

Independent Review of the National Legal Assistance Partnership (‘NLAP’) Agreement

Submission by the National Regional, Rural, Remote and Very Remote Community Legal Network (4Rs Network): Directions and priorities for 4Rs Australia

27 October 2023

4Rs Community Legal Network Members



4Rs Community Legal Network Members

Aboriginal Family Legal Services (WA)
Albany Community Legal Centre
ARC Justice (Loddon Campaspe Community Legal Centre, Housing Justice,
Goulburn Valley Community Legal Centre)
Barwon Community Legal Centre
Cairns Community Legal Centre
Central Australian Women's Legal Service
Central Tablelands and Blue Mountains Community Legal Centre
Community Legal Centres South Australia
Darwin Community Legal Service
Far West Community Legal Centre
First Nations Women's Legal Services Qld
Goldfields Community Legal Centre
Hume Riverina community Legal Centre
Hunter Community Legal Centre
Katherine Women's Information and Legal Service
Kimberley Community Legal Service
Launceston Community Legal Service
Macarthur Legal Centre
Mackay Regional Community Legal Centre
Marninwarntikura Women's Resource Centre
Mid North Coast Community Legal Service NSW
North and North West Community Legal Service
North Queensland Women's Legal Service
Peel Community Legal Service
Pilbara Community Legal Service
Shoalcoast Community Legal Centre
Top End Women's Legal Service
Townsville Community Law
Welfare Rights & Advocacy Service (WA)

The National 4Rs Network acknowledges and pays respect to the Aboriginal and Torres Strait Islander peoples, the Traditional Owners of land, waters, and seas. We acknowledge the impacts of past and present actions and practices on First Nations peoples and communities. We express our deep respect to Elders past, present and emerging.

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The 4Rs Network consents to this submission being published on the Review website, being identified in the report of the Review as having been made as a submission and being quoted with attribution in the report of the Review.

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About the 4Rs Community Legal Network

The National Regional, Rural, Remote and Very Remote Community Legal 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 ¹

The 4Rs Network's 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.

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.

Importance of the NLAP review

We note that the current review of the National Legal Assistance Partnership ("NLAP") was announced by the Commonwealth Attorney-General the Hon. Mark Dreyfus KC QC on 18 August 2023 and submissions are being received until 27 October 2023.

The current NLAP, which is due to expire in 2025, is:

"... a \$2.4 billion agreement between the Commonwealth and state and territory governments to fund vital legal assistance services for the most vulnerable people in Australia."²

¹ 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](#)).

² Attorney-General Dreyfus, Press Release, '[Independent Review of the National Legal Assistance Partnership – consultation open](#)', 18 August 2023

While the review requirements in the NLAP focus on effectiveness over the period considering NLAP's objectives and outcomes and/or outputs,³ the current Review goes beyond this by requiring "holistic assessment of legal need and all Commonwealth legal assistance funding".

This holistic assessment is of major importance in 4Rs areas around Australia due to vastly insufficient access to legal assistance and legal assistance related services provided by non-profit legal sectors and collaborators, including pro bono contributors.

Scope of the Review

For ease of reference for readers of this submission, the 'Scope of the Review' part of the Terms of Reference for the review⁴ are included here:

"Scope of the Review"

In accordance with the Federation Funding Agreements Framework and consistent with the NLAP (clause 82), the review will evaluate the extent to which the objective, outcomes and outputs (clauses 13-20) of the NLAP have been achieved, and the NLAP is efficient, effective and appropriate in achieving its policy intent. It will have a particular focus on:

1. A holistic assessment of legal need and all Commonwealth legal assistance funding, including:
 - a. the quantum, prioritisation, allocation, distribution mechanism, and timing and length of existing Commonwealth funding, including funding provided under the NLAP and outside the NLAP
 - b. funding allocated across jurisdictions and within each jurisdiction.
 - c. comparative analysis of various funding administration mechanisms, such as direct and indirect distribution of Commonwealth funding under the NLAP, and other legal assistance programs for example Family Violence Prevention Legal Services (FVPLS), and the previous Indigenous Legal Assistance Program 2015-2020 (ILAP) to identify best practice for Commonwealth funding arrangements including principles of self-determination
 - d. the current evidence of unmet legal need and demand, particularly pertaining to the most disadvantaged communities and population groups, such as those in regional, rural and remote locations
 - e. whether existing arrangements can appropriately respond to emergencies and new priorities (e.g., natural disasters, COVID-19 and legislative change).
2. An evaluation of the effectiveness and challenges of service delivery, including:
 - a. the effectiveness and challenges of delivering core legal assistance services of varying complexity and intensity, as well as wrap-around services such as counselling; and the broader role of providers in community education, advocacy and strategic litigation

³ [NLAP](#) Clauses 81 and 82

⁴ National Legal Assistance Partnership Review, Issues Paper ("**Issues Paper**"), August 2023, Annexure A, Terms of Reference, <https://nlapreview.com.au/the-independent-review-of-the-nlap>

- b. integration, collaboration and innovation of service delivery, within the sector and with other areas of social service provision such as health, employment, disability and child protection services, and how the NLAP supports broader government priorities (such as, the National Plan to End Violence Against Women and Children, Australia’s Disability Strategy, and the National Framework for Protecting Australia’s Children)
 - c. the cultural appropriateness of legal assistance services for First Nations people, acknowledging the diversity of Aboriginal and Torres Strait Islander culture, and the alignment between legal assistance services and the Priority Reforms and Targets under Closing the Gap
 - d. cultural appropriateness of legal assistance services for all national priority client groups under the NLAP.
3. An evaluation of data collection, performance monitoring and reporting, including:
- a. the current reporting framework, including its purpose, utility, and data quality, with consideration of the data capability across and the administrative burden on the sector
 - b. exploring alternative frameworks and approaches to improve the data availability, reliability, quality, and better connection with the broad outcomes
 - c. opportunities and strategies to enhance data collection of legal assistance that improve service delivery, guide future outcomes-based frameworks, and align with Closing the Gap Priority Reforms 2 and 42.

Individual evaluations of specific services under the NLAP, such as FASS, DVUs and HJPs, will be outside the scope of the review. However, the impact of these service models will be considered as part of the review.”

About non-profit legal service sectors

Funding via NLAP primarily relates to services delivered by Legal Aid Commissions, Community Legal Centres and Aboriginal Torres Strait Islander Legal Services. That is:

- Legal Aid Commissions (“**LACs**”) - which are statutory bodies, one for each state and territory established under state or territory legislation. Each LAC has a head office in the capital city and regional offices, except for the ACT where there is one office.⁵
- Community Legal Centres (“**CLCs**”) - which are non-government, not-for-profit organisations with a specialist and/or generalist focus. While some have a national or state-wide focus, the high majority focus on a geographic area within a state or territory. The First Nations Women’s Legal Service Queensland, based in Townsville, is a First Nations community and regionally controlled organization focusing North Queensland. There are over 160 CLCs.⁶

⁵ For more background, see <https://www.ag.gov.au/legal-system/legal-assistance-services> and the National Legal Aid web site: <https://www.nationallegalaid.org/>

⁶ Community Legal Centres Australia, The national community legal sector’, online at: <https://clcs.org.au/about-us/community-legal-centres/>

- Aboriginal and Torres Strait Islander Legal Services (“**ATSILS**”) - which are Aboriginal and Torres Strait Islander community controlled not for profit organisations. ATSILS are governed by Aboriginal and Torres Strait Islander people, in addition to the NSW/ACT ATSILS there is one ATSILS in each state and territory and all have branch offices.⁷

Funding to the fourth of the largest non-profit legal sectors, namely Aboriginal and Torres Strait Islander Family Violence Prevention Legal Services (“**FVPLS**”), which is provided separately to NLAP, administered by the National Indigenous Australians Agency.⁸ FVPLS are Aboriginal and Torres Strait Islander community-controlled organisations and FVPLS funding relates to a specified geographic area. There are 15 FVPLS with a strong focus overall on 4Rs and many are fully or primarily located in 4Rs areas.⁹

Additionally, **contributions by private lawyers**, especially via LACs and ATSILS are highly significant as are **pro bono contributions**¹⁰ by lawyers particularly with CLCs, ATSILS and FVPLS by lawyers. **Law school** and **law student** contributions are also substantial, although private lawyer, lawyer, law school and law student contributions are far less available in 4Rs areas.

In 4Rs communities where there are multiple non-profit legal services present, there are usually strong collaborations and a shared understanding of the impacts of grossly insufficient resources compared to levels of disadvantage and unmet legal needs (news clipping below, Katherine NT, May 2023 ¹¹).

Katherine lawyers work to reduce barriers to justice in the remote NT amid funding shortage

ABC Katherine / By Samantha Dick

Posted Thu 18 May 2023 at 6:26am, updated Thu 18 May 2023 at 8:13am



Katherine's major legal services came together for Law Week on Monday. (ABC News: Samantha Dick)

⁷ NATSILS, [National Aboriginal and Torres Strait Islander Legal Services](#) Strategic Plan 2019-23,

⁸ Issues Paper, op cit., 11

⁹ National Family Violence Prevention Legal Services Forum, <https://nationalfvpls.org/fvpls-services/>

¹⁰ Pro bono contributions are summarized by the [National Pro Bono Centre](#), these contributions cannot and do not substitute for the funding levels needed by each of the non-profit legal sectors.

¹¹ ABC Katherine, online at: <https://www.abc.net.au/news/2023-05-18/nt-katherine-lawyers-detail-remote-barriers-amid-funding-crisis/102353532>

Below: North Queensland Women's Legal Service, International Women's Day 8 March 2023



Levels of disadvantage in the 4Rs and unmet legal needs

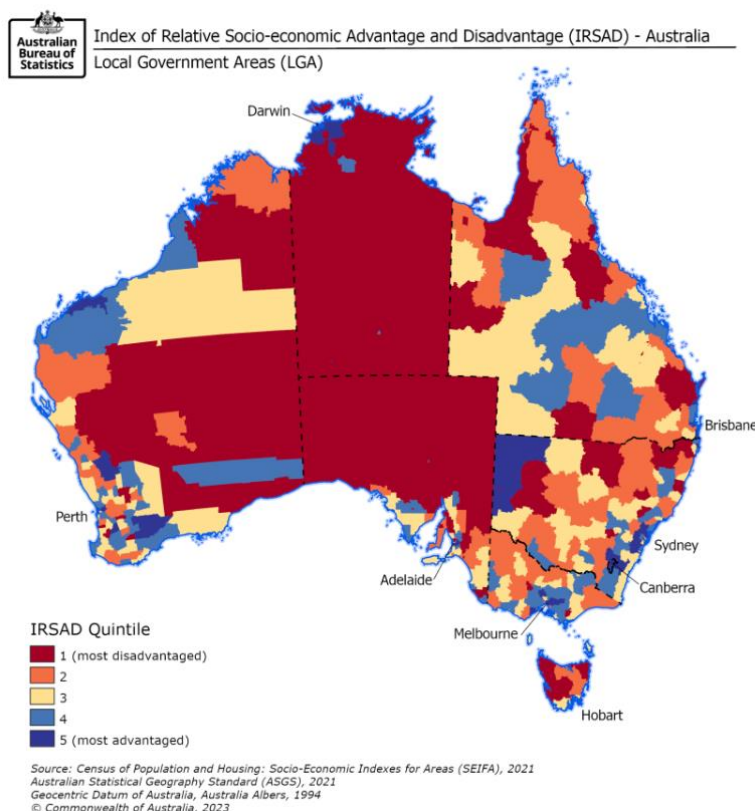
As noted by the Australian Institute of Health and Welfare:

“Around 7 million people – or 28% of the Australian population – live in rural and remote areas, which encompass many diverse locations and communities (ABS 2022e). These Australians face unique challenges due to their geographic location and often have poorer health outcomes than people living in metropolitan areas. Data show that people living in rural and remote areas have higher rates of hospitalisations, deaths, injury and also have poorer access to, and use of, primary health care services, than people living in *Major cities*.”¹²

The Index of Relative Socio-Economic Advantage and Disadvantage (“**IRSD**”)¹³ paints a picture of many of the trends relating to levels of disadvantage in the 4Rs (see map below).

¹² Australian Institute of Health and Welfare, [Rural and remote health](#) (AIHW, 2023). Also, the National Rural Health Alliance, [Submission](#) to the Senate Standing Committee on Community Affairs, Inquiry into the Extent and Nature of Poverty in Australia, Submission no 34, 10 February 2023.

¹³ Australian Bureau of Statistics, [Socio-Economic Indexes for Areas \(SEIFA\), Australia, 2021](#) (ABS, 2021)



While disadvantage is highly correlated with geographic location, there are also areas of relative socio-economic advantage within otherwise less disadvantaged 4Rs areas.¹⁴

In the 4Rs market factors often compound disadvantage by failing to achieve supply and by driving up the cost essentials including food, transport, energy, health, and housing.¹⁵ These factors contribute substantially to levels of client disadvantage and unmet legal needs in the 4Rs and to the costs of service delivery.

