects such as night patrols (as determined by Regional Councils) and prisoner support services to reduce recidivism.

Figure 1
Distribution of Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention services



Source: ATSIS.

⁵ ATSIS advised NAILSS in July 2003 that it was not in a position to purchase advocacy and research services at that time. A new approach to these services is expected to be finalised later in the year.

1.5 Funding support provided by ATSIIS for the four Law and Justice Program output elements from 1998–99 to 2002–03 is set out in Table 1.

Table 1
Law and Justice outputs 1998–99 to 2002–03

Output	1998–99 (\$ million)	1999–2000 (\$ million)	2000–01 (\$ million)	2001–02 (\$ million)	2002–03 (\$ million)
Legal Aid	40.890	43.398	39.811	42.766	42.787
Law and Justice Advocacy	5.523	6.257	3.799	3.185	4.017
Family Violence Prevention			4.854	4.896	4.890
Prevention, Diversion and Rehabilitation			5.078	5.296	5.399
Total	46.413	49.655	53.542	56.143	57.093

Source: Data provided by ATSIIS.⁶

1.6 The provision of funding for Legal Aid is the largest element of the Law and Justice Program. In 2002–03, ATSIIS received \$43 million for legal aid services, which was around 75 per cent of the overall funding. Around 90 per cent of ATSIIS' work is in criminal law. However, they also provide a range of additional services, such as a prison visits scheme, diversionary programs for young offenders and other programs to increase awareness of the legal system and seek to prevent recurring contact with the justice system. Some ATSIIS also provide advice, assistance and/or representation in family and civil law matters.

1.7 Table 1 illustrates that funding by ATSIIS for the Legal Aid element has not increased substantially over the last five years.

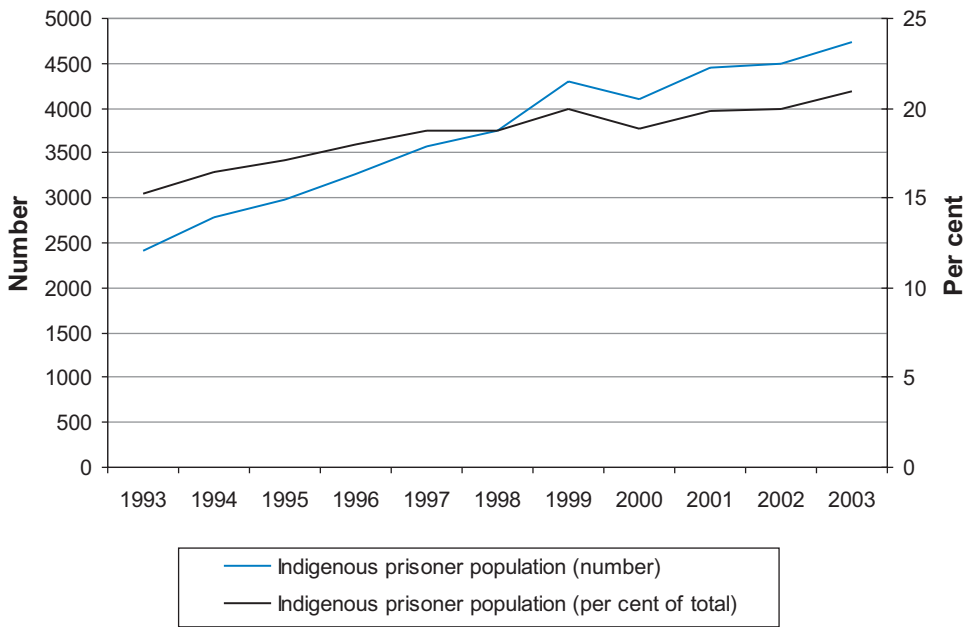
1.8 All indications are that the demand for legal services for Indigenous Australians is increasing. For example, the Australian Bureau of Statistics (ABS) survey, *Corrective Services, Australia*, reported that there were 4742 Indigenous prisoners in Australia (21 per cent of the prisoner population) at June 2003. With an imprisonment rate of 1907 per 100 000 adult Indigenous population at June 2003, Indigenous Australians were 16 times more likely than non-Indigenous Australians to be in prison.⁷ The proportion of prisoners who were Indigenous Australians rose from 14 per cent in 1992 to 21 per cent in 2003. These data are reflected in Figure 2.

⁶ Prior to 2000–01, ATSIIS had two Law and Justice Program Outputs, the Legal Services and Law and Justice: Prevention and Diversion outputs. In this table, for 1998–99 and 1999–2000 the amounts for 'Law and Justice: Prevention and Diversion' have been included in the Law and Justice Advocacy row. For 1998–99 and 1999–2000 'Law and Justice: Prevention and Diversion' included amounts later classified as Law and Justice Advocacy; Prevention, Diversion and Rehabilitation; and (some early) Family Violence Prevention funding.

⁷ Australian Bureau of Statistics September 2003, *Corrective Services, Australia, June Quarter 2003*.

Figure 2

Number of Indigenous prisoners and Indigenous prisoner proportion of total prison population 1992–2003



Source: ANAO analysis of ABS data to June 2003.

1.9 As discussed in Chapter 6, the performance information systems for the Program have experienced longstanding problems, limiting assurance regarding the quality of performance data.⁸ However, over time the reported number of case and duty matters conducted by ATSILS has fluctuated but overall, grown, as shown in the table below.

Table 2

ATSILS case and duty matters 1997–98 to 2002–03⁹

1997–98	1998–99	1999–2000	2000–01	2001–02	2002–03
68 066	61 963	77 371	94 949	79 986	113 698

Source: ATSIS annual reports.

⁸ In the case of the figures for 2000–01, the systems problems were such that case and duty matters data for NSW was not available. Data from 1999–2000 from NSW was used to contribute to the 2000–01 figures.

⁹ These are the most recent published figures. There have been revisions to previously published figures over time.

ATSIS offices

National Law and Justice Policy Branch (National Office)

1.10 Under current program responsibility within ATSIS, the National Law and Justice Policy Branch (the 'National Office') has overall responsibility for policy and program management for the Law and Justice Program. The National Office was moved to Sydney in 2000, following an organisational restructure. However, in 2003, further restructuring resulted in the National Office being relocated to Canberra.

1.11 The National Office assumed responsibility for Program policy from the end of 2002. Prior to that time, Program policy responsibility had been located in a different administrative area in Canberra.

1.12 In 2001–02, administrative expenditure for the National Office was \$1.369 million. In 2002–03 it was \$1.633 million. In recent years, under ATSIS' funding arrangements, up to half of the funds for National Office's administrative expenditure has been made available by having the Minister for Immigration and Multicultural and Indigenous Affairs approve a conversion of program money to administrative costs. This has allowed the National Office to employ six permanent staff, with additional staffing being short term contract staff.

1.13 During the audit, ATSIS commented that the ability to maintain experienced staff has been affected by the re-locations of the Branch between Canberra and Sydney in 2000 and 2003. Only one experienced officer moved to Sydney when the Branch relocated in 2000, and it is expected that none of the current Sydney staff will be relocating back to Canberra in the latest move.

State Offices

1.14 ATSIS' State Offices work with elected representatives¹⁰ in their area to contribute to the achievement of ATSIS's corporate plan. The State Offices, which form part of a *National Network* and are responsible to a *National Network Manager*,¹¹ support the Regional Councillors in their policy and advocacy roles on the key issues affecting Indigenous Australians at the State level. State Offices tend to have little to do with the delivery of services under the Law and Justice Program, although they have an important function in developing strategic partnerships with all levels of government, and pursuing alliances and agreements at the State and local government level within a State. In relation to the Law and Justice Program, the State Offices have an important role in taking

¹⁰ The *Aboriginal and Torres Strait Islander Commission Act 1989* requires Regional Council elections to be held every three years.

¹¹ A National Network Office was formed in October 2001 to support the National Network Manager.

forward cooperative arrangements between ATSIC/ATSIS and State/Territory governments. State/Territory governments are heavily involved in funding their own Legal Aid and Prevention and Diversion activities and have responsibility for the police and the courts in their State/Territory. The State Offices have little direct involvement in the delivery of the Law and Justice Program.

Regional Offices

1.15 ATSIS has 29 Regional Offices that are located in both urban and remote centres. These Offices, which also form part of the National Network, are responsible for supporting the statutory roles and functions of Regional Councils and delivering the bulk of ATSIS' grant program (including the Law and Justice Program). The functions of the Regional Offices include:

- acting as the prime point of contact in each region for business and the community with ATSIS;
- undertaking the delivery of ATSIS' program administration;
- supporting Regional Councils in the development and implementation of Regional Plans, consistent with ATSIC policy; and
- developing and maintaining effective partnerships with regionally based Commonwealth, State, Territory and local government agencies and community organisations.

Key guidance documents

ATSIS' Grant Procedures

1.16 ATSIS has promulgated its *Grant Procedures* for use by all staff in relation to the management of grants. The *Grant Procedures* cover topics such as:

- submissions for grant funding;
- appraisal of submission;
- grant documentation;
- release of funds;
- monitoring; and
- acquittance of grants.

1.17 The *Grant Procedures* also set out the arrangements that must be undertaken in assessing risks associated with any application, and in determining how ATSIS will manage funding of the applicant organisation.

Law and Justice Program Guidance

1.18 There are a number of guidance documents for the Legal Aid and the Family Violence Prevention elements of the Law and Justice Program. There is also a set of guidelines for test case funding under the Law and Justice Advocacy element. The Output Funding Statements for each of the four Program elements provide guidance as to the objectives of the funding and the types of activities that can be supported.

Legal Aid Guidance Document

1.19 The principal guidance document that is in place is the *Policy Framework for Targeting Assistance Provided by Aboriginal and Torres Strait Islander Legal Services*. This document is directed at ATSILS, which are required by ATSIIS to adopt this policy framework as part of the grant terms and conditions.

1.20 The objective of the document is to set out the priorities that ATSILS should follow in delivering legal aid services to Indigenous Australians. ATSILS must use grant funds to provide legal aid to clients who cannot afford to obtain private legal assistance, in the following priority categories:

- where the person may be detained in custody;
- where there is a real risk to the person's physical safety;
- where cultural or personal well-being is at risk;
- where a family member of a person who died in custody seeks representation at an inquiry into the death (unless other appropriate assistance is readily available);
- where the client would be significantly disadvantaged if assistance is not provided; and
- where circumstances of public interest exist and the provision of assistance is likely to provide substantial benefit to an Indigenous Australian community, group or to Indigenous Australians generally.

1.21 The *Policy Framework* provides that ATSILS must ensure, as far as possible, the following core services are provided:

- preventative, information and education services;
- initial legal advice, minor assistance and referral;
- duty lawyer assistance;
- legal casework assistance in criminal, civil and family law matters;

- input on law reform and law related issues to promote social justice for Indigenous Australians; and
- outreach, support and other legal aid related services.

Family Violence Prevention Guidance Documents

1.22 There is an *Operational Policy Framework for the National Family Violence Prevention Legal Services* that sets out the principles for the *Framework*, such as, who the services are for, specific types of help provided and operational requirements, including governance matters.

Law and Justice Advocacy Guidance Documents

1.23 There are *Test Case Funding Guidelines* that have been compiled by the National Office. This guide is for applicants seeking test case funding and is to assist ATSI staff in administering submissions and grants for funding.

Other legal assistance providers

Legal Aid Commissions

1.24 Legal Aid Commissions (LACs) are established in each State and Territory as statutory authorities under State/Territory legislation. Commonwealth funding is provided under agreements with the State/Territory or the relevant Legal Aid Commission. Commonwealth funding to LACs is directed to providing legal assistance for matters arising under Commonwealth law, in particular, family law. State and Territory funding is provided for matters arising under State/Territory law. This includes most criminal law matters. Assistance provided by LACs includes legal advice and information (in some circumstances via a telephone advice system), duty lawyer services and legal representation. The LACs provide representational assistance if a client satisfies means and merits tests and also may require a financial contribution from the client for certain services (ATSI do not apply a means test or require a financial contribution).

Community Legal Centres

1.25 The Commonwealth also provides funding to Community Legal Centres (CLCs), which are community-based organisations that provide free legal advice for low-income and disadvantaged people in the community. Many centres offer community legal education and some are actively involved in law reform. Some centres specialise in specific areas of law such as tenancy, credit and women's

issues. As a rule, CLCs either assist people to help themselves or direct them to legal aid, although they do sometimes provide representational services. State/Territory governments also provide some funding for CLCs.

1.26 Reviews are being undertaken jointly by the Commonwealth and State/Territory governments of CLCs on a State-by-State basis. These reviews are examining issues such as:

- distribution of CLC resources throughout the State;
- accessibility of CLC services for persons most in need;
- identification of core CLC services and eligibility criteria;
- enhancement of corporate governance of CLCs; and
- enhancement of the role of volunteers at CLCs.

Reviews related to the Law and Justice Program

1.27 There have been a number of reviews undertaken related to the Law and Justice Program. Most recently, the Australian National Audit Office (ANAO) undertook a performance audit of ATSI'S Grants Management¹² in 2002. ATSI'S Office of Evaluation and Audit (OEA) reported on an evaluation of the Legal and Preventative Services Program in January 2003¹³. The ANAO sought to complement these reviews rather than to duplicate them.

1.28 The objective of the ANAO audit of ATSI'S Grants Management was to determine the extent to which grant management practices met identified better practice standards. The audit concentrated on Community Development Employment Projects (CDEP) grants and Regional Council discretionary funding. The audit concluded that while ATSI'S was continuing to improve its management of grant funding there were still several administrative areas that required attention.

1.29 The OEA evaluation sought to: quantify, analyse and evaluate the outputs and outcomes of the ATSI'S; benchmark the cost and standard of legal services provided by the ATSI'S against legal work outsourced by LACs; assess the equity of funding provided by ATSI'S to ATSI'S; and examine the progress made by ATSI'S in greater prioritising of funds and resources to preventative and rehabilitative functions of the Program. The most significant finding of this evaluation was that ATSI'S are providing legal services at a cost that is

¹² ANAO Audit Report No.2 2002–03, *Grants Management*, Aboriginal and Torres Strait Islander Commission.

¹³ ATSI'S Office of Evaluation and Audit 2003, *Evaluation of the Legal and Preventative Services Program*.

significantly lower than that paid by LACs for legal work undertaken on a referral basis by private practitioners.¹⁴

1.30 In addition to the ANAO and OEA reviews, a report to the Commonwealth Government in June 1996 by the National Commission of Audit included a reference to the provision of legal aid to Indigenous Australians.¹⁵ The Commission of Audit was tasked with examining the Commonwealth government's finances including aspects of: what the Commonwealth government does; how it does it; how its activities are recorded; and the implications for its financial position. Where necessary the Commission of Audit was asked to suggest improvements.

1.31 In relation to legal aid to Indigenous Australians, the focus of the Commission of Audit was on duplication and overlap in legal aid delivery. The Commission considered that since 1970 Aboriginal and Torres Strait Islander Legal Services had developed into a system of separate independent legal aid corporations. The Commission reported that:

These corporations provide very largely the same services as those provided by mainstream Legal Aid Commissions (LACs) and Community Legal Centres (CLCs) in each State. ATSILS, LACs and CLCs are often geographically close to each other. This underlines the extent of overlap and duplication.

Mainstream LACs do not discriminate between Australians in the provision of services, although they do give priority to particular matters. Aboriginal and Torres Strait Islanders receive assistance at the same level of priority and funding as other equivalent income groups. However, they might not receive assistance with matters to which the LACs give lower priority, such as to some civil matters and some test cases.

There is a demonstrated need for Aboriginal and Torres Strait Islander people to receive general legal *advice* that relates to their own needs and background just as other disadvantaged groups in the community are assisted by specialist, independent CLCs which, in general, do not provide legal *representation*.

The Commission of Audit recommended¹⁶ that duplication and overlap between ATSILS and mainstream legal aid delivery should be removed by amalgamating ATSILS with Legal Aid Commissions. The Government chose not to implement this recommendation, requiring ATSIC / ATSIS to undertake a program of reforms for the ATSILS.

¹⁴ OEA advised that the cost comparison looked only at the cost of outsourced LAC legal work, not work done in house by LACs. The intention of such a comparison was to gauge the probable costs of outsourcing legal work done by ATSILS and the conclusion was that outsourcing would be significantly more expensive without adding to the quality of service provided. The Commonwealth Attorney General's Department advised that it considered that the comparison made was 'invalid because ATSILS in-house legal services were costed at the LAC brief out rate' and that 'a like with like comparison would have provided a different result'.

¹⁵ National Commission of Audit 1996, *Report to the Commonwealth Government*.

¹⁶ Recommendation 4.27: Legal Aid.

The audit

Objective and scope

1.32 The objective of the audit was to form an opinion on ATSI's management of the Law and Justice Program, having particular regard to the relative needs of Aboriginal and Torres Strait Islander peoples. The audit focused primarily on how effectively ATSI manages and delivers the provision of legal services to Aboriginal and Torres Strait Islander people and was designed to complement but not reproduce previous audit and other evaluation activity relevant to the Program.

Audit criteria

1.33 To assist it to form an audit opinion the ANAO developed the following audit criteria, in consultation with ATSI.

- Are roles and responsibilities within ATSI clearly communicated and enacted, and are relationships with stakeholders managed effectively?
- Does ATSI have an integrated approach to planning for the Program, including risk management, that will assist in its effective delivery?
- Is the performance framework for the Program appropriate for internal and external accountability requirements?
- Do the processes to support and monitor Program delivery effectively facilitate the achievement of Program objectives?

Audit methodology

1.34 In order to form an opinion on the audit objective, the audit team:

- conducted fieldwork in ATSI's National Law and Justice Policy Branch, in Sydney and Regional Offices in Sydney, Brisbane, Adelaide, Perth, Darwin, Tamworth, Queanbeyan, Katherine and Port Augusta. The work undertaken in these offices included examining key documents and files, and interviewing key personnel;
- consulted with key internal and external stakeholders in each State visited such as: the ATSI elected arm; grantee organisations from all four output elements, including ATSI and FVPUs; the Commonwealth Attorney-General's Department; and LACs; and
- consulted other areas of ATSI, including State Offices, as required.

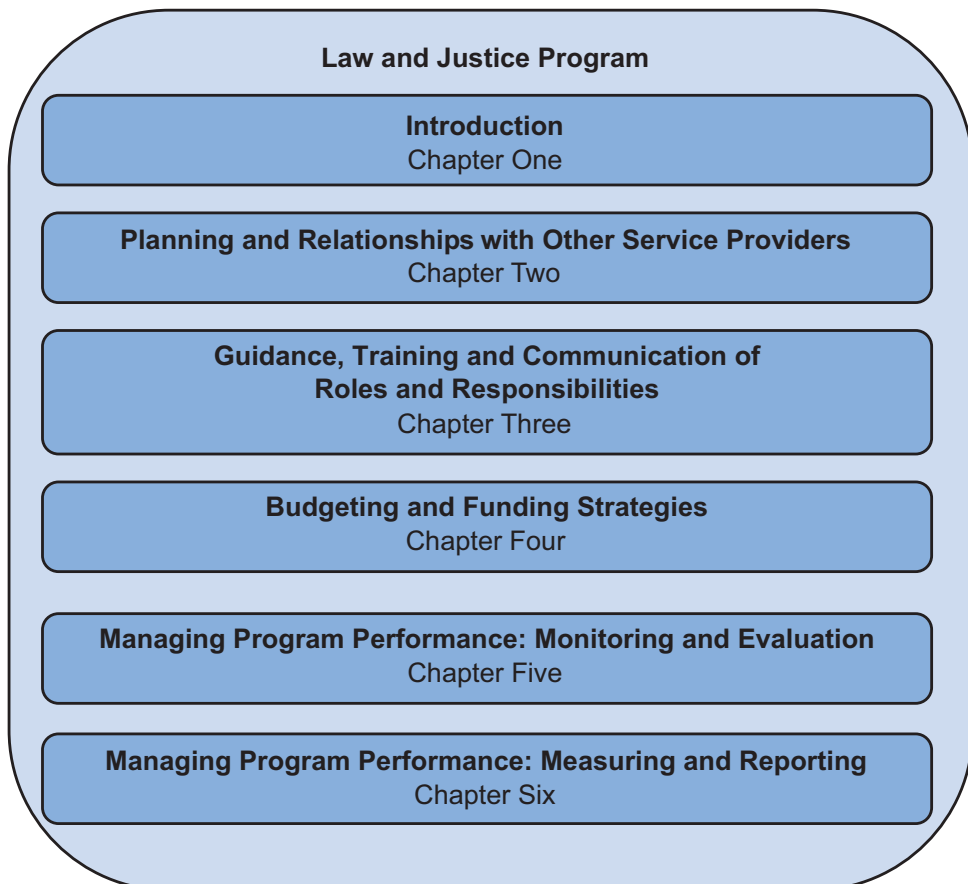
1.35 A complete list of organisations consulted is at Appendix 2.

