

## National Regional, Rural, Remote and Very Remote Community Legal Network

Joint Standing Committee on the National Disability Insurance Scheme

Parliament House

Canberra ACT 2600

By email: [ndis.joint@aph.gov.au](mailto:ndis.joint@aph.gov.au)

8 March 2024

Dear Colleagues,

### **NDIS participant experience in rural, regional and remote Australia**

This submission by the National Regional, Rural, Remote and Very Remote Community Legal Network ('**4Rs Network**') draws on experience working with vulnerable people in 4Rs communities around Australia.

### About this submission

The submission relates to the NDIS and rights, safety, wellbeing and inclusion of people with disability in regional, rural, remote and very remote ('4Rs') areas.

The submission particularly focuses on unmet needs for advocacy and legal support for people with disability in 4Rs areas in relation to the NDIS and generally.

### About the 4Rs Network

The 4Rs Network is a network of non-profit legal services in 4Rs areas which provide legal and related assistance via an incorporated non-profit structure or auspicing arrangement.

The 4Rs Network's services are based in, and/or service localities within 4 of the 5 classes of remoteness including:

- Inner Regional Australia
- Outer Regional Australia
- Remote Australia
- Very Remote Australia<sup>1</sup>

This equates to 6 of the 7 levels in the Modified Monash Model<sup>2</sup> being MM2 Regional centres to MM7 Very remote communities.

The 4Rs Network members work with and for their communities and regions. Their methods and programs often reflect deep understanding and long-term efforts to address important community needs. Their programs, services and advocacy often reflect involvement in community issues that have not been addressed by other means, including by local, state, or federal governments.

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<sup>1</sup> Applying the Australian Bureau of Statistics Remoteness Structure, Australian Statistical Geography Standard (ASGS) Edition 3, Reference period, July 2021 - June 2026 ([updated by the ABS on 21/03/2023](#)).

<sup>2</sup> Department of Health, [Modified Monash Model Fact Sheet](#) (online)

The 4Rs Network has been facilitated from within, and supported by, Community Legal Centres Australia and builds on a significant history of community legal centre-based networking from the mid 1990's seeking to address the specific and nuanced legal needs and rights of regional, rural, and remote and very remote communities and thereby increase the wellbeing those living within them.

Yours sincerely,

Judy Harrison  
Co-convenor 4Rs Network

## Contents

About this submission .....	1
About the 4Rs Network .....	1
Terms of Reference .....	4
Summary of recommendations .....	4
Glossary .....	7
I BACKGROUND .....	8
1.1 People with disability in the 4Rs .....	8
1.2 Lived experience .....	9
1.3 Closing the Gap and sector strengthening.....	9
1.4 Legal protection .....	11
2. HUMAN RIGHTS AND SYSTEMS FAILURES FOR PEOPLE WITH DISABILITY IN 4RS....	13
3. ADVOCACY AND LEGAL ASSISTANCE FOR PEOPLE WITH DISABILITY IN THE 4RS....	14
4. OTHER ISSUES .....	19
4.1 Justice system and NDIS in the 4Rs .....	19
4.2 People with disability and gross underfunding of 4Rs community-based legal services .....	23
4.3 Unmet social security legal needs for people with disability in 4Rs areas.....	24
4.4. Funding for Health Justice Partnerships and similar in 4Rs .....	28
4.5 Access by people with disability in the 4Rs to financial counselling.....	32
4.6 People with disability, NDIS and disaster responses in 4Rs areas.....	34
Attachment 1: Lived experience case studies .....	37
A1.1 Far West Community Legal Centre Ltd .....	37
A1.2 Royal Commission – Voices of people with disability in the 4Rs.....	39
A1.3 Darwin Community Legal Service NDIS case studies .....	44

## Terms of Reference

We note the Committee's terms of reference for this inquiry are:

"As part of the committee's role to inquire into the implementation, performance and governance of the National Disability Insurance Scheme (NDIS), the committee will inquire into and report on the NDIS participant experience in rural, regional and remote Australia, with particular reference to:

- a. the experience of applicants and participants at all stages of the NDIS, including application, plan design and implementation, and plan reviews;
- b. the availability, responsiveness, consistency, and effectiveness of the National Disability Insurance Agency in serving rural, regional and remote participants;
- c. participants' choice and control over NDIS services and supports including the availability, accessibility, cost and durability of those services;
- d. the particular experience of Aboriginal and Torres Strait Islander participants, participants from culturally and linguistically diverse backgrounds, and participants from low socio-economic backgrounds, with the NDIS; and
- e. any other related matters."<sup>3</sup>

## Summary of recommendations

The submission makes 14 recommendations, which are:

### **Rec 1: Legal protection is a 'litmus test' issue for NDIS implementation**

People with disability in 4Rs areas must have access to legal protection when required to ensure their rights, safety and wellbeing. One example is that current levels of access to assistance for legal protection by First Nations people with disability in the 4Rs at risk of family or domestic violence or sexual abuse is grossly insufficient.

This is, and should be treated as, a 'litmus test' issue for NDIS implementation in 4Rs areas because insufficient legal protection for people with disability impacts all stages of the NDIS pathway and NDIS objectives.

### **Rec 2: Planning and resources for access to legal protection in 4Rs**

The federal Government should address access to legal protections to ensure the rights, safety, wellbeing and inclusion of people with disability in the 4Rs and focus on high needs including safety from family, domestic and sexual violence.

### **Recommendation 3: new Disability Rights Act and 4Rs location**

The rights of people with disability in regional, rural, remote and very remote areas should be made visible in the proposed federal Disability Rights Act.

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<sup>3</sup> Joint Standing Committee on the National Disability Insurance Scheme, Inquiry into NDIS Participant Experience in Rural, Regional and Remote Australia, [Terms of Reference](#)

#### **Rec 4: reference to Australian Human Rights Commission about human rights in the 4Rs**

The Attorney-General should ensure that the Australian Human Rights Commission receives a reference to undertake a holistic national inquiry into human rights in 4Rs Australia focusing on people with disability and all other vulnerable groups with a view to evaluating how Australia's human rights frameworks are responding to the 4Rs and whether legislation should be amended to make the rights of people in 4Rs more visible.

#### **Rec 5: Increase access to independent advocacy, appeals advocacy and appeals legal assistance in the 4Rs**

The Commonwealth increase funding for access to independent advocacy as detailed by the Disability Advocacy Network Australia (\$91,225 million increase with \$20 million as a funding boost for independent disability advocates facing higher operating costs in rural, remote and very remote areas), as a good next step for 2024-5.

The adequacy of this figure should also be monitored as to whether it is sufficient to achieve needs-based access for people with disability in 4Rs areas.

NDIS Appeals funding (appeals advocacy and legal assistance) should specifically be increased to achieve needs-based access in the 4Rs.

ATSILS, FVPLS and other community-based nonprofit legal services which provide assistance in or to communities in the 4Rs should be actively facilitated if they wish to apply for funding to provide assistance under the NDAP and/or under the Appeals Program.

#### **Rec 6: NDIS and 4Rs remandees, detainees and prisoners**

High priority should be accorded to overcome barriers to NDIS access and supports for young people and adults in and from regional, rural, remote and very remote locations in custodial institutions with special attention to addressing barriers impacting on First Nations people.

Needs based funding of advocacy and legal support should be established aligned to optimum access and outcomes, especially resources for Aboriginal and Torres Strait Islander Legal Services including Family Violence Prevention Legal Services to provide a needs-based response.

#### **Rec 7: 4Rs Access to Justice Plan and people with disability**

Regarding the full range of civil and criminal legal and advocacy needs of people with disability in regional, rural, remote and very remote areas, and the needs of all vulnerable people in the 4Rs – the federal government facilitate establishment of a National 4Rs Access to Justice Plan via participatory and inclusive processes involving 4Rs community based legal services, their clients and their communities of interest and all stakeholders.

#### **Rec 8: Increase federal portfolio area capacity to identify and respond to 4Rs legal needs**

Federal Attorney-General's Department undertake a parallel 2-year project to develop and promote resources and tools to assist all relevant federal portfolio areas to develop their capacity to identify and contribute to the development of responses to 4Rs legal needs in their areas of responsibility. This to include emphasis on all

areas of need, including:

- Domestic, family and sexual violence
- Safety and wellbeing of children, older people and all community members
- Housing and homelessness
- Health
- Social security, family assistance and veterans' entitlements
- Families including separation issues, child support and intergenerational
- Employment
- Credit and debt
- Consumer
- Migration and refugee
- National Disability Insurance Scheme, and
- Disaster recovery

and responding to the needs of Aboriginal and Torres Strait Islander people, families, young people, older people and seniors, people with disability, CALD communities and all priority groups.

#### **Rec 9: Needs based funding for 4Rs community-based legal services**

That funding for community-based legal services in or for 4Rs areas be immediately doubled to address the chronic insufficiency of current resources to provide services for people with disability and other vulnerable groups.

That needs-based funding be implemented to further increase funding levels in addition to the immediate step of doubling current funding.

#### **Rec 10: funding for social security legal help for people with disability in the 4Rs**

Needs-based federal funding should be provided to community-based legal services, including Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services which wish to participate, to ensure ready access to social security legal help by people with disability, carers and other vulnerable people in 4Rs areas.

#### **Rec 11: Link or integrate social security legal help with relevant 4Rs community-based programs**

Efforts should be made to link or integrate social security legal help with relevant community-based programs in the 4Rs including considering how this could relate to the Remote Jobs and Economic Development Program.

#### **Rec 12: Health Justice Partnerships in 4Rs areas and similar**

Federal and state / territory governments provide collaborative leadership to achieve new funding, with active support/facilitation, action research and learning to:

- Substantially increase funding for community-based legal services in 4Rs areas to collaborate and/or lead health justice partnerships directed to the needs of people with disability, carers and other vulnerable groups.
- Build on the integrated, social determinants model to fund other locally relevant approaches in the 4Rs, for example collaborations with community support

services, safehouses, remote community employment programs, rehabilitation programs and wellbeing and education and training initiatives.

### **Rec 13: Financial counselling positions in 4Rs community based legal services**

The effectiveness of financial counsellors within community-based legal services, and the suitability of these services to host and incorporate these positions, warrants a priority review of the shortfall of financial counselling positions among ATSILS, FVPLS and other community-based legal services in the 4Rs.

This should focus on the multiple benefits to Indigenous and non-Indigenous people with disability and carers and all financially disadvantaged groups in 4Rs areas.

Closing the Gap Priorities should be applied to increase and strengthen First Nations Community Controlled service provision.

### **Rec 14: Disaster legal assistance for people with disability in 4Rs**

All stages of disaster planning including disaster preparedness, response and recovery should integrate access to legal assistance for people with disability, and all vulnerable groups, in 4Rs areas.

Funding for community-based legal assistance in the 4Rs should include disaster preparedness in core funding and additional disaster surge funding as needed.

## **Glossary**

The following terms are used in this submission:

ATSILS	Aboriginal and Torres Strait Islander Legal Service
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CLC	Community Legal Service
CRPD	Convention on the Rights of Persons with Disability
DRIP	Declaration on the Rights of Indigenous Peoples
4Rs	Regional, rural, remote and very remote
4Rs Network	National Regional, Rural, Remote and Very Remote Community Legal Network
FVPLS	Family Violence Prevention Legal Service
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme

# I BACKGROUND

This section outlines key demographics regarding people with disability in regional, rural remote and very remote ('4Rs') areas and the overarching relevance of:

- Lived experience,
- Closing the Gap and sector strengthening, and
- legal protection.

## 1.1 People with disability in the 4Rs

1.1.1 While the major cities in Australia have the highest number of people with disability, people with disability make up a higher proportion of the population in 4Rs areas even with likely statistical undercount.<sup>4</sup>

1.1.2 The rate of disability among First Nations people is about 3 times higher than the general population<sup>5</sup> and First Nations population as a proportion of the population increases with remoteness.<sup>6</sup>

1.1.3 Many previous reviews, including the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('**Disability Royal Commission**'), Final Report in September 2023,<sup>7</sup> the Committee's Capability and Culture Final Report in November 2023,<sup>8</sup> and the NDIA Review Final Report in December 2023<sup>9</sup> highlight the need to increase efforts to advance the rights of people with disability in 4Rs areas, including rights relating to access to, and full equitable benefit from, the NDIS.

1.1.4 These reports are on the back of previous inquiries which have highlighted shortfalls in rural health to the tune of billions,<sup>10</sup> and major issues to be addressed for full NDIS implementation in the 4Rs especially related to thin markets, insufficient workforce including allied health, and systemic

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<sup>4</sup> See the summary by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report, Volume 3: Nature and extent of violence, abuse, neglect and exploitation](#), 42-43 details from the Australian Bureau of Statistics, (27 July 2022), [Understanding disability statistics in the Census and the Survey of Disability, Ageing and Carers](#) ('SDAC') regarding exclusion of and details regarding exclusion of the following from SDAC: Very remote areas of Australia: Discrete Aboriginal and Torres Strait Islander communities; Gaols or correctional institutions; Other non-private dwellings such as hotels and motels, hostels, boarding houses or other long-term accommodation.

<sup>5</sup> Summary by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report, Volume 3: Nature and extent of violence, abuse, neglect and exploitation](#) 43-46.

<sup>6</sup> Australian Institute of Health and Welfare, [Profile of First Nations People](#), released 7 Sept 2023.

<sup>7</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Royal Commission Final Report](#), published 29 September 2023 ('**Disability Royal Commission Final Report**').

<sup>8</sup> Joint Standing Committee into the NDIS, [Capability and Culture of the NDIA Final Report](#), November 2023 ('**NDIA Capability and Culture Final Report**').