The Pilbara is an example. In 2021 the Pilbara region had a SEIFA score of 57, suggesting far less disadvantage than the Kimberley with a SEIFA score of 5, and the Regional Western Australia average of 28.¹⁶ However, many vulnerable groups in the Pilbara experience high levels of disadvantage. For example, the report by Jonathan in The Guardian in January 2023 (screen shots below) is one of many relating to the housing crisis.¹⁷

¹⁴ Delphine Bellerose and Catriona Mirrlees-Black, [Need for Legal Assistance Services \(NLAS\) indicators – 2021 Census Update](#), Law and Justice Foundation of NSW, Justice Issues, Paper 33, March 2023

¹⁵ For example: Mitchell Bowden, [Understanding food insecurity in Australia](#), CFCA Paper No. 55, (Australian Institute of Family Studies, 2020), 10-11; Margaret Deerain, (2023), 31(2) [Extent and nature of poverty in Australia and the impact on rural health](#), Australian Journal of Rural Health, 339

¹⁶ .ID Community for the Western Australian Parliamentary Library, [Western Australia SEIFA by profile area, Index of Relative Socio-economic Disadvantage](#), 2021 Index

¹⁷ Jonathan Barrett, [The boom is back in the Pilbara and so is the housing crisis](#), The Guardian, 25 January 2023

The boom is back in the Pilbara - and so is the housing crisis

As the appetite for Australia's minerals grows, boom and bust towns such as Port Hedland face an escalating rental emergency



The Pilbara Community Legal Service highlights that the housing crisis has many flow on effects. For example, women are being forced to choose between housing and safety when they are at risk of domestic or family violence but there is no other housing. This includes where the rented home comes with the other partner's employment.

Spatial patterns of disadvantage are also highlighted by the Dropping Off the Edge Report, which found (emphasis added):

“When looking at where disadvantaged communities are located in each state or territory, it becomes evident that, in general, disadvantage is experienced in regional and remote areas. All of the top 10 most disadvantaged locations in the Northern Territory were outside Darwin despite only one-third of the SA2 locations (community level areas) being outside the Darwin area. This trend was repeated to varying degrees in most other states and territories. In New South Wales only three of the top 40 most disadvantaged locations were in Greater Sydney. In Western Australia only one of the top 10 was in Perth and in Queensland only two of the top 10 most disadvantaged locations were in Greater Brisbane....

..... many of the most disadvantaged locations are severely disadvantaged (top 5% most

Figure 6 Map of index for South Australia and Greater Adelaide

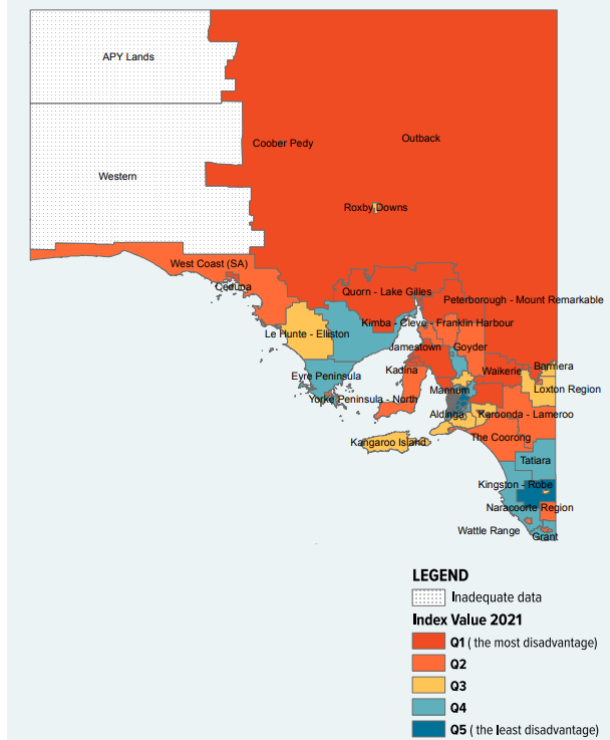


Figure 7 Map of index for Perth and WA

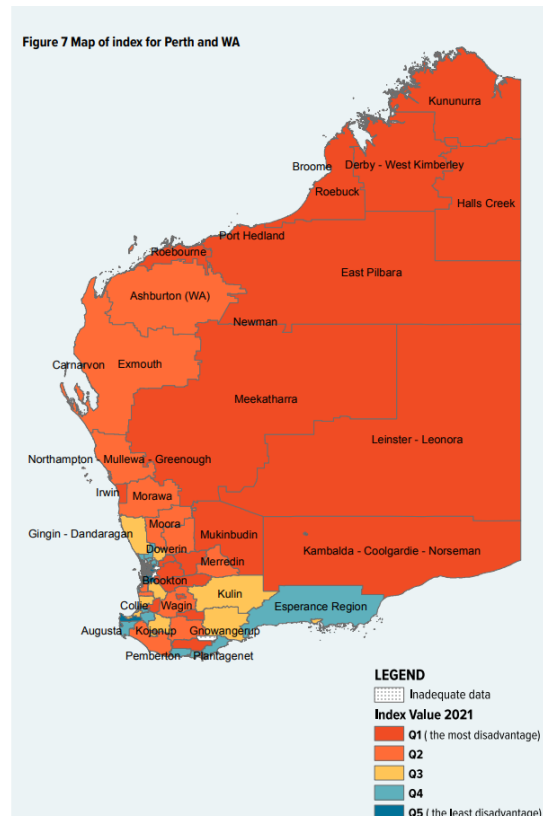


Figure 8 Map of index for Greater Hobart and Tasmania

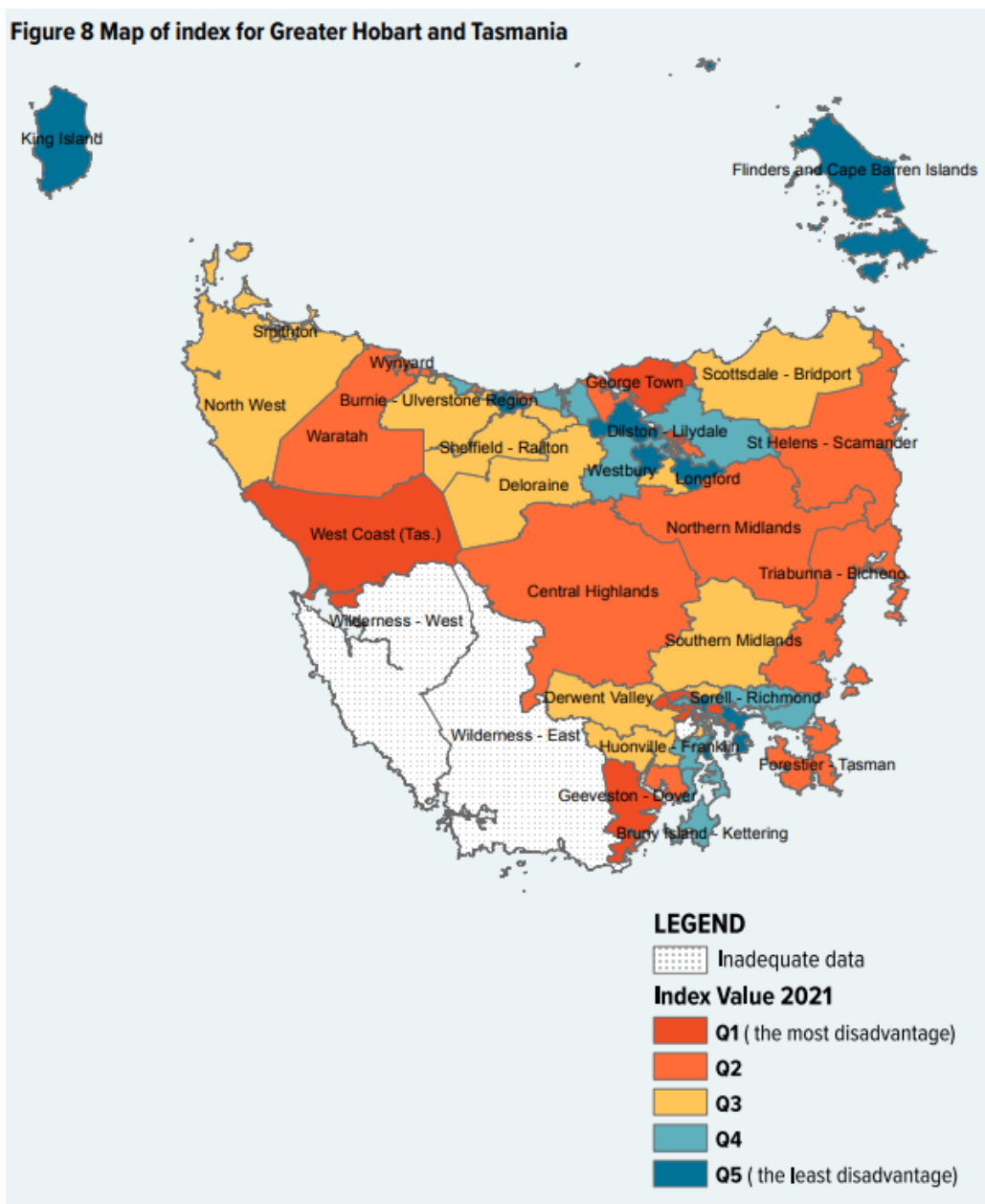
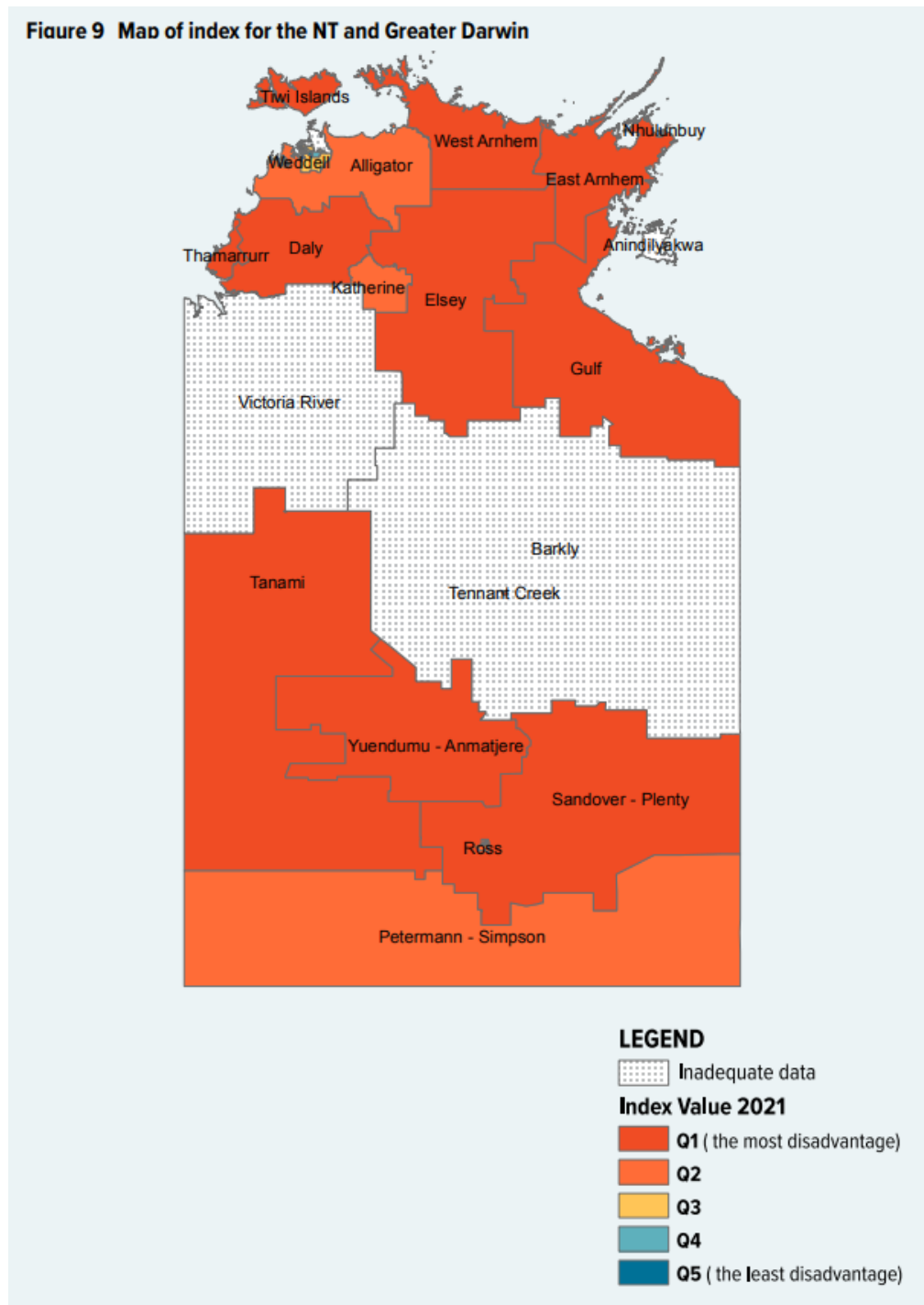