1.36 A consultant, Mr Pat Farrelly, assisted with the conduct of the audit. His contribution covered all elements of the audit.

1.37 A section 19 proposed report was issued to AT SIS and its response is at Appendix 1. Extracts were provided to the Commonwealth Attorney-General's Department (AGD) for comment. AGD provided a number of factual comments that the ANAO took into consideration in preparing the final report.

Structure of the Report

1.38 The issues addressed in each chapter are illustrated below.



2. Planning and Relationship with Other Service Providers

The purpose of this chapter is to examine planning and risk management undertaken in regard to the Law and Justice Program and whether planning takes account of the services available from other service providers.

Introduction

2.1 One of the key elements of sound governance is to have appropriate planning processes in place. Strategic and business planning assists organisations to achieve goals through the best allocation and use of staff and resources and in taking action in a timely fashion to address ongoing needs.

2.2 Planning should also take into consideration relationships with key external stakeholders. In commenting on recent initiatives in the United Kingdom, the National Audit Office found that public, private and voluntary organisations involved in delivering public services are required to work together much more to design programs. This produces programs that are better interconnected and mutually supportive, thus increases their chances of success and their overall quality.¹⁷

2.3 There are a number of government agencies in Australia, other than ATSIIS, that are involved in programs similar to those funded under ATSIIS' Law and Justice Program.¹⁸ These agencies are providing complementary or alternative services, and may also be funding the same organisations as ATSIIS for the provision of legal services. For this reason the ANAO examined the interrelationship of the Law and Justice Program with other government service delivery mechanisms, particularly in regard to the provision of legal aid through the LACs and CLCs.

2.4 Consideration is also given to whether ATSIIS' planning takes appropriate account of the services delivered by other agencies.

¹⁷ Report by the Comptroller and Auditor General 7 December 2001, *Joining Up to Improve Public Services*, p. 1. The Joint Committee of Public Accounts and Audit has also previously commented on the need for improved accountability arrangements where there are shared outcomes between agencies. Joint Committee of Public Accounts and Audit (JCPAA) Report 388, *Review of Accrual Budget Information*, p.iv and p.18.

¹⁸ For example: the Commonwealth Attorney General's Department (which provides funds to LACs and CLCs); the Commonwealth Departments of Health and Aging, and Family and Community Services; State and Territory government agencies; and many local governments fund services related to the Law and Justice Program.

Program planning processes

2.5 Better practice governance arrangements in the public sector involve strategic and business planning processes, including risk management, with associated review and monitoring processes, to fulfil responsibilities efficiently and effectively with due care and diligence.¹⁹

Strategic and business planning

2.6 The ANAO sought to determine if, for the four output elements of the Law and Justice Program, ATSIIS had:

- developed a strategic plan;
- assigned clear responsibility for particular activities;
- established clear targets for performance; and
- reported against those targets.

2.7 The ANAO found that there was no current strategic or business plan for the Law and Justice Program that linked objectives and planned outcomes to tasks for implementation. However, there were some elements of a planned approach. For example, ATSIIS had:

- provided regular advice to government of reforms taken or proposed;
- developed a national contestability policy for selection of service providers;
- developed a State Directions Strategy which included a mapping exercise and financial analysis for the ATSIIS; and
- commenced development of a new funding formula for distribution of funds amongst ATSIIS.

Advising Government on Program reforms

2.8 In 1997, the National Office identified, and outlined in a Policy Briefing paper, a number of reforms that needed to be implemented to improve the accountability and quality of ATSIIS service delivery. Since 1997, ATSIIS has been keeping the Government regularly informed of reforms taken or proposed for the Law and Justice Program. The ANAO's analysis indicates that the following significant initiatives have been implemented.

- Improving the access of Indigenous Australian women to legal and other services (see Chapter 6).

¹⁹ See ANAO Better Practice Guide 1997–98, *Applying Principles and Practice of Corporate Governance in Budget Funded Agencies*.

- Preparing and revising a policy framework and national minimum standards for ATSILS.²⁰
- Piloting means testing for clients of ATSILS.²¹
- Undertaking a program of evaluations of grantee organisations.

2.9 Completion of other reforms has been patchy. For example:

- a national performance reporting and data collection system was to be established. As discussed in Chapter 6, the ANAO has found that while there is a system, it is not working well, with both stakeholders and staff indicating that it is inefficient and not providing useful data;
- implementation of evaluation recommendations was to be monitored. As discussed in Chapter 5, this is not occurring consistently;
- protocols were to be established with mainstream legal aid providers setting in place a clear statement of roles and responsibilities. The ANAO is aware of protocols established within New South Wales (NSW) and Victoria but there are no other operating protocols;
- a new funding formula for ATSILS was to be developed, but as discussed below, it is yet to be finalised after four years (an interim formula has applied since April 2001); and
- while ATSIIS has introduced National Minimum Standards for ATSILS it has thus far only introduced more comprehensive standards (best practice standards) in three jurisdictions.²² ATSIIS proposed to evaluate these better practice standards in 2002–03 and in the light of this evaluation consider their extension to the remaining four states. The ANAO is not aware of this evaluation having been undertaken.

2.10 The ANAO found, in this context, that there was a perception among some stakeholders that the reform process had ‘stalled’ in recent times. In response to this finding, ATSIIS advised that National Office’s ability to pursue the reform process was inhibited by its limited ability to employ permanent staff. This occurred because approximately half of the resources available for Law and Justice Program administrative costs had been made available by having the Minister approve a conversion of program money to administrative costs each year. This conversion was only effective for one year at a time, with employment

²⁰ The National Minimum Standards are part of the grant terms and conditions for ATSILS. These Standards include professional practice requirements and planning, monitoring and evaluation provisions. These minimum standards apply in all States and Territories.

²¹ Means testing was found not to be viable due to the low number of persons likely to be ineligible for aid.

²² New South Wales, the Northern Territory and Western Australia—these standards cover provision of client service, working on underlying issues and managing the organisation and its people.

using converted funds being restricted to contracts for less than a year. In addition, ATSIIS advised there was an almost complete turnover of National Office staff in 2000 when the function was relocated from Canberra to Sydney.

ATSILS contestability policy

2.11 ATSIIS has developed a national contestability policy for the selection of service providers. The policy, which became effective from 1 July 2001, includes the following requirements:

- grants to ATSIIS will be made on an annual or triennial cycle and will be renewed subject to satisfactory performance for one further full period of one or three years. At the end of an incumbency of six years, provision of a service may be opened to contest from other potential providers at the discretion of ATSIIS; and
- when provision of an Indigenous legal service in a region is opened to contest, applications for the grant will be sought from as many interested and qualified Indigenous organisations as possible, and the selection will be made through a competitive process.

2.12 In developing this policy ATSIIS trialled a tender selection process for ATSIIS in NSW. A consultant engaged by ATSIIS to examine the most effective, efficient and accountable process for the selection of ATSIIS, determined that an alternative market of non Indigenous service providers that could provide culturally sensitive and stable services was highly restricted, and in many cases non existent.

2.13 The ANAO noted that generally other potential tenderers, such as the Legal Aid Commissions (LAC's), indicated that they did not wish to take over from ATSIIS the role of being the primary legal aid service provider to Indigenous Australians. Unlike ATSIIS, LAC activities involve means-testing and some cost recovery.

2.14 In June 2003, the Board of ATSIIS decided to expedite the tendering of legal aid services for all services over 18 months, commencing in August 2003. ATSIIS is to enter into contracts with selected service providers.

2.15 Experience has shown that the introduction of contestability in existing markets requires considerable effort and can take some time. Prior to issuing Requests for Tender, it is necessary to prepare detailed specifications for the required services, taking into account a full assessment of the market (including Commonwealth/State/Private Sector involvement) as well as preparing draft contracts (with clear specifications of the services to be provided) and sufficient, reliable, background data.

2.16 Consistent with the *Commonwealth Procurement Guidelines*, it would be advisable that a risk assessment be undertaken to highlight particular risks associated with the tender process, and how these are to be managed. Widespread consultation with potential providers and stakeholders is necessary to encourage acceptance of, and commitment to, this process.

2.17 During the ANAO fieldwork, in June 2003, the first tender was proposed for August 2003. At that time it was unclear to the ANAO whether the necessary draft contract (including specifications), guidelines for the submission of tenders, and background data, could be assembled in time to undertake meaningful consultations. The ANAO also notes that under past arrangements ATSIIS did not clearly specify the services, including their level and location that individual ATSIIS were to provide (see Paragraph 3.19). The limitation on the services that were provided by an ATSIIS was determined largely by the funding provided and not by the contract specification. Under a tender and contract arrangement, ATSIIS will need to specify the nature, type and quantity of service provision that is consistent with its ability to provide funding. Such specification would open up opportunities for benchmarking with other legal aid providers (see paragraph 5.57).

2.18 In October 2003, ATSIIS advised that it agreed with the ANAO's comments and issues raised during the fieldwork and stated that it was organising:

a special task group to develop tender specifications which will be published for comments before being finalised and proceeding to tender. A probity auditor will be engaged to oversee the entire process. For these reasons, the tender process will be later than originally envisaged by the Law and Justice Branch.

State Directions Strategy and Mapping for ATSIIS

2.19 ATSIIS have developed according to historical events and community influences and, as such, their current distribution is a result of these events rather than of national planning based on targeted need. In addition, there are very wide variations in the sizes, structures and operations of ATSIIS across Australia. Some States (Western Australia, South Australia, Tasmania and Victoria) have only one state-wide ATSIIS, while other States (New South Wales {six}, Queensland {11} and Northern Territory {four}) have several separately incorporated ATSIIS covering smaller geographical areas.

2.20 ATSIIS has developed a State Directions Strategy, which aims to assist ATSIIS achieve maximum efficiency and effectiveness in client service delivery. The strategy explores opportunities to maximise the optimal use of limited available funding through: eliminating inefficiencies or cost duplication; re-directing all available resources into filling service gaps; and enhancing direct service delivery.

2.21 In an internal paper dated 21 January 2003, ATSIC indicated that:

There has been no substantial injection of new money into the ATSILS program since 1992. Under current funding levels ATSILS are experiencing increasing costs and difficulty in attracting and retaining professional staff. On a national level, the Law and Justice Policy Office has developed a State Directions Strategy in an effort to support the ATSILS in dealing with increased funding pressures. This strategy also seeks to support ATSILS meet the growing demand for services, particularly given the high rate of growth in the Indigenous population.

The State Directions Strategy is being progressively implemented in South Australia, Queensland, Western Australia, Victoria and the Queanbeyan Region of NSW with the expectation that strategies for all States and Territories will be developed in the near future. The implementation of the strategy is furthest advanced in South Australia. Its demographic mapping project has been completed and the Legal Services Commission was engaged to develop model options to enhance service delivery in SA. In other states, the elected arm (primarily State Advisory Committees) has endorsed the Strategy to be implemented in their States or Regions and, as a first step, demographic mapping projects are now being implemented.

2.22 The mapping exercise was aimed at better aligning ATSILS resources with the needs of Indigenous Australians for legal assistance, and promoting rationalisation of ATSILS in some States. ATSI completed the mapping exercise in South Australia in April 2001, Western Australia in January 2002 and Queensland in March 2002. The maps are detailed and include, in the case of Queensland for example, Regional Council borders, Regional Council membership, the Board of Directors for each ATSILS, as well as details of:

- case load totals for each ATSILS;
- total number of matters for each ATSILS;
- ATSILS funding for 2000–01;
- Indigenous population projections—age breakdown;
- Indigenous population projections for 2002–2006;
- Queensland Indigenous population age/sex breakdown; and
- other details such as locality of police station, ATSILS office, Legal Aid office, Family Violence Prevention Units (FVPUs) and courthouses.

2.23 The ANAO considers that the production of maps is a useful tool with which to help demonstrate where the Law and Justice Program should be directing its resources. ATSI also considers that the maps may assist in eliminating duplicated administrative costs through co-locations, mergers or the establishment of new organisations, particularly where ATSILS serve

relatively small geographic areas. However, as illustrated below, there are a number of complicating factors that have affected the speed of change.

2.24 The intention of the mapping exercise in Queensland was to promote improved efficiency in the way ATSILS are structured in Queensland. This intention had support from various elected arms in Queensland.

2.25 ATSI analysed the mapping data in relation to the ATSILS located in Roma and Rockhampton. The results of that analysis showed that:

trends in each of these ATSILS regions indicates that the Indigenous population is increasing rapidly, especially the youth sector, and this is reflected in the fact that the majority of all the ATSILS' clients are under 25 years of age. Therefore, the already extensive rate of Indigenous contact with the juvenile and criminal justice system looks set to increase further, and consequently, ATSILS services will be in even more demand.

2.26 Data, including demographic information, and a discussion paper on State Directions were presented to ATSILS in March 2002. In April 2002, a preliminary discussion paper was distributed to Queensland ATSILS outlining potential administrative savings that could be available to enhance direct service delivery by the ATSILS in Queensland.

2.27 The ANAO found that the potential reforms in Queensland have not progressed since April 2002. In January 2003, ATSI advised the ANAO that this was a consequence of the ATSIC elections, but that it was now intending to move the reforms forward. ATSI advised that a further issue that affected progress is that, until 2003–04, the ATSIC Regional Councils concerned had a major role in changes to service delivery arrangements in their areas, which limited National Office's ability to enforce change.

2.28 The ANAO considers that the State Directions Strategy documentation provides sound broad goals for ATSILS reforms. However, the documentation does not indicate how the Strategy will optimise the use of limited available funding or how inefficiencies or cost duplication will be eliminated. Nor does the documentation set timeframes or assign responsibilities for completion of reforms. Progress has been slow, particularly in relation to South Australia (SA).²³ Despite a consultant's report being available in mid 2002 in relation to proposed SA changes, the ANAO found that in April 2003 ATSI were still considering what action they needed to undertake to implement the possible changes.

²³ As well as the mapping exercise in South Australia (SA) in January 2001 the SA State Executive Committee (SEC) resolved to proceed with legal services reforms in SA. The Legal Services Commission SA was chosen as a consultant to provide a model for a more efficient and effective legal service delivery structure. Their report *Proposal for Legal Services Reform* was delivered to the Network Regional Office in Adelaide on 7 June 2002. As the proposed reforms were substantial a thorough assessment was called for by the SEC. Subsequently an Inter-Regional working group was established to give the ATSIC elected arm the opportunity to consider their assessment and analysis.

2.29 Furthermore, the ANAO found that, to date, there was no evidence of available resources being re-directed into filling service gaps that would enhance direct service delivery as a result of the Strategy.

2.30 In responding to these findings, ATSIIS advised that its approach, involving the tendering for the provision of legal aid services, will result in efficiencies through the elimination of separate organisational structures for relatively small service areas. ATSIIS also referred to the additional guidance on how the tendering will be undertaken that was included in the paper submitted to the Commission in June 2003. In discussing contestability, as mentioned earlier in this report, the ANAO has expressed concerns, with which ATSIIS has agreed, regarding the need to undertake a risk assessment, determine clear specifications and consult appropriately with prospective tenderers.

2.31 Other reports²⁴ on the provision of legal services by ATSIIS have referred to 'shortfalls in ATSIIS funding' for legal aid of either \$12.4 million or \$25.6 million. Grantee organisations advised the ANAO that in the current environment service delivery is suffering. ATSIIS are slowly becoming less effective as they are forced to reduce the number of lawyers they employ, or reduce the range of services delivered, while the demand for assistance is increasing. This reflects increasing demand for ATSIIS' services, increasing costs and relatively flat funding levels.²⁵

2.32 In such an environment, the ANAO considers that the development of a whole-of-government approach (including the Commonwealth government and State/Territory governments) to addressing the legal aid needs of Indigenous Australians provides the best opportunity for all providers to achieve a standard of service delivery that is consistent and appropriate. Achieving this will require ATSIIS to work with funding agencies to provide governments with a comprehensive picture of the issues involved in providing legal aid to Indigenous Australians. In addition, unless ATSIIS acts to provide realistic specifications for the services ATSIIS are to provide, there are clear risks that there will be continued reductions in the ability of ATSIIS to deliver quality services.

Funding formula

2.33 In April 1999, the ATSIIS Board of Commissioners agreed to the development of a national funding method. An interim formula was prepared,

²⁴ See: ATSIIS Office of Evaluation and Audit 2003, *Evaluation of the Legal and Preventative Services Program*, p. 45; and ATSIIS and Australian Department of Finance and Administration December 2000, *ATSIIS Output Pricing Review*, p. 7.

²⁵ Chapter 1 illustrates that the available funding for the Law and Justice Program has been relatively static for some years and, in the case of legal aid, the numbers of Indigenous Australian offenders and inmates have risen, and the Indigenous Australian population in key age groups is also rising.

which was still current at the time of this audit. It takes five factors into account in determining the percentage of the Commission's total legal aid budget that any one State/Territory should receive:

- Indigenous population;
- Indigenous criminal incident rate;
- Indigenous prisoner population rate;
- State incarceration disability (a measure of Indigenous prisoners/ Indigenous criminal incidents); and
- State dispersion cost factor (tyranny of distance measure).

2.34 ATSI advised the ANAO that the interim formula has a number of shortcomings, including its State/Territory focus (thus not allowing lower level assessments of need), and some 'double counting', as prisoner population and State incarceration disability (see above) are so closely related, and are not in any case fundamental to determining the need for ATSI services.

2.35 Progress in developing a final formula has been slow. Since December 2001, ATSI have been exploring the possibility of engaging a consultant to undertake the task and have been liaising with the Australian Institute of Criminology to review the current interim funds distribution formula.

2.36 On 2 April 2003, after the ANAO audit commenced, an agreement was entered into with the Australian Institute of Criminology to develop a revised funding allocation method that more accurately reflects the levels of need for ATSI services. ATSI has indicated that it is currently considering a final report from the consultant.

2.37 Notwithstanding the preparation of the interim funding formula, the ANAO found that funding to ATSI remains primarily historically based, and funds allocation each year is not distributed using the interim formula. ATSI advised that it was intended that the interim formula be applied to any additional funding that becomes available during the course of a financial year. The ANAO notes that during both 2001–02 and 2002–03 the interim formula has been applied to a total amount of approximately \$1.2 million, which is only a small percentage of the legal aid funding provided in those two years (\$85.6 million). The ANAO considers that applying the formula in this way results in only a very small improvement in the distribution of available funds.

Risk management planning

2.38 Identifying, monitoring and managing risks is an important element of effective governance, as uncontrolled risks could lead to adverse exposure. The

ANAO has previously examined ATSISS' Regional Offices risk assessments of grant submissions;²⁶ this audit did not seek to duplicate that work.

2.39 ATSISS has a corporate risk management approach and its *Grants Procedures* establishes a regime for risk assessment of grants submissions by a Risk Appraisal Team. However, there is no documented risk management strategy that addresses the particular risks associated with the Law and Justice Program.