<sup>9</sup> NDIS Review, [Working together to deliver the NDIS, Independent Review into the National Disability Insurance Scheme Final Report](#) 3 December 2023. ('**NDIS Review 2023**')

<sup>10</sup> Nous Group, [Evidence base for additional investment in rural health in Australia National Rural Health Alliance](#) 23 June 2023 commissioned by the Rural Health Alliance. Also see: National Rural Health Alliance, [Rural health in Australia Snapshot 2023](#), 5, National Rural Health Alliance, '[Disability and access to the NDIS in rural Australia Fact Sheet](#)', February 2023. National Rural Health Alliance [Aged care access in rural Australia Fact Sheet](#), February 2023.



factors including NDIA and service system knowledge and cultural safety for First Nations peoples.<sup>11</sup>

## 1.2 Lived experience

1.2.1 Lived experience is an essential framework to centre accountability to people with disability in accordance with the social model of disability, First Nations cultural models of disability and applying a rights-based approach. A rights-based approach involves protecting, respecting and fulfilling the human rights of people with disability.<sup>12</sup>

1.2.2 The lived experiences of many people with disability in 4Rs areas and of carers, families and communities have continued to be expressed through many processes including the three major reviews which reported between September and December 2023.<sup>13</sup> Some are included at **Attachment 1: Lived experience case studies.**

1.2.3 These lived experience case studies, and many others, indicate:

- the kinds of experiences, issues and blockages impacting people with disability in the 4Rs,
- the interconnected and complex nature of many of the problem areas, and

why access to independent advocacy and legal assistance are priorities for Indigenous and non-Indigenous people with disability in the 4Rs.

## 1.3 Closing the Gap and sector strengthening

1.3.1 The First Peoples Disability Network has highlighted how First Nations people with disability are impacted by dramatically inadequate progress towards targets in the National Agreement for Closing the Gap expressing that:

First Peoples with disability and their families have been and continue to be amongst the most seriously disadvantaged and disempowered members of the Australian community.<sup>14</sup>

1.3.2 The FPDN emphasises the importance of driving better outcomes for First Nations people with disability through Closing the Gap priority reforms namely:<sup>15</sup>

- Priority Reform 1 Formal Partnerships and Shared Decision Making
- Priority Reform 2 Building the Community-Controlled Sector
- Priority Reform 3 Transforming Government Organisations
- Priority Reform 4 Shared Access to Data and Information at a Regional Level

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<sup>11</sup> For example: NDIA Capability and Culture Final Report (n 8); NDIS Review 2023 (n 9). Also see Darwin Community Legal Service, [Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#), 31 December 2022 ('**DCLS Disability Royal Commission submission December 2022**')

<sup>12</sup> Approaches confirmed by [Australia's Disability Strategy 2021-2031](#) (Australian Government Disability Gateway) ('**Australia's Disability Strategy**')

<sup>13</sup> Disability Royal Commission report (n 7) was published on 29 September 2023, the NDIA Capability and Culture Final Report (n 8) was tabled on 21 November 2023 and the NDIS Review (n 9) reported on 3 December 2023.

<sup>14</sup> FPDN, [Submission by the First Peoples Disability Network to the Productivity Commission Review of the Closing the Gap National Agreement](#), 13 November 2023.

<sup>15</sup> Ibid 19-22.

1.3.3 Further, in line with findings by the current committee in previous inquiries the FPDN has expressed how remote geographic location can be an intersectional factor:

Intersectionality is where two or more areas of marginalisation combine to create a “double disadvantage.” Intersectionality can include race, remote geographical location, disability, LGBTQIA+ status, and other factors.<sup>16</sup>

1.3.4 This is also acknowledged in the September 2023 *NDIS Costs, benefits and frameworks* report by Taylor Fry commissioned by the Independent NDIS Review.<sup>17</sup> The Taylor Fry Report referred to *intersectionality* as follows (especially see dot point 3):<sup>18</sup>

Intersectionality and outcomes monitoring

There is an ongoing need to ensure the funding and benefits of the Scheme are equitably distributed across different cohorts across Australia:

- First Nations people have challenges in both accessing the Scheme and accessing culturally appropriate services once in the Scheme (for example see Deloitte, 2023, for the Disability Royal Commission) [<sup>19</sup>]
- People from culturally and linguistically Diverse (CALD) backgrounds have specific challenges in accessing and using the scheme, including issues of communication, workforce capacity and cultural awareness. [<sup>20</sup>]
- Issues of thin (or non-existent) markets can affect access to services in regional and remote communities. This can be evidenced by lower utilisation of plans (Miller and Frank, 2021). [<sup>21</sup>]

1.3.5 This submission endorses the *Closing the Gap Disability Sector Strengthening Plan* (Disability SSP)<sup>22</sup> which relates to Priority Two of Closing the Gap and is one of four priority sectors for strengthening.<sup>23</sup> The others, which are also centrally relevant to First Nations people with disability in the 4Rs are: early childhood care and development;<sup>24</sup> housing;<sup>25</sup> and health.<sup>26</sup>

Priority Two of Closing the Gap has the following outcome and target:

Outcome: Building the community-controlled sector: There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country.

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<sup>16</sup> Ibid 16.

<sup>17</sup> Taylor Fry, [NDIS Review – Costs, benefits and frameworks Final report](#), 20 Sept 2023 (‘Taylor Fry 2023’).

<sup>18</sup> Ibid 140 references from the original included in [brackets].

<sup>19</sup> Deloitte, [Research report – Options to improve service availability and accessibility for First Nations people with disability](#), June 2023.

<sup>20</sup> ‘See for instance, the Discover Summary at <https://www.ndis.gov.au/about-us/strategies/cultural-and-linguistic-diversity-strategy>.

<sup>21</sup> Hugh Miller and Darryl Frank, ‘[Review of NDIA actuarial forecast model and drivers of Scheme costs Full report](#)’ 25 November 2021 (‘Taylor Fry 2021’)

<sup>22</sup> Closing the Gap [Disability Sector Strengthening Plan](#) (web site).

<sup>23</sup> Closing the Gap [Priority Reforms](#) (web site).

<sup>24</sup> Closing the Gap [Early Childhood Care and Development Sector Strengthening Plan agreed in principle by the Joint Council on Closing the Gap, 3 Dec 2021](#).

<sup>25</sup> Closing the Gap [Housing Sector Strengthening Plan, Joint Council on Closing the Gap approved 26 Aug 2022](#).

<sup>26</sup> Closing the Gap [Health Sector Strengthening Plan, Joint Council agreed in principle on 3 Dec 2021](#).

Target: Increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations.

The Disability SSP contains 10 Guiding Principles which are minimum standards:

‘for all existing and future work with First Nations Peoples with disability and further developing jurisdiction led sector strengthening actions in Implementation Plans.’<sup>27</sup>

These are:

- Principle One Human rights
- Principle Two Self-determination
- Principle Three Cultural integrity
- Principle Four Cultural safety
- Principle Five Partnership
- Principle Six Place based
- Principle Seven Innovation
- Principle Eight Empowerment
- Principle Nine Equity
- Principle Ten Sustainability
- Principle Eleven Knowledge
- Principle Twelve Nationally consistent approaches

## 1.4 Legal protection

*‘There are people with disabilities who are currently facing significant, substantial and grave human rights violations and we must... afford them with legal protection to ensure that they can bring forward actions against those who violate their human rights’*

Natalie Wade <sup>28</sup>

1.4.1 The Disability Royal Commission recommended review of national agreements, strategies and plans that affect people with disability to consider:

- The alignment with Australia’s Disability Strategy 2021-2031
- How funding allocations should recognise the needs and rights of people with disability
- The inclusion of specific outcome measures related to people with disability
- The development of specific action plans relating to people with disability <sup>29</sup>

1.4.2 The National Agreements to be reviewed included Closing the Gap, Housing and Homelessness, Health Reform, Mental Health and Suicide Prevention, Skills and Workforce Development and those relating to children and young people, National Legal Assistance Partnership, health services and family and sexual violence such as the National Plan to End violence against Women and Children 2022-2032 (**‘National Plan 2022-2032’**). <sup>30</sup>

1.4.3 Australia’s Disability Strategy has seven interrelated and connected Outcome Areas including ‘Safety, Rights and Justice’ the outcome for which is that ‘The rights of people with disability are promoted, upheld and protected, and people with disability feel safe and enjoy equality before the law’. <sup>31</sup>The policy priorities for this Outcome are:

1. People with disability are safe and feel safe from violence, abuse, neglect and exploitation.

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<sup>27</sup> Closing the Gap, [Disability Sector Strengthening Plan](#), Guiding Principles are at 4.5.1.

<sup>28</sup> Quoted by the Disability Royal Commission Royal Commission into Violence, Abuse Neglect and Exploitation of People with Disability [Final Report Vol 1: Final Report - Executive Summary, Our vision for an Inclusive Australia and Recommendations](#), (**‘Disability Royal Commission Final Report Vol 1’**) 2.

<sup>29</sup> Ibid Recommendation 5.4 at 210.

<sup>30</sup> Department of Social Services, [National Plan to End violence against Women and Children 2022-2032](#).

<sup>31</sup> Australia’s Disability Strategy (n 12) 14.

2. Policies, processes and programs provide better responses to people with disability who have experienced trauma.
3. Policies, processes and programs for people with disability promote gender equality and prevent violence against groups at heightened risk, including women and their children.
4. The rights of people with disability are promoted, upheld and protected.
5. People with disability have equal access to justice.
6. The criminal justice system responds effectively to the complex needs and vulnerabilities of people with disability.<sup>32</sup>

1.4.4 The National Agreements, strategies and plans referred to above are also interrelated and interconnected and Closing the Gap applies generally and all point to areas in which legal protection and the need for access to legal support and legal assistance arise.

1.4.5 First Nations strategies and plans, including the Aboriginal and Torres Strait Islander Action Plan 2023-2025,<sup>33</sup> which sits with the National Plan 2022-2032, and the First Nations National Plan for Family Safety which is currently being developed,<sup>34</sup> also highlight the many areas in which legal protection, and access to legal supports and services for legal protection, is relevant.

1.4.6 Barriers to legal protection for people with disability is undermining of commitments, plans, priorities and intended outcomes. Taking one example, current levels of access by First Nations people with disability in the 4Rs at risk of family or domestic violence or sexual abuse is grossly insufficient. This is also one of the 'litmus test' issues for implementation of the NDIS in 4Rs areas because failure to address access to legal protections for people with disability contributes to limitations in NDIS access, plan utilization, continuity of care and supports, and short-, medium- and long-term benefits. Failure to address access to legal protections causes and worsens some disabilities and increases demands families, carers and a wide range of services.

*Recommendation 1: Legal protection is a 'litmus test' issue for NDIS implementation*

**People with disability in 4Rs areas must have access to legal protection when required to ensure their rights, safety and wellbeing. One example is that current levels of access to assistance for legal protection by First Nations people with disability in the 4Rs at risk of family or domestic violence or sexual abuse is grossly insufficient.**

**This is, and should be treated as, a 'litmus test' issue for NDIS implementation in 4Rs areas because insufficient legal protection for people with disability impacts all stages of the NDIS pathway and NDIS objectives.**

*Recommendation 2: Planning and resources for access to legal protection in 4Rs*

**The federal Government should address access to legal protections to ensure the rights, safety, wellbeing and inclusion of people with disability in the 4Rs and focus on high needs including safety from family, domestic and sexual violence.**

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<sup>32</sup> Ibid 14-18.

<sup>33</sup> Department of Social Services, [Aboriginal and Torres Strait Islander Action Plan 2023–2025 Under the National Plan to End Violence against Women and Children 2022–2032](#)

<sup>34</sup> NIAA, [Stand Alone First Nations National Plan](#); Minister Burney, [Expert First Nations Steering Committee to advise reducing rates of family violence and abuse](#) Media Release, 24 January 2024.

## 2. HUMAN RIGHTS AND SYSTEMS FAILURES FOR PEOPLE WITH DISABILITY IN 4RS

2.1 Multiple systems are failing people with disability in 4Rs Australia including health, housing, social security, employment, access to legal assistance. All of these connect with social determinants of health<sup>35</sup> and impact individually and combined wellbeing.

2.2 There is still insufficient accountability to people with disability, and other vulnerable people, in the 4Rs and 4Rs location is often used as an excuse.

2.3 The proposed new federal Disability Rights Act may help with geographical discrimination against people with disability in the 4Rs, but the prospects would increase if the new Act highlighted that rights do not diminish with distance from capital cities and metro areas. The same applies to all federal, state and territory human rights, anti-discrimination / equal opportunity legislation which is typically silent on the issue of 4Rs geographic location. This silence fails to challenge myths that the human rights and legal rights of people with disability, and others who are vulnerable in 4Rs Australia, attenuate with distance from the metro.

2.4 While intersectionality is now well developed in relation to the human rights of people with disability, and while the 'rural' (meaning non-metro location) is increasingly included as an intersectional factor<sup>36</sup> - 'rurality' does not have a similar level of legal normative development as non-discrimination on other intersectional grounds such as gender, race, disability, age and sexual orientation. It is noteworthy that there is no international Convention or Declaration relating to the rights of people in rural areas as a group for visible inclusion in rights regimes. In Australia, this appears to contribute to the 'rural' or 'non-metro' being used to derail the human and legal rights of people with disability, and other vulnerable groups, in these areas.

2.5 The [Convention on the Rights of Persons with Disability](#) ('CRPD') refers to 'rural' in Articles 9 ('both in urban and in rural areas'), 25 and 26 ('including in rural areas').<sup>37</sup> Arguably:

- *inclusion in the CRPD* is a strong reason for inclusion in the proposed new Act, and
- *insufficient inclusion in the CRPD* is also a strong reason –because insufficient inclusion has a diluting effect<sup>38</sup> which should be addressed (and not repeated) in the proposed new Act.