Figure 9 Map of index for the NT and Greater Darwin

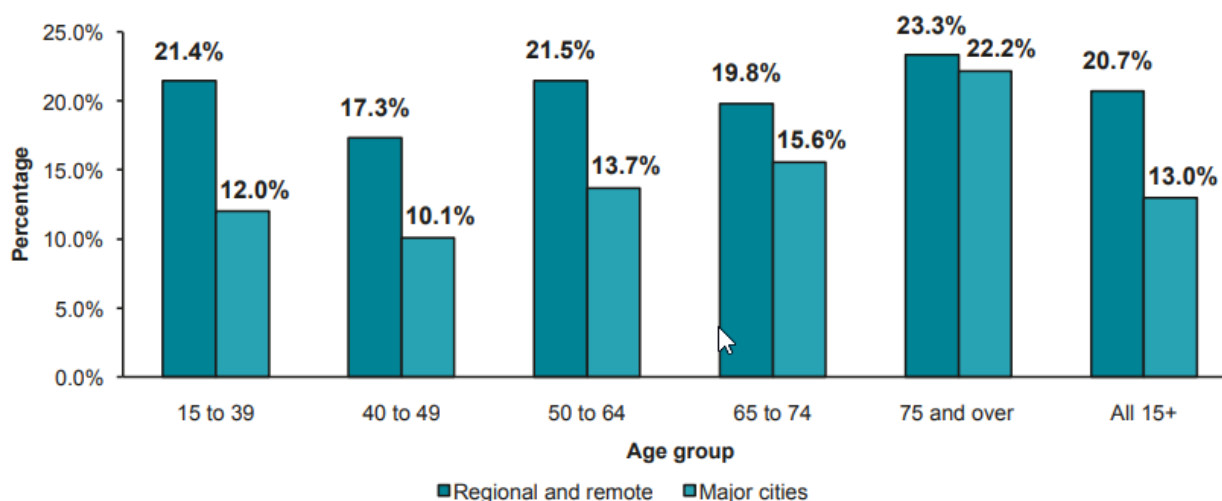


The Law and Justice Foundation of NSW has undertaken work to estimate need for legal assistance from NSW Community Legal Centres which was then projected nationally.²¹ This work focused on five

²¹ Catriona Mirrlees-Black, (2019) [An indicator of need for community legal centres: introducing NLAS\(CLC\)](#), Law and Justice Foundation of NSW, Justice Issues Paper 29, January 2019

indicators,²² collectively called the Need for Legal Assistance Services (Community Legal Centres) Indicator (“**NLAS (CLC)**”). The results indicated that the percentage of people who met the NLAS(CLC) criteria was about 13% in major cities and 20.7% in other areas, the latter being about 60% higher. Further, the percentage of people who met the NLAS(CLC) were higher for regional and remote areas compared to major cities, across all age group (figure below)²³

FIGURE 6: PERCENTAGE OF AGE GROUP COUNTED AS NLAS(CLC), BY RURAL/REMOTE OR MAJOR CITY



Estimates indicate that in 2023 among First Nations people:

- 39% (353,300) live in Major cities
- 44% (404,000) live in Inner and outer regional areas
- 17% (156,600) live in Remote and very remote areas combined.²⁴

As distance increases from the major cities, First Nations people make up an increasing proportion of the population (see table below²⁵).

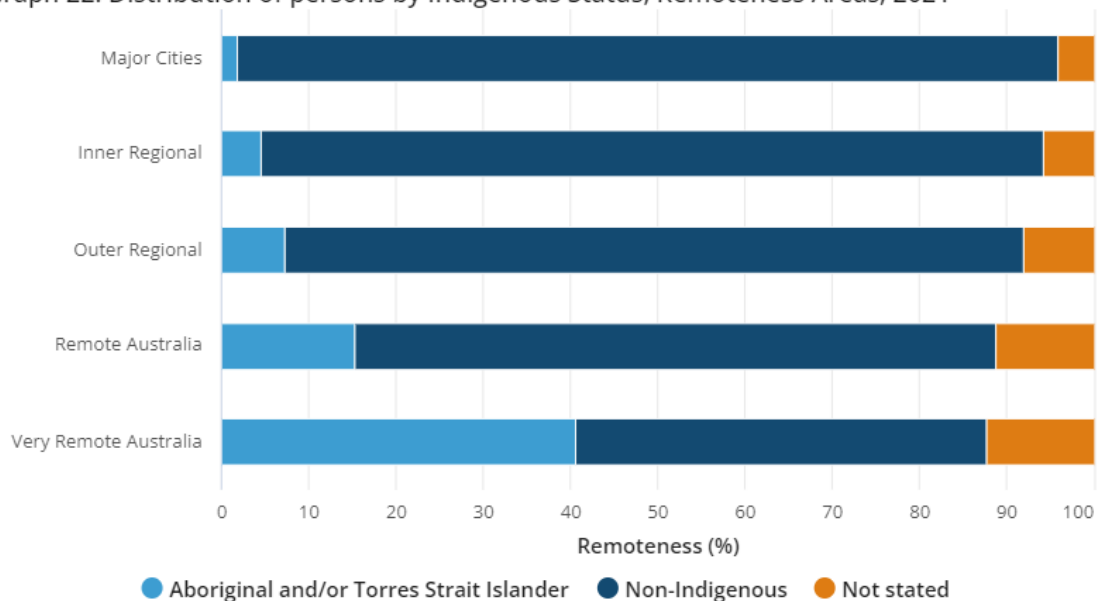
²² The five indicators are NLAS(Capability), NLAS(ATSI), NLAS(CALD), NLAS(65+) and NLAS(\$52K), outlined in more detail in Locating demand: updating the Need for Legal Assistance Service indicators, Justice Issues paper 28, December 2018.

²³ Ibid, 8

²⁴ Based on 2016 Census projections by Australian Institute of Health and Welfare, Australia’s Welfare, 2023, [Profile of First Nations People](#), (AIHW, 2023)

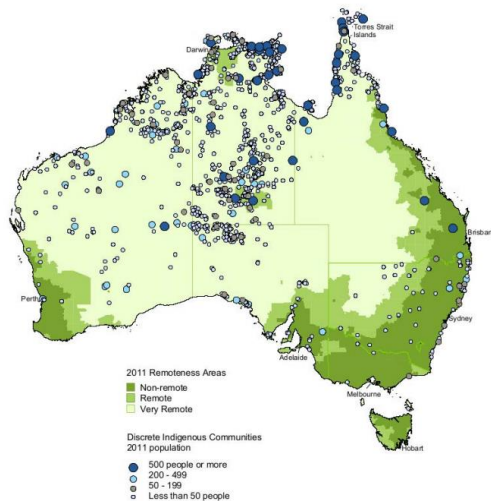
²⁵ Australian Bureau of Statistics (2021), [Census of Population and Housing - Counts of Aboriginal and Torres Strait Islander Australians](#), (2021)

Graph 22. Distribution of persons by Indigenous Status, Remoteness Areas, 2021



In 2011 there were over 1,000 discrete remote Indigenous communities in Australia, being communities where over 50% of the population are Indigenous people (see map below).²⁶

Figure 9.1 Discrete Indigenous communities by size and remoteness, 2011



Source: ABS (Census of Population and Housing, unpublished).

²⁶ Productivity Commission, [Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services Productivity Commission Inquiry Report](#), No. 85, 27 October 2017, Chapter 9. Human Services in Remote Communities, 267

Most remote Indigenous communities have highly insufficient access to legal assistance due inadequate resources for Aboriginal and Torres Strait Islander Community Controlled Legal Services and other community-based legal services in the service area.²⁷

In relation to needs for legal assistance, the following continues to be true:

“Importantly, ...distance and poor service infrastructure in RRR [regional, rural and remote] areas is compounded by the fact that disadvantaged groups such as Indigenous Australians [make up a higher proportion of the population] in RRR areas..... Thus, some RRR areas are microcosms of legal need, embodying the ‘double whammy’ of poor service infrastructure and populations with high vulnerability to legal problems.”²⁸

In early 2023 the Northern Territory Legal Assistance Strategy under NLAP was completed,²⁹ marking completion of Strategies by each jurisdiction.³⁰ The approach by jurisdictions to developing their Strategy reflects substantial diversity reflected in factors such as the length and level of detail. The treatment of non-metro areas is highly variable, which is a factor for dialogue and reflection.

So far, there has been no federal process focusing on the treatment of the 4Rs in these Legal Assistance Strategies or what can be learned from this.

The lived experience of all Commonwealth priority groups under the NLAP, includes lived experience in 4Rs locations. This includes Aboriginal and Torres Strait Islander people, older people, people at risk of family violence, people at risk of homelessness, people with a disability or mental illness, people with low income, and single parents.³¹ As highlighted in advocacy and submissions over many years, by legal

²⁷An aspect repeatedly emphasized by all peaks which make up the [Australian Legal Assistance Forum](#), including in plenary panel presentations by each at the [National Pro Bono Law Conference](#), Brisbane, 22-23 June 2023

²⁸ Pascoe Pleasence et.al, 2014, [Reshaping legal assistance services: building on the evidence base](#), Law and Justice Foundation of NSW, p. 32

²⁹ Online at: https://justice.nt.gov.au/_data/assets/pdf_file/0018/1213614/northern-territory-legal-assistance-strategy-and-action-plan.pdf

³⁰ New South Wales Legal Assistance Strategy and Action Plan Communities and Justice 2022–2025: <https://dcj.nsw.gov.au/legal-and-justice/laws-and-legislation/legal-assistance-and-applications/nsw-legal-assistance-strategy.html> Queensland Legal Assistance Strategy and Action Plan 2020-2025: <https://www.justice.qld.gov.au/about-us/services/legal-assistance-strategy-and-funding-unit/queensland-legal-assistance-strategy-action-plan> Western Australia Legal Assistance Strategy 2022-25: https://www.wa.gov.au/system/files/2022-06/WA-Legal-Assistance-Strategy-2022-2025_0.pdf South Australia Legal Assistance Strategy and Action Plan 2022-25: <https://www.agd.sa.gov.au/documents/Legal-Assistance-Strategy-Action-Plan.pdf> Victorian Legal Assistance Strategy 2022-25: <https://www.justice.vic.gov.au/justice-system/legal-assistance/victorian-legal-assistance-strategy-2022-2025> Tasmanian Legal Assistance Strategy 2022-25: <https://www.justice.tas.gov.au/your-rights/legal/legal-assistance-resources> and the ACT Legal Assistance Sector Strategy 2023-2025: <https://www.justice.act.gov.au/justice-programs-and-initiatives/legal-assistance-sector-initiatives/legal-assistance-sector-strategy>

³¹ NLAP Schedule A, clause A.3 priority groups

service sectors and a wide range of non-profit legal services, the operation of areas of law, including criminal law, civil and family law, are often compounded in 4R locations.³²

The Productivity Commission noted in the 2014 report on *Access to Justice Arrangements*³³ that government involvement in the provision of legal assistance services can be justified on a conceptual level by:

- **positive spillover** - or flow on effects to the wider community, including the benefits of preventing legal problems before they arise,
- **market failures** - including thin markets where economic forces do not address needs, and
- **equity and fairness** - in accessing the justice system.³⁴

Opportunities for positive spillover and equity and fairness are currently limited in the 4Rs by dramatically insufficient resources for legal assistance. This is against the backdrop that legal services market failure and thin markets are highly prevalent in 4Rs Australia where there are huge geographic areas with no private lawyers.

The mixed model of Legal Aid Commission service provision, consisting of in-house lawyers and private firms, is largely inapplicable for most of the Australian landmass due to unavailability of private lawyers. In 4Rs areas where there are private lawyers, there is no guarantee that they will take legal aid work or do so at sufficient volume. Similarly, duty lawyer services by contracted private practitioners are not applicable for most of the landmass.

While the Law Council's *Justice Project Report* completed in 2018 included a chapter on Rural, Regional and Remote Australians,³⁵ there has been a lack of progress in response.

In fact, identification of many of the issues and insufficient progress in response echoes through from earlier times, including the final report of the 2004 Legal and Constitutional References Committee, *Inquiry into Legal Aid and Access to Justice*,³⁶ the recommendations of which included:³⁷

³² For example, input by numerous legal services based in 4Rs areas referenced by the Law Council in the Justice Project Report ("**Justice Project Report**") chapter on Rural, Regional and Remote (RRR) Australians.

³³ Productivity Commission, 2014, *Access to Justice Arrangements*, [Inquiry Report No 72](#)

³⁴ Ibid., chapters 4, 5 and 20 including the summary at 20.1

³⁵ Op cit., Law Council of Australia, [Justice Project Report](#), 2018

³⁶ Commonwealth of Australia, Legal and Constitutional References Committee, [Inquiry into Legal Aid and Access to Justice Final Report](#), 8 June 2004 ("**2004 Senate Committee Inquiry**")

³⁷ Ibid, p.135-136

Recommendation 39

6.86 The Committee recommends that any increase in funding for rural, regional and remote areas should not be at the expense of funding for metropolitan areas. Additional funding is urgently required to address the problem of lack of legal and related services in rural, regional and remote areas.

Recommendation 40

6.87 The Committee recommends that the Commonwealth Government and state/territory governments ensure that thorough consultation takes place with rural, regional and remote communities in order to determine the most appropriate legal and associated services required in particular communities. All consultations should occur before any establishment of any new services.