2.40 Part of a risk management policy relates to the need for accountability of actions taken. The reporting to government described above, of progress on reforms, would fall into this category. However, other aspects of better practice risk management, such as documented identification of risks, assessment of their likelihood and consequences, and planned management response to them, have not been undertaken in the Program outside the individual grant level.

2.41 Consequently, the ANAO found that there is no formal risk management plan for the Law and Justice Program and those elements of risk management activity that do exist do not address key aspects of better practice risk management. The ANAO considers that the development of a risk management strategy and plan would assist the National Office to: focus on providing services where there is most need; develop a strategy to monitor and report on these activities; and demonstrate the success of the Program.

Relationships of ATSISS with other legal assistance providers

2.42 ATSISS provides grant funding to a national network of 25 ATSISS, which offer legal advice and representation at 96 sub-offices throughout Australia. Other agencies providing legal assistance to Indigenous people include the Commonwealth and State/Territory Attorney-General's departments, which are responsible for supporting LACs and CLCs. The sources of funding, target population, priorities and the main services provided by these bodies are illustrated in the table below.

²⁶ ANAO Audit Report No.2 2002–03, *Grants Management*, Aboriginal and Torres Strait Islander Commission.

Table 3
Sources of funding, target population, priorities and the main legal services provided by other agencies

Provider/ type of organisation	Primary source of funding	Community/ target population	Priorities	Main services provided	
				Advice	Representation
ATSILS Community- based Indigenous governed organisations	ATSIS	Indigenous people.	Legal aid services for criminal matters. This includes mostly criminal law matters arising under State/ Territory law. Test cases.	✓	✓
LACs State- based statutory authorities	Commonwealth Attorney- General's Department and State/ Territory governments*	All Australians (representational assistance is subject to means and merits tests and a financial contribution may be required for some services).	Commonwealth funding directed to legal matters arising under Commonwealth law, especially family law.	✓	✓
			State/Territory funding directed to matters arising under State/ Territory Law. This includes most criminal law matters.	✓	✓
CLCs Community- Based	Commonwealth Attorney- General's Department*	Low-income and disadvantaged people in the community.	Information, legal advice, casework and legal representation to disadvantaged clients.	✓	X

Source: ANAO fieldwork.

Note: LACs also receive some funding from other sources, such as Solicitors' Guarantee Funds, and State/Territory Governments also provide some funding to CLCs.

2.43 In examining ATSIS' planning for its Law and Justice Program the ANAO assessed whether:

- ATSIS' planning accounted for services available from other providers; and
- ATSIS clearly specified the extent and location of services to be provided by ATSILS.

Commonwealth response to the Commonwealth Grants Commission's Report on Indigenous Funding 2001

2.44 The Commonwealth's response to the Commonwealth Grant Commission's (CGC) Report on Indigenous Funding²⁷ provides a planning framework for ATSIIS to consider how ATSIIS should best be deployed to meet the needs of Indigenous Australians.

2.45 The Commonwealth's response sets out a series of principles for equitable provision of services to Indigenous Australians. Principles relating to need and equity that were set down were:

- services should be provided on the basis of need and equity to all Australians;
- mainstream services have the same responsibility to Indigenous Australians as non-Indigenous;
- more resources can be directed to Indigenous Australians, in recognition of their greater need, especially in rural and remote locations;
- where mainstream services are inadequate (due to locational and other barriers to access) additional Indigenous-specific services are required; and
- overall capacity to achieve outcomes is important in deciding whether 'Indigenous-specific programs and services should be established ... or whether to enhance mainstream programs'.

Legal Aid Commissions

2.46 In many ATSIIS programs, the ATSIIS role is intended to be that of a supplementary funding body. In the case of legal aid to Indigenous Australians, 89 per cent of legal aid cases were handled by the ATSIIS in 2000–01, and 11 per cent were provided by the LACs.²⁸ Accordingly, ATSIIS, through its Law and Justice Program, is effectively the primary funding body for legal aid to Indigenous Australians.

2.47 Of the ATSIIS case and duty matters, by law type, in 2001–02, 89 per cent were criminal matters and only two per cent were family law matters.²⁹ If these criminal law matters were not being dealt with by ATSIIS, which are funded by the Commonwealth under ATSIIS' Law and Justice Program, there would be far

²⁷ ATSIIS, *Annual Report 2001–2002*, p. 16.

²⁸ ATSIIS Office of Evaluation and Audit 2003, *Evaluation of the Legal and Preventative Services Program*, p. 112.

²⁹ ATSIIS, *Annual Report 2001–2002*, p. 148.

greater funding pressure on the LACs, in particular the element of their service (i.e. most criminal law matters) funded by State/Territory governments.

2.48 Currently there is only one State that provides direct financial assistance to ATSILS. The Queensland Legal Aid Commission pays costs of the higher courts to ATSILS in that State for legal fees and disbursements. The Northern Territory Legal Aid Commission is working on a proposal under which it would take on the serious crime cases of one of the Northern Territory ATSILS for a trial period. Apart from these arrangements, the ANAO is not aware of any other funding arrangements whereby State governments meet the costs associated with the provision of legal aid by ATSILS.

2.49 The ANAO had discussions with five LACs as part of the audit. In the main, these bodies considered that the ATSILS carried out valuable work in providing legal aid to Indigenous Australians. It was pointed out to the ANAO that State/Territory government 'law and order' campaigns have a disproportionate impact on the ATSILS because Indigenous Australians are over-represented in the criminal justice system.

2.50 Particular points arising from the discussions were:

- examples of one-off cooperation included: having an ATSILS carry out representation for a LAC client (for a fee) at a remote location where the majority of clients were Indigenous Australians; LAC purchasing high level representation from an ATSILS in one location; in one instance the ATSILS and the LAC are co-located at a regional centre (with separate entrances); and an ATSILS securing the services of a seconded LAC solicitor for family law work;
- the LACs would not be able to meet the needs of Indigenous Australians in remote locations if ATSILS were not able to do so (they often don't have local representation);
- LACs are able to assist in some cases, where ATSILS are confronted with conflicts of interest in representing offenders and victims;
- there is a flow of staff from the ATSILS to the LACs because of substantial variation in pay rates (for example, for one senior position, the LAC salary was more than 50 per cent greater than the comparable ATSILS salary); and
- ATSILS are considered to rely heavily on staff dedication, with staff often operating in poor working conditions.

2.51 While the ANAO found that in some States/Territories there are partnership arrangements between the LACs and ATSILS, the usefulness of these arrangements in developing constructive relationships is limited. LACs generally

are unable to provide direct funding to ATSILS although there remains considerable scope for in-kind support. Willingness to become involved in such arrangements varied between States.

2.52 The ANAO found that ATSIIS does not take into account, in its planning for legal aid within the Law and Justice Program, the extent of services able to be delivered by LACs. This approach would be consistent with the principles laid down by the Commonwealth following the CGC Report on Indigenous Funding. Planning should also take account of the State/Territory government contributions to the criminal law operations of the LACs. To do this in a systematic manner ATSIIS needs to make clear decisions on what services it wishes to provide in this environment. With the proposal to move to tendering and contract arrangements, ATSIIS will need to assure itself as to how, in the future, legal aid services that are required, but not provided by ATSILS because of constrained funding, will be provided by alternative providers such as the LACs.

Community Legal Centres

2.53 At the working level there appeared to be less interaction between CLCs and ATSILS. In one case, identified to the ANAO, a CLC provides representational support and this is extremely useful in cases where the ATSILS may have a conflict of interest. This type of arrangement is the exception rather than the rule (possibly because of the limited representation services provided by CLCs).

Recommendation No.1

2.54 The ANAO recommends that in order to maximise the efficient and effective use of program resources ATSIIS should develop strategic and business plans, including risk management, for the Law and Justice Program. Planning should take account of:

- the need to promote a whole-of-government approach, determined in consultation with relevant State and Commonwealth agencies, to achieve equitable access to legal aid services by Indigenous Australians;
- the specifications of contractual arrangements with ATSILS under the ATSIIS policy relating to tendering for legal aid services; and
- the roles of LACs and CLCs, and the potential for them to deliver services to Indigenous Australians.

ATSIS response

2.55 Agree. ATSIS is pursuing reforms considered by Government to be essential for the Law and Justice Program. ATSIS notes that the Ministerial Directions issued to its CEO as a result of the separation of powers from 1 July 2003 requires it, *inter alia*, to facilitate linked approaches with other government agencies to optimise outcomes for clients and coordinate its activities to achieve effective synergies with overall Government policies and priorities. In addition, ATSIS is organising to establish a special tender task group to develop tender specifications which will be published for comments before being finalised and proceeding to tender. A probity auditor will be engaged to oversee the entire tender process.

Legal Aid output element: partnership with the Commonwealth Attorney-General's Department

2.56 The Commonwealth Attorney-General's Department (AGD) is a principal funding body for both LACs and CLCs.

2.57 ATSIS recognises the importance of the relationship with the AGD, and has a Memorandum of Understanding (MOU) with that department.³⁰ This MOU reflects the joint commitment of the National Law and Justice Policy Branch and the AGD's Family Law and Legal Assistance Division to ongoing cooperation and consultation to improve the effectiveness of legal assistance for Indigenous Australians.

2.58 ATSIS also considers this relationship is important in relation to the family law needs of Indigenous Australians. ATSIS meets with AGD twice per year to discuss matters of common interest. The ANAO found that this arrangement has operated satisfactorily as a forum to exchange information and cooperate in certain cases at the project level. The ANAO notes that this partnership should provide a basis for ensuring that, as part of ATSIS' planning, a whole-of-government approach is taken to providing equitable access by Indigenous Australians to legal aid services (see Recommendation No.1).

2.59 Details related to other partnering relationships are at Appendix 3.

³⁰ ATSIS, *Annual Report 2001–2002*, p. 151.

3. Guidance, Training and Communication of Roles and Responsibilities

This chapter assesses the guidance available to AT SIS staff administering the Law and Justice Program and whether roles and responsibilities related to AT SIS' administration of the Program were clearly communicated and enacted.

Introduction

3.1 The ANAO examined whether:

- Regional Office staff had available appropriate guidance and training regarding the operation of the Law and Justice Program, and their particular responsibilities, to be able to satisfactorily carry out their role in administering grants; and
- roles and responsibilities were communicated in such a manner that there was a clear framework for the overall management and accountability of the Program, and the achievement of its outcomes.

3.2 The availability of appropriate training for the boards and senior management of AT SILS was also examined.

3.3 The ANAO recognises that many of the points raised in this chapter may also apply to other programs that AT SIS administers through split responsibilities involving a National Office (with program and policy responsibility) and a Regional Office Network (with day-to-day program administration responsibility).

Guidance for staff

3.4 It is established better practice³¹ in grants administration that clear, consistent and well-documented program guidelines are required for effective and consistent grant program administration systems. This is especially important in networked programs or where multiple assessors are examining applications.

³¹ ANAO Better Practice Guide, May 2002, *Administration of Grants*, p. 37.

General grants management guidance

3.5 The ANAO's fieldwork and analysis was based on the arrangements in place prior to 1 July 2003. Effective from 1 July 2003, the Minister for Immigration and Multicultural and Indigenous Affairs separated the administrative arm of ATSIC from the elected arm. The Minister also made the administrative arm responsible for making all decisions on the provision of funding under grant or contract arrangements. From 1 July 2003 provision of grant funding became the sole responsibility of ATSIS. Previously, elected Regional Councils had been directly involved in providing almost half the grants by value. This change did not affect the conclusions and recommendations in this audit report.

3.6 At the time of ANAO fieldwork, the assistance provided to external groups to provide services under the Law and Justice Program occurred through ATSIS' grant funding arrangements. This process was carried out in a standardised approach by the Regional Offices, applying the *ATSIS Grant Procedures*. The ANAO had previously found that *ATSIS' Grants Procedures* provided adequate support to the process of assessing grant applications.³² Consequently, the ANAO did not conduct a detailed review of *Grant Procedures* in this audit.

Guidance for staff about the Law and Justice Program

3.7 While there was general guidance for staff in regard to grants management, there was no documented guidance that referred specifically to the Law and Justice Program (with the exception of the *Test Case Funding Guidelines* that provided specific criteria that needed to be met in relation to such funding).

3.8 Consequently staff assessing these grant applications were in the main guided by ATSIS' general *Grant Procedures* and the Output Funding Statements for the Law and Justice Program. In most cases where grants were provided to organisations under the Law and Justice Program, the organisations concerned had received assistance for many years and the provision of grant assistance was viewed more as a rolling commitment. The detailed examination that was undertaken by the Regional Office related very much to the inputs (proposed expenditures on matters such as staff, equipment, insurance, travel etc) set out in the grant application, rather than an assessment of what the grantee proposed to achieve.

3.9 An ANAO survey sought to establish if ATSIS Regional Office staff dealing with the Law and Justice Program were appropriately skilled and confident in dealing with their Law and Justice clients. Analysis of the survey results showed that while the median time of employment in ATSIS of staff surveyed was

³² ANAO Audit Report No.2 2002–03, *Grants Management*, Aboriginal and Torres Strait Islander Commission, p. 16.

6.5 years, the median time spent working on the Law and Justice Program was only 13 months. This indicated that while staff were experienced at managing grants generally, they were far less experienced in managing Law and Justice Program grantee organisations.

3.10 One way to counteract inexperience is to provide staff with documented guidance. The ANAO survey also sought staff views about the supporting information and guidance provided to them (see Table 4).

Table 4

ATSIS staff survey respondents' rating of supporting information and guidance (per cent)

Source of guidance	Very good	Good	Poor	Very poor	Indicated not applicable
Regional Office	11	56	28	6	0
National Office	6	28	28	17	22
ATSIS generally	6	39	39	6	11

Source: ANAO survey of ATSIS staff. Total percentages add to 101 owing to rounding.

3.11 While two-thirds rated the supporting information and guidance provided by their Regional Office as good or very good, less than half rated the supporting information and guidance provided by ATSIS generally, which included the *Grants Procedures*, as good or very good. Insofar as the Law and Justice Program is concerned, almost half of the respondents noted that they considered the support and guidance provided by the National Office was poor or very poor. Furthermore, nearly a quarter of respondents considered that the National Office did not have a role in providing them with supporting information and guidance (i.e. indicated National Office was not applicable). These survey responses are also representative of the views of field officers in the offices visited by the ANAO.

3.12 The ANAO noted from discussions with National Office staff that considerable effort was expended on informally advising and assisting staff in Regional Offices relating to the Law and Justice Program. However, it would appear that this effort on the part of National Office staff is not sufficient to overcome what is seen as substantial deficiencies in the guidance material on the Law and Justice Program available to Regional Office staff. From discussions with staff in particular Regional Offices, the ANAO noted that certain staff working on Law and Justice matters had not made themselves familiar with the guidance provided to ATSILS and Family Violence Prevention Units (FVPUs) that were part of the grant agreements. This could affect the standard of monitoring of grantee organizations undertaken by Regional Office staff.

Training

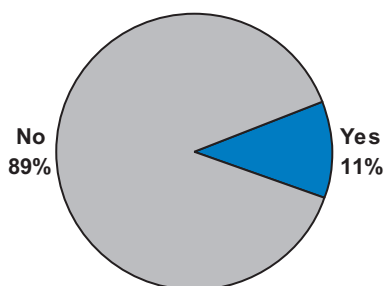
3.13 The AT SIS Regional Offices are responsible for the training and ongoing development of their staff. Consistent with the Regional Offices' responsibilities, their staff training effort is directed at general matters (such as grant management) rather than specific programs (such as the Law and Justice Program). Any training input related to the Law and Justice Program is seen by the Regional Offices as the responsibility of the National Office.

3.14 For its part, the ANAO has been advised that the National Office does not dispute that it has a clear role in providing support, advice and training for Regional Office staff in relation to Program-specific issues. However, it points out that given that there are 29 Regional Offices, many with high levels of staff turnover, it is unrealistic to expect the National Office to be the only source of Program-based training. The National Office considers that Regional Managers should ensure that where a field officer is assigned responsibility for a Law and Justice project, staff should be provided with an adequate 'handover' report and some specific guidance on the relevant Program-specific issues.

3.15 The ANAO staff survey also found that nearly 90 per cent of staff had received little training in respect of Law and Justice Program matters (see Figure 3) and the same proportion considered that they would benefit from training in aspects of that Program (see Figure 4).

Figure 3

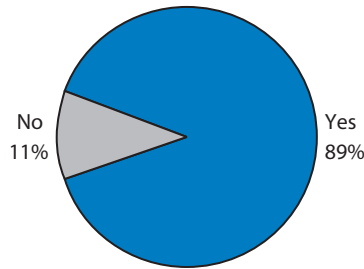
Have you ever received any training about the Law and Justice Program or its sub-programs?



Source: ANAO survey of AT SIS staff.

Figure 4

Are there any areas of your work on the Program where you feel you could benefit from further training/development?



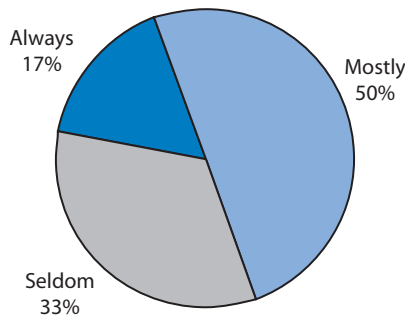
Source: ANAO survey of ATSI staff.

3.16 While there was a range of training needs nominated by staff, more than half of the staff surveyed identified the need for basic training either in what the Law and Justice Program does, or how their grantee organisations function (or should function).³³

3.17 In addition to the relative inexperience of staff and lack of training, staff also expressed low levels of confidence because they did not understand sufficiently the work done by Law and Justice service providers (see Figure 5).

Figure 5

Do you feel that you understand sufficiently the work that the Law and Justice Program service providers do, in order to do your job well?



Source: ANAO survey of ATSI staff.

3.18 Consequently, the ANAO considers that there would be merit in having clear documented guidance and supporting training covering what is expected of Regional Offices and their staff in relation to the Law and Justice Program. This will be particularly important in the context of the ATSI Board's decision

³³ Around a quarter nominated both forms of basic training as needed.

(June 2003) to expedite the tendering for legal aid services over the next 18 months and enter into contracts with selected providers. Such guidance would also provide a basis for Regional Managers to be held accountable by the Network Manager for their contribution to the Program (see paragraphs 3.24–3.31 below). A skills assessment of staff would help guide this process.

Guidance for ATSILS

3.19 The *Policy Framework* for ATSILS includes criteria that must be applied by ATSILS in determining whether legal casework assistance will be provided in relation to a particular matter. The ANAO considers that these criteria provide broad limits on the matters that ATSILS can be involved with. The criteria are not sufficiently directed that they will result in ATSILS undertaking any substantial targeting of legal assistance. For example, the *Policy Framework* does not provide any limit on the complexity of cases that the ATSILS will take on, or specify the locations at which services are to be provided. These decisions are made by individual ATSILS, often based on the level of funds available. The ANAO considers that the *Policy Framework* does not constitute a clear specification of the services to be provided.

3.20 ATSIIS advised that it was the intent of the Policy Framework to be reasonably broad and enable ATSILS to operate flexibly—in accordance with self-determination principles and local circumstances. ATSIIS indicated that in its view, ATSILS are effectively targeting priority areas as 89 per cent of ATSILS assistance was provided in criminal matters. It also noted that it was intended that once contracts for delivery of legal aid services are in use, they will specify more clearly how ATSIIS expects legal assistance to be targeted.

Communicating roles and responsibilities

3.21 The ATSIIS structure in regard to the delivery of the Law and Justice Program (as operating prior to 1 July 2003) is complex, incorporating a separation between both policy and program management (National Office) and grants administration (Regional Offices), and between the administrative and elected arms. State Offices and State elected groups also have some impact on the Law and Justice Program, insofar as it relates to policy and advocacy at the State/Territory government level. Table 5 summarises this structure, including the key interactions that occur within ATSIIS in the delivery of the Program.