<sup>35</sup> World Health Organization, Commission on Social Determinants of Health, [Closing the gap in a generation: health equity through action on the social determinants of health, Final Report of the Commission](#), 27 August 2008 (WHO, Geneva); World Health Organization, [World Health Topics, Social determinants of health](#) (WHO, Geneva); Australian Institute of Health and Welfare 'Social determinants of health' (AIHW, 2022)

<sup>36</sup> Committee on the Rights of Persons with Disabilities, [General comment No. 6 on equality and non-discrimination](#), 19th sess, UN Doc CRPD/C/GC/6, (6 April 2018), para [19]; Royal Commission into Violence, Abuse Neglect and Exploitation of People with Disability, [Final Report Vol 4 Realising the Human Rights of People with Disability](#), September 2023, especially 54-56 and [Final Report Vol 1: Final Report - Executive Summary, Our vision for an Inclusive Australia and Recommendations; First Person's Disability Network submission to the Productivity Commission Review of the Closing the Gap National Agreement](#), 13 November 2023; Taylor Fry 2023 (n 17) 140

<sup>37</sup> [Convention on the Rights of Persons with Disabilities](#), opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

<sup>38</sup> The concept of a 'diluting effect' has been developed by Dr Scott Avery in analysing the effect of only one reference to Indigenous people in the CRPD which is in the Preamble. See: Scott Avery, 'Intersections in Human Rights and Public Policy for Indigenous People with Disability' Chapter 11 in Franziska Felder, Laura Davy,

2.6 The Royal Commission noted the insufficiency of CRPD in relation to First Nations people and recommended that the objects of the new Act should be to respect, protect and fulfil all the rights in the CRPD and the rights of 'First Nations people with disability not specifically articulated in the CRPD'.<sup>39</sup>

2.7 Also to note that:

- the Declaration on the Rights of Indigenous Peoples<sup>40</sup> ('**DRIP**') does not refer to the 'rural' (or similar), and
- among the core human rights treaties other than CRPD, only CEDAW refers to 'rural, but only in only in Article 10 and 14 ('rural as well as in urban areas') and 14 ('rural woman' 'women in rural areas' 'equality of men and women, that they participate in and benefit from rural development'.

2.8 This adds to reasons to specifically include 'rural' (or approved term) it in the new Act.

*Recommendation 3: new Disability Rights Act and 4Rs location*

**The rights of people with disability in regional, rural, remote and very remote areas should be made visible included in the proposed federal Disability Rights Act.**

*Recommendation 4: reference to Australian Human Rights Commission about human rights in the 4Rs*

**The Attorney-General should ensure that the Australian Human Rights Commission receives a reference to undertake a holistic national inquiry into human rights in 4Rs Australia focusing on people with disability and all other vulnerable groups with a view to evaluating how Australia's human rights frameworks are responding to the 4Rs and whether legislation should be amended to make the rights of people in 4Rs more visible.**

## 3. ADVOCACY AND LEGAL ASSISTANCE FOR PEOPLE WITH DISABILITY IN THE 4Rs

3.1 Advocacy of many kinds, by, with and for people with disability is required for people with disability in 4Rs areas to exercise their rights of self-determination and lead the improvements and reforms required. Disability advocacy is described as follows by the National Disability Advocacy Framework 2023 – 2025<sup>41</sup> under Australia's Disability Strategy 2021-2031:<sup>42</sup>

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Rosemary Kayess (eds), *Disability Law and Human Rights: Theory and Policy* (Palgrave Macmillan 2022) 221–38. This analysis was discussed with approval by the Disability Royal Commission [First Nations people with disability, Final Report 9](#), September 2023 24-25.

<sup>39</sup> Disability Royal Commission Final Report Vol 1 (n 29) 57

<sup>40</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).

<sup>41</sup> [National Disability Advocacy Framework 2023-2025](#), 3 which also highlights that this is not a complete list of advocacy types that may be available in each jurisdiction ('**National Disability Advocacy Framework**')

<sup>42</sup> [Australia's Disability Strategy](#) (n 12).

Disability advocacy enables people with disability to participate in the decision-making processes that safeguard and advance their human rights.

- **Individual advocacy** is a one-on-one approach, undertaken by a professional advocate, relative, friend or volunteer, to prevent or address instances of unfair treatment or abuse.
- **Systemic advocacy** involves working for long-term social change to ensure the collective rights and interests of people with disability are served through legislation, policies and practices.
- **Self advocacy** is undertaken by someone with disability who speaks up and represents themselves. Support and training for self advocacy is available through community-based groups.
- **Legal advocacy** upholds the rights and interests of individual people with disability by addressing the legal aspects of discrimination, abuse and neglect.

3.2 These forms of advocacy are familiar to virtually all client service roles in 4Rs community-based legal services (lawyer and other roles) however the needs for people with disability, and other clients, vastly exceeds resources.

3.3 The National Disability Advocacy Framework 2023-2025 provides that:

All people with disability, including those experiencing multiple disadvantage, are supported to have effective interactions and access to disability supports and services and/or mainstream services and facilities including supportive, flexible and timely access to justice and legal advocacy.<sup>43</sup>

3.4 'Independent advocate' is defined in s.9 of the NDIS Act:

***independent advocate***, in relation to a person with disability, means a person who:

- (a) is independent of the Agency, the Commission and any NDIS providers providing supports or services to the person with disability; and
- (b) provides independent advocacy for the person with disability, to assist the person with disability to exercise choice and control and to have their voice heard in matters that affect them; and
- (c) acts at the direction of the person with disability, reflecting the person with disability's expressed wishes, will, preferences and rights; and
- (d) is free of relevant conflicts of interest.

3.5 Additionally the Guiding principle in s4(13) of the Act, expresses that the role of advocacy is to be acknowledged and respected:

- (13) The role of advocacy in representing the interests of people with disability is to be acknowledged and respected, recognising that advocacy supports people with disability by:
  - (a) promoting their independence and social and economic participation; and
  - (b) promoting choice and control in the pursuit of their goals and the planning and delivery of their supports; and
  - (c) maximising independent lifestyles of people with disability and their full inclusion in the community.

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<sup>43</sup> National Disability Advocacy Framework (n 41) 6.



### 3.6 The NDIS Review found that:

Individual disability advocacy plays a critical role in promoting, protecting and defending the human rights of people with disability. We have heard there is approximately twice as much demand for advocacy in comparison to supply. This means advocacy organisations are unable to meet the support needs of all people with disability.<sup>44</sup>

3.7 While the NDIS Review discussed many issues to be addressed relating to the NDIS in 4Rs areas, the recommendations relating to independent advocacy did not *emphasise* inclusion of the 4Rs despite there being very high unmet needs for independent advocacy. That is the NDIS Review recommended:

**Action 1.5 National Cabinet should agree to jointly invest in achieving nationally consistent access to individual disability advocacy services.**

To ensure people with disability have access to effective individual advocacy support there should be better coordination of funding and activities across the Commonwealth National Disability Advocacy Program, and state and territory advocacy programs. Funding increases should have regards to the findings from the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and the National Disability Advocacy Framework and Disability Advocacy Work plan.<sup>45</sup>

**Action 1.6 All Australian governments should fund systemic advocacy of LGBTIQ+SB people with disability to strengthen representation at all levels.**

This requires a commitment to funding under the Department of Social Services Disability Representative Organisation Program. Currently there are no Disability Representative Organisations in this area....<sup>46</sup>

3.8 Further, the NDIS Review did not directly discuss the National Disability Advocacy Program ('NDAP')<sup>47</sup> and the NDIS Appeals Program ('Appeals Program')<sup>48</sup> which are administered by the Department of Social Services. Neither of these programs is sufficiently funded or sufficiently inclusive to deliver required levels of support and assistance to people with disability in 4Rs areas.

3.9 In relation to being insufficiently these programs are currently not inclusive of Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services or many other community-based legal services in 4Rs areas despite most of these services have long standing presence and are trusted services in their 4Rs communities and regions.

3.10 The NDAP is funded to:

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<sup>44</sup> NDIS Review 2023 (n 9) 57.

<sup>45</sup> Ibid 61.

<sup>46</sup> Ibid 62.

<sup>47</sup> Department of Social Services, [National Disability Advocacy Program](#) (DSS web site).

<sup>48</sup> Department of Social Services, [NDIS Appeals Program](#) (DSS web site).



...provide people with disability access to effective advocacy support. This support works to promote and protect the rights of people with disability by helping to remove barriers to their full and equal participation in the community.

NDAP is for people with disability who are facing complex challenges. The program provides support in situations where people with disability feel unable to act, speak or write about a difficult situation on their own, or do not have the support required to resolve an issue....

An advocate can provide information, help an individual explore their options and work through issues, and make informed decisions. Through NDAP, an advocate can assist individuals to:

- Understand and exercise their rights
- Self-advocate, wherever possible
- Identify and address situations of violence, abuse, neglect or exploitation
- Make a complaint
- Understand and/or access the NDIS, Centrelink and other government services
- Find and use community services, including legal services
- Request extra support (such as reasonable adjustments) at school or work.

### 3.11 The Appeals Program is funded to:

...[help] people with disability, and other people affected by reviewable decisions .. of the National Disability Insurance Agency (NDIA). The NDIS Appeals Program helps people access support when seeking a decision review through the Administrative Appeals Tribunal (AAT)...

To access the NDIS Appeals Program, an individual must have already applied to the NDIA for an internal review and received an outcome.

There are 2 types of supports available under the ongoing NDIS Appeals Program for people appealing internal NDIA decisions before the AAT:

- Access to a skilled disability advocate who acts as a support person.
- Access to funding for legal services, where there is wider community benefit and/or disadvantage that would substantially benefit from legal representation.

Support persons are also National Disability Advocacy Program (NDAP) disability advocates. They are available in every state and territory.

An NDIS Appeals Program advocate can help by:

- Explaining the review process, including what is involved in appealing to the AAT.
- Helping to prepare documents.
- Providing skills so that individuals can better represent themselves.
- Attending AAT conferences and hearings to help individuals put their case to the AAT.

While the focus of the NDIS Appeals Program is advocacy support, individuals may also be able to access legal services through the Legal Aid Commission in their state or territory....

3.12 The NDAP has no ATSILS or FVPLS funding recipients and few other 4Rs community-based legal service funding recipients.<sup>49</sup> There is also vastly insufficient funding for 4Rs coverage by city-based community legal services receiving funding and the costs and effects of attempting 4Rs coverage in this way would be counterproductive.

3.13 Similarly there has been no funding under the NDIS Appeals Program to ATSILS or FVPLS or to most other community-based non-profit legal services in 4Rs Australia.<sup>50</sup> While some community-based legal services in the 4Rs may not nominate to provide NDIS Appeals Program assistance, the current funding patterns do not correspond with the needs of people with disability in 4Rs areas and they are not aligned with Closing the Gap priorities.

3.14 These patterns are contributing to insufficient access to non-legal advocacy support and legal assistance for people with disability, and carers, relating to the NDIS in 4Rs areas. The patterns risk continuing a two-tiered system where there is more advocacy and legal assistance for people with disability relating to the NDIS in metro areas and more opportunity for people in metro areas to influence directions in relation to rules, procedures and reforms without sufficient inclusion of 4Rs.

3.15 This submission calls for a new model of *needs-based* access to independent advocacy and NDIS review and appeals legal assistance for people with disability in 4Rs areas. This requires a funding model which is focused on the needs of people with disability in 4Rs areas, effective access to advocacy assistance and realistic funding, responsive to actual costs. People with disability should have choice and arrangements should implement Closing the Gap priorities.

3.16 We note, and support, estimates by the Disability Advocacy Network Australia that funding required to increase in independent advocacy totals up to a substantial figure. We think that DANA's call for a \$91,225 million increase in funding for independent advocacy, with \$20 million as a funding boost for independent disability advocates facing operating costs in rural, remote and very remote areas, is a good next step for 2024-5.<sup>51</sup> The adequacy of this figure should also be monitored as to whether it is sufficient to achieve needs-based access for people with disability in 4Rs areas.

3.17 NDIS Appeals advocacy and legal assistance funding should also be increased to specially achieve needs-based access for people with disability in 4Rs areas.

3.18 ATSILS, FVPLS and other community-based nonprofit legal services which provide assistance in or to communities in the 4Rs should be actively facilitated if they wish to apply for funding to provide assistance under the NDAP and/or under the Appeals Program.

*Recommendation 5: Increase access to independent advocacy, appeals advocacy and appeals legal assistance in the 4Rs*

**The Commonwealth increase funding for access to independent advocacy as detailed by the Disability Advocacy Network Australia (\$91,225 million increase with \$20 million as a funding boost for independent disability advocates facing higher operating costs in rural, remote and very remote areas, as a good next step for 2024-5.**

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<sup>49</sup> Funding recipients are listed on the DSS website for these programs.

<sup>50</sup> Ibid.

<sup>51</sup> Disability Advocacy Network Australia, [DANA Federal 2024-5 Pre-Budget Submission: A strong, sustainable future: addressing capacity shortfalls for a strengthened disability advocacy sector](#), November 2023; DANA [submission to the current inquiry](#) dated 5 March 2024; Darwin Community Legal Service submission 43 to the current inquiry, 22 February 2024

The adequacy of this figure should also be monitored as to whether it is sufficient to achieve needs-based access for people with disability in 4Rs areas.

NDIS Appeals funding (appeals advocacy and legal assistance) should specifically be increased to achieve needs-based access in the 4Rs.