There has not been a dedicated national study of 4Rs legal needs and of unmet legal needs in the 4Rs in Australia. The 2012 Legal-Aid Australia Wide Survey: Legal Needs in Australia,³⁸ undertaken by telephone interview, attempted to include rural areas without a tailored methodology. This compares with the Indigenous Legal Needs Project, which focused on Indigenous civil and family law legal needs undertaken between 2011 and 2015 which included focus groups³⁹ It also compares with the 2020 *Access to Justice in the Barkly Report*⁴⁰ the methodology for which included a large local cohort, community focus groups and interviews with a range of stakeholders.

In many locations in the 4Rs the nature and effect of unmet legal needs in the 4Rs are at a humanitarian level and are deepening hardship and poverty. Unmet legal needs contribute to women, children and older people being unsafe.

Unmet legal needs in the 4Rs also contribute to homelessness, child protection interventions, social security problems, disengagement, increased anxiety, and poorer health profiles.

People, groups, and communities in the 4Rs are vulnerable to being taken advantage of, or unfairly treated by many actors.

The submission which follows focuses on measures relevant to the NLAP Review to achieve proper access to legal assistance in the 4Rs.

[About this submission](#)

The NLAP Review is of major importance for advancing justice, equality, and wellbeing in the 4Rs, and increasing efforts to overcome patterns of exclusion and disadvantage in the 4Rs.

³⁸ Christine Coumarelos et. al, 2012, [Legal-Aid Australia Wide Survey: Legal Needs in Australia](#), Law and Justice Foundation of NSW

³⁹ UTS and JCU [Indigenous Legal Needs Project](#) web site

⁴⁰ Fiona Allison and Chris Cunneen, 2020 [Access to Justice in the Barkly](#), Jumbunna Institute for Indigenous Education and Research, UTS, Sydney.

The submission focuses on building forward to increase access to legal assistance among disadvantaged people, groups, and communities in regional, rural, remote, and very remote parts of Australia. The submission highlights patterns relating to 4Rs areas. It is likely to complement submissions to the Review by many others concerned to increase equity and inclusion across geographic areas, in particular locations and among particularly disadvantaged groups.

The submission highlights that the NLAP approach to the 4Rs is highly underdeveloped, there is minimal reference to the 4Rs, no strategic direction and insufficient transparency, facilitation, and accountability.

The context relating to the availability of legal assistance in the 4Rs currently includes no benchmarks, no workforce planning, and a grossly insufficient funding model.

The next NLAP should provide a high-level framework, responsive resourcing, and accountability mechanisms to achieve and sustain access to justice in the 4Rs. The approach should:

- ensure access to legal assistance for people, groups, and communities in the 4Rs
- promote holistic, place-based, approaches, and
- ensure rights, inclusion, and wellbeing.

The following summarises many of the key challenges to be overcome, which are highlighted in the submission.

Challenges for NLAP	To overcome the following:
Planning and direction for the 4Rs	<ul style="list-style-type: none"> • No national 4Rs Access to Justice Strategy. • No articulated 4Rs vision, concepts, structures, or coordination. • No identifiable 4Rs representative or implementation arrangements.
Funding and resources for the 4Rs	<ul style="list-style-type: none"> • No 4Rs legal assistance community needs-based funding model. • No accountability for the adequacy of funding in the 4Rs or the effects of underfunding, including cost-shifting.
Legal workforce for the 4Rs	<ul style="list-style-type: none"> • Dramatically insufficient salaries and conditions for 4Rs legal assistance workforce (lawyers and non-lawyers). • No <i>national legal workforce plan</i> and no <i>4Rs legal workforce plan</i> • Insufficient emphasis on paralegal, non-legal advocacy, and support across 4Rs communities. • Absence of programs and financial incentives to help address 4Rs legal workforce needs.
Accountability to groups and communities in the 4Rs	<ul style="list-style-type: none"> • No 4Rs legal assistance targets or intended impact model. • No monitoring and reporting on 4Rs legal assistance, access to justice or intended outcomes. • No adequate accountability under NLAP to 4Rs communities (<i>horizontal accountability</i>), and over-reliance on vertical accountability to funders.

Cross-cutting themes relating to the 4Rs	<ul style="list-style-type: none"> • No principles for access to legal assistance in the 4Rs. • No adequate measures to address metro-normativity in legal education and training for admission to legal practice resulting in insufficient focus on 4Rs law, justice, and legal workforce issues in law school curriculum. • No measures to facilitate law student legal practitioner and law student pro bono resulting in this being highly skewed to the metro and inequitable for 4Rs communities.
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A summary of the recommendations in the submission is below followed by:

- Key issues of concern relating to the 4Rs (1-3 inclusive), and
- Responses to questions in the Issues Paper.

Summary of recommendations

Recommendation 1: 4Rs Network Pre-budget submission should be implemented

That the recommendations by the 4Rs Network, in its January 2023 federal pre-budget submission, be implemented. That is:

- Establish a National 4Rs Access to Justice Strategy and Action Plan.
- Increase federal portfolio capacity to respond to 4Rs legal needs – to include all relevant portfolios to overcome the narrow and insufficient focus on the Attorney-General's portfolio.
- Immediate injection of funds for 4Rs community based legal services for 4Rs place-based approaches, addressing priority unmet community legal needs via models to increase wellbeing across multiple areas in people's lives.
- Allocate federal funding for 4Rs community legal services to be assisted to collaborate and develop as a sector.
- Allocate federal funding for the 4Rs Network to hold a national gathering of 4Rs community based legal services and initiatives to deliberate current issues, themes, directions and solutions.

Recommendation 2: NLAP's unresponsiveness to 4Rs legal needs to be overcome

The unresponsiveness of NLAP to 4Rs legal needs must be addressed, and forms of bias which have subordinated legal needs in the 4Rs must cease. This should also be reflected in a major, corrective, funding injection to address unmet needs for access to legal assistance in the 4Rs.

Recommendation 3: Principles in Support of 4Rs Legal Assistance are needed

NLAP should facilitate development of Principles in Support of 4Rs Legal Assistance and once finalised, these principles should be incorporated in relevant way in stakeholder practices.

Recommendation 4: Standards for access to legal assistance in the 4Rs are needed

NLAP should ensure that standards for access by 4Rs communities to legal assistance are established and implemented and reporting against standards and indicators include report-back and direct engagement with 4Rs groups and communities.

Recommendation 5: Standards to address factors upstream from the 4Rs are needed

NLAP should implement standards which address upstream factors relating to access to legal assistance in the 4Rs, in particular:

- sufficient funding to ensure equitable salaries, not less than Legal Aid Commission levels, for community legal workers salary levels in 4Rs
- initiatives in support of recruitment and retention of the remote 4Rs legal workforce equivalent to those relating to the rural and remote health workforce
- initiatives to increase the treatment and inclusion of 4Rs justice issues and career options in law curriculum including financial support for law students to undertake clinical and other placement programs in 4Rs areas, and including a domestic equivalent to the New Colombo Plan in law focused on the 4Rs
- Initiatives to facilitate 4Rs pro bono.

Recommendation 6: NLAP theory of change should reflect positive inclusion of the 4Rs

NLAP should reflect a coherent, meaningful, and integrated theory of change and results framework. This should include the objective of reducing disadvantage. Measures should support dialogue about progress in 4Rs and metro areas, including accountability to groups and communities in the 4Rs.

Recommendation 7: Indicators, baselines, and data sharing for the 4Rs

The new NLAP should place transparency and accountability at the centre to achieve a striving approach to access to legal assistance and the intended impacts like Closing the Gap and include:

- indicators and targets to help respond to unmet legal needs in the 4Rs
- baselines and additional data collection including qualitative data
- sufficient capacity for effective and ongoing 4Rs access to justice research, and
- an effective range of justice, social justice and wellbeing indicators relating to the 4Rs.

Recommendation 8: NLAP reconceptualised to promote 'buy-in' and leveraging

NLAP should be reconceptualised to promote 'buy-in' and leveraging by the full range of policy and program areas and enable inclusion of peaks representing disadvantaged groups and mechanisms for inclusion of lived experience. This will help address the current problems of NLAP being distanced from, and insufficiently accountable to the 4Rs.

Recommendation 9: Foreground geography, place, and accountability to the 4Rs

The geographic dimensions of access to justice in Australia should be fully visible in the NLAP and NLAP should promote contextually responsive, place-aware service availability. NLAP should reflect and apply principles of accountability to groups and communities in the 4Rs. This should be carried out in the operation of the NLAP and monitoring and evaluation of the NLAP.

Recommendation 10: Implement Needs based funding

The current historical-distribution funding model should be replaced with a needs-based funding model, which is the most fundamental and critical improvement required for adequate access to legal assistance, and intended positive outcomes, in the 4Rs.

Funding for 4Rs legal assistance should immediately be doubled due to the nature and extent of gaps in availability of legal assistance.

In relation to the 4Rs costings for needs-based funding should be based on locally costed service delivery plans which reflect the estimated actual costs of service provision. Overheads in the 4Rs such as travel and related costs for service provision in 4Rs areas should be funded without this impinging on service provision.

Needs-based funding should also be implemented for 4Rs disaster resilience legal assistance, to include baseline and surge funding and funding for research for 4Rs disaster legal research and 4Rs legal capacity building local, regionally and nationally.

1. Network's federal pre-budget submission

In January 2023 the Network made a federal pre-budget submission ⁴¹ which continues to apply. This called for:

- A concerted effort to address deeply entrenched barriers to access to justice for people in regional, rural, remote and very remote ('4Rs') Australia, and
- Recognition that some of the most entrenched problems with justice and fair treatment in Australia occur within 4Rs areas and that lack of access to legal assistance is denying people in the 4Rs the opportunity to advance their rights and wellbeing and that of their families and communities.

The submission contained 5 recommendations, namely:

1. **Establish a National 4Rs Access to Justice Strategy and Action Plan** – as there isn't one and has never been one.
2. **Increase federal portfolio capacity to respond to 4Rs legal needs** – to include all relevant portfolios to overcome the narrow and insufficient focus on the Attorney-General's portfolio.
3. **Immediate injection of funds for 4Rs community based legal services** for 4Rs place-based approaches, addressing priority unmet community legal needs via models to increase wellbeing

⁴¹ National Regional, Rural, Remote and Very Remote Community Legal Network, Federal Pre-Budget Submission dated 27 January 2023 ('**4Rs Pre Budget submission**') Published as a public submission at: <https://consult.treasury.gov.au/pre-budget-submissions/2023-24/view/607>

across multiple areas in people's lives.

4. Allocate federal **funding for 4Rs community legal services to be assisted to collaborate and develop as a sector** – to address the continuing lack of resources for this.
5. **Federal funding for the 4Rs Network to hold a national gathering** of 4Rs community based legal services and initiatives to deliberate current issues, themes, directions and solutions.

This pre-budget submission is attached and includes a copy of the South Australian Law Bulletin dated 6, July 2022 which contains a substantial article about the Network.

Recommendation 1: 4Rs Network Pre-budget submission should be implemented

That the recommendations by the 4Rs Network, in its January 2023 federal pre-budget submission, be implemented. That is:

- Establish a National 4Rs Access to Justice Strategy and Action Plan.
- Increase federal portfolio capacity to respond to 4Rs legal needs – to include all relevant portfolios to overcome the narrow and insufficient focus on the Attorney-General's portfolio.
- Immediate injection of funds for 4Rs community based legal services for 4Rs place-based approaches, addressing priority unmet community legal needs via models to increase wellbeing across multiple areas in people's lives.
- Allocate federal funding for 4Rs community legal services to be assisted to collaborate and develop as a sector.
- Allocate federal funding for the 4Rs Network to hold a national gathering of 4Rs community based legal services and initiatives to deliberate current issues, themes, directions and solutions.

2. Unpacking metro-normativity

The Network's federal pre-budget submission, referenced above, and our submission to the Robodebt Royal Commission,⁴² referred to problems for the 4Rs relating to metro-normativity. For example, in the pre-budget submission we expressed that:

"Vastly increased access to advocacy and legal help for people in 4Rs communities is also a pre-requisite for 'equality before the law' in the full sense of the law itself being more inclusive and reflective of 4Rs. This is because laws, programs, review, and appeals systems, are often metro-

⁴² [National Regional, Rural, Remote and Very Remote \(4Rs\) Community Legal Network submission to the Robodebt Royal Commission](#) ("4Rs Robodebt submission"), dated 3 February 2023

normative, resulting in assumptions, logics and processes, which block equality and reduce access to justice within 4Rs contexts.”⁴³

The Robodebt Royal Commission received 990 submissions, 90% were from individuals and 40% were from regional, rural, or remote areas.⁴⁴ It is likely that most people in 4Rs areas had insufficient access to social security legal assistance, due to dramatically inadequate funding and arrangements for this assistance in 4Rs areas.⁴⁵

Metro-normativity is impacting efforts to address levels of unmet legal need in the 4Rs. This includes metro-focused policy perspectives, service provision, training and legal education which are insufficiently inclusive of the 4Rs.

Metro perspectives can result in the 4Rs being relatively unknown and result in justice issues and unmet legal needs in the 4Rs being treated as less prevalent, less pressing, and less evocative.