Table 5
Roles and Responsibilities

Principal Responsibilities	Area involved (Administrative arm)	Area Involved (Elected arm)
Policy/Program management	National Centre for Law and Justice Policy	Board and its committees
Grant administration	Network of 29 Regional Offices	Regional Councils
State level policy/advocacy	State Offices	State elected group

Source: AT SIS.

3.22 The ANAO has previously found that the separation of centralised policy development from regionalised administration requires clear articulation and widespread understanding of matters such as: roles and responsibilities; consultative arrangements; funding arrangements; processes for managing risks; performance measures; and timing for the arrangements to work effectively.³⁴

3.23 To address these issues, some agencies³⁵ have developed formalised arrangements, such as Service Level Agreements in order to achieve successful working arrangements between overall program management and regional administration dealing directly with service providers.

3.24 AT SIS does not have a formalised agreement between its program/policy areas and its Regional/State Office network. AT SIS advised that work did commence on developing such an agreement in the late 1990s, but that this was not completed. The ANAO notes that these arrangements are currently being addressed in some other AT SIS program areas.

3.25 The ANAO found that there was limited specification of Regional Office and State Office responsibilities in the planning and performance monitoring documentation for the National Network. For example, there are 14 Regional Office Performance Benchmarks that the National Network Manager uses as indicative measures against which the performance of Regional Offices will be gauged, including indicators for processes such as:

- program commitment;
- program expenditure;
- grant acquittal; and
- operational expenditure.

³⁴ See ANAO Better Practice Guide, May 2002, *Administration of Grants*, pp. 17–18 and also ANAO Audit Report No.18 2000–01 *Reform of Service Delivery of Business Assistance Programs*, and ANAO Audit Report No.1 1999–2000 *Implementing Purchaser/Provider Arrangements between the Department of Health and Aged Care and Centrelink*.

³⁵ For example: the Department of Industry, Tourism and Resources (DITR) has developed a Business Partnership Agreement between its policy areas and its service delivery Division, AusIndustry covering all its business development programs. The Business Partnership Agreement replaced a series of program-specific Service Level Agreements. See ANAO Audit Report No.40 2002–03, *R&D Tax Concession*.

3.26 AT SIS advised the ANAO that it was the role of the Regional Offices to oversee these financial processes and that the relevant National Office was responsible for tracking program performance and keeping the National Network informed. There are Chief Executive Instructions and formal delegations covering the Regional Office and National Office financial responsibilities. Monitoring practices are examined in detail in Chapter 5.

3.27 However, there is no reference to the achievement of individual program outcomes or the performance monitoring of grant agreements in the documentation. Moreover, the documentation does not cover how Regional/State Offices and other areas of AT SIS outside the Network, such as policy/program areas should interact.

3.28 In the absence of clear articulation of administrative arrangements, the ANAO found that there were mixed levels of understanding of these arrangements by staff and grantee organisations. For example, the ANAO found that:

- at the manager level within AT SIS, there was a clear understanding of how responsibilities fitted together. At this level there is generally not considered to be a need for detailed guidance on the operation of individual programs. These officers have long experience in AT SIS management arrangements;
- there was widespread uncertainty among AT SIS field officers dealing with the Law and Justice Program about the roles and responsibilities of other areas in AT SIS that also had responsibility for the Law and Justice Program. These field staff are the principal day-to-day contacts for grantee organisations; and
- some grantee organisations were also uncertain as to which areas of AT SIS were responsible for matters beyond day-to-day grants administration.

3.29 An important responsibility in a devolved network, such as AT SIS, is clear communication, so that all areas of the organisation are appropriately informed of actions that may impact on their operations. The ANAO found evidence that while many AT SIS staff considered communication between the Regional Office network and National Office to be generally adequate, there have been examples in this regard where this has not always been the case. For example:

- with regard to communicating with grantee organisations (a responsibility of Regional Offices), instances have occurred where these organisations have been approached directly by other parts of AT SIS (including National Office); and
- transfer of funds to Regional Offices has occurred towards the end of the financial year, without relevant project officers in these offices being aware.

3.30 AT SIS noted that while direct National Office communication with grantee organisations may occasionally have occurred, there are also examples of Regional Offices requesting that National Office communicate with grantee organisations about Law and Justice specific matters. Funds can become available because they have been returned by other Regional Offices, unavoidable delays have occurred with consultancies or grants, or they have been identified as surplus from other program areas. In these circumstances communication within Regional Offices is also important.

3.31 Overall, the ANAO found that while AT SIS managers were broadly aware of the administrative arrangements in relation to the Law and Justice Program, the absence of formalised arrangements has led to widespread uncertainty among staff and some grantee organisations about roles and responsibilities. The ANAO considers that this issue is likely to apply equally under the new administrative arrangements that are in place from 1 July 2003, as it did under previous arrangements. While generally adequate, there have been some difficulties in communication between Regional Offices and other parts of AT SIS.

Recommendation No.2

3.32 The ANAO recommends that, in order to effectively integrate National and Regional Office contributions to program management, AT SIS introduce mechanisms to clarify the roles and responsibilities of its National and Regional Offices involved in the operation of the Law and Justice Program, including such matters as communication, guidance and training of staff.

AT SIS response

3.33 Agree. AT SIS has recognised that the matter of effective program administration and management is relevant to all of its programs and is using the ANAO report to assist in developing appropriate procedures governing roles and responsibilities of National and Regional Offices.

Operation of AT SILS boards

3.34 AT SILS are incorporated under a range of legislative regimes. These include the *Corporations Act 2001* and its preceding legislation (Commonwealth), the *Aboriginal Councils and Associations Act 1976* (Commonwealth), and various Associations Incorporation Acts (State). In the case of the Commonwealth legislation the controlling body is the Australian Securities and Investments Commission (ASIC); for state legislation it is a body such as the Department of Fair Trading in the relevant state; and for the *Aboriginal Councils and Associations Act* it is the Office of the Registrar of Aboriginal Corporations (ORAC).

3.35 Inevitably, the level, and manner, of scrutiny of ATSILS will vary according to the incorporation controlling body. For example, the ANAO notes that because ATSILS that are incorporated under the Corporations Act are quite small relative to many bodies incorporated under this Act, ASIC may provide a lower level of scrutiny of the governing boards than ORAC would for Indigenous corporations.

3.36 ORAC is specifically responsible under its legislation to become involved in rectifying problems in organisations registered under its Act. The ANAO also notes that ORAC has been undertaking specific initiatives designed to improve skills of the directors of Indigenous corporations. ORAC has a comprehensive information and training program aimed at helping corporations to better manage their affairs, and operate in accordance with the Act and their rules. However, many ATSILS are incorporated under the Corporations Act or State legislation and do not have the benefit of the training and other assistance provided by ORAC.

3.37 In 1999, in a report to the Government, the then ATSIC referred to the provision of accredited training for CEO/Principal Solicitors and Board members of ATSILS about managing change and quality issues. In a further report to Government, ATSIC referred to the completion in 2000–01 of an accredited quality management training program by ATSILS directors and senior staff. The ANAO noted that training for Board members is no longer occurring.

3.38 In a number of the ATSI Regional Offices that were visited during the audit the ANAO found that a considerable amount of Regional Office resources was spent attempting to resolve difficulties that related to the conduct of ATSILS boards, and the implications that had for the effective operation of the ATSILS.

3.39 Currently, structured access to management training for Law and Justice Program grantee organisations' boards and senior management is limited to those incorporated under the ORAC regime. Quality management training was provided in the past to ATSILS, but this is no longer occurring. ATSI Regional Offices expend considerable effort in resolving difficulties that relate to the conduct of ATSILS boards, and the implications that had for the effective operation of the ATSILS. This distracts ATSI staff from monitoring activities related to the performance of ATSILS.

3.40 Under the existing grant provision relationships between ATSI and ATSILS, ATSI is in a position to prepare and provide appropriate management training to reinforce skills and behaviours and to inform new board members of their responsibilities. ATSI can readily require all ATSILS boards and senior management, irrespective of their mode of incorporation to attend such training through variation to annual grant conditions. Such training could also be extended to the boards and senior management of FVPUs.

3.41 However, in moving funding arrangements away from a grant based arrangement to a more commercial basis (involving tendering and contracts), the ANAO notes that it may well not be appropriate for ATSIS to be directly involved with providing training for boards and senior management. Instead ATSIS will need to develop a means by which contracted organisations can, on an ongoing basis, provide assurance that their management and staff are appropriately skilled.

4. Budgeting and Funding Strategies

This chapter examines the budgeting and funding strategies that operate in respect of the Law and Justice Program. While the discussion in this chapter covers the arrangements that existed prior to the existence of AT SIS (i.e. before 1 July 2003), the key issues raised should be considered under any revised budgeting and funding arrangements.

Introduction

4.1 Good practice public sector management requires the efficient and transparent use of resources to provide services to the public.³⁶ This requirement is specified in the legislative requirement that a 'Chief Executive must manage the affairs of the Agency in a way that promotes proper [efficient, effective and ethical] use of the Commonwealth resources.'³⁷

4.2 Funding strategies should be designed to obtain value for money and maximise the available funding for service delivery activities. The main costs of the Law and Justice Program are the funds paid to service providers and the cost of administration. The ANAO, therefore, examined whether AT SIS had considered the costs associated with:

- annual versus multi-year funding;
- small versus large grants (small grants have a higher proportion of fixed costs than larger grants, increasing the percentage of administrative costs to program funds); and
- delivering the grants under a devolved network.

Funding approval responsibilities

4.3 Under the arrangements existing prior to 1 July 2003, the National Office approved *transfers* of national funding into Regional Office cost centres. Effectively, through this transfer process National Office controlled amounts

³⁶ See ANAO Better Practice Guide 2003, *Public Sector Governance*, ANAO Better Practice Guide 1998–99, *Corporate Governance in Commonwealth Authorities and Companies* and ANAO Better Practice Guide 1997–98, *Applying Principles and Practice of Corporate Governance in Budget Funded Agencies*.

³⁷ Section 44 of the *Financial Management and Accountability Act 1997*. With the separation of AT SIC/ AT SIS, the latter became a prescribed agency under this Act from 1 July 2003. Prior to this time, AT SIC (administrative and elected) fell under the *Commonwealth Authorities and Companies Act 1997* (CAC Act) and the associated Commonwealth Authorities and Companies Orders (CAC Orders). The CAC Orders include a requirement to produce an annual report that reviews how AT SIC performed during the financial year in relation to: its statutory objective and functions; its corporate plan; and its principal outputs and contribution to outcomes.

provided to service providers from national funding. For Regional Council funding, responsibility for approving grant applications lay with Regional Councils. ATSSIS' *Grants Procedures* outlined the grant appraisal and approval process, the objectives of which were to determine:

- whether an applicant is eligible to receive funding;
- whether ATSSIS can fund the proposed activities;
- the risk associated with funding the activities;
- the benefits to the community of funding, taking into consideration other possible alternative sources of funding;
- how ATSSIS will manage and administer the grant;
- the relevance of the submission to priorities under the Regional Plan;
- the priority of the activity(s) against other activities; and
- how the submission compares with other submissions proposing to deliver the same activities.

4.4 The *Grant Procedures* indicate that ATSSIS will only fund activities that are for the purposes of furthering the economic, social or cultural development of Indigenous Australians, and are consistent with:

- Board of Commissioners' priorities;
- Regional Council planning priorities; and
- Output Funding Statements.

4.5 Involvement of the elected arm depended on whether the activity was regional, multi-regional or national. The decision makers in relation to applications for grant funding also considered the relevant Regional Plan, National Office's business or operational plan or ATSSIS's Corporate Plan.

4.6 Of the total budget for the Law and Justice Program in 2002–03, 46 per cent was classed as regional funding and 54 per cent as national funding. Generally, Regional Councils were responsible for approving grants where the grantee organisations were operating entirely within the region (except for Family Violence Prevention Units (FVPUs)—see paragraph 4.9).

4.7 The National Office became involved in approving a transfer of national funding to a regional cost centre where the beneficiaries crossed regional boundaries. In the case of grants being made where the beneficiaries were from a number of regions, the National Office would require the Regional Office, where the grantee organisation's main office is, to consult with ATSSIS's elected arm in that State. These arrangements applied to the Legal Aid, Law and Justice Advocacy, and Prevention Diversion and Rehabilitation output elements.

4.8 AT SIS pointed out that there have also been occasions when national funding was made available for other activities that were confined within one Regional Council boundary, for example, where funds were available in the national budget and the relevant Regional Council was unable to support the activity from its own allocation.

4.9 The above arrangements do not apply to the FVPUs. The FVPUs generally operate within the one Regional Council area, although national funding is provided for these grantee organisations. This was a decision of the AT SIC Board when the FVPUs were first established. Regional Councils have endorsed any grant submission before the National Office considered it. Day-to-day administration of the grant remained the responsibility of the Regional Office.

4.10 For 2001–02 and 2002–03, even though funding decisions related to grantee organisations operating in one region were made by Regional Councils, many instances were noted where National Office considered requests for additional Legal Aid output element funds during the financial year. This was after the Regional Council had considered the request, agreed with it but was unable to fund the request from available funds. As National Office had uncommitted funds, these requests were passed to the National Office for its consideration. The National Office considered these requests against the criteria of:

- does the request fall within the Law and Justice Program output groups?
- is the request of national significance?

4.11 The ANAO considers that the above criteria are very broad, and there is a risk that the delegate who makes the funding decisions in these circumstances may not have a strong basis on which to justify why particular requests are agreed to, and why others are declined. In these circumstances, the decision process will not be transparent to parties other than the decision-maker; indeed grantee organisations and AT SIS staff variously described the process to the ANAO as ‘ad-hoc’ and ‘mysterious’. The ANAO found it difficult to assess from documentation why some proposals were approved and others were not. One Regional Office commented to the ANAO that the AT SILS in its region submits additional funding requests on a weekly basis. AT SIS agrees that this is a problem and has asked the relevant Regional Office to ensure that the particular service provider understands that it cannot rely on continual additional ‘one-off’ allocations being provided; and must expect to have to operate within the overall approved budget.

4.12 Most of the requests that the ANAO noted were for matters such as attendance at conferences, computer equipment, insurance expenses and accommodation costs. This confirms the input-based nature of the funding considerations of the Law and Justice Program. The ANAO considers that a

process, such as the one described above, encourages grantee organisations to be dependent on these 'top-ups' as part of their ongoing management. An alternative approach would be for funding related to the Law and Justice Program to be output or outcome based. AT SIS considers that it may be difficult to verify that outputs/outcomes have been achieved by funded organisations, particularly in relation to legal and preventative type services that are generally of a sensitive, personal nature. The ANAO considers that a movement away from the current input focus would be feasible in relation to all services, although it acknowledges that some compromises may be required to provide a workable system.

4.13 AT SIS noted that it is proposed to change the budgeting process for 2004–05, with all funding being provided from a national budget and decisions on allocations to Regional Offices being made by the relevant program manager. The issues raised above will apply equally in these circumstances.

Maximising efficiency

4.14 As part of its analysis of AT SIS' funding strategies related to the Law and Justice Program, the ANAO examined whether AT SIS had given proper consideration to the most efficient means of providing assistance to service delivery organisations. Improvements were considered from the point of view of both AT SIS and the AT SILS.

Annual funding versus multi-year funding

4.15 In order to deliver an ongoing and consistent legal service to Indigenous Australians, grantee organisations look for a commitment to long-term funding. The ANAO notes that there have been a number of recommendations previously that proposed triennial funding instead of annual funding, including:

- the Royal Commission into Aboriginal Deaths in Custody;³⁸
- the Spicer review regarding CDEP funding;³⁹ and
- the 1992 House of Representatives report 'Mainly Urban'.

4.16 The ANAO performance audit of AT SIC's Grants Management found that incumbent organisations often receive the same level of funding from one year to the next; creating a perception that the submission process is a formality. During the current audit, grantee organisations and AT SIS staff questioned the rationale of incumbent organisations preparing and submitting a detailed

³⁸ Recommendations 190 and 195.

³⁹ Recommendation 10(5).

application, that is basically the same from one year to the next, and is subjected to the same scrutiny as in previous years, when the end result is approval of funds based on what the grantee organisation has been allocated in the past.

4.17 The ANAO found that the majority of grantee organisations funded under the Law and Justice Program are provided with grants for one year at a time, while a minority received funding on a triennial basis. The ANAO understands that the decision to fund for more than one year at a time has rested with Regional Councils and the National Office. The ANAO noted that Legal Aid Commissions (LACs) and Community Legal Centres (CLCs), funded by the Commonwealth through the Attorney-General's Department to provide legal aid services, are funded on multi-year cycles.⁴⁰

4.18 The ANAO considers that the provision of annual funding imposes administrative burdens on grantee organisations, such as the need to commit resources each year to completing a detailed submission, and places undue restrictions on the organisation's ability to plan beyond the 12 month funding period. The fact that an organisation cannot make commitments beyond the current year dramatically affects its operations. For example, the ANAO found that one of the issues affecting grantee organisations' ability to recruit and retain professional staff, such as lawyers, is that they cannot offer them a contract for more than one year at a time.

4.19 The ANAO also found that the annual funding submission process increases the administration burden on ATSI, as each submission involves a detailed risk assessment and approval process. However, a move to multi-year funding would enable, and indeed, require, increased focus on performance monitoring activity.

4.20 The ANAO concluded that ATSI should assess the benefits and costs of moving to multi-year funding for all or some of its grantee organisations, with a view to improving consistency of funding to delivery organisations. Particular consideration should be given to multi-year funding where the delivery of a service has been undertaken by the one organisation over a period of time and, in the opinion of ATSI, is likely to continue.

Ad-hoc grants

4.21 ATSI has previously committed itself to examining ways of reducing the number of individual grants.⁴¹ As mentioned previously, the ANAO noted that

⁴⁰ The LACs are on a four-year funding cycle, and the CLCs have recently moved from an annual funding cycle to a triennial cycle.

⁴¹ ATSI response to recommendation three of the 1996 National Commission of Audit, *Report to the Commonwealth Government*.

the National Office receives many requests for relatively small 'one-off' grants. Examples of these grants include funding for:

- Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat (QAILSS) Annual General Meeting, \$30 000;
- computer and phone upgrade, and office equipment for the National Aboriginal and Torres Strait Islander Legal Services Secretariat (NAILSS), \$35 000;
- computers and a compactus for an ATSILS, \$15 600;
- a one-off payment for professional indemnity insurance for an ATSILS, \$50 000;
- workers' compensation insurance for an ATSILS, \$53 586;
- additional rent for an ATSILS, \$54 333;
- laptop and printer for an FVPU, \$6 000; and
- vehicle and office equipment for an ATSILS, \$50 000.

4.22 These requests are received via the Regional Offices and passed on to the National Office for consideration. As noted previously, the criteria under which such requests are considered are very broad, and the ANAO considers that the process lacks transparency. If a request is agreed to, the National Program Manager will arrange for funds to be transferred from National Office's unallocated funds to the Regional Office.

4.23 In some years there was also additional funding provided during the year to some output elements for matters such as indexation, and the ANAO also observed numerous small ad-hoc grants being made out of Regional Council funds for incumbent organisations to cover such matters as attendance at conferences. The ANAO notes that there are only very broad criteria applied to the assessment of these requests for additional funding.

4.24 The processes undertaken by the Regional Offices to manage the distribution of small ad-hoc grants are the same as for larger grants made in the standard grant submission process. Regional Offices process each application in accordance with the *Grant Procedures*, including undertaking an evaluation of the submission, risk assessment, periodic monitoring under the grant conditions, and ultimate acquittal. Consequently, processing ad-hoc grants adds to the administrative costs of the Regional Offices. ATSI points out that, in the vast majority of cases, Regional Offices offer additional funding to grantee organisations via letters of variation to their existing grants, rather than creating whole new submissions. ATSI notes that most of the monitoring/acquittal requirements for additional funds offered are either wholly or substantially

integrated with the main grant. Nevertheless, ATSSIS agrees that dealing with numerous variations, particularly for relatively small amounts, is less than efficient.