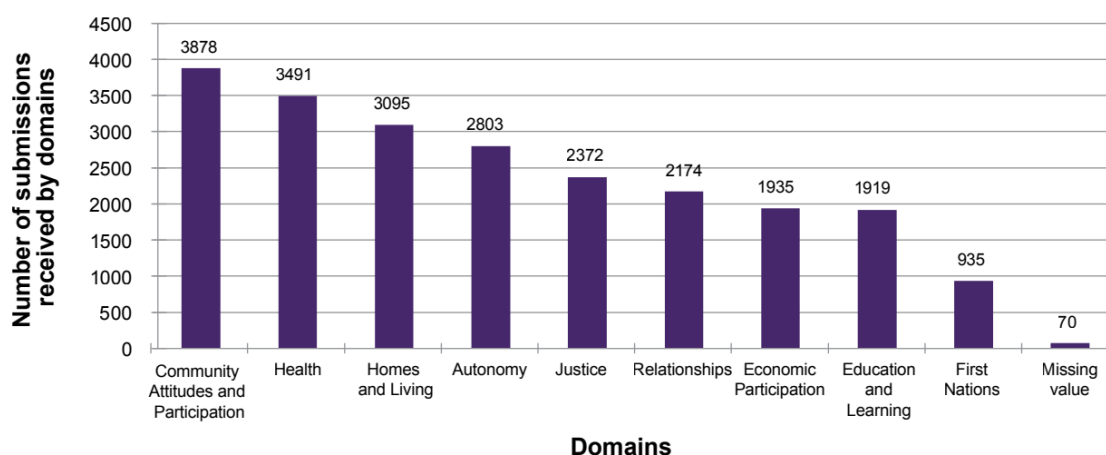
ATSILS, FVPLS and other community-based nonprofit legal services which provide assistance in or to communities in the 4Rs should be actively facilitated if they wish to apply for funding to provide assistance under the NDAP and/or under the Appeals Program.

## 4. OTHER ISSUES

### 4.1 Justice system and NDIS in the 4Rs

4.1.1 The Disability Royal Commission received 7,944 submissions of which 2372 were recorded as covering the domain of 'justice' (graphic below):<sup>52</sup>

Figure 2.4 shows the main domains covered by submissions. In summary, most related to either Community attitudes and participation (3,878) or Health (3,491), followed by Homes and living (3,095). Other domains included Autonomy (2,803), Justice (2,372), Relationships (2,174), Economic Participation (1,935), Education and learning (1,919), and First Nations (935).



4.1.2 However, focusing on criminal and civil dimensions, and recognising how advocacy and legal assistance can contribute, most if not all submissions to the Royal Commission resonated with multiple legal, rights, justice and access to justice issues.

4.1.3 The CRPD and other human rights instruments, including DRIP, outline rights and outcomes required. This necessitates full access to and effectiveness of criminal and civil justice system operations.

<sup>52</sup> Disability Royal Commission, [About the Royal Commission, Final Report Volume 2](#).

4.1.4 Australia's Disability Strategy outlines a vision for a more inclusive and accessible Australian society where all people with disability can fulfil their potential as equal members of the community. Its purpose is to:

- provide national leadership towards greater inclusion of people with disability
- guide activity across all areas of public policy to be inclusive and responsive to people with disability
- drive mainstream services and systems to improve outcomes for people with disability
- engage, inform and involve the whole community in achieving a more inclusive society.<sup>53</sup>

Policy Priority 5 of the Strategy relates to people with disability and access to justice and 6 relates to people with disability and criminal justice.<sup>54</sup>

#### **Policy Priority 5:**

##### **People with disability have equal access to justice**

Effective access to justice for people with disability requires consideration of individual needs. Without this there can be no equitable or equal participation. This requires appropriate strategies, including aids, equipment, and accessible legal information and advice to facilitate equal and effective participation in all legal proceedings. In addition, greater awareness of disability is needed among some parts of the judiciary, legal professionals and court staff.

"Interactions between the mental health and justice systems are important. People with mental illness are over-represented in the criminal justice system and as victims of crime. They are also more likely to find themselves dealing with legal issues than the general population." (Productivity Commission 2020) [<sup>55</sup>]

"Without appropriate adjustments and support, the legal system is largely inaccessible for many people with disability. This can produce unjust outcomes." (Law Council of Australia 2018) [<sup>56</sup>]

"People with disability engaging in the justice system face significant barriers, with many finding access to justice difficult, hostile and ineffectual. As a result, they are often left without legal redress." (Australian Civil Society 2019) [<sup>57</sup>]

#### **Policy Priority 6:**

##### **The criminal justice system responds effectively to the complex needs and vulnerabilities of people with disability**

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<sup>53</sup> [Australia's Disability Strategy](#) (n 12)

<sup>54</sup> Quoted passages below have updated footnotes in [brackets]

<sup>55</sup> Productivity Commission, [Mental Health Inquiry Report](#), 30 June 2020, vol 3, 9

<sup>56</sup> Law Council of Australia, ['Part 1: People with Disability'](#) in The Justice Project Final Report, August 2018, last accessed 25 February 2024 ('**LCA People with Disability**')

<sup>57</sup> Australian Civil Society, [Australian Civil Society Shadow Report to the United Nations Committee on the Rights of Persons with Disabilities: UN CRPD Review 2019. In response to the List of issues prior to the submission of the combined second and third periodic reports of Australia](#) [CRPD/C/AUS/QPR/2-3] (2019) *Disability rights now*, 24-25

People with disability who have complex needs, multiple impairments and/or multiple and intersecting forms of disadvantage, face even greater obstacles within the justice system compared to other people with disability and people without disability. People with disability in the criminal justice system are at a heightened risk of violence, abuse, neglect and exploitation. Reducing the over-representation of people with disability across the criminal justice systems of Australia and other systems of detention requires appropriate strategies, including adoption of diversionary approaches and transition to community supports.

“[P]eople with intellectual disability are understood to be over-represented in prisons. [S]everal studies have found that 25%–30% of people in prison have borderline intellectual disability, and 10% have a mild intellectual disability. Almost 1 in 3 (29%) prison entrants reported a chronic health condition that affected their participation in everyday activities (21%), education (11%), or employment (16%).” (Australian Institute of Health and Welfare 2019) <sup>[58]</sup>

“Aboriginal and Torres Strait Islander women with disability are at an even greater risk of experiencing violence and of being involved in violence and imprisoned, as they face intersecting forms of discrimination because of their gender, disability, and ethnicity.” (Law Council of Australia 2018) <sup>[59]</sup>

“Justice Project stakeholders have also underscored the strong correlation between disability and heightened interaction with the criminal justice system, as well as raised serious concerns about the imprisonment and indefinite detention of people with disability.” (Law Council of Australia 2018) <sup>[60]</sup>

“These assessments [intellectual disability, language and literacy] demonstrate that the level of disability and its impact on young people is significantly higher than indicated by self-report, suggesting that young people in custody are significantly under-reporting the level and impact of their disability. Young people in the juvenile justice system are at risk of not receiving the educational and disability support they require if they are not able to self-report their disability support needs.” (Justice Health & Forensic Mental Health Network and Juvenile Justice NSW 2015) <sup>[61]</sup>

“Assessment for disability in prison is patchy and not consistently measured. The Commission heard that even if a person’s disability is identified or known, appropriate support, medication and services are frequently not provided in prison or there is limited follow-up.” (Australian Human Rights Commission 2014) <sup>[62]</sup>

4.1.5 There are major issues regarding the rights of remandees, detainees and prisoners in relation access to the NDIS and supports in custodial institutions. This includes people held in custodial institutions in 4Rs locations and people from 4Rs areas held in metro custodial institutions. There are multiple adverse effects and Aboriginal people with disability, Aboriginal carers, families and communities are disproportionately impacted.

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<sup>58</sup> AIHW, The health of Australia’s prisoners 2018, AIHW, (2019 Australian Government). Most recent update AIHW, ‘Health of people in prison’ released 7 July 2022

<sup>59</sup> LCA People with Disability (n 56) 57

<sup>60</sup> Ibid 18

<sup>61</sup> Justice Health & Forensic Mental Health Network, and Juvenile Justice NSW (2017) [2015 Young People in Custody Health Survey: Full Report](#), 39

<sup>62</sup> Australian Human Rights Commission (2014) [Equal Before the Law: Towards Disability Justice Strategies](#), 29

*Recommendation 6: NDIS and 4Rs remandees, detainees and prisoners*

**High priority should be accorded to overcome barriers to NDIS access and supports for young people and adults in and from regional, rural, remote and very remote locations in custodial institutions with special attention to addressing barriers impacting on First Nations people.**

**Needs based funding of advocacy and legal support should be established aligned to optimum access and outcomes, especially resources for Aboriginal and Torres Strait Islander Legal Services including Family Violence Prevention Legal Services to provide a needs-based response.**

4.1.6 As highlighted by the 4Rs Network in previous submissions to federal bodies, the lack of a national 4Rs Access to Justice Plan is a major gap in terms of hopes of addressing the many lacks regarding the rights, inclusion and wellbeing of vulnerable groups, including people with disability, in the 4Rs. The issues involve multiple stakeholders and involve funding levels, the need for 4Rs legal workforce planning, equity and incentives (which are absent) and systems issues.

4.1.7 Further federal portfolio capacity is currently insufficient to identify and respond to legal needs in the 4Rs including the needs of people with disability and legal needs relating to the NDIS.

*Recommendation 7: 4Rs Access to Justice Plan and people with disability*

**Regarding the full range of civil and criminal legal and advocacy needs of people with disability in regional, rural, remote and very remote areas, and the needs of all vulnerable people in the 4Rs – the federal government facilitate establishment of a National 4Rs Access to Justice Plan via participatory and inclusive processes involving 4Rs community based legal services, their clients and their communities of interest and all stakeholders.**

*Recommendation 8: Increase federal portfolio area capacity to identify and respond to 4Rs legal needs*

**Federal Attorney-General's Department undertake a parallel 2-year project to develop and promote resources and tools to assist all relevant federal portfolio areas to develop their capacity to identify and contribute to the development of responses to 4Rs legal needs in their areas of responsibility. This to include emphasis on all areas of need, including:**

- Domestic, family and sexual violence
- Safety and wellbeing of children, older people and all community members
- Housing and homelessness
- Health
- Social security, family assistance and veterans' entitlements
- Families including separation issues, child support and intergenerational
- Employment
- Credit and debt
- Consumer
- Migration and refugee
- National Disability Insurance Scheme, and
- Disaster recovery

**and responding to the needs of Aboriginal and Torres Strait Islander people, families, young people, older people and seniors, people with disability, CALD communities and all priority groups.**

## 4.2 People with disability and gross underfunding of 4Rs community-based legal services

4.2.1 Many of the underlying issues for people with disability in the 4Rs are highly resonant with areas of underfunding, and in total grossly insufficient funding of Aboriginal and Torres Strait Islander Legal Services, Family Violence Prevention Legal Services and Community Legal Services (collectively referred to as ‘**community-based legal services**’) as well as Legal Aid Commissions, as raised by these sectors and others in the NLAP Review.<sup>63</sup>

4.2.2 While people with disability are highly represented among those in the 4Rs who benefit from assistance from these legal services, the levels of underfunding of these services in the 4Rs:

- Breach rights under Article 12 (Equal Recognition before the Law) and Article 13 (Access to Justice) of the CRPD and multiple other CRPD rights, and
- Is extremely harmful and highly misaligned with strategic commitments and intentions for people with disability and other vulnerable groups.
  - For example, non-profit community-based legal services in the 4Rs contribute to all intended ‘Outcome Areas’ of Australia’s Disability Strategy 2021-2031 but need specific adequate funding for a needs-based response to people with disability and other vulnerable groups.<sup>64</sup>

The seven Outcome Areas to achieve the Strategy’s vision are:

- Employment and Financial Security
- Inclusive Homes and Communities
- Safety, Rights and Justice
- Personal and Community Support
- Education and Learning
- Health and Wellbeing

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<sup>63</sup> For example: National Aboriginal and Torres Strait Islander Legal Services, [NATSILS submission to the Independent Review of the National Legal Assistance Partnership 2020-25](#), October 2023; National Family Violence Legal Service Forum, [NFVLP Forum Submission to the NLAP Review](#), November 2023; National 4Rs Community Legal Network, [4Rs Network submission to the NLAP Review](#), 27 October 2023; Community Legal Centres Australia, [CLCA submission to the NLAP Review](#), 27 October 2023; National Legal Aid, [Submission to the NLAP Review](#), October 2023; Law Council of Australia, [LCA submission to the National Legal Assistance Partnership Review](#), 27 October 2023; Economic Justice Australia, [EJA submission to the NLAP Review](#), 26 October 2023; [Consumer Action Law Centre submission dated 23 June 2023 to the NDIS Review](#); Community Law Western Australia [CLWA submission to the National Legal Assistance Partnership Review](#), October 2023; Aboriginal Family Legal Service Western Australia, [AFLS submission to the NLAP Review](#), October 2023; DCLS Disability Royal Commission submission December 2022 (n 12); [Far West Community Legal Service submission to the NLAP Review](#), 23 October 2023; [Central Tablelands and Blue Mountains Community Legal Centre submission to the NLAP Review](#), October 2023; Hume Riverina Community Legal Service, [Submission to the National Legal Assistance Partnership Review](#), 27 October 2023; Townsville Community Law, [TCL submission to the NLAP Review](#), October 2023; Darwin Community Legal Service, [DCLS submission to the NLAP Review](#), October 2023; Pilbara Community Legal Service, PCLS submission to the NLAP Review, October 2023; Launceston Community Legal Centre, LCLC submission to the NLAP Review, October 2023; Gippsland Community Legal Centre, GCLC submission to the NLAP Review, October 2023, First Nations Women’s Legal Service, submission to the NLAP Review October 2023.

<sup>64</sup> Ibid.



- Community Attitudes.