A hierarchical dimension arises, when metro perspectives treat themselves as holding superior knowledge and entitled (or ‘duty bound’) to apply their perspectives to the 4Rs.

Policy and program development within government across many portfolio areas are at risk of metro-bias. Consequently, responses to needs for social support, health, housing, and many others may be impacted simultaneously by metro-normativity.

Metro-normativity adds an additional dimension to discrimination on the grounds of gender, ‘race’, age, disability, sexual orientation, and others. However, discrimination against individuals, groups, and communities in the 4Rs *on the grounds of 4Rs location* is undeveloped in discrimination law. This contributes to problematic logic, such as the claimed ‘reasonableness’ of differentiating access to rights in the 4Rs, so using *location* to discriminate, and compound discrimination, against the groups indicated in the 4Rs.

The presence of bias against the 4Rs is often purportedly justified by claims that the 4Rs should not have expectations and that addressing needs in the 4Rs is disproportionately expensive and unrealistic. However, the reference point for this is the metro, which is not sufficient for an inclusive approach.

Moves to highlight and address gender bias against women in access to legal assistance, going back to the Australian Law Reform Commissions reports on *Equality Before the Law* completed in 1994⁴⁶ are illustrative of the type of unpacking and critique which needs to occur to overcome metro-bias against access to legal assistance by individuals, groups, and communities in the 4Rs. This bias has been carried forward by NLAP in perpetuating chronic unresponsiveness to 4Rs legal needs.

Recommendation 2: NLAP’s unresponsiveness to 4Rs legal needs to be overcome

The unresponsiveness of NLAP to 4Rs legal needs must be addressed, and forms of bias which have subordinated legal needs in the 4Rs must cease. This should also be reflected in a major,

⁴³ Ibid., p. 7

⁴⁴ Royal Commission into the Robodebt Scheme [Final Report](#), tabled 7 July 2023, p. xlv

⁴⁵ Op. cit., 4Rs Robodebt submission

⁴⁶ Australian Law Reform Commission, *Equality Before the Law: Justice for Women* (ALRC [Report 69 Part 1](#)), 25 July 1994 and *Equality Before the Law: Women’s Equality* (ALRC [Report 69 Part 2](#)), 21 December 1994, also see op.cit., 2004 Senate Committee Inquiry Report, [Chapter 4, Women and Family Law](#).

corrective, funding injection to address unmet needs for access to legal assistance in the 4Rs.

Launceston Community Legal Centre backs literacy program

The EXAMINER

23 May 2023



3. NLAP fundamentals relating to the 4Rs

For NLAP to properly engage with levels of disadvantage in 4Rs Australia and respond to the grossly insufficient access to legal assistance for individuals, groups, and communities in many 4Rs areas, structural issues relating to NLAP need to be addressed.

3.1 Principles and standards relating to 4Rs

Currently, NLAP contains no principles regarding access to legal assistance in the 4Rs and no standards. Both are needed to promote progress in and accountability to the 4Rs.

3.1.1 Principles in support of 4Rs legal assistance

Principles in support of the provision of 4Rs legal assistance should be developed and reflect basic requirements for effectiveness in the 4Rs.

These principles would include promoting the central role of First Nations legal services in service provision for First Nations people, groups, and communities in the 4Rs.

The following are examples of possible principles relating to provision of 4Rs legal assistance:

- **Disadvantaged individuals, groups, and communities in the 4Rs should have timely, responsive, and effective access to the legal assistance they need.**
- Access by individuals, groups, and communities in the 4Rs to legal assistance **reflect the rights of these groups and aims to contribute to multi-dimensional efforts to increase agency, inclusion**

and wellbeing and reduce disadvantage.

- Service provision to 4Rs communities **should be accountable to 4Rs communities.**
- **The central role of First Nations legal services in service provision for First Nations people, groups and communities is recognised, supported. and facilitated in the 4Rs** aligned with:
 - human rights, self-determination, cultural safety, and empowerment, and
 - principles and priorities under Closing the Gap.
- **In-person legal assistance** should be available in the 4Rs where required for accessibility, cultural safety and effectiveness for the clients, groups and communities concerned.
- Legal services in the 4Rs should be as **relevant and local as possible** to maximise accessibility, responsiveness, and accountability.
- Legal services in the 4Rs should be as **receptive as possible to local needs** in relation to their service provision and their overall operations.
- Legal services delivering in the 4Rs should aim to **achieve and maintain local trust and support** and **work in with the flow of community needs, priorities and activities.**
- Legal services in the 4Rs should **aim to employ from the local area** as much as possible and should **contribute to local skills development** and to **the local economy.**
- **Legal services in 4Rs areas should recruit and facilitate service provision by additional services** where relevant, e.g., metro services which are willing to contribute or provide expertise in specialist areas of law. Appropriate protocols should be established to maintain community trust and effectiveness.
- Legal services looking to expand into or within the 4Rs **should consult with existing services to maximise benefits.**
- **Funding bodies, and all stakeholders, should be mindful of these principles** and ensure that new initiatives do not impact negatively on continuing, effective, 4Rs service provision.

Recommendation 3: Principles in Support of 4Rs Legal Assistance are needed

NLAP should facilitate development of Principles in Support of 4Rs Legal Assistance and once finalised these principles should be incorporated in relevant ways.

3.1.2 Standards relating to legal service provision in the 4Rs

Currently there are no legal service standards for the following aspects in the 4Rs:

- service availability and coverage
- service accessibility
- service provision
- access to assistance in areas of law (e.g., relating to families, debt, social security, tenancy, compensation, wills and estates, criminal law), and
- access to assistance of the nature and extent required (e.g., legal information, legal and/or non-legal casework assistance, court representation, systemic advocacy / reform).

Currently, NLAP is unable to report on levels of access to legal assistance in the 4Rs areas compared to levels of legal need. As noted in the Issues Paper, NLAP currently does not provide a definition of ‘legal need or a framework for measuring it’.⁴⁷

Although there is no concluded definition of ‘legal need’⁴⁸ the Issues Paper states that:

“Legal need refers to a problem that an individual cannot resolve by their own means, and where a legal solution to that problem exists....

“Unmet legal need is where the individual is either not aware of their legal rights or where they lack the appropriate access to legal services, whether for reasons of affordability or availability of the appropriate legal service.”

However, these statements do not reflect legal assistance, legal information, and legal education which:

- helps clarify the nature of a problem and whether and how legal assistance may help
- helps prevent or reduce problems including the negative impact of problems
- helps increase the capacity to work on problems in the future, and/or
- contributes to trying to address or reduce systemic problems.

Additionally, the approach to ‘a problem’ as resolved or unresolved does not reflect:

- the multi-faceted nature and impacts of many problems
- different ways of understanding / conceptualising problems
- different ways of working on problems or aspects of problems, and
- that problems and their impacts may be reduced even if not overcome.

A more nuanced approach to defining ‘legal need’ and ‘unmet legal needs’ is needed for a cogent theory of change and results framework, which connects how different kinds of legal assistance can help increase fairness, access to rights, inclusion and wellbeing and reduce disadvantage.

The theory of change should reflect a nuanced approach to the impacts of legal needs, how people try to access legal help and systemic factors.

Image below: In 2021 six Northern Territory organisations made submissions to the Senate Community Affairs References Committee Inquiry into the ‘Purpose, intent and adequacy of the Disability Support Pension’ each highlighting patterns in

⁴⁷ Op.cit., Issues Paper p. 15

⁴⁸ For example, the NSW Law and Justice Foundation most recently published study, Bellerose, D., (2022) [An analysis of Legal Aid service data: two Jurisdictional Profiles](#). Sydney. Law and Justice Foundation of NSW, notes at p. 8 that “There is currently no robust measure or indicator of the extent of legal need, identified by various geographical areas (SA1-4, suburb, post code, LGA), in Australia”

relation to major failures of DSP in the NT.⁴⁹



The following diagram in the Final Report of the Royal Commission into Violence, Neglect, Abuse and Exploitation of People with Disability, which represents how life pathways can be 'disrupted through targeted supports',⁵⁰ is also generative for thinking about how legal assistance often operates as targeted support. This includes how ready access to civil law legal assistance may reduce contact with the justice system at multiple points.⁵¹

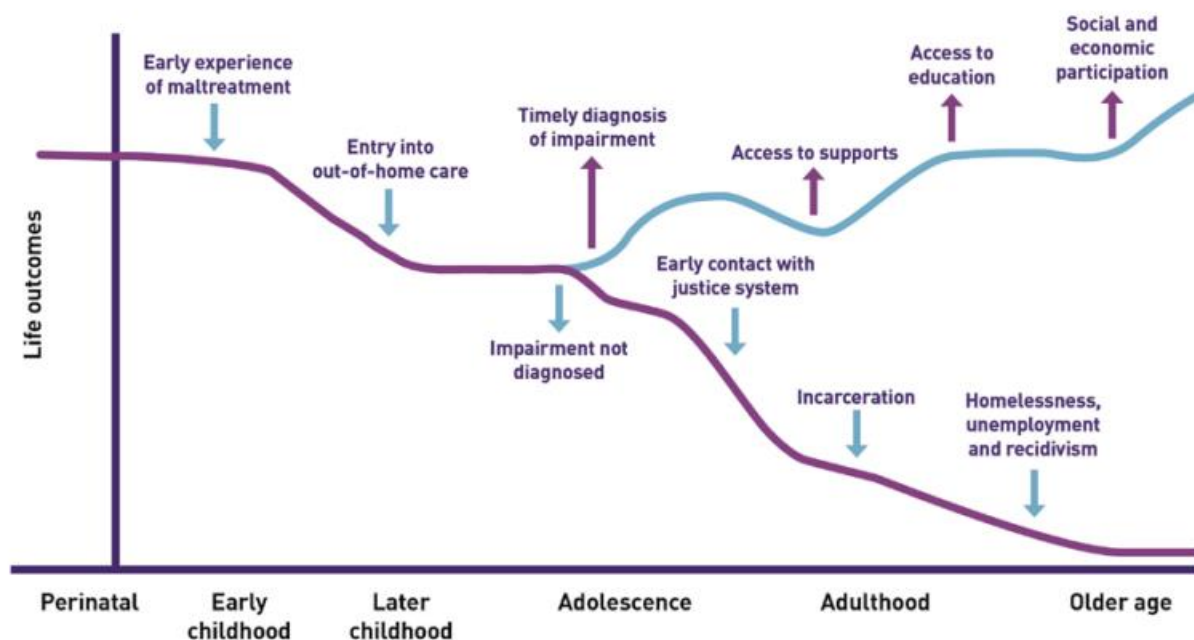


Figure 3.2.3: An example of how a life pathway can be disrupted through targeted supports

⁴⁹ DCLS, [Darwin Community Legal Service Summary of Background, NT Submissions and Committee Recommendations regarding the Committee's Report](#), 18 February 2022.

⁵⁰ Royal Commission into Violence, Neglect, Abuse and Exploitation of People with Disability, [Final Report Volume 3, Nature, and Extent of Violence Abuse, Neglect and Exploitation](#), September 2023, Commonwealth of Australia, p. 84

⁵¹ See for example the Indigenous Legal Needs Project: <https://www.jcu.edu.au/indigenous-legal-needs-project>

Further threshold issues are that NLAP has not:

- achieved standards or targets regarding access to legal assistance in the 4Rs, and
- provided a results framework, such as how access to legal assistance may increase access to rights, inclusion, and wellbeing (discussed at 3.3 below).

For example, if there was a **standard that there must be effective and timely access to legal assistance for social security recipients in 4Rs areas** – this would express the requirement and the measure would be the extent to which the standard is met for individuals, groups, and communities in the 4Rs.

Further if this standard included that:

- *Aboriginal and Torres Strait Islander people have the option of service provision by an Aboriginal and Torres Strait Islander Community Controlled Legal Service*, this could also be measured, and
- *assistance should aim to enhance the right, inclusion, and wellbeing*, then ways of measuring this would be required.

In a high proportion of 4Rs areas individuals, groups and communities have little or no input in relation to access to legal assistance for them. For example, most have little or no opportunity to participate in co-design relating to the suitability of service provision including the type, mode of delivery, and frequency. Generally, 4Rs communities have no way of requiring that:

- there be access to legal assistance for them,
- they be involved in considering actualities against legal assistance plans, or
- levels of access to assistance for groups and communities in the 4Rs be facilitated.

Recommendation 4: Standards for access to legal assistance in the 4Rs are needed

NLAP should ensure that standards for access by 4Rs communities to legal assistance are established and implemented and reporting against standards and indicators includes report-back and direct engagement with 4Rs groups and communities.

3.2. Standards relating to upstream factors example of 4Rs legal workforce

Additionally, NLAP has not operated on upstream factors limiting access to legal assistance in the 4Rs.