4.25 ATSSIS' activity costing system⁴² attributes costs to Output Groups rather than to individual programs within Output Groups. Using this ATSSIS cost data, the ANAO estimated that the average cost to ATSSIS of administering an approved grant activity in Output Group Three, of which the Law and Justice Program is a part, was around \$15 000 in 2001–02.⁴³ Given the relative complexity of Law and Justice Program grants, the ANAO considers that \$15 000 is likely to be a conservative estimate for the administration cost of Law and Justice Program grant activities.

4.26 The ANAO found that, based on this information the attributed overall administration costs are in the order of six to seven per cent of the overall cost of delivering the Program. However, the ANAO observed instances in Regional Offices where relatively small grant activity amounts, made to both new and existing grantees, were considered with separate risk appraisals, agreements and acquittal arrangements. These processes may well be inefficient in the case of smaller amounts. In 2002–03, information in the ATSSIS Grants Management System indicated that there were more than sixty grant activities with a value less than \$20 000.

4.27 The ANAO considers that there is clearly a place for ATSSIS to make some small grants, particularly when seeking leverage funding from other agencies. However, the ANAO suggests that ATSSIS could achieve administrative efficiencies if it could reduce the number of separate small grant activities made to the one grantee organisation. One way of doing this would be for ATSSIS to ensure that the process mentioned at paragraph 4.24 of approving a variation to an existing grant, based on a written request from a grantee rather than a complete submission is applied consistently. In the longer term a more efficient method would be to replace the current input plus 'top-up' approach to grant funding with a purchaser/provider method that allocates funds on an output basis.

⁴² The system was prepared in 2000–01 using a survey of ATSSIS offices attributing their staff times to outputs. The system has been used to determine output costs for the Portfolio Budget Statements process. ATSSIS advised that the system has not been revised and is has been applied to estimate current program costs. The costing estimate is still being worked through with ATSSIS finance area, but indications are that any changes are unlikely to be major.

⁴³ ATSSIS is unable to determine accurately the full cost of administering the Law and Justice Program. This analysis draws on the information available related to outputs and grant activity information provided by ATSSIS from its Grants Management System.

Professional Indemnity Insurance

4.28 AT SIS' 2002–03 *General Terms and Conditions* relating to grants require grantees to insure for professional indemnity (PI) insurance.⁴⁴ The ANAO found from an examination of financial statements provided to AT SIS by legal service providers that they all included PI insurance.

4.29 The ANAO noted that there was a considerable variation in the amounts paid by most AT SILS and the FVPUs, with most AT SILS paying in the order of \$50 000 to \$100 000 per annum (grantee organisations advised that premiums had been rising rapidly in recent times). However, during the audit the ANAO also found one AT SILS and one FVPU that were only paying between \$2000 and \$3500 for PI insurance because they were members of the National Association of Community Legal Centres (NACLCL). NACLCL has negotiated a bulk-purchase of PI insurance for its members (see Table 6).

Table 6

Good practice—bulk purchase of PI insurance

The National Association of Community Legal Centres (NACLCL) has negotiated a bulk purchase of PI insurance for around 160 legal centres. The ANAO understands that an organisation must be a member of their State Association. The State Associations receive membership payments based on a formula related to the amount of revenue centres receive (approximately 0.2 per cent). The insurance premium is levied separately on centres. There are also quality assurance procedures that members are required to follow and there is a process of checks (legal practice management). The cost to the centres for the insurance premium can be about \$2 000 per annum, although this will vary depending on the size of the organisation.

Source: ANAO fieldwork.

4.30 The ANAO considers that there would be considerable benefit in AT SIS investigating the options for realising savings on PI insurance. There are a number of options open to AT SIS in this regard, including:

- AT SIS negotiating a bulk purchase of PI insurance on behalf of the AT SILS and FVPUs; or
- where practicable, AT SILS and FVPUs becoming members of the NACLCL to join the State CLC Associations and receive the benefits of purchasing bulk PI insurance.⁴⁵

⁴⁴ Program Specific Conditions for Legal Aid Services Grants, clause 2.

⁴⁵ During this audit fieldwork the National Office wrote to all Regional Managers with responsibility for an AT SILS describing the NACLCL arrangement in relation to PI insurance, together with a draft letter for them to raise with AT SILS the potential benefits of membership.

Recommendation No.3

4.31 The ANAO recommends that AT SIS review the funding arrangements under which assistance is provided to grantee organisations under the Law and Justice Program with a view to providing assistance on an output basis, extending the length of grant agreements, and setting clear criteria for top-up funding.

AT SIS response

4.32 Agree. AT SIS, in compliance with the Ministerial Directions is moving towards performance based contractual arrangements with service providers which will be based on best practice, including outcome based funding, market testing, needs, comparative efficiency and effectiveness and capacity to deliver.

5. Managing Program Performance: Monitoring and Evaluation

This chapter assesses ATISIS' approach to managing the performance of the Law and Justice Program. This includes monitoring and evaluating the ATISIS offices delivering the Program, the grantee organisations and the Program itself.

Introduction

5.1 Monitoring and evaluation are essential tools for good program management, providing management with assurance that program requirements are being met, outcomes are being achieved, and corrective action is being taken where necessary. Good practice monitoring systems provide timely and accurate information that meets the needs of staff using the management system while minimising the administrative burden on grant recipients.

5.2 In this audit, the ANAO has used the term 'monitoring' to refer to processes used to provide management with ongoing insight into activities and performance of the Program, ATISIS Regional Offices and grantee organisations. 'Evaluation' is used to refer to periodic assessments of a specific issue or series of issues.⁴⁶ ATISIS usually conducts monitoring in-house, while many evaluations are contracted out or are conducted by external parties.

5.3 Monitoring occurs at a number of levels within ATISIS, depending on the object of the monitoring activity. The ANAO examined three key monitoring processes to monitor the activity and performance of:

- ATISIS' business units involved in program delivery;
- grantee organisations; and
- the Law and Justice Program itself.

ATISIS business unit monitoring

5.4 As discussed in Chapter 1, the National Office and the Regional Office network deliver the Law and Justice Program. Responsibility for monitoring aspects of the activities of the Regional Offices lies with the National Network Office.

5.5 Using ATISIS' corporate information systems, the National Network Office monitors the financial performance of Regional Offices and State Offices, for

⁴⁶ See ANAO Better Practice Guide 1997–98, *Controlling performance and outcomes: Better Practice Guide to Effective Control*, pp. 33–34.

example: budgets, actual expenditure, commitments, and acquittals. The National Network Office also monitors key corporate tasks such as timeliness of correspondence and Regional Council Annual Reports. The Network Office also has performance agreements with individual Regional Managers, covering office and human resource management issues.

5.6 The National Network Office does not monitor delivery of individual program services, as this is the responsibility of program managers.

5.7 The ANAO found that the National Network office closely monitors the performance of the various business units and addresses issues as they arise. However, the monitoring of regional offices was aggregated for all grant programs, and did not differentiate between individual programs delivered out of each office. Consequently, the monitoring did not specifically cover the Law and Justice Program, except as one part of a range of programs.

5.8 The National Law and Justice Policy Branch points out that, in its view, the Regional Offices have a very clear and direct role in monitoring the performance of funded activities. National Office accepts that there is a need for ATSI to work through these issues and agree on appropriate and consistent delineation of responsibilities.

Grantee organisation monitoring

5.9 As discussed in Chapter 1, the responsibility for day-to-day monitoring of grantee organisations rests with the network of ATSI Regional Offices.

5.10 ATSI has recognised the importance of monitoring grantee organisations, and has devoted a chapter of its *Grant Procedures* to this topic. ATSI Regional Office staff use the *Grant Procedures* to guide their monitoring of Law and Justice Program grantee organisations. The *Grant Procedures* cover, *inter alia*, the objectives of monitoring,⁴⁷ and, in broad terms, the methods to be used, namely: performance monitoring through field visits; performance reports; and financial monitoring through financial reports.

5.11 There has been no policy advice or guidance developed corporately for Regional Office staff specifically for the monitoring of Law and Justice Program grantee organisations.⁴⁸ However, some Regional Offices have developed local

⁴⁷ The *Grant Procedures* specifies that the objectives of monitoring are to:

- a) determine the extent to which activities proposed are being provided;
- b) determine the extent to which activities being provided are achieving their proposed objectives;
- c) confirm compliance with grant conditions by the grantee; and
- d) determine the timing and level of funds releases.

⁴⁸ Following the completion of audit fieldwork, ATSI advised that it has provided a checklist for staff that covers a variety of quality assurance matters, including compliance with National Minimum Standards.

procedures to focus staff monitoring activity. For example, the Brisbane Office had developed a checklist covering ‘governance’⁴⁹ and ‘financial’ issues for use by field staff in monitoring grantee organisations. The Office had also commenced developing a process map for grants administration from submission to acquittal, including monitoring, outlining the procedures to be used by staff in the Office.

5.12 Staff advised that these were very useful guides but that there was no mechanism to readily share such better practices with staff from other Offices. The ANAO considers that there would be merit in ATSIIS developing mechanisms to share its knowledge of better administrative practices between staff.

Financial monitoring—financial reports

5.13 The ANAO has previously found that the financial management of grants, especially funds releases and acquittals, was sound.⁵⁰

5.14 In this audit, the ANAO found that all ATSIIS Regional Offices visited had in place processes to promptly analyse, in detail, the financial reports provided by grantee organisations. Some Offices had specialist units whose function was, *inter alia*, to analyse the financial reports, whereas in other Offices, this responsibility rested with the field staff.

5.15 ATSIIS field staff used a proforma to analyse the financial reports. The proforma addressed the quality and content of financial documentation, as well as assessing the appropriateness of expenditure items and trends. Unsatisfactory financial reporting was identified and actions taken. For example:

- a grantee organisation was found to be substantially underspent on its grants and ATSIIS sought clarification as to whether the activities would be completed within the relevant funding period; whereas
- another grantee organisation was asked to include budget information in future financial reports to enable easier analysis.

5.16 Grantee organisations consulted by the ANAO confirmed that ATSIIS monitored closely their financial reports, although some commented that at times this monitoring appeared over-zealous. For example, some commented that ATSIIS staff would query individual expenditure items, such as postage and stationery, even though grants were made on a ‘block budgeting’ basis. Overall, the ANAO considers that ATSIIS’ processes and practices in relation to the monitoring of the financial aspects of grants are sound.

⁴⁹ For organisations incorporated under the *Aboriginal Councils and Associations Act 1976* only.

⁵⁰ ANAO Audit Report No.2 2002–03, *Grants Management*, Aboriginal and Torres Strait Islander Commission, p. 13.

Performance monitoring—field visits

5.17 A prime purpose of performance monitoring is to ensure that the grantee organisation is *progressively meeting the agreed milestones towards achievement of the objective of the grant*.⁵¹ Performance is monitored through a combination of field visits and performance reports. AT SIS considers that:

field visits are the general method used for monitoring performance and they are complemented by performance reports—it is the actual performance of Grantees that should be monitored rather than the receipt of performance reports⁵².

5.18 The ANAO has previously found that planned field visits were often not conducted and were poorly documented.⁵³ At the time the ANAO recommended that:

ATSIC undertake an appropriate number of field visits based upon the grantee organisation's risk profile. The conduct and results of these field visits should be adequately documented in line with ATSIC grants procedures.⁵⁴

ATSIC agreed to the recommendation and advised that:

The grant procedures were changed in 2001–02 to stress the need to define monitoring arrangements, taking into account the risk profile and the available resources. We will remind regional managers of the importance of documenting field visits.⁵⁵

5.19 As the ANAO has already reviewed the conduct and documentation of ATSIS grants management field visits generally, a detailed examination of the visits for Law and Justice Program grants was not undertaken as part of this audit.

5.20 The risk assessment process accompanying consideration of a grant application specifies the number of field visits for a grantee organisation. However, most Regional Offices have an informal target of around four to six field visits per Law and Justice Program grantee organisation per year, although high-risk organisations may have more planned visits.

5.21 AT SIS advised that it is a requirement that staff record field visits in the Grants Management System (GMS), although recording *the details* of the visit in GMS is optional. In the year to April 2003, around half of the grantee organisations reviewed by the ANAO had had a field visit recorded in GMS. However, none had had more than one visit recorded. This amounts to only

⁵¹ AT SIS 2002–2003 Grant Procedures, paragraph 5.3.1.

⁵² *ibid* paragraph 5.3.2.

⁵³ ANAO Audit Report No.2 2002–03, *Grants Management*, Aboriginal and Torres Strait Islander Commission, p. 55 and pp. 59–60. Over 65 per cent of planned visits were not completed.

⁵⁴ *ibid*, p. 60.

⁵⁵ *ibid*, p. 60. The Grant Procedures states that: *Field visit results must be documented*.

14 per cent of the planned visits on a pro-rata basis. AT SIS staff advised that while they intend to record field visits on GMS, some visits may only be recorded on file, and others are not recorded at all. Consequently, there is no readily accessible and reliable management information on field visit completion rates.

5.22 Notwithstanding the likelihood that GMS under-records the actual number of field visits conducted, staff and managers consulted by the ANAO confirmed that many planned visits still do not occur. Many staff expressed frustration at not being able to conduct planned visits, and some grantee organisations commented that they only received a visit from AT SIS ‘when there was a problem.’ Furthermore, the ANAO observed that documentation of the details of visits, either in GMS or on file, continues to be patchy, with the level of detail varying from substantial two-three page description to a note of the meeting occurring, but without any details of the meeting.

5.23 The ANAO’s findings in this audit illustrate that AT SIS needs to make sure that field visits are undertaken as planned and are appropriately documented. The ANAO considers that, at a minimum, field visit documentation should include the issues discussed, and the actions agreed to by both AT SIS and the grantee organisation.

5.24 The ANAO considers that failure to complete and document the field visits required under AT SIS’ risk assessment processes, reduces assurance that the risks are appropriately being managed and also may undermine the rigour and credibility of the risk assessment process itself. In addition, appropriate documentation of field visits is vital, particularly in the context of high staff turnover in some Regional Offices, where documentation is essential to inform subsequent field officers as to the issues relating to the grants for which they have assumed responsibility. Improving documentation is also particularly important in the context of AT SIS’ plans to replace some existing grants with contractual arrangements.

Quality of monitoring

5.25 As discussed in Chapter 3, AT SIS field staff are relatively inexperienced in dealing with Law and Justice Program grantee organisations and there has, in practice, been very limited training of staff in this area.

5.26 The ANAO considers that, as it is AT SIS policy that field visits are the primary form of monitoring grantee organisation performance, it is a matter of concern that a third of the staff surveyed by ANAO felt that they seldom sufficiently understood the work done by the organisations to do their job well (see Figure 5 at paragraph 3.17).

5.27 The ANAO also considers that the lack of staff training and experience and associated low levels of confidence impacts on the quality of monitoring through field visits. Many grantee organisations consulted by the ANAO, particularly the ATSILS, advised that most ATSSIS field staff conducting visits did not know enough about the nature of the organisation to be able to form an opinion as to the appropriateness of the management, and quality, of service delivery by the organisations.⁵⁶ On the other hand, some of the more experienced field staff were considered to be more effective in addressing grantee organisation management issues.

5.28 The ANAO was advised by ATSSIS staff and grantee organisations that field visits tend to be focused on immediate management issues, such as funding and internal management matters, and general information gathering about the activities of the organisation. Staff and grantee organisations confirmed that field visits do not include processes to verify reported performance and financial information, or include assessments of the reliability of the systems used to prepare this information.⁵⁷

5.29 The ANAO considers that ATSSIS has had no means of systematically assuring itself as to the accuracy of the information reported to it by grantee organisations. The ANAO notes that the current round of effectiveness evaluations (see below) includes a requirement to evaluate the systems in place to collect performance data (as well as seeking the views of stakeholders and examining issues relevant to the quality of ATSILS' service delivery). However, as only four evaluations have been completed at the time of audit fieldwork, it will be some time before appropriate management assurance is forthcoming. Furthermore, as discussed below, the evaluations will not cover 60 per cent of grantee organisations, because only ATSILS and Family Violence Prevention Units (FVPUs) are intended to be evaluated. The ANAO considers that greater assurance would be gained if staff were provided with adequate guidance as to the matters to be addressed in field visits.

5.30 The ANAO suggests that to facilitate this process, without requiring access to personal data, ATSSIS provides guidance to staff on methods of assessing the integrity of the system by which data is collected, analysis of trend data for a particular service provider (against explanations of movements in the trends) and quality assurance processes applied by service providers (for example, sample testing of file records against system data).

⁵⁶ Some ATSSIS managers and staff commented that staff sometimes found Law and Justice Program grantee organisations intimidating due to their involvement in the legal system.

⁵⁷ Some staff were concerned about verification partly because of confidentiality issues surrounding client files of ATSILS.

Performance monitoring—periodic performance reports

5.31 Notwithstanding the policy requirement that visits are the general method of monitoring performance, the ANAO found that, in the absence of supporting guidance and training, AT SIS staff relied primarily on periodic performance and financial reports as their prime source of monitoring information.

5.32 Periodic performance reports have the potential to be a source of valuable information for grant managers to monitor and assess performance and take corrective action where necessary. Supply of these reports is a key requirement of grantee organisations. Failure to supply a report will trigger a ‘breach’ in the AT SIS management system, which can impede the release of subsequent funds.

5.33 The *Grants Procedures* indicates that periodic performance reports should be analysed and the results entered into GMS, but does not provide any guidance on what would constitute appropriate analysis. However, the ANAO found that, in contrast with the analysis of financial reports, there was no systematic analysis of the periodic performance reports supplied by grantee organisations.

5.34 AT SIS policy requires staff to analyse the content of performance reports. Three Regional Offices visited did have a pro-forma for analysis of performance reports. The content of these reports varied from a short analysis of the documentation and a rating of the quality of service delivery, to rating without any analysis. However, the ANAO found that this pro-forma was used inconsistently within these offices, with the key determining factor being the individual field officer. In other Regional Offices, there was no process to record analysis of performance reports. Some staff advised that they did review the performance reports from time to time, but did not record the results of their analysis. In these instances, there was a comparison made between the number of clients serviced by the organisation, and their expected number of client visits. However, the ANAO found that most AT SIS staff simply relied on receipt of the report as a key indicator of grantee organisation performance.

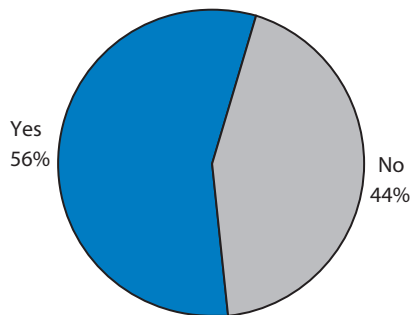
5.35 Most grantee organisations consulted by the ANAO advised that they did not receive feedback on the quality or content of their performance reports. Within AT SIS, it is unclear as to which area is responsible for initiating such feedback. In addition, many grantee organisations commented that the indicators were often not relevant to their activities, usually because they were required to report on mandated performance indicators for a particular output element, while their activities actually crossed a number of AT SIS outputs. As discussed in Chapter 6, the ANAO considers that improving the performance indicator framework to make them relevant to the funded activity and to address outcomes would assist not only AT SIS, but also grantee organisations, in determining if program objectives were being met.

5.36 The ANAO considers that the main reason for the lack of consistent analysis of performance reports is that they do not provide information that readily assists staff to gain an insight into the adequacy of grantee organisation activities. Information required would include: service quality; the effort associated with outputs; and the outcomes achieved. The ANAO acknowledges that the revised performance indicators developed for application in 2003–04 onwards will enable grantees to provide more relevant qualitative and narrative information, encompassing outcomes achieved.