The Outcome Areas are interrelated and necessarily connected. For example:

- improved education and learning outcomes lead to better employment and financial security outcomes
- improved outcomes in safety, rights and justice leads to better health and wellbeing outcomes.<sup>65</sup>

4.1.3 The 4Rs Network called for immediate doubling of resources for non-profit community based legal services in or for 4Rs areas.<sup>66</sup> This is required to address multiple issues related to levels of under-resourcing. Further, the 4Rs Network, with many others, has called for implementation of needs-based funding which would further increase funding levels in addition to the immediate step of doubling current funding.

*Recommendation 9: Needs based funding for 4Rs community-based legal services*

**That funding for community-based legal services in or for 4Rs areas be immediately doubled to address the chronic insufficiency of current resources to provide services for people with disability and other vulnerable groups.**

**That needs-based funding be implemented to further increase funding levels in addition to the immediate step of doubling current funding.**

## 4.3 Unmet social security legal needs for people with disability in 4Rs areas

4.3.1 Social security advocacy and legal help are high needs area among people with disability in 4Rs areas however, due to the chronic insufficiency of funding for social security advocacy and legal help generally, and totally inadequate provision for access to this assistance in 4Rs area, many needs are not addressed. The positive effects of access to social security legal assistance are well established and can result in improvements in multiple areas of wellbeing.<sup>67</sup>

4.3.2 Most recently the needs for access to social security legal help in 4Rs areas have been pressed in numerous submissions to the National Legal Assistance Partnership Review, including:

- Community Legal Centres Australia<sup>68</sup>
- Community Legal Western Australia<sup>69</sup>
- Darwin Community Legal Service<sup>70</sup>
- Economic Justice Australia<sup>71</sup>
- National Aboriginal and Torres Strait Islander Legal Services<sup>72</sup>

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<sup>65</sup> Australia's Disability Strategy (n 12) 8.

<sup>66</sup> National 4Rs Community Legal Network, [4Rs Network submission to the NLAP Review](#), 27 October 2023

<sup>67</sup> See National Social Security Rights Network, [Specialist Social Security Community Legal Services in Australia Impact Report](#), October 2018.

<sup>68</sup> Community Legal Centres Australia, [CLCA submission to the NLAP Review](#), 27 October 2023.

<sup>69</sup> Community Legal WA, [CLWA submission to the NLAP Review](#), October 2023.

<sup>70</sup> Darwin Community Legal Service, [DCLS submission to the NLAP Review](#), October 2023.

<sup>71</sup> Economic Justice Australia, [EJA submission to the NLAP Review](#), 26 October 2023.

<sup>72</sup> National Aboriginal and Torres Strait Islander Legal Services, [NATSILS submission to the Independent Review of the National Legal Assistance Partnership 2020-25](#), October 2023.



- National Regional, Rural, Remote and Very Remote Community Legal Network,<sup>73</sup> and
- Townsville Community Law<sup>74</sup>

4.3.3 Article 28 of the Convention on the Rights of Persons with Disabilities relates to 'Adequate standard of living and social protection' and stipulates:

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by persons with disabilities to public housing programmes;

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

4.3.4. The rights of people with disability in relation to social security and standard of living also arises from other human rights obligations.<sup>75</sup>

4.3.5. The 4Rs Network has outlined issues about chronically insufficient access to legal assistance in relation to social security in 4Rs in recent previous submissions namely to:

- Treasury in the 2024-5 federal pre-budget consultation<sup>76</sup>
- The NLAP Review<sup>77</sup>

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<sup>73</sup> National 4Rs Community Legal Network, [4Rs Network submission to the NLAP Review](#), 27 October 2023.

<sup>74</sup> Townsville Community Law, [TCL submission to the NLAP Review](#), October 2023.

<sup>75</sup> **Universal Declaration of Human Rights**: Article 22: "Everyone, as a member of society, has the right to social security ..."; Article 25: "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control...."; **International Covenant on Economic Social and Cultural Rights** Article 9 recognises: "the right of everyone to social security, including social insurance"; additionally Article 5(e)(iv) of the **Convention on the Elimination of all Forms of Racial Discrimination**; Articles 11(1)(e) and 14(2)(c) of the **Convention on the Elimination of All Forms of Discrimination Against Women**; Article 26 of the **Convention on the Rights of the Child**.

<sup>76</sup> National 4Rs Community Legal Network, [Federal Pre-Budget Submission 2024-5](#) 24 January 2024.

<sup>77</sup> National 4Rs Community Legal Network, [4Rs Network submission to the NLAP Review](#) 27 October 2023.

- The Robodebt Royal Commission<sup>78</sup>
- Treasury in the 2023-4 federal pre-budget consultation.<sup>79</sup>

4.3.6 The following are examples of the problems, the first from Western Australia and the second from the Northern Territory.

### **Painting the picture**

#### ***Western Australia and the Kimberley***

Non-profit legal services participating in the 4Rs Network include the Welfare Rights & Advocacy Service WA ('WRASWA'), which has sufficient funding for 3 full time solicitors focusing on social security legal help, however, the service area is Western Australia.

Other WA participants in the Network include:

- Aboriginal Family Legal Service WA (office locations in Broome, Kununurra, Carnarvon, Port Hedland, Kalgoorlie, Perth)
- Albany Community Legal Centre
- Goldfields Community Legal Centre
- Kimberley Community Legal Service
- Marninwarntikura Fitzroy Women's Resource Centre
- Peel Community Legal Service
- Pilbara Community Legal Service
- Regional Alliance West
- Southern Aboriginal Corporation Family Violence Prevention Legal Service
- South West Community Legal Service

None of these receive funding to provide social security legal help.

Focusing on the Kimberley, as an example:

- The Kimberley is twice the size of Victoria.
- KCLS is the only generalist community legal service, but KCLS does not receive funding to provide social security legal help.
- The other non-profit legal services with offices in the Kimberley are:
  - Aboriginal Legal Service of WA
  - Aboriginal Family Legal Service WA, and
  - Legal Aid WA
- None receive funds to provide social security legal help.
- A high proportion of clients are receiving Centrelink or are reliant on others who are.

#### ***Northern Territory***

Darwin Community Legal Service, December 2022 submission to the Royal Commission:

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<sup>78</sup> National 4Rs Community Legal Network, [4Rs Network submission to the Robodebt Royal Commission](#) 3 February 2023.

<sup>79</sup> National 4Rs Community Legal Network [Federal Pre-Budget Submission 2023-4](#) 20 dated 27 January 2023.

How many people with disability in the NT might social security advocacy and legal help? The answer is ‘a lot’ taking into account the number of people with disability, their carers and family members – represented within:

- A continuing and changing number of people currently receiving social security payments in the NT with problems relating to this – including debts, suspensions, incorrect payments, mix-ups, delays, Services Australia errors
- People trying to establish eligibility for a social security payment or for the relevant social security payment (e.g. Carer Payment, Disability Support Pension), or the relevant rate
- People who were receiving a social security payment but have ceased – and have issues to deal with – such as debts
- People who are not receiving their social security entitlements because they are alienated from the system (have walked away, or have heard bad things about it, or don’t have the relevant information)<sup>80</sup>

4.3.7 Additionally, access to social security legal assistance in the 4Rs should be linked or integrating with relevant 4Rs community-based programs. As noted by the Aboriginal Peak Organisation NT in Fair Work Strong Communities (2023) relating to employment in remote communities:

Aboriginal and Torres Strait Islander people in remote communities should have access to legal help to enable them to pursue their rights in the social security system.<sup>81</sup>

4.3.8 The recent announcement of the Remote Jobs and Economic Development Program which will facilitate 3,000 new jobs in remote communities,<sup>82</sup> is also an opportunity to review and establish arrangements for proper community-based access to social security legal help. Targeting in this way will help increase positive outcomes by ensuring access to rights in relation to entitlements and payment issues including debts.

*Recommendation 10: funding for social security legal help for people with disability in the 4Rs*

**Needs-based federal funding should be provided to community-based legal services, including Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services which wish to participate, to ensure ready access to social security legal help by people with disability, carers and other vulnerable people in 4Rs areas.**

*Recommendation 11: Link or integrate social security legal help with relevant 4Rs community-based programs*

**Efforts should be made to link or integrate social security legal help with relevant community-based programs in the 4Rs including considering how this could relate to the Remote Jobs and Economic Development Program.**

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<sup>80</sup> DCLS Disability Royal Commission submission December 2022 (n 11) at 135. Also see 7.5 *Social security advocacy and legal help in the NT and system overhaul*, 135-139 (including case studies at 128-134) and 6.4 *Impacts of social security system on access by people with disability to employment*, 105-106.

<sup>81</sup> Aboriginal Peak Organisation NT, APO [NT Fair Work Strong Communities](#) (2023) 16.

<sup>82</sup> The Prime Minister, Minister Burney and other Ministers announced this new program, Media Release, [Next Steps on Closing the Gap: Delivering remote jobs](#), 13 February 2024.

## 4.4. Funding for Health Justice Partnerships and similar in 4Rs

4.4.1 As outlined above, many community-based legal services in 4Rs areas are well placed, if funded, to provide increased advocacy and legal assistance to people with disability and carers and extend their roles in local and regional place-based ecosystems of support.

4.4.2 A program area and model with substantially insufficient funding and facilitation in the 4Rs, relates to the Health Justice Partnership ('HJP') despite the great potential to extend effective Indigenous and non-Indigenous service provision and outcomes to highly vulnerable groups in the 4Rs including people with disability.<sup>83</sup>

4.4.3 HJPs help address social determinants which reduce health and wellbeing. HJPs do this by integrate ways of increasing access to legal assistance and rights for the person receiving support in a health setting.<sup>84</sup>

4.4.4 While many 4Rs community-based legal services include health services in their networks and may collaborate in various ways, the HJP model involves a less informal, more integrated, sufficiently resourced, committed approach to support common cohorts of clients. That is:

At its core, health justice partnership works through collaboration across otherwise-siloed health and legal assistance services, supporting common cohorts of clients. But it reflects a wide range of service approaches, correlating to different needs, contexts and intended outcomes. These might include clinic, co-location or outreach models, with varying degrees of partnering beyond the presence of legal assistance in a non-justice setting.<sup>85</sup>

4.4.5 HJPs / Medical Legal Partnerships in the United States, Australia and the United Kingdom reflect the following assumptions:

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<sup>83</sup> For example: Health Justice Partnerships Australia, [Response to Issues Paper: Review of the National Legal Assistance Partnership](#), 1 November 2023; National Aboriginal and Torres Strait Islander Legal Services, [Submission to the Independent Review of the National Legal Assistance Partnership 2020-25](#), October 2023.

<sup>84</sup> Health Justice Partnerships Australia, [Annotated Bibliography Resource for the Review of the National Legal Assistance Partnership](#), August 2023; Health Justice Partnerships Australia, [Health Justice Partnership Theory of Change](#), 14 July 2020; Kirsty Forsdike, Cathy Humphreys et al, An Australian Hospital's Training Program and Referral Pathway within a Multi-disciplinary Health–Justice Partnership Addressing Family Violence (2018) 42(3) *Australian and New Zealand Journal of Public Health* 284; Elizabeth Tobin-Tyler, Tessa Boyd-Caine et al, 'Health Justice Partnerships: An International Comparison of Approaches to Employing Law to Promote Prevention and Health Equity' (2023) 51(2) *The Journal of Law, Medicine & Ethics* 332; Stephanie Price, 'Integrated Practice Makes Perfect: The Opportunities and Challenges of Supporting Vulnerable Populations with a Health Justice Partnership in a Community Setting' (2021) 20(3) *International journal of Integrated Care* 133; Maja Lindegaard Moensted and Carolyn A Day, 'Addressing Social Determinants of Health through Legal Services: The Integration of a Health Justice Partnership into a Drug Treatment Clinic' (2022) 22(S3) *International journal of Integrated Care* 348; Rados Angharad, E Beckett and Anne-Marie Callus (eds), *The Routledge International Handbook of Children's Rights and Disability* (Routledge, First edition., 2023); Liz Curran and Pamela Taylor-Barnett, 'Evaluating Projects in Multifaceted and Marginalised Communities: The Need for Mixed Approaches' (2019) 19(1) *Evaluation Journal of Australasia* 22.

<sup>85</sup> Elizabeth Tobin-Tyler, Tessa Boyd-Caine et al, 'Health Justice Partnerships: An International Comparison of Approaches to Employing Law to Promote Prevention and Health Equity' (2023) 51(2) *The Journal of Law, Medicine & Ethics* 332, 334 ('**Tobin-Tyler**') referencing Suzie Forell and Tessa Boyd-Caine, '[Service Models on the Health Justice Landscape: A Closer Look at Partnership](#)', Health Justice Australia (2018)

(1) low-income and other marginalized groups experience worse health due to injustices that are both directly caused or exacerbated by and potentially remediable through law;

(2) access to justice — especially through direct legal advice and support — is crucial for improving health and health equity;

(3) because the same low-income and marginalized populations experiencing poor health also experience poor access to justice, formal partnerships among service providers working with these populations can facilitate both justice and better health equity; and

(4) by collaborating, health and legal service providers are in a unique position to identify the downstream health effects of law and policy failures.

Critically, HJPs develop shared goals based on these assumptions. Thus, health justice partnerships provide an opportunity for legal and health partners to share accountability for and measure success based on the intersection of health and justice.<sup>86</sup>

4.4.6 HJPs are developed around needs of the target groups and may have a specific or broad focus. Examples include:

- Personal safety including domestic and family violence and safety of older people from abuse and neglect.
- Healthcare access and decision making.
- Rights and supports as a person experiencing mental health or capacity issues.
- Housing and homelessness.
- Income support and social security.
- Credit, debt and consumer.
- Criminal and civil court matters.
- Discrimination and human rights.
- Child protection and family separation.
- Complaints, decision review and appeals.