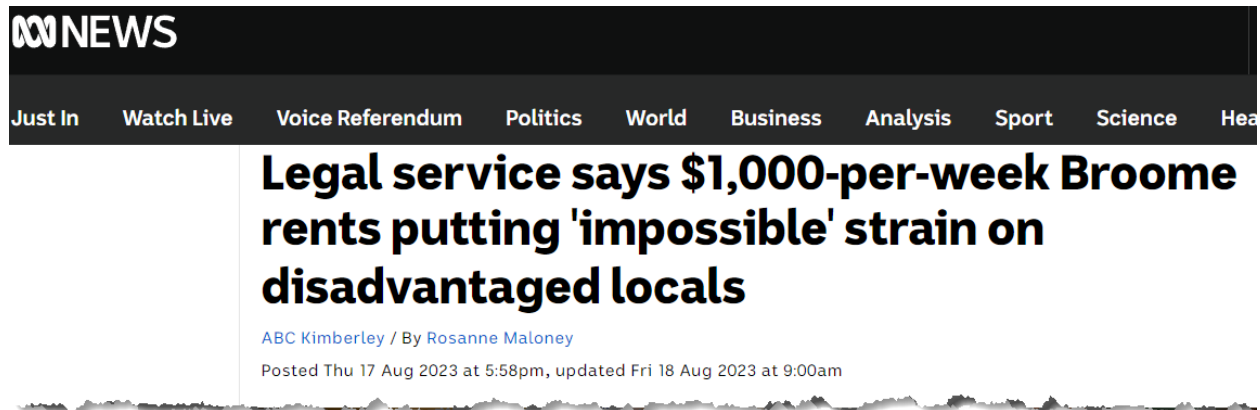
This can be explained by the problematic feature that NLAP contains no standards for itself, and it does not connect with, or incorporate, a National Access to Justice Strategy.

As indicated above, there is also no National Regional, Rural, Remote and Very Remote Access to Justice Strategy and Action Plan – which is a further major gap.

NLAP, and the Commonwealth under NLAP, should be a central instigator and facilitator in achieving solutions in the 4Rs. One example is lack of NLAP focus and national effort in relation to 4Rs legal workforce planning, despite the long-standing adverse effects.

A high proportion of legal services in 4Rs areas are struggling with vacant positions especially lawyers and other professional staff.

Image below: sections from the ABC News Report⁵² on 17 August 2023, quoting Kimberley Community Legal Service CEO, Christine Robinson.



"We've already in ... the last year probably, lost about six to eight possible [financial counsellor] candidates, because we couldn't provide subsidised housing," Ms Robinson said.

"Service providers are not being able to deliver core services because they're unable to find staff to deliver them."

In relation to lawyers, the most recent National Profile of Solicitors sheds some light on the patterns:

- Overall, about 87% of solicitors were practicing in a city-based or suburban location and only 9% were practicing in a country/rural area.⁵³
- The number of solicitors employed in the community legal sector, reduced between 2020 and 2022.⁵⁴
- Country/rural areas have experienced little growth since 2011 with the greatest growth in suburban, city and overseas locations, in that order.⁵⁵
- By practice sector (consisting of private practice, corporate legal, government legal, community legal and other), community legal has by far the highest proportion of solicitors located in a country/rural area at 19%. This compares, for example, with the next two highest being private practice: 11% and other: 9%. The proportion for government legal located in country/rural was 6% and corporate legal was 4%.⁵⁶

⁵² <https://www.abc.net.au/news/2023-08-17/reiwa-data-median-rent-broome-1000-per-week-rental-crisis/102741436>

⁵³ URBIS, [2022 National Profile of Solicitors](#), prepared for the Law Society of NSW, 26 April 2023, p.3

⁵⁴ Ibid, Table 11 p. 26

⁵⁵ Ibid, p. 3

⁵⁶ Ibid, p. 39

To be able to attract and retain staff in 4R areas, resources are needed to increase salaries and other measures are required including reasonable incentives to relocate. As with the recruitment of medical professionals who are provided an uplift, or loadings for award employees working in 4R areas, lawyers and all legal service staff should receive adequate compensation. However, the reverse is generally the case. For example, employees of ATSILS and CLCs which are focused on remote areas,⁵⁷ are paid up to 40% less than Legal Aid counterparts.⁵⁸

NLAP should reflect standards to implement:

- **Equitable salaries for 4Rs community legal service workers** – salaries should be increased to at least the level of Legal Aid Commission salaries, without reducing resources available for 4Rs community legal service delivery. This addresses 4Rs community legal salary levels being substantially lower, resulting in inequity for staff, unfilled positions, disproportionate workloads, staff burnout, turnover, reduced services and continuity for clients and loss of social capital for communities.
- **Initiatives for recruitment and retention of the remote 4Rs legal workforce equivalent to the rural and remote health workforce.** This includes local recruitment initiatives; bonded tertiary education; tertiary fees relief; inclusion of 4Rs law and justice issues in law school curriculum; 4Rs clinical legal, internship and practical placement programs; and recruitment and retention packages for the 4Rs which ensure access to affordable accommodation and address other contextual barriers.
 - In relation to initiatives in support of 4Rs clinical legal, internship and practical placement programs a domestic equivalent to the New Colombo Plan (NCP)⁵⁹ focusing on law should be developed to enable law students to undertake on-location experiential learning law courses in 4Rs Australia equivalent to those currently undertaken overseas under the NCP.
 - The lack of a domestic equivalent to the NCP makes it more feasible for many Australian law students to participate internationally, while being unable to undertake the equivalent experiential learning in 4Rs Australia.
- **Initiatives to facilitate 4Rs pro bono** – such as by promoting pro bono efforts with 4Rs legal services and setting aspirational targets for legal profession and law student 4Rs pro bono and establishing initiatives in support. This aims to overcome metro-normativity in legal practitioner and law student pro bono, resulting in structural bias against the law and justice issues and access to legal assistance in the 4Rs. Initiatives are needed to overcome this differential and increase benefits for 4Rs communities.

Recommendation 5: Standards to address factors upstream from the 4Rs are needed

⁵⁷ For example, all but two of the 23 Aboriginal Legal Services (NSW/ACT) Ltd offices in New South Wales are in RRR areas: NSW Government, [New South Wales Legal Assistance Strategy and Action Plan 2022-2025](#), 12

⁵⁸ Law Council of Australia, [2023-24 Pre-Budget Submission](#). (3 February 2023, p. 9

⁵⁹ [New Colombo Plan](#) information on the Department of Foreign Affairs web site

NLAP should implement standards which address upstream factors relating to access to legal assistance in the 4Rs, in particular:

- sufficient funding to ensure equitable salaries, not less than Legal Aid Commission levels, for community legal workers salary levels in 4Rs
- initiatives in support of recruitment and retention of the remote 4Rs legal workforce equivalent to those relating to the rural and remote health workforce
- initiatives to increase the treatment and inclusion of 4Rs justice issues and career options in law curriculum including financial support for law students to undertake clinical and other placement programs in 4Rs areas, and including a domestic equivalent to the New Colombo Plan in law focused on the 4Rs
- initiatives to facilitate 4Rs pro bono



Image above: True Justice: Deep Listening developed by the North Australian Aboriginal Justice Agency, Winkiku Rumbangi NT Indigenous Lawyers Aboriginal Corporation and the ANU College of Law⁶⁰

Image below: Wills and Estate team lawyers from Barry Nilsson Lawyers (Brisbane) responded to Law Access in WA seeking a pro bono collaboration for the East Kimberley wills clinic project.⁶¹

⁶⁰ NAAJA, Deep Listening: <https://www.naaaja.org.au/deeplisting/> and <https://www.truejustice.org.au/about-the-on-country-experiences>

⁶¹ The Proctor, 3 July 2023, <https://www.qlsproctor.com.au/2023/07/willing-to-go-a-long-way/>

“The government provided funding to Law Access to develop and run a clinic in collaboration with other community legal services such as Aboriginal Family Legal Services (AFLS), Kimberley Community Legal Services (KCLS) and Legal Aid WA in rural, regional and remote Indigenous communities.”



The team about to board the small plane to Kalumburu (left to right): Rachel Rima, Gabrielle Brown, Emma Blay, Arna Plaisted and Eliza Parry-Okenden.

3.3 Results framework and counting what matters for the 4Rs

How an initiative will achieve the positive changes sought is sometimes called the results framework. This provides an account of how resources and actions will achieve the intended results.

3.3.1 Description of the NLAP results framework

NLAP objectives and outcomes are in clauses 13 and 14 respectively (shown below).

Objective

13. The objective of the NLAP is to contribute to integrated, efficient, effective and appropriate legal assistance services which are focused on improving outcomes and keeping the justice system within reach for vulnerable people facing disadvantage, within available resources.

Outcomes

14. The NLAP will facilitate achievement of the following outcomes, outlined within the National Strategic Framework:

- (a) legal assistance services are focused on, and are accessible to, people facing disadvantage;
- (b) legal assistance services are delivered in a client-centric manner in order to better consider people's legal needs and capabilities;
- (c) legal assistance and other service providers and governments collaborate to provide integrated, client-centric services to address people's legal and other problems;
- (d) legal assistance services are provided at an appropriate time, which best addresses an individual's legal needs, including preventative action when appropriate;
- (e) legal assistance services empower people and communities to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems; and
- (f) legal assistance providers are supported to build the capacity of their organisations and staff, to ensure they can effectively respond to evolving service demand.

15. The NLAP will also support the delivery of Aboriginal and Torres Strait Islander specific legal assistance services, consistent with self-determination as defined under the NLAP, in order to facilitate achievement of the following outcomes:

- (a) enable and empower Aboriginal and Torres Strait Islander people in addressing their legal needs; and
- (b) improve access to justice outcomes for Aboriginal and Torres Strait Islander people.

Additionally, clause 17 provides NLAP's intended outputs:

Outputs

17. The objectives and outcomes of the NLAP will be achieved through:

- (a) the delivery of efficient, effective and appropriate mainstream and specialist legal assistance services within each State;
- (b) the delivery of efficient, effective and culturally appropriate Aboriginal and Torres Strait Islander specific legal assistance services within each State;
- (c) participation and engagement in collaborative service planning by the Commonwealth, States and the legal assistance sector, with guidance provided in Schedule B; and
- (d) sharing of information and resources which support the delivery of mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services.

3.3.2 Analysis of the NLAP results framework for the 4Rs

It is important to highlight that NLAP:

- has no *measures* relating to the objective, and
- outcomes measures mainly focus on the count of services provided rather than outcomes.

In essence, the NLAP theory of change and results framework is currently organised as follows:

Key question	Answer to this question
<ul style="list-style-type: none">• How will NLAP improve access to justice and justice for individuals and groups	<ul style="list-style-type: none">• By providing access to legal assistance, community legal education and contributing to law reform.
<ul style="list-style-type: none">• How will this be measured	<ul style="list-style-type: none">• By counting the number of 'service' instances e.g.:<ul style="list-style-type: none">○ number of legal advices provided○ number of non-legal assistance services provided○ number of duty lawyer services provided○ number of other representation services provided○ number of court/tribunal services provided○ number of community legal education sessions delivered / number of participants

NLAP is not effective for measuring outcomes or impacts such as whether assistance provided made a difference and, if so, the nature and extent of the difference. For example:

- NLAP uses the aspirational terms 'access to justice' and 'justice' without developing effective measures, and
- NLAP does not measure or report on whether increased rights, inclusion and wellbeing were achieved.

That is, NLAP lacks a results framework which offers a coherent, meaningful, and integrated theory of change. This applies generally, that is to metro and 4Rs areas.

What is at stake is not sufficiently specified and neither is what 'success' looks like.

As NLAP mainly aims to target legal assistance to disadvantaged groups, it follows that NLAP aims to operate on a positive way on 'disadvantage'.

However, as it has not been specified if this would include objectives, such as the following in relation to disadvantaged individuals, groups, and communities:

- increased agency and ability to respond to problems (which includes access to legal information and legal assistance)
- increased inclusion, and

- increased wellbeing.

NLAP should apply these kinds of objectives, reflected in the theory of change, results framework, and quantitative and qualitative indicators.

Recommendation 6: NLAP theory of change should reflect positive inclusion of the 4Rs

NLAP should reflect a coherent, meaningful, and integrated theory of change and results framework. This should include the objective of reducing disadvantage. Measures should support dialogue about progress in 4Rs and metro areas, including accountability to groups and communities in the 4Rs.