5.37 Over 40 per cent of the staff surveyed by the ANAO considered that the performance information framework was not appropriate and useful for their work on the Law and Justice Program (see Figure 6). As discussed in Chapter 6, the performance information in the reports was focussed on inputs and workload rather than outcomes.

Figure 6

Is the performance information framework appropriate and useful for your work on the Law and Justice Program?



Source: ANAO survey of ATSI staff.

5.38 The ANAO considers that grantee organisation performance reports are presently under-utilised as a source of information for monitoring purposes. In many cases, the reports are not being used at all, and, owing to limitations in the performance indicators, the information contained within the reports is of limited value for staff in assessing grantee organisation performance.

Relationship between evaluation and monitoring activity

5.39 ATSI has conducted effectiveness evaluations of some Law and Justice Program grantee organisations (see paragraphs 5.56–5.79). The ANAO considers that many of the objectives for effectiveness evaluations are equally appropriate for the monitoring undertaken by ATSI field staff. While the ANAO acknowledges that monitoring activity does not have the same depth of analysis as evaluations, it does have the benefit of much greater frequency—the current round of evaluations is expected to take around five years to complete.

5.40 The ANAO considers that in preparing guidance for field staff as to the monitoring activities expected of them, there would be value in AT SIS also ensuring that this complements the coverage by any planned evaluations. This would provide ongoing management assurance that grantee performance is appropriate and enable timely corrective action to be taken where needed.

Recommendation No.4

5.41 The ANAO recommends that AT SIS (through its Regional Network) strengthen its processes to monitor grantee performance by:

- using performance information as an integral part of monitoring activity;
- providing feedback to grantee organisations about their performance reports;
- complementing the coverage of effectiveness evaluations with monitoring activities by staff; and
- conducting field visits as planned and documenting results on corporate information systems.

AT SIS response

5.42 Agree. AT SIS is addressing this as a whole of agency issue and is developing an agreement between Program Managers and the National Network Office which will outline the working relationships and mechanisms to meet the needs of program areas in monitoring and reporting on outcomes.

Law and Justice Program oversight

5.43 Systematic program oversight enables program managers to actively track expenditure and program activities and outcomes against planned targets through the year and take corrective action where necessary.⁵⁸

Program finances

5.44 The National Office has a systematic process for monitoring the grant allocations, commitments, and actual expenditure of the Program throughout the year, as well as the administration costs of the Office.

5.45 The National Office maintains a spreadsheet, which is updated regularly, containing financial data from AT SIS' corporate finance system, AIFIS. The spreadsheet is used by program managers to track grant funding allocations to Regional Offices, broken down by the four output elements within the Law and

⁵⁸ ANAO Audit Report No.18 2001–02, *Performance information in Portfolio Budget Statements*.

Justice Program. The spreadsheet is also used to track transfers into and out of the Program and between Program elements through the year. 'Commitments' are also recorded, as are 'soft' commitments.⁵⁹

5.46 The National Office also regularly monitors actual Program expenditure for both national grant funds and Regional Council grant funds directly from AIFIS, and follows-up any anomalies with the relevant office. Overall Program commitments and expenditure are commented on in the monthly report to the Minister for Immigration and Multicultural and Indigenous Affairs (Chapter 6).

5.47 The National Office receives a monthly report on its planned and actual administration expenses, broken down by 'employee', 'other administration' and 'non-cash' costs. This is used by management to make decisions about incurring staffing, travel and other costs. The National Office does not monitor the relevant administration costs of Regional Offices as this is considered to be the role of the Regional Offices and National Network Office. The ANAO notes that this separation of responsibilities means there is no integrated analysis of the total cost of the Program, including both program and administrative expenses.

Program performance

5.48 By contrast, the National Office's oversight of actual outcomes against planned activities throughout the year is less systematic. At an aggregate level, performance targets for the Program are set in the Portfolio Budget Statements and reported in the Annual Report. As discussed in Chapter 6, these targets are primarily focused on workload and do not adequately measure outcomes and service delivery quality.

5.49 The ANAO found that while aggregate performance data is available through the year, it is not always readily accessible and is rarely used.⁶⁰ In the normal course of events, the National Office does not monitor planned and actual performance targets systematically through the year. At the end of the year it examines the data in the context of preparing the Annual Report. The National Office indicated that as resources are limited, and the compilation of aggregate performance data is a relatively time-consuming process, it is unable to undertake this process on a more regular basis.

⁵⁹ 'Soft' commitments is a term used to refer to potential expenditure should priorities and funds permit.

⁶⁰ Notwithstanding data quality and reliability and systems weaknesses, activity data for the Legal Aid and Family Violence Prevention elements is available through the year through the ATSIIS website (see Chapter 6). National Office advises that the website does not include a facility for it to be aggregated. Performance information for the Prevention and Diversion, and Law and Justice Advocacy elements is manually keyed into GMS by ATSIIS field staff throughout the year. However, the National Office advised that it considers GMS to be incapable of readily aggregating this performance data.

5.50 National Office considers that it is the role of Regional Offices to monitor individual grantee performance against planned targets. However, as discussed above, most field staff do not analyse grantee organisation performance data, and consequently there is, in practice, no systematic monitoring of performance against targets through the year. The ANAO considers that it is important that AT SIS clarify this area of accountability and advise all staff of their responsibilities.

5.51 National Office does, from time to time, examine an individual organisation's performance data and other performance information when it is alerted to particular problems or issues by a Regional Office, and in the context of preparing official correspondence. Effectiveness evaluations and general interaction with Regional Offices also provides some Program performance information.

5.52 The ANAO concluded therefore that there are sound processes to monitor systematically the Law and Justice Program finances throughout the year. However, monitoring the progress of the Law and Justice Program in meeting its planned performance targets during the year is ineffective and unsystematic. Monitoring Program performance during the year is largely ad-hoc and re-active, and available performance information does not sufficiently address service quality. As previously identified, monitoring of individual grantee organisation performance is inconsistent and generally weak.

5.53 The absence of effective performance monitoring processes raises the risk that under-performance or poor service quality may not be identified sufficiently early to enable effective management response. Equally, it reduces the capacity of AT SIS to identify higher performance grantee organisations that may be a source of valuable better practice information.

Recommendation No.5

5.54 The ANAO recommends that AT SIS (through the National Law and Justice Policy Branch) systematically monitor the Law and Justice Program performance against planned targets, including service quality, and take corrective action where the targets are not being met.

AT SIS response

5.55 Agree. Proposed contractual arrangements with service providers will specify requirements and performance targets under a proper purchaser-provider relationship.

Evaluation

5.56 While monitoring provides ongoing insight into activities and performance of the Program, ATSI offices and grantee organisations, periodic evaluations of grantee organisations enable more in-depth assessments to be undertaken, focusing on matters not covered in day-to-day monitoring processes.

5.57 As discussed in Chapter 1, the Law and Justice Program has itself been the subject of an evaluation of various aspects of its performance. Most recently, the *Evaluation of the Legal and Preventative Services Program*⁶¹ focused on the provision of legal aid through the ATSI framework and sought to benchmark outcomes against the mainstream Legal Aid Commissions.

Grantee organisations

5.58 Since 1996–97, there have been a number of evaluations conducted of grantee organisations within the Law and Justice Program.

5.59 During the period 1996–97 to 2001–02, two types of evaluations were completed, comprising detailed *effectiveness reviews* and more targeted *quality assurance checks*. Fourteen effectiveness reviews and 13 quality assurance checks were completed, most of these by June 2000.⁶² The effectiveness review program, which had been managed out of National Office, fell into abeyance during 2001–02 while the quality assurance review process stopped during 1999–2000. All the evaluations were of ATSI, with the exception of two legal services secretariat organisations funded under the Law and Justice Advocacy element. No evaluations were conducted of Prevention and Diversion grantee organisations. The FVPUs only commenced in 2000 and evaluations were therefore not appropriate during this time.

5.60 In 2002–03, ATSI commenced a five-year program of *effectiveness evaluations* using standardised Terms of Reference for all its ATSI to *determine their effectiveness in providing clients with quality legal (aid) services*. At the same time, effectiveness evaluations were conducted of four FVPUs and two evaluations were conducted of the two legal services secretariat organisations.

Tender process for effectiveness evaluations

5.61 The National Office coordinated the current round of ATSI effectiveness evaluations. An open tender process for evaluations of the 25 ATSI and

⁶¹ ATSI Office of Evaluation and Audit 2003, *Evaluation of the Legal and Preventative Services Program*.

⁶² A further four effectiveness reviews were scheduled for completion (three in 2000–01 and one in 2001–02). However, ATSI documentation indicates that these were not completed. Similarly, two quality assurance checks scheduled for 1999–2000 were not completed.

⁶³ Around half of the ATSI were the subject of an evaluation.

13 FVPUs⁶⁴ was commenced in March 2002, with tenderers being assessed in April-May 2002.

5.62 Using a standard set of criteria, tenderers were assessed against criteria incorporated into the Request for Tender documentation by a panel comprising staff from the National Office and from two Regional Offices. Of the 18 original tenderers, five were selected for interview and were ranked according to quality and price. Ultimately three consultants were selected to conduct the first 10 of a proposed rolling program of effectiveness evaluations.

5.63 The ANAO considers that the tender process was a sound basis on which to select consultants to conduct the effectiveness evaluations. Selecting consultants to conduct a number of evaluations enabled ATSIK to leverage experience gained.

5.64 ATSIK has advised that, in the light of its experience to date, it intends to hold two three-staged tender rounds for the remaining evaluations, rather than one large tender process. The ANAO observed some weaknesses in the first tendering process, that it considers ATSIK should bear in mind, in moving forward to conduct additional tendering processes. For example,

- while the National Office coordinated the selection of evaluators, it is the responsibility of the relevant Regional Offices to manage the evaluation and the associated contract. However, there is no documented guidance provided to the Regional Offices and their staff as to how the evaluations were to be managed, and, in at least one instance, the responsible field officer had had no evaluation experience or contract management training, and as a consequence, problems were encountered in seeing the contract through to completion; and
- no cost-benefit analysis of an outsourced evaluation program has been conducted. The evaluation program is likely to cost in the order of \$1 million in contractor costs over five years.⁶⁵ The ANAO considers that there would be benefit in ATSIK considering the relative costs and benefits of alternative evaluation strategies, including developing in-house capacities.

5.65 ATSIK notes that:

- Law and Justice evaluations for major reviews in ATSIK cover many similar areas to major reviews of other grantee organisations;

⁶⁴ ATSIK subsequently decided to postpone the FVPU evaluations, due to their comparative infancy.

⁶⁵ The evaluations cost around \$25 000 to \$30 000 each. There are 25 ATSIKs and 13 FVPUs to be reviewed.

- guidance on dealing with major reviews and consultancies in general is provided in AT SIS' generic grant and corporate procedures that are available to Regional Office staff;
- Regional Managers have a responsibility to ensure staff assigned to monitor evaluations are capable of performing the required tasks; and
- while having initially decided against using in-house resources for evaluations, this matter would be reconsidered.

5.66 The ANAO considers that AT SIS, as a whole, needs to examine the best way to undertake evaluations and monitor their progress.

Completion and outcomes of effectiveness evaluations

5.67 Evaluations have taken longer than was planned in some cases, and others have been postponed. Of the 10 evaluations planned to be undertaken in 2002–03, two were postponed until later years and delays were encountered with three of the evaluations undertaken during the year.

5.68 AT SIS advised that it had planned to conduct additional evaluations in 2002–03,⁶⁶ subject to the availability of suitable consultants. The ANAO considers that the difficulties in meeting the targets for planned evaluations suggests that closer project and contract management is required to complete evaluations in a timely manner. AT SIS advised that progress with evaluations was affected by unexpected performance issues arising with one consulting firm, and the need to follow up the completion of evaluations by another firm.

5.69 The ANAO noted that an examination of a selection of the completed evaluations indicated that they contained findings that addressed the Terms of Reference, and recommendations were targeted at both AT SIS (National Office and Regional Office) and the grantee organisation, as required.

5.70 The ANAO was advised that the process of evaluations would be suspended as a result of the re-organisation of AT SIC/AT SIS, in particular the move of National Office to Canberra in July 2003. The ANAO considers that this raises the risk of a loss of momentum similar to the previous round of evaluations. AT SIS acknowledged this risk, but considered some loss of momentum to be unavoidable given the re-location of National Office functions.

Evaluation Terms of Reference

5.71 The Terms of Reference of the rolling program of evaluations include an assessment against five key areas: governance; operations; client service and a

⁶⁶ Miwatj Aboriginal Legal Service Aboriginal Corporation, Tasmanian Aboriginal Centre, Aboriginal Legal Service of Western Australia, Victorian Aboriginal Legal Service Co-operative, and Western Aboriginal Legal Service.

report on emerging issues. In addition, the evaluations sought to assess effectiveness against applicable service standards and completion of an effectiveness checklist.

5.72 While the ANAO considers that the Terms of Reference outline broadly sound objectives for the evaluations, there are some weaknesses that ATSIIS should bear in mind in moving forward. For example, the Terms of Reference require the evaluator to address, *inter alia*, 'client service effectiveness.' However, there is no requirement to assess systematically client satisfaction with the services received. The ANAO considers that client satisfaction is a key measure of client service quality and would provide ATSIIS with valuable performance information that it currently does not have.

5.73 ATSIIS advised the ANAO that ATSIIS raise the question of client confidentiality in relation to ATSIIS (or its consultants) seeking information directly from clients. The ANAO suggests that one possible way of overcoming the client confidentiality and data quality issues would be for survey forms (designed by ATSIIS) to be sent out by service providers to their clients, and that these responses (containing no personal identifier, only a service provider identifier) then be sent to the evaluator for analysis. The evaluator could oversight the process of the mail out. Such an approach may well be worth trialling.

Follow-up of evaluations

5.74 Optimal outcomes of evaluations will be achieved when there are processes in place to determine that: recommended actions are implemented; the actions rectify the identified problems; and that further remedial action is taken, where necessary. This requires that a monitoring and reporting process accompanies evaluations after completion of the report.

5.75 ATSIIS notes that the terms of reference of the effectiveness evaluations required consultants to split their recommendations into three categories, namely those relating to grantee organisations, Regional Office and the National Law and Justice Policy Branch. As well as considering recommendations related to its specific responsibilities, the National Office considers it important to examine recommendations relating to Regional Offices and grantee organisations, as these could potentially point to widespread issues for which it might be appropriate to design and implement particular grant conditions or policy responses. The National Office advised that it is collating effectiveness evaluation recommendations in a spreadsheet, with an intention to analyse trends and identify policy responses if necessary. Regional Offices are responsible for following-up implementation of the evaluation recommendations in their area of responsibility. Regional Managers advised that they considered it to be the

role of field staff to follow-up evaluations conducted of grantee organisations for which they are responsible.

5.76 However, the ANAO found that there is no guidance, either corporately or for the Program, which specifies, for field staff, the steps to be taken in following-up evaluations. There is no corporate system that records evaluations and their outcomes. Consequently, ATSSIS found it difficult to identify the evaluations conducted in the Law and Justice Program, particularly any that may have been conducted in the Prevention and Diversion sub-program. ATSSIS indicated that there is information regarding ATSSIS' generic 'major reviews' and contract management exercises, and that this type of work is well within the work-level standards of relevant Regional Office staff. The ANAO considers that further guidance should be provided on the specific approach required in overseeing effectiveness evaluations.

5.77 The ANAO found that practices in relation to following up of evaluations to be variable across the offices visited. For example, some field officers ask the grantee organisation to provide, in writing, an implementation plan for the evaluation's recommendations; other field officers did not pursue implementation issues with the grantee organisations. With the exception of one Regional Office, there was no further follow-up to monitor completion of recommended actions or to undertake remedial action if the recommendations did not achieve the desired result.

5.78 Furthermore, there is no process to provide management with assurance, either at the Program or Corporate levels, that evaluations are being appropriately implemented and are achieving intended results. Processes at the Regional level in this regard are mostly ineffective. One Regional Office visited by the ANAO had recently developed a local information system on which all evaluation recommendations are summarised and their implementation status is recorded. The status of evaluations is reported to the Regional Council using this system. No other system was observed in the other offices visited by the ANAO. Consequently, the ANAO considers that ATSSIS management can have little assurance as to the extent that actions recommended by evaluators have been implemented and have achieved the intended results.

5.79 In the absence of information available within ATSSIS, the ANAO consulted grantee organisations about implementation of evaluation recommendations and follow-up from ATSSIS. Those organisations that had had an evaluation conducted (either under the old process or the current process), advised that most recommendations had indeed been implemented. However, a small number had not been implemented, particularly those involving additional resources from ATSSIS. In addition, the ANAO found that in some cases

recommendations had initially been implemented, but had subsequently been reversed. Grantee organisations confirmed that, apart from some being required to provide an implementation plan to ATSYS, there had been little or no follow-up from ATSYS as to the status of the recommended actions or their effects.

Recommendation No.6

5.80 The ANAO recommends that ATSYS develop:

- comprehensive guidance for Regional Offices to follow in overseeing effectiveness evaluations and their outcomes; and
- processes to provide management with assurance that evaluations are being implemented and are achieving intended results.

ATSYS response

5.81 Agree. This recommendation will be addressed on a whole of agency basis.

6. Managing Program Performance: Measuring and Reporting

This chapter examines the performance information and reporting framework for ATISIS' Law and Justice Program, including the performance indicators for the Program and associated IT systems.

Introduction

6.1 Performance information is important for both internal management and external reporting and accountability purposes.⁶⁷ Routine monitoring on performance information provides assurance that a program is delivering its outputs and achieving outcomes.⁶⁸ Externally, performance information is important for accountability requirements,⁶⁹ including reporting to government and other stakeholders.

6.2 The ANAO sought to assess the performance information framework in place for the Law and Justice Program, in particular the:

- performance indicators in the Department of Immigration and Multicultural and Indigenous Affairs' (DIMIA's) Portfolio Budget Statements (PBS);
- Program outcomes reported in the Aboriginal and Torres Strait Islander Commission's Annual Report;
- performance indicators for grantee organisations; and
- information systems used to support the delivery, and report the outcomes, of the Law and Justice Program.

Performance Information in Portfolio Budget Statements

6.3 ATISIS' outcomes form part of DIMIA's PBS. The PBS specifies the outputs chosen to contribute to the intended outcomes. Performance measures for the outputs contained in the PBS include indicators for quantity, quality and the price paid by government.

6.4 Quantity indicators are generally relatively straightforward, and specify the number of units that are being produced for the given price. For example,

⁶⁷ ANAO Better Practice Guide 2001–02, *Performance Information in Portfolio Budget Statements*.

⁶⁸ ANAO Audit Report No.18, 2001–02, *Performance Information in Portfolio Budget Statements*.

⁶⁹ ANAO Better Practice Guide 2001–02, *Performance Information in Portfolio Budget Statements*.

for the Legal Aid output element, the Government purchases 77 000 units of legal advice/representation in criminal matters. However, quality indicators can be harder to define. Better practice says that quality indicators should relate to tangible objective criteria. Some examples of quality indicators include: timeliness; coverage; accuracy; and client satisfaction.⁷⁰ They can also indicate to stakeholders and Parliament the capacity of the funded organisations to deliver the required services to agreed standards.

6.5 The Law and Justice Program contributes to AT SIS' Output Group Three *'Improvement to Social and Physical Wellbeing.'* The performance information included in DIMIA's 2002–03 PBS specifies quantity and quality performance indicators used to assess the Law and Justice Program.

6.6 The ANAO examined the performance indicators contained in DIMIA's 2002–03 and 2003–04 PBS to assess whether the performance indicators contained measurable information for its quantity and quality information. In both 2002–03 and 2003–04, the quantity measures for the four Law and Justice outputs contained measurable data. However, the quality measures for some of the Law and Justice outputs in 2002–03 actually contained quantity measures compiled from data supplied by grantee organisations, rather than quality measures. For example, the Prevention, Diversion and Rehabilitation quality measure was '24 600 persons assisted'.