4.4.7 Hume Riverina Community Legal Service ('HRCLS') is one of a small number of community-based legal services in 4Rs areas collaborating in a health justice partnership. This HJP has engaged in longitudinal action research which demonstrates the accessibility, effectiveness and importance of this model for high needs clients.<sup>87</sup>

### **Case study - Hume Riverina Community Legal Service**

HRCLS has been working in partnership with Albury Wodonga Aboriginal Health Service (AWAHS) for over 8 years in Invisible Hurdles Health Justice Partnership (HJP) focused on young people experiencing or at risk of family violence. This program saw service demand and unmet legal need in the wider Aboriginal community and led to AWAHS and HRCLS designing a whole-of-community HJP, 'Bagaraybang bagaraybang mayinygalang' which in Wiradjuri is 'empowering and alleviating'. This program embeds a HRCLS lawyer and community engagement worker within the Aboriginal community led organisation. This program practically and effectively contributes to National Agreement on Closing the Gap Priority Reform 2 and 3.

<sup>86</sup> Ibid Tobin-Tyler, 332 number layout adjusted from the original for clarity in the current submission.

<sup>87</sup> Hume Riverina Community Legal Centre, Invisible Hurdles Project (web site)  
<https://www.hrcls.org.au/invisible-hurdles-project/>

NLAP mental health funding enables delivery of this program. Dedicated funding for Community Legal Centres (CLCs) to work in partnership with Aboriginal organisations would be preferred. In our region there is no Aboriginal Legal Service, the closest is based in Wagga Wagga NSW, 135kms away and Shepparton VIC, 170kms away. Their capacity to service our region is limited. Certainty of funding supports intersectional and holistic approaches to the provision of legal services.<sup>88</sup>

4.4.8 HJPs can help increase the effectiveness of health supports, including the ability of health professionals to address legal criteria when providing assessments and reports.<sup>89</sup> The latter is relevant in many ways including access to, and adequacy of, NDIS and other supports, and access to social security entitlements including disability support pension.<sup>90</sup>

4.4.9 Health justice partnerships ('HJPs') can also increase access to supports for systemic advocacy by the person or groups affected enabling their lived experiences to be heard.<sup>91</sup> More broadly HJPs can facilitate access to a full range of other relevant services and supports available via the community-based legal assistance provider and their networks.

4.4.10 Only a small proportion of the 109 existing HJPs are operating outside metro areas.<sup>92</sup> This means, substantially fewer opportunities for rural health organisations in the 4Rs, including 4Rs Aboriginal Community Controlled Health Services, to partner in a HJP. It also features under representation of ATSILS and FVPLS among HJP legal leads and partners generally, including in the 4Rs, and under representation of other 4Rs community-based legal services.

4.4.11 NATSILS has highlighted the multiple ways in which insufficient funding for ATSILS to undertake HJPs impacts adversely on First Nations people.<sup>93</sup>

4.4.12 Examples of the current low availability of the HJP model in 4Rs areas includes only two HJPs in the Northern Territory and South Australia, three in Western Australia (listed below) and none in Tasmania.

#### Northern Territory<sup>94</sup>

- Women'sHeLP – a health and legal partnership for Central Australia and the Barkly (partnership between Central Australian Women's Legal Service and Central Australian Health Service)

<sup>88</sup> Hume Riverina Community Legal Service, [Submission to the National Legal Assistance Partnership Review](#), 27 October 2023 4.

<sup>89</sup> Hannah Freeman and Adrija Bhattacharyya, Learning from Health Justice Partnerships' (2023) 45(12) *Medical Teacher* 1438.

<sup>90</sup> DCLS Disability Royal Commission submission December 2022 (n 12); Economic Justice Australia, [EJA submission to the NLAP Review](#), 26 October 2023.

<sup>91</sup> Tobin-Tyler (n 85) 332

<sup>92</sup> Health Justice Partnerships Australia, ['Health Justice Partnerships Across Australia'](#), last accessed 25 February 2024 and Health Justice Partnerships Australia, ['Health Justice Landscape' November 2022](#).

<sup>93</sup> National Aboriginal and Torres Strait Islander Legal Services, [Submission to the Independent Review of the National Legal Assistance Partnership 2020-25](#), October 2023.

<sup>94</sup> Health Justice Partnerships Australia, [Health Justice Partnerships Across Australia](#), last accessed 25 February 2024; World Health Organisation, Social Determinants of Health, ['A Conceptual Framework for Action on the Social Determinants of Health'](#), 2010; Australian Institute of Health and Welfare, ['Cultural and Social Determinants of Health'](#), AIHW, last updated 8 December 2020.



- The Katherine Health Justice Partnership – a partnership between the NT Legal Aid Commission and the Katherine Individual Support Program, a collaboration of health and social support services, coordinated by Wurli Wurlinjang Health Service

#### South Australia

- Safe and Well Kids HJP (a partnership between Legal Services Commission of South Australia, South Australia Department of Human Services, Women's Safety Services South Australia and Relationships Australia South Australia)
- South Australia Northern Suburbs HJP (partnership between Legal Services Commission of South Australia, Lyell McEwin Health Service and Northern Domestic Violence Service)

#### Western Australia

- ISHAR (partnership with Northern Suburbs Community Legal Centre and Legal Aid WA operating as WREN)
- Joondalup Health Campus (partnership with Northern Suburbs Community Legal Centre and Legal Aid WA operating as WREN)
- Legal Aid WA/Next Step East Perth Legal Clinic (partnership between Legal Aid WA and Next Step Drug & Alcohol Service)

4.4.13 People with disability are among those who greatly benefit from HJPs which are currently operating. However, there are few HJPs in 4Rs areas, no examples of ATSILS or FVPLS being a legal lead and few examples of community-based legal services in 4Rs areas being included in HJP funding allocations.

4.4.14 Experience among community-based legal services indicates that integrating legal assistance and de-siloing can also be applied to other contexts in 4Rs areas. Three examples which are inclusive of people with disability are:

- the collaboration between ArtsLaw and many 4Rs Aboriginal Art Centres via the 'Artists in the Black' initiative focusing on artists rights including wills;<sup>95</sup>
- the Veterans Legal Service at The Oasis 'Homebase for the Veteran Community in Townsville';<sup>96</sup> and
- the Mid-North Coast Community Legal Centre Embedded School Lawyer program with the Maclay Valley Workplace Learning Centre in Kempsey.<sup>97</sup>

4.4.15 This points to models which develop resourced, focused and committed legal assistance collaborations. Provided new resources are available, other examples in the 4Rs could include collaborations with: safehouses; remote community employment programs;<sup>98</sup> rehabilitation programs; and wellbeing, education and training initiatives.

#### *Recommendation 12: Health Justice Partnerships in 4Rs areas and similar*

**Federal and state / territory governments provide collaborative leadership to achieve new funding, with active support/facilitation, action research and learning to:**

- **Substantially increase funding for community-based legal services in 4Rs areas to collaborate and/or lead health justice partnerships directed to the needs of**

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<sup>95</sup> ArtsLaw Centre Australia, Artists in the Black <https://www.artslaw.com.au/artists-in-the-black/>

<sup>96</sup> Townsville Community Legal Service, [Veteran's Legal Service](#) and [The Oasis Townsville](#)

<sup>97</sup> Community Legal Centres NSW, [NSW's First Embedded School Lawyer offers help to disadvantaged kids](#).

<sup>98</sup> Which are discussed above at 4.3.8 in relation to access to social security legal help.

**people with disability, carers and other vulnerable groups.**

- **Build on the integrated, social determinants model to fund other locally relevant approaches in the 4Rs, for example collaborations with community support services, safehouses, remote community employment programs, rehabilitation programs and wellbeing and education and training initiatives.**

## 4.5 Access by people with disability in the 4Rs to financial counselling

4.5.1 Research studies consistently confirm that living with disability is one of the strongest predictors of debt. For example, a study relating to the UK found that:

Being in receipt of benefits and long-term illness or disability were the strongest predictors of debt, with long-term ill or disabled respondents also being more susceptible to long-term debt<sup>99</sup> [and] ... respondents with a long-term illness or disability were also significantly more likely to experience long-rather than short-term debt.<sup>100</sup>

The study recommended that:

This association highlights the potential for a co-ordinated approach, which recognises that healthcare and welfare professionals have a role to play in identifying those who are most vulnerable to debt. Such co-ordination may also help to prevent the degeneration of circumstances which is often a characteristic of those experiencing social and civil justice problems<sup>101</sup>

4.5.2 A study in the US relating to children with disabilities and parents' unsecured debt, also found higher debt levels and greater financial strains.<sup>102</sup>

4.5.3 As community-based legal services in 4Rs areas work with many people with disability and others facing financial and other forms of hardship, the need for holistic service provision obvious and critical. While some community-based legal services in 4Rs areas have received funding to employ a financial counsellor, others have not despite the benefits for clients of financial counsellors, lawyers and other staff working alongside.<sup>103</sup>

4.5.4 Financial Counselling Australia estimates that there are about 1,100 financial counsellors in Australia which translates to about 850 full time positions. About 110 are identified as First Nations and the majority of these are based in rural and remote locations and work with First Nations people.<sup>104</sup>

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<sup>99</sup> Nigel Balmer, Pascoe Pleasence et al, 'Worried Sick: The Experience of Debt Problems and Their Relationship with Health, Illness and Disability (2006) 5 *Social Policy and Society* 39, 43.

<sup>100</sup> Ibid 46, 47.

<sup>101</sup> Ibid 47.

<sup>102</sup> Jason N Houle and Lawrence Berger, Children with Disabilities and Trajectories of Parents' Unsecured Debt across the Life Course (2017) 64 *Social Science Research* 184.

<sup>103</sup> Carolyn Bond and Denis Nelthorpe, [Financial counselling in community legal services rewards and challenges](#), October 2023, Financial Counselling Foundation; Natasha Cortis and Ciara Smyth, [Specialist Financial Counselling for Women Affected by Domestic and Family Violence Evaluation of the Financial Counselling Foundation Grants](#) 18 May 2023, Financial Counselling Foundation ('Cortis and Smyth')

<sup>104</sup> Financial Counselling Australia, [FCA submission to the NLAP Review](#), November 2023 4-5.



Financial counsellors are experts in financial difficulty and need an in-depth knowledge of many topics including credit law, bankruptcy law, debt collection law and practices, industry hardship processes and government concession frameworks. Financial stress is often an overwhelming and stressful experience for people and financial counsellors also need excellent counselling skills...<sup>105</sup> [and] also suggests the importance of integrating health and advice services, through initiatives such as Health Action Zones and Community Legal Service Partnerships.<sup>106</sup>

4.5.5 In 2020 the Central Australian Women's Legal Service based in Alice Springs and Tennant Creek was able to employ a Domestic and Family Violence Financial Counsellor with time limited funding from the Financial Counselling Foundation. This was one of 11 positions funded nationally.<sup>107</sup>

Over the 3 year period the FC has become integrated into CAWLS service delivery. The FC has assisted over 320 women with a variety of financial issues including reduction of debt, access to Centrelink payments, education regarding budgeting and scams. Data from a recent progress report is included in this report. CAWLS was very grateful when the Financial Counselling Foundation advised they were able to provide additional funding for the FC position for a further 2 years. Financial Counselling has developed into an incredibly important part of the wrap-around support CAWLS provides to women in Central Australia and the Barkly.<sup>108</sup>

4.5.6 Evaluation of grants by the Financial Counselling Foundation on impacts of funding for Women's Legal Services and Tenancy Services to engage financial counsellors to work alongside lawyers found:

- A more holistic wrap-around model allowed agencies to provide a better service. Clients in crisis may only find the strength to call an agency once, and not follow through with advice or referrals. Clients in both evaluations noted that they appreciated internal referrals which helped reduce the stress that comes from having to retell their story.
- Improved financial situation and wellbeing for most clients.
- People felt empowered through understanding their financial situations and knowing about options and supports available to them.
- For tenancy services the post-intervention survey indicated that for 53% of clients, their housing situation was more secure.
- For Domestic and Family Violence services women were able to prioritise safety and break harmful cycles.
- Neither service could resolve all issues for all clients with barriers including: housing affordability, tenancy issues, pressures of being a sole parent and cost of living increases.<sup>109</sup>

4.5.7 The effectiveness of financial counsellors within community-based legal services, and the suitability of these services to host and incorporate these positions in 4Rs areas, warrants a priority review of the shortfall of financial counselling positions among ATSILS, FVPLS and other community-based community legal services in the 4Rs.

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<sup>105</sup> Ibid 1.

<sup>106</sup> Ibid 48.

<sup>107</sup> CAWLS, [Central Australian Women's Legal Service, Annual Report 2022-23](#) 42.

<sup>108</sup> Ibid.

<sup>109</sup> Financial Counselling Australia, [FCA submission to the NLAP Review](#), November 2023, 6 quoting Cortis and Smyth.

4.5.8 This should focus on the multiple benefits to Indigenous and non-Indigenous people with disability and carers and all financially disadvantaged groups in 4Rs areas.