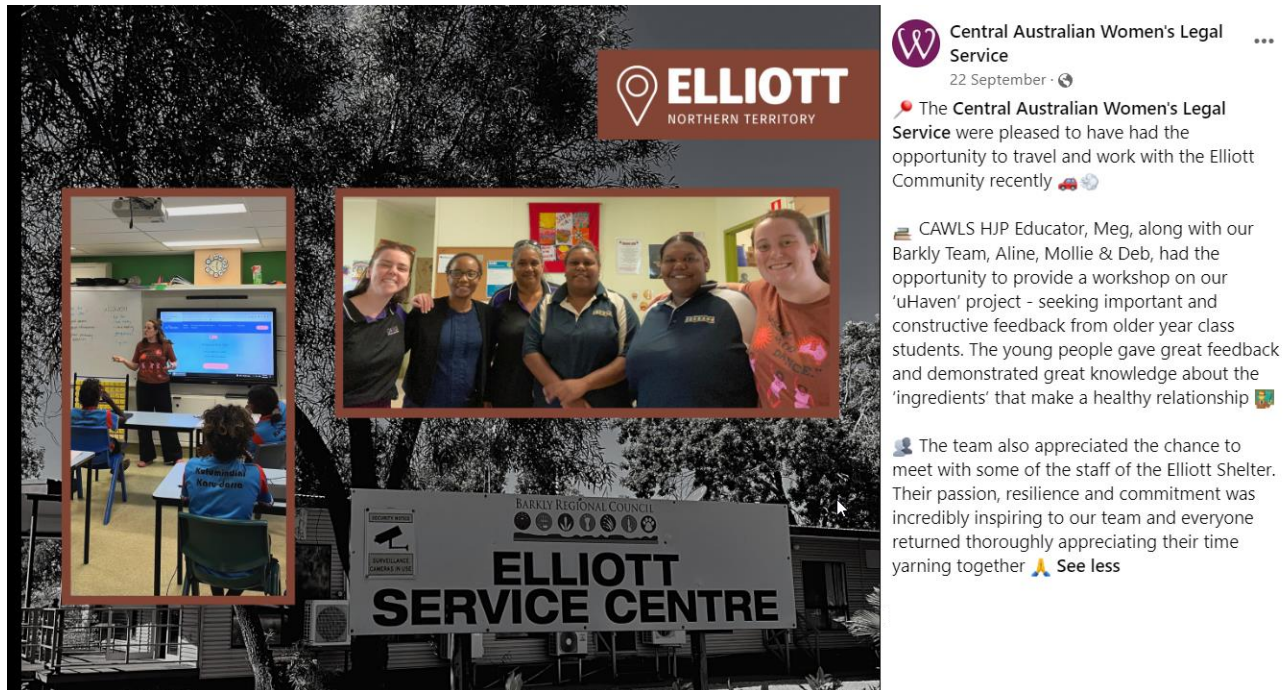


Image above: Central Australian Women's Legal Service working in Elliot, CAWLS Facebook post September 2023.

3.3.3 Indicators, baselines and data sharing for the 4Rs

While people residing in rural or remote areas are a NLAP national priority client group (see screen shot of NLAP Schedule A, at A3 below), and A3 acknowledges that people can fall into more than one priority group – NLAP does not relate:

- the nature and extent of the intersectionalities in 4Rs areas
- the nature and extent of disadvantage in 4Rs areas, or
- how accountability to groups and communities in the 4Rs in relation to the availability and effectiveness of legal assistance will occur.

Commonwealth Priorities

NATIONAL LEGAL ASSISTANCE PARTNERSHIP

PRELIMINARIES

- A1 This Schedule provides guidance on the prioritisation of mainstream, specialist and Aboriginal and Torres Strait Islander specific legal assistance services.

NATIONAL PRIORITY CLIENT GROUPS

- A2 The States will ensure that legal assistance services are focussed on people experiencing financial disadvantage.
- A3 The States will ensure that legal assistance services are planned and focussed to people who fall within one or more of the following national priority client groups (in alphabetical order):
- (a) Aboriginal and Torres Strait Islander people;
 - (b) children and young people (up to 24 years);
 - (c) older people (aged over 65 years or Aboriginal and Torres Strait Islander people aged over 50 years);
 - (d) people experiencing, or at risk of, family violence;
 - (e) people experiencing, or at risk of, homelessness;
 - (f) people in custody and/or prisoners;
 - (g) people residing in rural or remote areas;
 - (h) people who are culturally and linguistically diverse;
 - (i) people with a disability or mental illness;
 - (j) people with low education levels; and
 - (k) single parents.
- A4 The list of national priority client groups recognise that certain cohorts of vulnerable people facing disadvantage are more likely to experience legal problems, less likely to seek assistance and/or less able to access services for a range of reasons.
- A5 The legal assistance sector is not excluded from assisting clients that fall outside these groups.

The new NLAP should place transparency and accountability at the centre to achieve a striving approach to access to legal assistance and the intended impacts, like Closing the Gap,⁶² and include:

- indicators and targets to help respond to unmet legal needs in the 4Rs
- baselines and additional data collection including qualitative data
- sufficient capacity for effective and ongoing 4Rs access to justice research, and
- an effective range of justice, social justice and wellbeing indicators relating to the 4Rs.

In relation to the 4Rs the new NLAP should contribute to:

- *Correlating estimates of unmet legal need* in the 4Rs - achieving cogent estimates of levels of unmet legal need in the 4Rs nationally, regionally, and in local 4Rs areas based on a range of methodologies - to provide indicative estimates and support a more functional and purposive approach.

⁶² National Agreement on Closing the Gap: <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap>

- *Learning and development in relation to unmet legal needs in the 4Rs* – using a grounded approach involving a substantial increase in funding for services immediately (such as a doubling of funding) with active learning about unmet legal needs by providing more services. This is particularly important in 4Rs contexts because unmet legal needs and help seeking are both suppressed by factors which include the knowledge and expectation of no, or insufficient, assistance.
- *Estimating unmet legal need in the 4Rs by area of law* - such as social security, youth crime, child protection and numerous others – to enable targeting and increase momentum to:
 - de-silo funding responsibilities for unmet legal needs among government policy areas and
 - achieve more data and feedback to responsible policy areas to assess progress and improve responses.

For example, the federal social security portfolio is not currently contributing towards addressing profound unmet social security legal needs in 4Rs areas and wide-ranging social (and multi-portfolio) impacts. This links with *cost-shifting between portfolio areas* - causing increased disadvantage within families and communities and increased demand for state and territory funded support and emergency services.

- Achieving a clearer picture of unmet legal needs in the 4Rs by demographics and by social policy objectives, such as:
 - proportion of women and children living free from violence
 - proportion of adults and children living in affordable, safe, and secure accommodation
 - proportion of people with disability receiving reasonable and necessary supports
 - proportion of people experiencing disadvantage able to access and use *legal assistance of the types, nature and extent required* when this promotes their rights, wellbeing, and inclusion.

These examples go hand in hand with the fact that positioning legal help in cross-disciplinary approaches often increases access to assistance, is far more effective for the client and has greater systemic impacts.⁶³

This aligns with other initiatives such as:

⁶³ See for example: Australia Legal Australia-Wide Survey: Legal Needs in Australia, 2012, [Chapter 10: A holistic approach to justice](#), Law and Justice Foundation of NSW; Health Justice Partnerships Australia, [Theory of change for health justice partnership](#), 2020; Liz Curran, ‘[Going Deeper’: The Invisible Hurdles Stage III Research Evaluation Final Report](#), Centre for Rights & Justice, Nottingham Law School, Nottingham Trent University, June 2022 undertaken with Hume Riverina Community Legal Service, Albury Wodonga Aboriginal Health Service, and North-East Support & Action for Youth Wodonga Flexible Learning Centre; Darwin Community Legal Service [submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 31 December 2022](#)

- Strong emphasis on intersectionality, cross-disciplinarity, and lived experience in numerous federal, state and territory policy initiatives – intersecting with rights, law, justice, and social justice objectives.⁶⁴
- The federal *Measuring What Matters Statement* -⁶⁵ the first iteration of Australia’s National Wellbeing Framework, ‘...to better understand what matters most to Australians – to build a healthy, secure, sustainable, cohesive and prosperous Australia for everyone’.⁶⁶
- Work by the Productivity Commission on the *National Indigenous Evaluation Strategy* - where the Commission recommended the principle of Indigenous people being central in all respects to the evaluation of Indigenous targeted programs.⁶⁷
 - The logics of the Indigenous Evaluation Strategy about the centrality of the group/s intended to benefit are applicable to all contexts including people in the 4Rs being central to the development, design, operation, monitoring and evaluation of legal assistance intended to be available to them.

In summary, in addition to counting the number of services (the current focus), the new NLAP should incorporate justice, social justice and wellbeing indicators, including those relating to the 4Rs.

In relation to NLAP accountability to groups and communities concerning the availability and effectiveness of legal assistance:

- NLAP is not compliant with Closing the Gap Priority 4 (copy below) regarding shared access to data and information at a regional level for Aboriginal and Torres Strait Islander communities and organisations,⁶⁸

⁶⁴ For example, as referenced in the [Northern Territory Legal Assistance Strategy and Action Plan](#), 2023

⁶⁵ Commonwealth of Australia, [Measuring What Matters: Australia’s First Wellbeing Framework](#), July 2023

⁶⁶ The Treasury, Measuring What Matters, web site: <https://treasury.gov.au/publication/p2023-mwm>

⁶⁷ Productivity Commission, [Indigenous Evaluation Strategy](#), October 2020

⁶⁸ Closing the Gap Priority Reforms <https://www.closingthegap.gov.au/national-agreement/priority-reforms>

Shared Access to Data and Information at a Regional Level

Priority Reform Four, National Agreement on Closing the Gap

"Collect, analyse, use our own data to meet our own needs. It's our information and we should use it for our own purposes as decided by us."

– Engagement survey participant from New South Wales

Governments commit to enable shared access to location specific data and information for Aboriginal and Torres Strait Islander communities and organisations.

Disaggregated data and information is most useful to Aboriginal and Torres Strait Islander organisations and communities to obtain a comprehensive picture of what is happening in their communities and to make decisions about their futures.

- Further, NLAP has not achieved shared access to data and information at a regional level for each of the NLAP priority groups, to the breadth of groups, communities, and stakeholders in 4Rs Australia.

The NLAP embodies a distant approach in relation to the 4Rs and has variable and hidden impacts.

NLAP has not grappled effectively with:

- substantial diversity in the size, characteristics, and demographics of 4Rs service areas, and
- jurisdictional characteristics, including responsiveness to unmet legal needs.

This is accompanied by lack of principles and national standards for access to legal assistance in relation to the 4Rs (see 3.1 above).

Additionally, differing factors between jurisdictions impact on the existence, availability and reach of metro-located 'state-wide' services. Many of these are chronically under-resourced and are blocked by lack of resources from providing and facilitating meaningful state-wide services inclusive of people and services in the 4R. Examples are Welfare Rights and Advocacy Service located in Perth, Basic Rights Queensland, located in Brisbane, Social Security Rights Victoria located in Melbourne and Darwin Community Legal Service, located in Darwin.⁶⁹

- **Case study: Darwin Community Legal Service**
DCLS – is the only generalist community legal service in the NT, and the only legal service which received some ongoing funding to provide specialist social security legal help in the NT. However, despite NT demographics the DCLS service area for social security legal help is primarily Darwin and region due to lack of resources. DCLS has highlighted that there is no funding model and no identifiable funding for social security legal help in the NT and a funding model is needed for non-profit legal services in the NT to implement territory wide social security legal help, especially in remote and very remote communities. DCLS has sought

⁶⁹ List of legal services is on the Economic Justice Australia [web site](#).

additional resources to increase social security legal assistance, increase other services and achieve an office in Alice Springs – so far this has been unsuccessful.⁷⁰



Image: Darwin Community Legal Service community made banner including 'Centrelink'⁷¹

Legal assistance service areas identified in non-profit legal service contracts are often highly disproportionate to allocated resources. In 4Rs areas this creates imagined geographies of access to justice which reflect the potential rather than the reality resulting from inadequate resources.

Recommendation 7: indicators, baselines and data sharing for the 4Rs

The new NLAP should place transparency and accountability at the centre to achieve a striving approach to access to legal assistance and the intended impacts, like Closing the Gap and include:

- Indicators and targets to help respond to unmet legal needs in the 4Rs
- Baselines and additional data collection including qualitative data
- Sufficient capacity for effective and ongoing 4Rs access to justice research, and
- An effective range of justice, social justice and wellbeing indicators relating to the 4Rs.

⁷⁰ See for example DCLS [submission to the Senate Community Legal Affairs Committee Inquiry into the Repeal of the Cashless Debit Card, 14, August 2022](#); [submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 31 December 2022](#) into pp. 137-139

⁷¹ DCLS submission to the [Productivity Commission's review of the National Housing and Homelessness Agreement, 30 March 2022](#), p. 15

3.4 NLAP and ‘buy-in’, leveraging and inclusion for the 4Rs

Currently, NLAP is conceptualised as an inter-governmental compact focused on the Commonwealth, State and Territory Attorney-General portfolios. There is little ‘buy-in’ by other portfolio areas in a policy sense and effectively no ‘buy-in’ in the sense of contributing financially.

This results in federal portfolios such as health, social security, housing, employment and training, regional development, transport, and consumer affairs not being visible or sufficiently included in NLAP. Additionally, portfolio and program areas in support of Aboriginal and Torres Strait Islander people, older people, people with disability and all other NLAP priority groups - including rural and remote - are absent.

By not reflecting and presenting a cross-portfolio and multi-program approach, the NLAP misses opportunities to leverage numerous systems and processes.

NLAP misses opportunities to:

- Work more holistically to prevent legal problems, increase early intervention, and reduce harm.
- Improve policy processes and reduce the legal anomalies which perpetuate disadvantage.
- Increase access to legal assistance.
- Improve systems and reduce costs.
- Collaborate on crucial projects like legal workforce planning – especially 4Rs legal workforce planning.

The negative effects of under-leveraging are multiplied in the 4Rs where groups and communities are impacted by multiple systems which are not designed for them.