6.7 AT SIS revised its performance indicators for the 2003–04 financial year, for the whole agency, including its Law and Justice Program. The ANAO found that the new performance indicators, to be implemented in July 2003, contain similar quantity measures as those from the 2002–03 financial year. However, the quality measures have been re-designed in consultation with stakeholders to make sure that they no longer contain quantity measures. Table 7 details the Law and Justice performance indicators in the PBS for 2003–04 financial year.

⁷⁰ *ibid.*, p. 21.

Table 7
Law and Justice Performance Indicators (2003–04)

Output	Quantity	Quality
Output 3.6 Legal Aid	Provision by ATSILS of legal representation for at least 45 000 clients	Adoption and progressive implementation of national funding formula for ATSSIS' legal aid allocation. Delivery of quality legal aid services by ATSILS adoption of minimum standards. Full compliance with ATSSIS' ATSILS Policy Framework. Effective co-operation, co-ordination and liaison with State, Territory and Commonwealth Governments regarding the delivery of legal aid services for Indigenous people.
Output 3.7 Law and Justice Advocacy	Two to three National and State Secretariats	Advancement of Indigenous rights through support for successful test cases. Effective co-operation, co-ordination and liaison with State, Territory and Commonwealth Governments regarding law and justice issues of particular relevance to Indigenous people.
Output 3.8 Family Violence Prevention	Funding support for 13 Family Violence Prevention Legal Services Provision of assistance to 3 500 persons through FVPLS	Delivery of quality family violence related legal aid and support services by FVPLS and full compliance with ATSSIS' FVPLS Policy Framework. Enhanced FVPLS capacity in assisting children who are victims of family violence or sexual assault. Effective co-operation, co-ordination and liaison with State, Territory and Commonwealth Governments regarding family violence related issues.
Output 3.9 Prevention, Diversion and Rehabilitation	30 night patrol services 24 600 persons assisted	Effective promotion of community cohesion by night patrol, youth support and other services receiving funding under this output.

Source: DIMIA 2003–04 Portfolio Budget Statements.

6.8 ATSSIS has also expanded the PBS performance indicators in its Output Funding Statements. These describe, for each output, the purpose of funding, any funding guidelines (such as policy documents), and performance measures. The ANAO notes that the latter are largely quantitative, and the few quality measures contained do not explicitly align with the PBS quality indicators as better practice would suggest.⁷¹ ATSSIS indicated that aggregation and analysis

⁷¹ ANAO Better Practice Guide 2001–02, *Performance Information in Portfolio Budget Statements*.

of data provided by grantee organisations in their performance reporting should help it to report in summary form for PBS purposes, in some cases. In addition, AT SIS will draw on its own sources of information as program managers.

6.9 Overall, the ANAO considers that the quality measures, as specified in the 2003–04 PBS, represent an improvement over previous indicators, which did not properly address quality matters. However, measurement of some quality indicators specified in 2003–04 will not be straightforward for AT SIS, particularly in light of the weaknesses in AT SIS’ monitoring practices (see Chapter 5) and performance information systems (see paragraphs 6.42–6.53). As discussed below, the ANAO considers that these indicators could be improved so that they are easily measurable and aligned with better practice. Improvements to data quality will be important to underpin enhanced performance indicators.

6.10 While the 2003–04 PBS specifies quantity and quality indicators for the Law and Justice Program, it does not include a measure of price. Instead, a pricing figure is given for the whole of Output Group Three, of which the Law and Justice Program is a part.

6.11 Consequently, stakeholders and Parliament are unable, from the PBS, to ascertain the price expected to be paid for planned services in the Law and Justice Program. AT SIS does, on request, provide Parliament with figures on the price expected for the Law and Justice Program, as part of the Budget Estimates process. However, these figures are incomplete, as they do not include the cost to AT SIS of administering the Program.

6.12 While the PBS, and related Output Funding Statements do not specify the expected cost of the Program, the AT SIS Annual Report does include a measure for the cost of each output. However, AT SIS advised that owing to systems limitations, this figure is prepared on a cash-only basis, and does not include all accrued non-cash costs. Consequently, the ANAO considers that the figures in the Annual Report are likely to understate the full cost of delivering the Law and Justice Program.

Grantee organisations’ performance indicators

6.13 Performance indicators used to monitor grantee organisations should be one tool used to monitor grantee organisations’ performance, and also give AT SIS data to enable them to track trends. The data should also link with AT SIS’ performance indicators in the PBS, and allow AT SIS to demonstrate that the Law and Justice Program is helping to achieve the outcome for which it is funded.

6.14 As part of ATSI's grant conditions, organisations must provide ATSI with an activity performance report (performance information report), which describes the grantee organisation's:

- performance against output measures;
- status of activity (whether the project has been completed); and
- position against the objectives of the approved activity.⁷²

6.15 The ANAO found that the detailed performance information required from grantee organisations is broadly aligned with ATSI's higher-level indicators contained in its Output Funding Statements and, to a lesser extent, the PBS.

6.16 The performance indicators grantee organisations are required to report against are sent to them with the letter of offer, which also details the frequency with which they are expected to submit reports. The performance indicators for grantee organisations are standard for each of the four output elements; and to comply with ATSI's grant conditions, grantee organisations are expected to submit their reports on time.

6.17 When reports are not submitted on time, ATSI Project Officers will contact the organisation to find out why their report has been delayed, and when it will be received. Non-compliance with submitting reports causes a 'breach' in the Grant Management System (GMS). Once a breach has been recorded in GMS, ATSI staff cannot make a routine release of grant funds to the organisation. However, GMS can be over-ridden in certain circumstances and payments can, and are, made despite an organisation being 'in breach'.

Frequency of reporting

6.18 The frequency with which grantee organisations are required to submit their performance indicator reports differs. ATSI decides the frequency of reporting required through its risk assessment processes. A grantee organisation that is assessed as being a high risk would generally have to report more frequently than an organisation that is low risk. The ANAO has previously examined ATSI's grant risk assessment processes and did not re-review them in this audit.⁷³

6.19 The ANAO found in this audit that the frequency with which grantee organisations were required to submit reports varied substantially from monthly, quarterly, six monthly to yearly. There was not always a clearly documented link between the assessed risk for an organisation and the frequency of reporting.

⁷² ATSI, *General Terms and Conditions Relating to Grants*, 2002–2003.

⁷³ ANAO Audit Report No.2 2002–03, *Grants Management*, Aboriginal and Torres Strait Islander Commission.

For example, ATSILS were required to report quarterly, irrespective of their assessed risk.

6.20 The ANAO considers that more consistent and explicit linkages between assessed risk and reporting frequency would provide greater assurance that grantee organisation risks are being consistently managed across ATSSIS Regional Offices.

Quality of performance indicators

6.21 The quality of grantee organisations' performance indicators is important for ATSSIS, as it allows data to be tabulated to assess whether the Law and Justice Program is meeting its targets, as set out in DIMIA's PBS.

6.22 The ANAO assessed the quality of the performance indicators for grantee organisations to determine whether they were providing the information required by ATSSIS. The ANAO found that there were shortcomings that ATSSIS should address in improving performance information.

6.23 The performance indicators for ATSILS in past years largely require them to report on how busy they were, i.e. how many clients they had seen in a reporting period. The ANAO notes that the collation of workload data is important. However, this needs to be balanced with requirements to report on other important matters such as service quality, the effort associated with outputs, and the outcomes achieved. The ANAO notes that the revised performance indicators for 2003–04 are considerably improved and now include scope for grantee organisations to provide qualitative material on certain matters.

Measuring service quality and associated effort

6.24 The 2003–04 PBS quality indicators for ATSILS measure the quality of the legal services provided to clients, through: their compliance with the relevant ATSSIS policy framework and minimum standards; adoption of a national funding formula; and cooperation with other agencies involved in the delivery of legal aid.

6.25 However, the ANAO found that the only way ATSSIS currently has to assure itself of compliance with the minimum standards is through its program of effectiveness evaluations, which are conducted on a rolling five-year cycle. The more frequent monitoring conducted by ATSSIS field staff does not include assessment of compliance with standards (these minimum standards include professional practice requirements relating to client service). Consequently, ATSSIS has had limited assurance as to the extent of compliance with the relevant standards. ATSSIS has recognised this, and has prepared a checklist for field staff to assist in monitoring compliance with the relevant standards.

6.26 The current measures of service quality are limited. While compliance with the relevant standards aids quality service provision, it does not, of itself, indicate whether clients consider that they are receiving a high-quality service. The funding formula is expected to be finalised in the first part of 2003–04 and, therefore, ATSIIS expects to be able to report on its adoption and implementation for that financial year. ATSIIS proposes to consult with the State Offices to allow it to report on cooperation with state government agencies to allow it to report on achievements in that area. ATSIIS proposes to do this in narrative form, which will give some qualitative information for readers.

6.27 One option to measure the quality of service provision would be to survey client perceptions of service quality.

6.28 The ANAO notes that the LACs and CLCs each conduct surveys of a maximum of 100 clients each six months. The LAC survey, for example, contains questions relating to the clients perspective on the quality of the service they received. While this may not be able to be translated directly to ATSIIS or FVPUs, the ANAO suggests that consideration be given to survey arrangements that would protect anonymity and also provide some degree of independence. Analysis of the results from different organisations would allow relative performance to be monitored. ATSIIS will always need to assess any survey results carefully considering other information available, but they could provide a useful additional tool.

6.29 The ATSIIS Office of Evaluation and Audit undertook such a survey in their review, *Evaluation of the Legal and Preventative Services Program*. However, the ANAO notes that this survey was done of prisoners, and, therefore, was not representative of the satisfaction levels of clients of ATSIIS more generally.

6.30 The capacity of funded organisations to provide a complete professional service would also be a quality indicator that ATSIIS could consider including in its performance information framework. Such an indicator could also provide information on the effort related to achieving specific output levels that could be useful in identifying efficiency levels in funded organisations. For example, in the case of the ATSIIS and FVPUs, this could be a measure of availability of professional staff, such as solicitors.⁷⁴

6.31 A study conducted for the ANAO showed that while most ATSIIS had a complete complement of solicitors, six out of 17 FVPUs had vacant positions. The average length of time of vacancy was eight months. The data showed that there were no solicitors in the three West Australian FVPUs, and that this had been the case for 13 months in Kalgoorlie, 12 months in Geraldton and six and a half months in Fitzroy Crossing. In these circumstances there would have been substantial reductions in service capacity.

⁷⁴ Or the number of solicitor months that are expected versus the actual solicitor months.

6.32 As discussed in Chapter 5, grantee organisations are required to submit regular performance reports to ATSI Regional Offices. The performance indicators for these reports are standardised across each Law and Justice Program output element. The ANAO found that for some grantee organisations, these standard performance indicators were not appropriate to capture the outcomes of the organisation. Some grantees interviewed by the ANAO also commented that the performance indicators they reported against did not accurately reflect what their organisation did, or the outcomes it had achieved. Consequently, many ATSI staff do not consider the performance indicator framework to be useful in their work (see Chapter 5). From the ANAO's point of view, the revised performance indicators for grantee organisations for 2003–04 are a considerable improvement on previous years. The inclusion of scope to provide qualitative data on a number of matters should enhance the quality of the performance reporting provided.

Quantity of performance information data collected

6.33 It is better practice that data collected for government programs should be purposeful, and assist staff in making decisions relating to the programs, or serve some other useful purpose such as management decision-making and meeting statistical reporting requirements.⁷⁵

6.34 There is a great deal of performance data collected for the Law and Justice Program. ATSI are required to supply the most amount of information—over 21 statistics, divided by age and gender and outcome (fined, community service order, other non-custodial sentence, custodial sentence, dismissed/no case/withdrawn and other). Appendix 4 lists the performance indicators required for the Legal Aid and Family Violence Prevention output elements in 2002–03.

6.35 The ANAO found that the process for collecting performance information data is time and resource intensive for both grantee organisations and ATSI. For example, in the case of the Legal Aid output element, data is collected by ATSI solicitors from their case files and given to the ATSI staff member responsible for entering the data. The ANAO found that one ATSI visited had a dedicated staff member for the data entry. ATSI then prepare a report for ATSI, which can be labour intensive given problems with the information systems (discussed below). ATSI indicated that some ATSI had indicated that they used the data for their own management purposes and, therefore, did not consider that inputting the data was an undue burden.

6.36 Once the performance indicator report reaches ATSI, it is analysed by the relevant ATSI project officer. Once satisfied with the report, the data

⁷⁵ ANAO Audit Report No.40 2002–03, *R&D Tax Concession*.

provided is then entered by the project officer into GMS, and, in some cases, also into the ATSILS website (discussed below). Project officers told the ANAO that this process takes them up to two days work per report. ATSIS advised that from 2003–04 it will no longer be necessary for project officers to enter workload data for ATSILS or FVPUs into GMS.

6.37 The ANAO found that much of the performance data provided to ATSIS by grantee organisations is rarely used. As discussed in Chapter 5, this information is only occasionally used by ATSIS for monitoring purposes (partly because of systems weaknesses) and, as illustrated below, only a small amount of this data was used by ATSIS to report the performance of the Law and Justice Program against their performance indicators in the Annual Report.

6.38 Therefore, the ANAO considers that, to better meet the Law and Justice Program’s management, monitoring, and reporting needs, the amount, frequency, and subject matter of the performance indicators should be reviewed. The options are for ATSIS to determine, but may include, for example, differentiating between types of performance and financial information, some of which may be required frequently (i.e. quarterly), some less frequently (i.e. annually), and some only when requested.⁷⁶ ATSIS indicated that from 2003–04 the requirement to submit mandatory quarterly performance information reports and workload data has been removed for ATSILS. As with funding for other activities, it will now be up to the relevant Regional Office to determine the frequency of such reporting in accordance with the grantee organisation’s risk rating.

6.39 Review of performance indicators in this manner would then allow ATSIS to undertake enhanced data analysis, and provide a better ability to inform management in a timely manner.

Recommendation No.7

6.40 The ANAO recommends that, to meet the Law and Justice Program’s management, monitoring, and reporting needs, ATSIS review the reporting frequency, and quality and quantity performance indicators, and collect only essential data required for program management.

ATSIS response

6.41 Agree. As the report indicates, ATSIS is already moving along these lines and as the response to recommendation 4 illustrates, it is addressing the issues raised in this recommendation as part of an overall package.

⁷⁶ The ANAO notes that applicants for the Research and Development Taxation Concession are required to be able to supply certain types of information if it is requested. See ANAO report No.40 2002–03, *R&D Tax Concession*, p. 34.

Information Technology Systems

6.42 Information Technology (IT) systems play an important role in collecting information accurately, and being able to report that information with a minimal amount of effort. Data integrity is an important characteristic of IT systems used as essential tools in the recording of statistical client data. The ANAO sought to determine if the information systems used for collecting data for the Law and Justice Program provided AT SIS with a reliable data system to collect and report data.

6.43 AT SIS' primary IT system is the GMS. The ANAO has previously found that the GMS provides adequate support for managing the assessment process.⁷⁷ Consequently, the ANAO did not review the GMS in this audit.

6.44 For the Law and Justice Program, the GMS is the source of performance information for the Prevention and Diversion, and Law and Justice Advocacy output elements. The National Office advised that while data for individual grantee organisations can be extracted from the GMS, it is difficult to extract aggregated data from the GMS for these outputs throughout the year, and so the National Office only obtains this information annually.

6.45 AT SIS supplies IT systems to AT SILS and FVPUs to facilitate the recording of various legal statistics, which are then provided to AT SIS via performance indicator reports submitted by grantee organisations. There are currently three different IT systems provided for AT SILS and FVPUs; some smaller AT SILS opt to keep their statistics manually.

6.46 To aggregate the data from the various AT SILS, there is a website where AT SILS or National Office staff manually enter the data from their IT system. When this data is aggregated, a report can be printed for each service and manually entered into a spreadsheet, or the National Office can arrange for the data to be dumped into an Access database, from which some consolidated reports can be produced.

6.47 In interviews with stakeholders, the ANAO was told that longstanding problems existed with these different IT systems, although the degree and types of problems varied. AT SILS and FVPUs reported to the ANAO that they had problems with the program provided by AT SIS, and one FVPU had reverted to using a manual system. Other AT SILS told the ANAO that they had problems extracting information from the IT systems to produce their performance indicator reports. Others reported that data entered into the website was being systematically corrupted, rendering the resulting performance information unreliable.

⁷⁷ ANAO Audit Report No.2 2002–03, *Grants Management*, Aboriginal and Torres Strait Islander Commission, p. 16.

6.48 AT SIS staff also told the ANAO about the problems they experienced with the IT systems. One Regional Office commented to the ANAO that they would like to be able to look at AT SILS data nationally, to see how their AT SILS was performing in comparison to national averages.

6.49 The National Office, in conjunction with AT SIS' Information Service Office conducted a review of these IT systems, and a draft report was sent to AT SIS in December 2002. That review found in relation to the AT SILS' systems, that while the three current systems are meeting needs for data collection, the Law and Justice Program needs to move to using one reporting program. The review found that this would minimise the long-term cost associated with currently providing three systems.

6.50 In terms of data aggregation, the review found that the current system that involves data being reported from one software system and manually entered into the AT SILS website as discussed above, is not a reliable or efficient method for data aggregation or reporting. In fact, the review found that the current website had reached the end of its useful life, and may not be usable for this financial year.

6.51 The review also found that data analysis is minimal due to the limitations of the current process. The National Office expressed a wish to have better analysis and reporting functions to facilitate and support strategic and policy related decision-making. The review recommended that a package be developed that would import data into an AT SIS Corporate system, such as *AT SIS Reporting*.

6.52 The report made 18 recommendations aimed at streamlining the costs associated with operating three separate systems, and addressing the lack of versatility associated with the current system. AT SIS advised the ANAO that they are proposing to address these issues with the development of a new Client Management System. It is proposed that the new Client Management System would be operational by June 2004. This system needs to be able to support the Law and Justice Program's data needs. The ANAO considers that, in developing the new Client Management System, it would be worthwhile for AT SIS to consult with the LACs about the available options.⁷⁸

6.53 The ANAO notes that currently there is limited assurance regarding the quality of the data supplied by grantee organisations. This data forms the basis of the performance information reported by AT SIS. Improvements to monitoring arrangements proposed in Chapter 5, together with effective IT systems, should lead to improved confidence in AT SIS' reported performance information.

⁷⁸ As part of their funding agreements with the Commonwealth, all the LACs agreed to implement a common management system, which enables aggregation of data and automated reporting to the Commonwealth. At the time of this audit, the system was being reviewed with a view to improvement or replacement.

Reporting Program performance

Annual Reports

6.54 Annual reports are the primary vehicle for reporting program performance to Parliament and other stakeholders. ANAO better practice suggests that the focus of annual reports has been moving away from reporting administrative detail, to providing more information regarding program performance.⁷⁹

6.55 ATSIC's 2001–02 Annual Report details the performance of the Law and Justice Program for that financial year. Some of the statistics required to be supplied by grantee organisations are compiled and reported in the Annual Report in accordance with the measures specified in the PBS.⁸⁰ The Annual Report also includes: qualitative information for each output element; ATSILS reform process; and advocacy and future directions.