4.5.9 Closing the Gap Priorities should be applied to increase and strengthening First Nations Community Controlled service provision.<sup>110</sup>

*Recommendations 13: Financial counselling positions in 4Rs community based legal services*

**The effectiveness of financial counsellors within community-based legal services, and the suitability of these services to host and incorporate these positions, warrants a priority review of the shortfall of financial counselling positions among ATSILS, FVPLS and other community-based legal services in the 4Rs.**

**This should focus on the multiple benefits to Indigenous and non-Indigenous people with disability and carers and all financially disadvantaged groups in 4Rs areas.**

**Closing the Gap Priorities should be applied to increase and strengthen First Nations Community Controlled service provision.**

## 4.6 People with disability, NDIS and disaster responses in 4Rs areas.

4.6.1 Article 11 of the Convention on the Rights of Persons with Disability requires that ‘all necessary measures’ be taken in situations of risk including natural disasters:

Article 11 – Situations of risk and humanitarian emergencies

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

4.6.2 This is pivotable for people with disability whose safety, wellbeing and rights may be greatly or critically impacted.<sup>111</sup> The Guiding Principles of the *Sendai Framework for Disaster Risk Reduction 2015–2030*<sup>112</sup> commit to empowerment, inclusion and non-discriminatory participation:

19. Guiding Principles:

(d) Disaster risk reduction requires an all-of-society engagement and partnership. It also requires empowerment and inclusive, accessible and non discriminatory participation, paying special attention to people disproportionately affected by disasters, especially the poorest. A gender, age, disability and cultural perspective should be integrated in all policies and practices, and women and youth leadership should be promoted. In this context, special attention should be paid to the improvement of organized voluntary work of citizens;

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<sup>110</sup> Above at 1.3 Closing the Gap and Sector Strengthening

<sup>111</sup> UN Office for Disaster Risk Reduction, [2023 Global Survey on Persons with Disabilities and Disasters](#) (Geneva, 2023).

<sup>112</sup> UN [Sendai Framework for Disaster Risk Reduction 2015–2030](#) adopted at the Third UN World Conference in Sendai, Japan on March 18, 2015.

(g) Disaster risk reduction requires a multi-hazard approach and inclusive risk-informed decision-making based on the open exchange and dissemination of disaggregated data, including by sex, age and disability, as well as on easily accessible, up-to-date, comprehensible, science-based, non-sensitive risk information, complemented by traditional knowledge;

4.6.3 International obligations and disaster standards require a human rights approach and accordingly the Draft *Articles on the Protection of persons in the event of disasters* emphasises:

- respect for human dignity (Article 4)
- human rights (Article 5), and
- humanitarian principles including ‘non-discrimination, while taking into account the needs of the particularly vulnerable’ (Article 6).<sup>113</sup>

4.6.4 As noted by Bill Mitchell, Principal Solicitor with Townsville Community Law, work by the Brookings-Bern Project on Internal Displacement identified four areas of human rights protection arising in a disaster:<sup>114</sup>

- Protection of life, security, and physical, mental and moral integrity.
- Protection of rights related to basic necessities of life.
- Protection of other economic, social and cultural rights.
- Protection of other civil and political rights.

4.6.5 Substantial collaborative work by Townsville Community Law has highlighted the importance of legal assistance disaster readiness in support of the rights, wellbeing and safety of vulnerable groups, including people with disability.<sup>115</sup> This is accompanied by a new lexicon which also reflects the nature and extent of the issues. For example:

- *disaster readiness* - The state of having disaster legal assistance plans and continuity of operations plans in place.
- *disaster legal assistance* - The provision of legal assistance to individuals and communities as part of disaster management, disaster operations or disaster resilience. It includes disaster legal outreach.
- *disaster legal assistance planning* - Collaborative planning processes between the legal assistance sector and the disaster management sector about disaster legal assistance.
- *disaster legal assistance plans* - Tiered collaborative plans for the provision of disaster legal assistance at State, District and Local levels between the legal assistance sector and the

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<sup>113</sup> Bill Mitchell, ‘[A disaster for human rights?](#)’ *Queensland Law Society Proctor*, 11 December 2020 (‘**Mitchell 2020**’); Draft Articles on the Protection of persons in the event of disasters UNGA Res 71/141 (19 December 2016) UN Doc A/RES/71/141.

<[https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/6\\_3\\_2016.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/6_3_2016.pdf)>; Arnold N. Pronto, ‘[Developments on the Draft Articles on the Protection of Persons in the Event of Disasters \(2021\)](#)’ (2023) 4(1) *Yearbook of International Disaster Law Online*, 467-473.

<sup>114</sup> Ibid quoted by Mitchell, Brookings-Bern Project on Internal Displacement, [Human Rights and Natural Disasters. Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster](#), March 2008; Also see Brookings – Bern Project, [IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters](#), July 2021.

<sup>115</sup> Townsville Community Law, ‘[Disaster Readiness for the Legal Assistance Sector: Disaster Legal Assistance in Queensland, Stage 1 Report and Proposal](#)’ January 2021 (‘**TCL Disaster Readiness 2021**’)

disaster management sector.

- *disaster legal needs* - Legal issues or problems that are related to, or raise out of disaster.
- *disaster legal assistance training* - A curriculum of training to prepare legal assistance providers' staff and volunteers for disaster readiness. It includes induction, ongoing training, continuing professional development and accreditation-based training.<sup>116</sup>

#### 4.6.6 In May 2023 National Legal Aid called for:

- integration of disaster legal assistance into National and State emergency management planning and in all stages of disaster preparedness, response, and recovery, and
- sustainable and ongoing national funding for disaster legal assistance.<sup>117</sup>

4.6.7 This was elaborated in the joint submission by Community Legal Centres Australia, National Family Violence Prevention and Legal Services Forum, National Aboriginal and Torres Strait Islander Legal Services, and National Legal Aid which included highlighting that:

- Disasters legal assistance must be properly factored into disaster responses and pre-planning is essential including ensuring that funding to enable provision of timely, specialised legal assistance. Funding is also needed for surge capacity and coordination functions relating to disaster legal help responses.
- Ongoing funding for legal assistance services should include including place-based and specialist service providers in regional, rural and remote areas to address particular areas of legal need, such as social security, insurance and tenancy. Reasons include that local services are best placed to build local relationships with vulnerable groups and other services.<sup>118</sup>

#### *Recommendations 14: Disaster legal assistance for people with disability in 4Rs*

**All stages of disaster planning including disaster preparedness, response and recovery should integrate access to legal assistance for people with disability, and all vulnerable groups, in 4Rs areas.**

**Funding for community-based legal assistance in the 4Rs should include disaster preparedness in core funding and additional disaster surge funding as needed.**

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<sup>116</sup> Ibid 62-63.



<sup>117</sup> National Legal Aid, [NLA submission to the Senate Select Committee Australia's Disaster Resilience](#), May 2023.

<sup>118</sup> [Joint Submission to the NLAP Review by Community Legal Centres Australia, National Family Violence Prevention and Legal Services Forum, National Aboriginal and Torres Strait Islander Legal Services, and National Legal Aid: NLAP and disaster legal assistance](#), 27 October 2023.

## Attachment 1: Lived experience case studies

### A1.1 Far West Community Legal Centre Ltd

Our main administrative offices are in Broken Hill, however our operational area extends across the vast west of NSW, from Tibooburra in the north to Wentworth in the south and Wilcannia and Ivanhoe in the east. We conduct regular outreach activities to provide support to communities of the far west. This map shows the main population centres we serve. (Website: <https://www.farwestclc.org.au>)<sup>119</sup>

 <p><b>Far West Community Legal Centre Ltd</b></p>	<ul style="list-style-type: none"> <li>In our region, there are a lack of specialists, even in Broken Hill and to get diagnoses, people will have to travel extraordinary distances - e.g. to Mildura or even Adelaide. For individuals and families on a low income, this is very challenging. We are aware of some parents who have tried to get their child assessed for autism but have had to travel long distances for multiple appointments and are still left with lengthy wait times. Even if they are able to access funds to finance travel, it doesn't cover all out-of-pocket expenses or meet full costs of accommodation etc.</li> </ul>
<ul style="list-style-type: none"> <li>There are also children who 'fall through the cracks', where they come from a low income family and their parent(s)/guardian might not have the education or support (financial or otherwise) to pursue a diagnosis for their child. Due to this there are many children who never receive a diagnosis and thus never receive the support. They go through school labelled as disruptive, get suspended, disengage and then show anti-social behaviour, turns into criminality, turns into drug use etc. There is completely inadequate support for young people coming into contact with the criminal justice system and no justice reinvestment activities that we know of.</li> </ul>	

<sup>119</sup> Far West Community Legal Service Inc Case Studies, March 2024



- Even once people qualify for the NDIS support, they often will have to travel far to appointments. Broken Hill has limited services too and those support services who service the community often do so in an adhoc/inconsistent way, or charge greater fees for remote distances/travel etc (meaning more money is taken out of the client's packages).
- There are some great services who seek out clients are the ones to make the first move... However, even if they help people on the first appointments, due to many people lacking birth certificate, ID docs etc it can mean they aren't receiving assistance in a timely manner. There is a homeless population in Broken Hill that often hang around the Stuart Park area, our staff have heard from a community meeting I was in recently that there is a need for services to start going into the community because too many times they would intake people but then they would miss their additional appointments and no follow up could be done. People who have transient living arrangements and lack of access to transport, technology and funds are even less likely to be able to get through the paperwork even with the assistance of community services.
- There is an enormous amount of clients coming to our Community Legal Centre who cannot read or write. Most are sound of mind and not on DSP or diagnosed with any intellectual disability so because of this they often don't get support from community services to fill out forms etc. Due to stigma unfortunately many adults think it's too embarrassing or too late to seek assistance. We often assist clients in non legal ways and this is mostly filling out forms or writing a letter on their behalf.
- For some of our criminal law clients who are on Disability Support Pension, often their carer can be someone who does not necessarily have the client's best interest at heart. Some clients have substance abuse issues, and behaviour and mental health issues, and then their carer is completely unsuitable to provide support (for example, they themselves have a drug problem) and have more of an interest in the money than providing care. Monitoring of the caregiver relationships is completely inadequate, leaving vulnerable people prey to unscrupulous 'friends' or carers simply ill-equipped to provide support.



## A1.2 Royal Commission – Voices of people with disability in the 4Rs

Volume 1 of the Final Report by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Voices of People with Disability’ has four parts and includes voices of many relating to 4Rs areas.<sup>120</sup> This section contains eight of these accounts from, or in support of, people with disability in 4Rs areas.

### *Anders and Blair*

Anders is in his 60s and has intellectual disability. He lives in his own unit in supported accommodation in a regional town. Blair is his sister and legal guardian....

Anders’s parents cared for him until they became ill about a decade ago. ‘He ... was very happy at home and very well cared for. But, sadly, things changed dramatically when he moved into the [service provider’s] residence.’ Blair said that Anders needs one-on-one care, but ‘80 per cent of the time he’s on his own’...

One day, Blair arrived and couldn’t find any support workers. After an hour, she found the staff in part of the property ‘smoking and just talking’. ‘It’s like a social club,’ she said. Another day, Blair arrived to find Anders lying in a hallway with a broken leg...<sup>121</sup>

### *Bernie*

Bernie is in his 30s and has attention deficit hyperactivity disorder, diagnosed a couple of years ago. Bernie is a disability advocate. He told the Royal Commission about working in regional and remote communities.

‘The barriers in place for any person like me accessing the Disability Support Pension are already enormous. Add to that a thousand kilometres of unfathomable roads, and also the fact that there are no mechanisms to get the things that are needed to make the application in the first place. It’s purposefully designed to be inaccessible.’<sup>122</sup>

### *Callista*

Callista is the principal of a regional primary school in which 15 per cent of the 300 students have a disability. ‘I not only have a refugee community, but also a dozen languages spoken at my school as well as 20 nationalities,’ Callista told the Royal Commission. ‘Navigating that is difficult.’ Callista said there aren’t enough support services in the town to help all her students....

Callista said of the 15 per cent of her students with disability, a third are still waiting for a diagnosis.....

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<sup>120</sup> Disability Royal Commission Final Report, [Voices of People with Disability, Volume 1](#) Sept 2023.

<sup>121</sup> Disability Royal Commission Final Report, [Voices of People with Disability Volume 1 Book 2](#) Sept 2023 108-9.

<sup>122</sup> Ibid 493.

‘Particularly if parents can’t pay privately, which my families and, I would think, regional and remote Australia can’t ... the minimal wait is three months, and the maximum is two years to try and get into a paediatrician.’...

Callista said while the school waits for a diagnosis and the special funding that comes with it, the child often needs one-on-one support, which drains the school’s budget and creates a ‘real moral dilemma’<sup>123</sup>

### *Halo and Mac*

Halo is in her mid-40s, has an acquired brain injury, post-traumatic stress disorder and experiences seizures and vertigo. She told the Royal Commission that when the NDIS was introduced, she thought it would be about ‘getting people back out into the community’, doing things that ‘enrich your life’. Instead, she has found the scheme’s rules and processes ‘arduous and taxing ... like pushing treacle up a hill’. Because she lives in a rural location, waiting periods for services can be months or years. Halo says the idea of going without specialist care for so long fills her with dread. A few years ago, Halo’s occupational therapist recommended a number of home modifications to make it safe to access. ‘If we had a fire, and if I had to go out the front, I would fall, and the back is nearly just as treacherous,’ she said. The therapist’s report went to ‘different people’, but Halo has heard nothing further. Halo constantly feels ‘let down’, abandoned, and with a sense of having to ‘fight every step of the way’. Halo described her experience with support workers as ‘a debacle’. One particular worker ‘was always on her phone’ and would ‘sit in her car’ while Halo was shopping. When the support worker introduced Halo to other people, she would say, “‘she’s got a brain injury. You can’t tell, can you?’”...

One day, Halo fell as she was getting out of the support worker’s car. The worker was on a phone call and had not helped Halo out of the car. As a result of the fall, Halo sustained an injury. Halo’s husband, Mac, says he feels unable to leave his wife alone with support workers. He now stays at home when carers visit, to ensure they are taking good care of his wife. ‘That’s pretty hard. It limits my life, it limits [Halo’s] life and that should not be the case.’<sup>124</sup>

### *Hilary*

Hilary’s parents are Deaf. ‘I was Mum’s and Dad’s interpreter,’ Hilary told the Royal Commission. ‘English was my second language ... It’s only in my later life that I have really picked up the English and understood it. I still think in Auslan.’ Hilary isn’t Deaf, but said she didn’t start speaking until she was five ‘because [her family] used Auslan in the home’. Hilary still interprets for her parents. ‘[My mother] couldn’t even get an interpreter for a solicitor’s appointment yesterday through video remote interpreting. I couldn’t get anybody for the whole of Australia. I had to interpret my mum’s solicitor appointment.’ Hilary works as a professional Auslan interpreter....

Hilary said there are no Auslan court interpreters in her town who can speak First Nations languages. As a result, some people ‘don’t understand what’s happening and how there’s a law in all of this, because they grew up in remote areas’...<sup>125</sup>

<sup>123</sup> Disability Royal Commission Final Report, [Voices of People with Disability Volume 1 Book 2](#) 99.

<sup>124</sup> Ibid 458.

<sup>125</sup> Ibid 3-4.



### *Jacques and Addie*

Addie is mum to Jacques, an autistic teenager with an intellectual disability. Jacques also lives with a neuro-degenerative disease, epilepsy and uses a wheelchair. Addie and Jacques live in a small rural town. Addie told the Royal Commission that one night a couple of years ago she saw blood in Jacques's urine and suspected an infection. Jacques was hospitalised for five days, in pain.

'They had no idea where the pain was coming from ... Tears were just rolling down his eyes. "Mummy stop it. Mummy stop it. Mummy stop it."' Addie tried to explain to the doctors the nature of Jacques's disability and how it affects him. She told them – if he won't talk to you, talk to me. But the doctors didn't listen. One doctor called child protection officers, accusing her of lying about Jacques's disability. Addie insisted the doctors perform an ultrasound. They discovered a benign tumour blocking Jacques's bladder. Jacques has been unable to leave the house since Addie brought him home from hospital. He's supported by the NDIS, but has been waiting nearly two years for funding to modify his home so he can manoeuvre his wheelchair. 'There's no way of getting Jacques from his bedroom to the shower. There's no way of getting him into the shower in his wheelchair. I can't even use his wheelchair in the house because of his height and proportion. They're too wide for my doors.' ....<sup>126</sup>

### *Jarvis and Enid*

Jarvis is in his 30s, has cerebral palsy and uses a wheelchair. Jarvis spoke to the Royal Commission with help from his advocate, Enid. Jarvis and his partner bought a house in a regional area. Enid said the NDIA has since refused to fund a ramp so he can access his house.

'The problem is both the front and back door have steps, so he was wanting a ramp for the front door only,' Enid told the Royal Commission. 'It's been rejected a couple of times ... It's only about two or three steps.' ....

Enid said it appears the NDIA rejected the ramp because Jarvis didn't consult them enough before he and his partner bought the house, even though they paid for the house themselves. 'So, I think the reason for rejection was there was not enough evidence to show they looked around before they purchased this one.' Enid said Jarvis did a lot of research before buying the house, and consulted his occupational therapist. 'I'm not sure what justifies enough evidence, to be honest.'<sup>127</sup>

### *Tarni*

When Tarni first met with her advocate more than two years ago, her two priorities were accessing more of her own funds and going home to country.

Tarni is an Aboriginal woman. She comes from a remote community where people identify strongly with their ancestral countries and their languages, stories, songs, dances and histories. However because there are no relevant disability or health services there, she has no alternative but to live in supported accommodation in the nearest city – an eight-hour drive away – estranged from her country and family.

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<sup>126</sup> Disability Royal Commission Final Report [Voices of People with Disability, Volume 1 Book 1](#) Sept 2023 25.

<sup>127</sup> Disability Royal Commission Final Report [Voices of People with Disability, Volume 1 Book 1](#) Sept 2023 419.

Tarni is in her late 40s and has an acquired brain injury, chronic liver disease and other health issues. She is on the Disability Support Pension and a public trustee manages her financial matters.

At the time Tarni met with her advocate, her weekly funds allowance was so low that she was living below the poverty line and could not afford to engage with the community in even the simplest ways, like going out for a cup of coffee. Her quality of life was suffering, yet there were funds available.

As a result of Tarni's acquired brain injury, a successful claim had been made against her superannuation fund for total and permanent disability (TPD). These funds were rolled over to her superannuation fund and could be drawn down at any time. So her funds included the Disability Support Pension, superannuation and TPD.

Yet, when her advocate went to the public trustee about this issue, they were met with 'complete resistance and lengthy delays'.

The public trustee argued that Tarni's superannuation funds should be maintained for her retirement.

Her advocate argued that this is 'inherently discriminatory when it comes to Aboriginal people as their life expectancy is shorter than the rest of Australian society'. It is unlikely, they said, given Tarni's disability and serious health conditions, that she would even reach the superannuation preservation age of 60.

The advocate argued that it was also the public trustee's duty to take into consideration the 'maintaining of an adult's cultural and linguistic environment'.

The advocate said that in their experience, the public trustee 'prefers to maintain funds at all costs and there is a culture within the public trustee office which promotes this value above others'. It took more than three months and an internal complaint by the advocate for the matter to be resolved.

Meanwhile, Tarni's need to go home was intense. Every time the advocate met with her the words 'I want to go home' were 'recurring and urgent'. At one stage, she was in danger of self-harm – she felt 'like the only way she was going to get there was "in a box"'.

In support of Tarni's application to the public trustee for funds to go home, her doctor wrote: 'Tarni has ... significant medical comorbidities that will limit her quality of life and long-term prognosis. She has recently been seen by ... a general physician who strongly agrees that getting Tarni back to country is an urgent priority ...'

It took almost two years of back and forth between the public trustee, Tarni's guardian and the NDIS – of obfuscation, negotiation, gathering information and reports and trying to find

appropriate supports – before the public trustee finally allowed Tarni to access her TPD funds to go home to country for a holiday....<sup>128</sup>

### *Westley and Sloan*

‘Pretty much I was in a domestic violence relationship with my son.’ Westley, 13, lives with his family in a small rural town. He has attention deficit hyperactivity disorder (ADHD), oppositional defiance disorder, dyslexia, depression and anxiety. His mum, Sloan, told the Royal Commission there are ‘not a lot of supports’ available to help Westley or the family....

Around the start of high school, despite increased dosages of medication, Westley’s behaviour became violent. He ‘smashed up’ the home and repeatedly tried to strangle Sloan. At times the family were so scared they called police. Police would walk in and say there was nothing they could do to help the family despite seeing the damage and other signs of violence....

Sloan only learned about the NDIS a year ago. She applied immediately. The NDIS rejected the first application saying she didn’t supply enough documentation. They rejected the second application because, contrary to the psychologist’s report, they believe Westley’s disability is not lifelong. Sloan submitted a third application and has been waiting more than two months for a response. The impact on the family has been terrible. Sloan is working two jobs to pay for specialists and medication – approximately \$1,000 a month. Her husband has lost his job because he needs to help Sloan with Westley....

Sloan believes services need to be better coordinated rather than ‘handballing’ the problem to each other and then back to her. She has been to countless meetings where people have said ‘good luck’.

‘I didn’t need luck, I needed help.’<sup>129</sup>

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<sup>128</sup> Disability Royal Commission Final Report, [Voices of People with Disability, Volume 1 Book 3](#), Sept 2023 450-451.

<sup>129</sup> Disability Royal Commission Final Report [Voices of People with Disability, Volume 1 Book 1](#) Sept 2023 249-250.

### A1.3 Darwin Community Legal Service NDIS case studies

The DCLS submission to the Royal Commission contains many case studies with analysis. Below are six of these which relate to the NDIS.<sup>130</sup>

Case Study	Client D <sup>131</sup>
<b>Brief outline</b>	Client D is an Aboriginal person who lives in a remote community. D receives meals supports from a service provider as part [of] D's NDIS support package. A support worker regularly delivered food for D at the family home. Initially a family member would take the food at the front door to pass on to D inside. At some point the support worker who delivers the meals returned to the house, and saw that the family was eating the food with none given to D. This prompted further investigation which indicated that it was common for family (including the nominated carer) to consume food that was delivered for D and not necessarily share with D.
<b>Analysis</b>	<p>This situation may indicate different things. It is unclear whether D is being harmed or benefited. If D is participating willingly in reciprocal sharing, and potentially fulfilling obligations, the situation may be positive. However, if D is being abused and neglected through his food being taken from him, D could be at risk.</p> <p>A culturally safe, nuanced approach is needed to understand the situation, which would likely involve engaging D in a safe and supportive way, likely by Aboriginal workers (if they feel comfortable to do so), suitable to D.</p> <p>The situation may also illustrate complexity in assumptions (and reflect differing cultural assumptions) about how supports through NDIS or Aged Care Packaging should operate in remote community contexts</p>

Case Study	Client E <sup>132</sup>
<b>Brief outline</b>	Client E, an Aboriginal person who is a NDIS participant, lives in a remote community. Client E wants to move back to his home community, which is not the community he is in now. E's home community has some but not all service provider infrastructure in place to fully support E's needs. E has a supportive family member in this community, who would be able to provide the supports for E to on regular 'Return to Country' visits to explore if E might be able to move there permanently. E's family member asks the NDIA if they, as a family member, can provide paid supports to E as part of his NDIS plan. The family member provides extensive evidence, including proof of the cultural needs of E, as well as economic participation in E's home community that he is not able to achieve anywhere else. The NDIA initially does not make a decision, and then makes an unfavourable decision. E and his family spend 12 months at the Administrative Appeals Tribunal, where they finally receive permission to set up E's family member as a paid support.

<sup>130</sup> DCLS Disability Royal Commission submission December 2022 (n 12).

<sup>131</sup> Ibid 46.

<sup>132</sup> Ibid 50.

<b>Analysis</b>	Illustrative of NDIA being unwilling to adapt to NT Aboriginal cultural and community realities and applying an inaccessible process.
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<b>Case Study</b>	<b>Client F<sup>133</sup></b>
<b>Brief outline</b>	Client F is a child with disability in a remote community. F received an NDIS plan, but F's family received no assistance in understanding the NDIS or the supports they may be able to access. After one year, F's plan is reviewed, and the funding is cut significantly, the NDIA reasoning that as it was underutilized the funding must not be necessary. F's family sought assistance in appealing this decision. In the internal review our service argued for funding for therapists to travel to F's community to provide early intervention supports. In the internal review meeting the IRO admitted to having no understanding of the location or attributes of F's community. The IRO decision confirmed the decision under review. The plan was still cut. F's family decided not to pursue the appeal further, as even though they have attempted to engage with the NDIS for over a year, they have not seen any benefits to F.
<b>Analysis</b>	<p>Illustrative of the failure of the NDIA to adapt to circumstances and needs of NDIS participants in remote Aboriginal communities in the NT.</p> <p>Illustrative of the NDIA failing Aboriginal children and families in the NT.</p> <p>Illustrative of systemic factors which compound disadvantage for people with disability in remote communities in the NT.</p>

<b>Case Study</b>	<b>Client H - 1<sup>134</sup></b>
<b>Brief outline</b>	Client H 1 was in detention and had chronic documented disabilities including cognitive and behavioural. There were challenging behaviours and complex needs. Despite substantial prior statutory agency involvement, there had been no NDIS access application. The Superintendent had relevant responsibilities, but advocacy and assistance were required towards an NDIS access application.
<b>Analysis</b>	Illustrative of lack of attention to NDIS access prior to offending resulting in incarceration, apparent lack of therapeutic approach during the criminal justice process, and lack of focus on roles and responsibilities regarding the NDIS by detention facility managers (despite their statutory roles).

<sup>133</sup> Ibid 50-51.

<sup>134</sup> Ibid 62.

Case Study	Client H - 2 <sup>135</sup>
<b>Brief outline</b>	<p>Client H was in prison at the time he became a DCLS client. He has a disability and was a NDIS participant. H was eligible for Supporting Independent Living funding. H was eligible for parole, but was repeatedly unsuccessful in being granted parole, as he could not provide definite answers about his living situation and supports after leaving prison. This was because the NDIA would not finalise his NDIS plan based on a proposed Roster of Care, as the NDIA argued it could not make a final assessment on H's needs before knowing where he would move to upon release. Neither process provided the flexibility needed to progress H's parole. DCLS submitted a complaint to the NDIA on H's behalf and assisted with the implementation of services when a NDIS plan was completed.</p>
<b>Analysis</b>	<p>Illustrative of interface between NDIA and Corrections where the NDIA's position caused Catch 22 which can have substantial adverse effects, including increasing the length of incarceration.</p> <p>Also illustrative of how NDIA administrative decision making can relate to fundamental human rights where the gravity of the situation and NDIA's statutory purposes are not reflected in the NDIA approach.</p>

Case Study	Client K <sup>136</sup>
<b>Brief outline</b>	<p>Client K is a young person in a remote community, unable to access the support he requires to learn to read.</p> <p>Client K was diagnosed with ADHD and Specific Learning Disorder (related to their inability to read) which could not be explained by another diagnosis such as an intellectual disability.</p> <p>NDIA considers that the responsibility for learning support in this case belongs to the NT Department of Education.</p> <p>The school attempted to provide an adequate service however K's literary skills did not improve. It appears that the school did not have the resources to provide the specialized support needed to meet this child's needs.</p>
<b>Analysis</b>	<p>Similar to Client J (above), the stand-off between the Commonwealth (NDIA) and NT (Department of Education) is leaving K without supports.</p> <p>This failure could have long term adverse effects for K with potential future support needs which also impact the NDIA and the Commonwealth and the NT Department of Education and the NT.</p>

<sup>135</sup> Ibid 62.

<sup>136</sup> Ibid 66.