Law and Justice Program performance as reported in Annual Reports

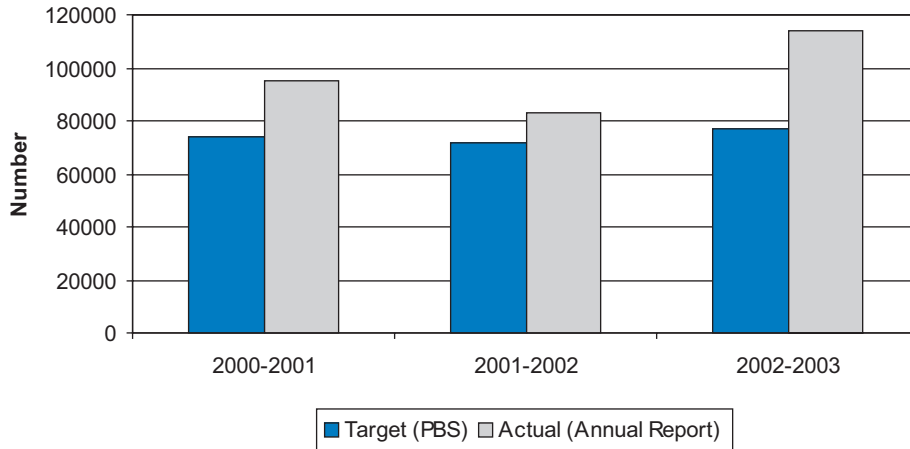
6.56 Statistics reported in ATSIC Annual Reports illustrate what services grantee organisations are delivering to Indigenous Australians. As discussed, there are issues with data integrity, however, ATSIC's data, as reported in Annual Reports, highlights that ATSILS have been exceeding ATSIC's performance targets for criminal matters (see Figure 7).

⁷⁹ ANAO Better Practice Guide 2001–02, *Performance Information in Portfolio Budget Statements*.

⁸⁰ ATSIC also reports the following statistics for the Legal Aid output: ATSILS case and duty matters by gender and by law type; ATSILS client profile by gender and age; outcomes of criminal matters represented by ATSILS; and ATSILS brief-outs by gender. These five statistics come from data collected and reported by ATSILS.

Figure 7

Legal advice/representation in criminal matters—target versus actual

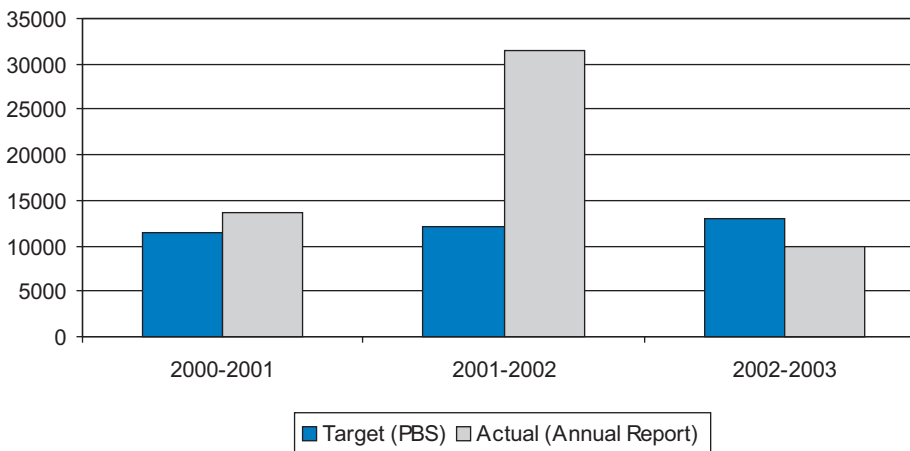


Source: ANAO Analysis of data from ATSIIC Annual Reports and PBS.

6.57 Advice and representation for Indigenous Australians in non-criminal matters is also a service offered by ATSIILS. This data is also reported by ATSIIC in its Annual Report. The ANAO analysed the statistics for advice and representation for non-criminal matters, as provided in recent Annual Reports, and compared these to ATSIIC’s targets (see Figure 8). After rising considerably in 2001–02, the number of non-criminal matters declined in 2002–03. ATSIIS stated that the result was affected by the increased involvement of ATSIILS in criminal matters.

Figure 8

Legal advice/representation in non-criminal matters—target versus actual

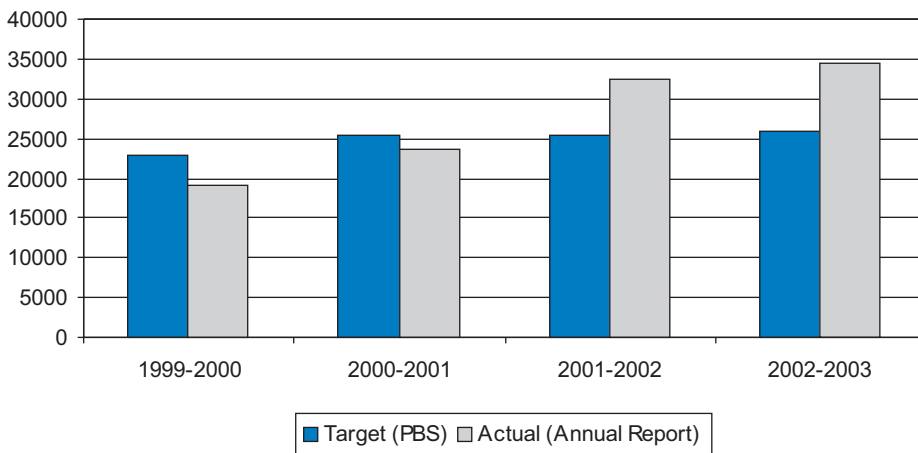


Source: ANAO Analysis of data from ATSIIC Annual Reports and PBS.

6.58 Improving women’s access to legal services has been a priority area for the Law and Justice Program. Figure 9 compares ATSIK’s performance with targets.

Figure 9

Number of legal matters for women handled by ATSIK



Source: ANAO Analysis of data from ATSIK Annual Reports and PBS.

6.59 In 1999–2000 and 2000–01, ATSIK did not meet its targets for improving women’s access to legal services. However, in 2001–02 and 2002–03 the increased target were substantially exceeded. ATSIK has also implemented changes to the Law and Justice Program that allow women better access to legal representation. These changes were brought about because ATSIK recognised that, as ATSIKs were often representing the perpetrator in an effort to keep them out of custody, in some cases women were not receiving equal access to legal services. The changes implemented by ATSIK include the provision for ATSIKs to ‘brief out’ matters to an external practitioner. The introduction of separate funding for the FVPUs in 2000–01, with an associated increase in performance target, has also give women more access to legal advice and representation.

6.60 Information regarding other Law and Justice outputs in the Annual Report is brief. The ANAO noted that performance of the Law and Justice Advocacy output almost entirely focuses on inputs, that is, what organisations and test cases have been funded, rather than an assessment of their outcomes. In relation to the other outputs, the ANAO found that while the information contained was concise, it did report on aspects of service delivery outcomes.

6.61 The Law and Justice Program results, as reported in ATSIK Annual Reports, confirm that the grantee organisations funded by the Program are delivering a large amount of much-needed services to Indigenous Australians, and that, on

the whole, the volume of services has increased over time. This is a positive achievement in a climate of resource constraint. However, deficiencies in the performance indicator framework make it impossible to determine whether service delivery efficiency and effectiveness is optimal, or whether service delivery quality is consistent and adequate.

Canberra ACT
7 November 2003



P. J. Barrett
Auditor-General

Appendices

Appendix 1

ATSIS' full response to the s 19 proposed report

ATSIS response

1. The report concludes that there is a need for considerable improvement in the management of the Law and Justice Program. This is not denied. However, while accepting the report and agreeing with its recommendations, I should point out that ATSIS is already addressing the issues raised and would have done so as part of its revision of agency wide program administration and management policies and procedures.

2. Indeed, since the separation of the Aboriginal and Torres Strait Islander Commission (ATSIC) and ATSIS on 1 July 2003, the actions I have taken in regard to the tendering of legal aid services for Indigenous Australians and the revision of program administration which ATSIS is implementing, will respond to each of the report's recommendations. The Ministerial Directions which were issued to me by the former Minister for Immigration and Multicultural and Indigenous Affairs detail, among other things, the requirements for the choice and relationship with individual service providers.

3. The following extract from these Ministerial Directions illustrates the course of action ATSIS will be pursuing:

Having appropriate regard to functional priorities and strategies for addressing relative need determined by the ATSIC Board, the CEO will take all reasonable steps to ensure that resources are apportioned between regions and communities according to demonstrable relative need, taking account of the availability of alternative services in those areas and the supplementary intent of Indigenous specific services. The choice of and relationship with individual service providers should be based on best practice, including:

- outcome-based funding and performance-based contracts for service delivery;
- market testing and competitive tendering wherever appropriate;
- assessments based on comparative efficiency and effectiveness, including demonstrated capacity to deliver; and
- management structures that reflect principles of sound governance and leadership by fit and proper individuals with a record of effective management.

4. ATSIS believes that much more preparatory work needs to be done before we call for tenders in compliance with the Ministerial Directions. Consequently, I am organising to establish a special task group which will have the necessary

skills to ensure that the entire tender process is in accord with the Directions. I also intend to appoint a probity auditor to monitor the process.

ANAO comment

5. The ANAO notes that its fieldwork for the Law and Justice Program performance audit pre-dated the decision to separate ATSIC and ATSIIS, and the resulting Ministerial Directions. The ANAO kept ATSIIS informed of the emerging audit findings through the audit fieldwork, and provided ATSIIS with its draft audit findings and possible recommendation in early June 2003. The ANAO is pleased that many of the emerging audit concerns were able to be considered as a part of agency-wide reforms, including the Ministerial Directions which were issued after the ATSIIS/ATSIC separation in 1 July 2003.

6. The ANAO also notes ATSIIS' positive response to the issues raised by the ANAO during audit fieldwork in relation to the proposed tendering out of legal aid services.

Appendix 2

Organisations consulted

Aboriginal and Torres Strait Islander Services Offices

- ATSI Head Office in Canberra;
- National Centre for Law and Justice Policy Sydney;
- Regional Offices in Sydney, Brisbane, Perth, Adelaide, Darwin, Tamworth, Queanbeyan, Port Augusta and Katherine; and
- State Offices in Sydney, Brisbane, Perth, Adelaide and Darwin.

Other Commonwealth Agencies

- Attorney-General's Department, Canberra; and
- Department of Immigration and Multicultural and Indigenous Affairs.

Peak Bodies

- Coalition of Aboriginal Legal Services, NSW;
- National Aboriginal and Torres Strait Islander Legal Service Secretariat, QLD;
- National Association of Community Legal Centres, NSW;
- National Legal Aid, Tasmania; and
- Queensland Aboriginal and Torres Strait Islander Legal Service Secretariat.

Aboriginal and Torres Strait Islander Legal Services

- Aboriginal and Torres Strait Islanders Corporation (QEA) for Legal Services, Brisbane QLD;
- Aboriginal Legal Right Movement, Adelaide SA;
- Kamilaroi Aboriginal Legal Service, Armidale NSW;
- Kamilaroi Aboriginal Legal Service, Tamworth NSW;
- Kamilaroi Aboriginal Legal Service, Moree NSW;
- Katherine Regional Aboriginal Legal Aid Service, Katherine NT;
- North Australian Aboriginal Legal Aid Service, Darwin NT;

- South East Aboriginal Legal Service, Nowra NSW;
- Sydney Regional Aboriginal Corporation Legal Service, Sydney NSW; and
- Western Australian Aboriginal Legal Service, Perth WA.

Legal Aid Commissions

- Legal Aid Commission of the Northern Territory;
- NSW Legal Aid Commission;
- Queensland Legal Aid Commission;
- SA Legal Aid Commission; and
- WA Legal Aid Commission.

Family Violence Prevention Units

- Kamilaroi Aboriginal Legal Service (Family Violence Legal Support Centre), Mooree NSW;
- Warndu Watllhilli-Carri Ngura-Aboriginal Family Violence Legal Service, Port Augusta SA; and
- Top End Women’s Legal Service, Darwin NT.

Other organisations

- Aboriginal Corporation for Homeless and Rehabilitation Community Services, Sydney NSW;
- Aboriginal Prisoners and Offenders Support Service, Adelaide SA;
- Deaths in Custody Watch Committee, Perth WA;
- First Contact, Brisbane QLD;
- Gallang Place, Brisbane QLD;
- Larrakia Nation, Darwin NT; and
- Noongar Night Patrol, Perth WA.

Appendix 3

Other partnership arrangements of ATSIIS related to Law and Justice

Family Violence Prevention output element relationships

1. ATSIIS is represented at a number of meetings at the State and national level related to family violence. One issue for ATSIIS in these processes is to have available appropriate staff to attend these meetings at a State level and be able to make worthwhile contributions. In part this might arise because the Family Violence Prevention output element is relatively new within ATSIIS, and also because the ATSIIS workers who have most to do with family violence issues are located in the more remote ATSIIS Regional Offices.
2. ATSIIS referred to one instance where its involvement was not at the level that it would have wished. A Task Force was established related to the Partnership Against Domestic Violence and ATSIIS was given observer status for a period, and later invited for specific items only. Given the level of family violence in Indigenous Australian communities, ATSIIS considered that it should have had full membership of the Task Force.
3. During the audit, the ANAO noted that individual Family Violence Prevention Units (FVPUs) had regular contact with local police regarding family violence. This involved setting up ongoing arrangements for the services of the FVPUs to be brought to the attention of Indigenous Australians in the community. The Units were also establishing ongoing relationships with particular communities.
4. ATSIIS has advised that the Commonwealth Attorney-General's Department (AGD) is considering arrangements under which Indigenous Australians in New South Wales would gain improved access to family law funding provided by the Commonwealth to the New South Wales Legal Aid Commission (LAC). This matter is to be discussed further by ATSIIS, the NSW LAC and the AGD.

Prevention, Diversion and Rehabilitation output element relationships

5. The Prevention, Diversion and Rehabilitation output element mainly operates within particular Regional Council areas. In these cases, the ATSIIS Regional Offices are involved as funding bodies alongside other elements of the State/Territory and local governments. This brings with it an ongoing need for cooperation. Table 8 illustrates a better practice example of one grantee

organisation's approach to managing relationships with multiple funding agencies.

Table 8

Managing relationships with multiple funding agencies

One of the night patrols funded by ATSIIS had introduced a good way of involving its various funding stakeholders. This night patrol was funded by a number of different government agencies, including state and local government, as well as ATSIIS. The night patrol has an Advisory Committee that includes all funding stakeholders. This Committee meets monthly and allows all funding bodies to query progress on particular elements of the patrol's activities, raise issues about the service delivery being undertaken by the patrol and examine expenditure trends. This type of arrangement is good practice in that it promotes transparency of the patrol's activities for all stakeholders, is efficient in that patrol management has one forum to deal with all funding stakeholders and promotes sharing by stakeholders of their separate interests.

Source: ANAO fieldwork.

State/Territory government partnering arrangements

6. In some of the States/Territories that the ANAO visited there were initiatives underway relating to the commitment of the relevant governments and ATSIIS to work together to build new and just relationships between ATSIIS and the relevant governments. In some cases this was also moving to the development of Aboriginal Justice Agreements that would be directed at improving the effectiveness of justice related programs and services for Indigenous Australians. These agreements with State/Territory governments are aimed at reducing Indigenous Australians' contact with the justice system and providing for safer communities.

7. The ANAO found that these arrangements tended to be pitched at a high level, and as such they are unlikely to result in firm commitments from the State/Territory governments that would result in additional funding for ATSIIS. Their impact would be in improvements in the areas where the State/Territory governments are already heavily involved (for example, courts, police and various prevention and diversion activities). However, given Indigenous Australians' relative over-interaction with these institutions and activities, the ANAO would encourage ATSIIS to continue to pursue these initiatives with a view to having State/Territory governments better address the needs of the Indigenous community.

Appendix 4

Performance indicators for ATSILS and Family Violence Prevention Units

Workload indicators for ATSILS 2002–03

Describe initiatives implemented following recommendations of an Effectiveness Review/
Quality

Assurance Check and/or Self assessment against standards

Analysis of Performance Information

Describe any tests cases conducted

Percentage of finalised appeals upheld

Number of appeals finalised

Number of appeals finalised and upheld

Number of case matters

Approved

Refused

Other/not applicable

Number of duty matters

Approved

Refused

Other/not applicable

Number of criminal matters:

- Female/Male/Other
- Aged 18–24 years (17–24 in Qld)
- Aged 25–54 years
- Aged 4–17 years (4–16 in Qld)
- Aged over 55 years
- Age Unknown

Number of finalised major charge criminal matters for dutywork:

- Female/Male/Other
- Pleading guilty
- Pleading guilty then fined
- Pleading guilty then given other non-custodial sentence
- Pleading guilty then given community service order
- Pleading guilty then given custodial sentence
- Pleading guilty then dismissed/no case/withdrawn
- Pleading guilty then other
- Pleading not guilty
- Pleading not guilty then dismissed/no case/withdrawn
- Pleading not guilty then fined
- Pleading not guilty then given other non-custodial sentence
- Pleading not guilty then given community service orders
- Pleading not guilty then given custodial sentence
- Pleading not guilty then other

- Other
- Other then fined
- Other then given other non-custodial sentence
- Other then given community service order
- Other then given custodial sentence
- Other then dismissed/no case/withdrawn
- Other then other

Number of criminal matters:

- Female/Male/Other
- Dutywork
- Casework
- Advice/Information (Non-court assistance)

Number of Violence Protection matters:

- Female/Male/Other
- Dutywork
- Casework
- Advice/Information (Non-court assistance)

Number of civil matters:

- Female/Male/Other
- Duty work
- Casework
- Advice/Information (Non-court assistance)

Number of family matters:

- Female/Male/Other
- Dutywork
- Casework
- Advice/Information (Non-court assistance)

Number of Inquests into Deaths in Custody matters:

- Female/Male/Other
- Dutywork
- Casework
- Advice/Information (Non-court assistance)

Number of other matters:

- Female/Male/Other
- Dutywork
- Casework
- Advice/Information (Non court assistance)

Number of civil matters:

- Female/Male/Other
- Aged 18-24 years (17-24 in Qld)
- Aged 25-54 years
- Aged 4-17 years (4-16 in Qld)
- Aged over 55 years
- Age Unknown

Number of Violence Protection matters:

- Female/Male/Other
- Aged 18-24 years (17-24 in Qld)

- Aged 25-54 years
- Aged 4-17 years (4-16 in Qld)
- Aged over 55 years
- Age Unknown

Number of Inquests into Deaths in Custody matters:

- Female/Male/Other
- Aged 18-24 years (17-24 in Qld)
- Aged 25-54 years
- Aged 4-17 years (4-16 in Qld)
- Aged over 55 years
- Age Unknown

Workload indicators for Family Violence Prevention Units 2002–03

Number of media presentations

- Describe media presentations

Number of conference presentations

- Describe conference presentations

Number of other presentations

- Describe other presentations

Number of community and agency meetings

Number of participants at community and agency meetings

- Location of community and agency meetings
- Describe each community and agency meeting

Number of indigenous community meetings

Number of participants at indigenous community meetings

- Location of indigenous community meetings
- Describe each indigenous community meeting

Number of indigenous women's meetings

Number of participants at indigenous women's meetings

- Location of indigenous women's meetings
- Describe each indigenous women's meeting

Number of publications produced

- Describe contents of publications produced

Number of meetings held with government and non-government agencies in the area

- List government and non-government meetings
- Describe changes in coordination and collaboration between government and non-government agencies
- Detail any developments or adjustments to relevant protocols and inter-agency guidelines
- Detail any other ways agencies within the area are implementing relevant activities
- Detail initiatives in advocating that cross-cultural awareness training be provided by agencies for their staff

Number of agencies providing cross-cultural awareness training for their staff

- Detail initiatives to collect statistical information on the incidence of indigenous family violence

Number of State meetings where the model is presented

- List name and date for each State meeting

Number of national meetings where the model is presented

- List name and date for each national meeting
- Describe any interest in the model resulting from State or national meetings
- Describe any trends and issues arising from the performance information
- Describe/identify target committees/group for services (ie location and demographics) and services provided to them
- Describe how initiatives have contributed to the reduction of indigenous family violence rates

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