Similarly, the current NLAP concept creates a logic to exclude direct involvement of peaks representing disadvantaged groups.

Further, the current NLAP contains no mechanisms to bring in and reflect lived experience, including the lived experience of disadvantaged groups and communities in 4Rs Australia.

Lack of inclusion diminishes dialogue, vitality, momentum, problem solving and potential. The current logic of exclusion adds to the ethos of NLAP being distant from, and insufficiently accountable to, the 4Rs.

Recommendation 8: NLAP reconceptualised to promote ‘buy-in’ and leveraging

NLAP should be reconceptualised to promote ‘buy-in’ and leveraging by the full range of policy and program areas and enable inclusion of peaks representing disadvantaged groups and mechanisms for inclusion of lived experience. This will help address the current problems of NLAP being distant from, and insufficiently accountable to, the 4Rs.



Image: Port Hedland community rallying against family violence, 2022⁷²

3.5 Foreground geography, place, and accountability to the 4Rs

The Background to the terms of reference for the review begins by noting that:

“Legal assistance plays a vital role in ensuring more equal access to justice to the justice system which is fundamental to our democratic society and the rule of law. Not only does legal assistance facilitate improved outcomes for individuals, it also generates broader benefits to society. Conversely, insufficient legal assistance not only results in injustice and entrenches disadvantage, it can have other profound economic and social costs for individuals, their families and communities.”⁷³

This is an encompassing statement which embraces metro and 4Rs Australia but does not reflect that resources for the operation of the justice system, and many other sectors, are chronically insufficient in many 4Rs areas. Additionally, 4Rs demographics reflect higher rates of disadvantage across indicators including justice, health, disability, education, income, employment, and wellbeing impacting also by Indigeneity, age and gender.

⁷² Source: Alexander Scott, Hedland community to rally against domestic violence at Hedland Says No To Family Violence march, 21 April 2022, North West Telegraph

⁷³ National Legal Assistance Partnership Review, Issues Paper, August 2023 at Attachment A p.1



Image supplied: Katherine Women's Legal Information Referral Service, 14 August 2023



Images above, Nino Bucci, [Medicare for the justice system: the NSW lawyers who cover 200,000 sq km to see their clients](#), The Guardian, 4 June 2023

3.5.1 International comparisons and geography

The NLAP has not produced statistics or analysis of NLAP's performance in metro compared to 4Rs areas, or for 4Rs areas by aspects such as access to legal assistance:

- in civil law compared to criminal law and by areas of law
- for priority group, and
- by the type and extent of disadvantage.

Generalised figures, such as Table 2.1 in the Issues Paper (copy below),⁷⁴ are also unhelpful for lack of geographic relevance. Australia is the sixth largest country in the world after Russia, Canada, China, the USA, and Brazil.⁷⁵ The other countries on the table below are far smaller: Finland is 69th largest, the United Kingdom is 77th and Ireland is 117th.⁷⁶

Table 2.1 Comparison of Legal Assistance expenditure as a proportion of GDP

Country	GDP (2016)	Legal Assistance funding (2016)	Funding as proportion of GDP (2012)	Funding as proportion of GDP (2016)
Australia	\$1.2 trillion	≈ \$500 million	0.04%	0.04%
England and Wales	\$2.6 trillion	≈ \$3 billion	0.14%	0.10%
Finland	\$238 billion	≈ \$20 million	0.03%	0.01%
Ireland	\$304 billion	≈ \$40 million	0.02%	0.01%

Source: World Bank, International Legal Aid Group, Flores (2014), cited in Aung (2020)

3.5.2 NLAP and data relating to the 4Rs

NLAP is currently not achieving publicly available data provision and analysis relating to geographic, spatial, and place-based patterns of access to legal assistance compared to legal needs.

There appears to be a relationship between this and the lack of focus on the 4Rs in the NLAP in numerous respects. This includes the Introduction to the NLAP, the objectives, intended outcomes and measures.

The next NLAP should increase the visibility of the 4Rs and ensure public data provision and analysis relating to legal needs and access to justice in the 4Rs. This is essential for NLAP to play a full role in:

- Delivering sufficient resources to ensure effective access to legal assistance in the 4Rs,
- Ensuring that 4Rs legal needs are not obscured or subordinated within its own operations and implementation,

⁷⁴ Issues Paper p. 8

⁷⁵ The Global Economy web site: https://www.theglobaleconomy.com/rankings/land_area/

⁷⁶ Ibid.

- Promoting an effective range of mechanisms in support of NLAP effectiveness in the 4Rs, and
- Promoting accountability for its operation and effectiveness to individuals, groups, and communities in the 4Rs – that is adding this new dimension of *horizontal accountability* to the current *vertical accountability* to funders.

Recommendation 9: Foreground geography, place, and accountability to the 4Rs

The geographic dimensions of access to justice in Australia should be fully visible in the NLAP and NLAP should promote contextually responsive, place-aware service availability.

NLAP should reflect and apply principles of accountability to groups and communities in the 4Rs. This should be carried out in the operation of the NLAP and monitoring and evaluation of the NLAP.

August 2023

WILCANNIA NEWS

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SCHOOL HOLIDAY COLOUR FUN RUN

Thanks to Martin Bass from Far West legal Service, who with the help of staff from a couple of their programs gave local kids a great day during the school holidays. A Welcome to Country was given by Uncle Cyril Hunter backed up by the Bakandji Dance Group who after their performance brought all the kids into the act with the snake dance.

(Continued on page 2)

ASSISTANT MINISTER for INDIGENOUS HEALTH VISITS WILCANNIA

Last Friday Senator Malarndirri McCarthy made a not well publicised visit to Wilcannia. Word soon went round town and a number of locals were able to tell her of their health and other concerns.

(Continued on page 4)

Image: Australian Rural and Regional News, [Wilcannia News, School Holiday Colour Fun Run, 2 August 2023](#)

3.6. NLAP funding model is insufficient for the 4Rs: implementing needs-based funding

The NLAP funding model for legal assistance services is the primary cause of profound gaps in access to legal assistance being experienced by disadvantaged groups in 4Rs Australia.

An overhaul is needed to move from the current *historical-distribution-funding model* (“**HDFM**”), to as close as possible to a *needs-based funding model* (“**NBFM**”). This is particularly pressing for the most disadvantaged areas, communities, and groups in 4Rs Australia.

This would not be achieved at the expense of needs in metro areas. Rather funding should be increased overall and should be transitioned in as soon as possible.

3.6.1 Funding priority: 4Rs

The next NLAP should:

- **At least double funding for access to legal assistance in the 4Rs** immediately focusing particularly on increasing service provision to, for and with highly disadvantaged and underserved groups and communities in the 4Rs, and
- Begin a process to establish **4Rs Access to Legal Assistance Principles and Standards** (see 3.1 above) to articulate directions and benchmarks for access to legal assistance by individuals, groups and communities in the 4Rs.

This would respond to:

- **Levels of disadvantage:** The disproportionate levels of disadvantage in the 4Rs across multiple domains and indicators.⁷⁷
- **Prevalence of unmet legal needs:** The dramatic and pervasive shortfalls between the availability of legal assistance in the 4Rs, the size of the service areas, the prevalence of unmet legal needs and how this perpetuates disadvantage.⁷⁸
- **Pervasive under funding of legal assistance for the 4Rs:** The fact that all non-profit legal service sectors with 4Rs service areas have highly insufficient resources for service provision in a high proportion of 4Rs areas.
- **Need for accountability to 4Rs communities:** The need for 4R communities to be able to co-design their legal assistance plans which non-profit legal services then aim to implement. In many locations this would invert current decision making and increase accountability, responsiveness, and services to 4Rs communities.

⁷⁷ insert ref

⁷⁸ Insert ref to State and NT Legal Assistance Strategies

- **Need for a more holistic and effective approach:** NLAP should promote positive outcomes and a holistic approach:
 - *All the way down* through the implementation of a holistic approach in NLAP’s objectives, processes and collaborations which flow through into improvements at the level of individual service provision, and
 - *All the way up* from provision of legal assistance to and with individuals and groups which are as holistic as possible, which flow through improving their wellbeing, and to improvements to laws, systems, and practices, which should be all be recognised by NLAP as positive outcomes.
- **Need for access to legal assistance to avoid letting down other efforts:** The funding shortfall for access to legal assistance in 4Rs areas is an impediment to efforts and outcomes sought by other sectors in the 4Rs. For example: health; emergency relief; women and children’s safety from violence and abuse; social security; housing; child protection; education; employment; disability; aged care; mental health; complaints systems; and criminal justice. This highlights that inadequate legal assistance funding can have substantial effects for individuals and groups and for the operation of multiple systems.

3.6.2 Reasons to shift to needs-based funding

The following outlines reasons why the current *historical-distribution funding model* should be replaced by a *needs-based funding model*, particularly focusing on individuals, groups and communities experiencing disadvantage in the 4Rs.

The current NLAP **historical-distribution funding model** (“HDFM”) applies capped funding to the total national NLAP funding pool, without determining the adequacy compared to needs.

- This model focuses on how to divide the allocated funds, not on the adequacy of the funding pool to be divided. The model largely reflects the continuation of historical funding, the origins of which are in initiatives resulting in different program rounds and priorities over the years. This is mainly a top-down, executive approach which divides a pre-determined funding amount.
- The HDFM applies a range of statistical factors and relativities,⁷⁹ to formularise adjustments from the historically determined baselines. This continues to work within the available funding pool. Adjustments from the baselines tend to be small. The approach is not designed to respond to actual levels of need and the approach is not accountable to the nature and extent of the needs.
- As noted above at 3.3, the outcomes (impacts) for the HDFM are primarily the number of services delivered. Under a cogent program logic these would be activities or outputs. However, as the HDFM does not achieve funding according to need, meaningful changes at the level of outcomes and impacts are less likely.

⁷⁹ Outlined in general terms in the NLAP Review – [Issues Paper Addendum 1 – Funding Distribution Model](#)

- Underfunding due to the HDFM also confounds assessment of needs, especially when ‘service’ counts are the primary approach. This is because under resourcing in the 4Rs results in:
 - people not coming forward (e.g. isolation /realism /defeatism)
 - insufficient service capacity to proactively reach out (containment),
 - delays when people do connect with help (attenuation), and
 - increased risks that people will give up (attrition).
- Under resourcing of legal assistance services in the 4Rs also:
 - *artificially increases service counts* – because the counts include people referred on due to lack of service capacity (count 1 statistic) to the next service which refers due to lack of capacity (count 1 statistic) and so forth, and
 - *creates phantom 4R service and assistance levels* – where a service was provided (count at least 1 statistic) but it was not the service the client needed (e.g. client received legal advice and legal task assistance rather than ongoing representation and ongoing non-legal support).
- This HDFM disadvantages 4Rs Australia because:
 - It falls far short of achieving sufficient funding allocations.
 - It impedes efforts to increase resource allocations to underserved areas by pitting areas of legal need and disadvantage against each other.
 - The formulas for access to legal assistance (cost of providing services) in 4Rs areas are grossly insufficient.
 - The availability of other funding, such as from state/territory and other sources is insufficient and access to this funding is inconsistent across areas and jurisdictions, and among sectors and service types.
 - Rationales for responsiveness and accountability to 4Rs communities are largely absent.

This compares with a **needs-based funding model (“NBFM”)** - which starts by estimating needs, including:

- the standards of access to legal assistance to be achieved for individuals, groups, and communities, and
- relevant models and the service delivery costs,

considering the intended outcomes in the short, medium, and longer term.

The NBFM at the very least requires sampling and cost estimation to build up realistic and validated pictures from the ground up.

- As the focus is on actual needs, the ‘units’ of consideration would include local needs across the service area.
- The NBFM would focus on estimating the actual service delivery costs considering the diverse needs and realities of the intended client groups, ways of working with and achieving real progress.

- This approach is open and flexible, and any formulas would be part of a dialogue rather than being permitted to dominate.
- This would be totaled for realistic funding appropriations and corresponding funding allocations.
- The resulting allocations, being more realistic, would increase accountability for access to legal assistance to individuals, groups, and communities in 4Rs areas.
- The outcomes (impacts) for the NBFM would focus on what the individual or group assisted achieved according to access to justice, justice and wellbeing indicators. These would be correlated for progress against 4Rs, state and national objectives. Areas of progress and intractability could be identified for increased attention.
- The NBFM would overcome the fact that many 4Rs legal services are, to a greater or lesser extent, locked out of their full geographic service areas due to funding levels which are not fit for purpose.
- Further, many metro services are similarly locked out of the possibility of increasing their 4Rs service provision, due to unresponsive and grossly insufficient funding models.

Example:

Community based legal service located in a 4Rs community with a very large geographic service area which includes remote and very remote communities.

Current historical-distribution funding model

- NLAP funding is mainly historical and consists of an allocated figure, not a needs-based figure. The legal service may have received some additional funding under the current NLAP.
- The funding figures are not based on the nature and extent of legal needs in the service area and do not reflect the actual cost of delivering services.
- The budget by the service under this funding model reflects decisions by the service about how to best use the funds which fall far short of needs. Rising costs during the funding period have disproportionate impacts on 4R areas. For example, average fuel prices in the Kimberley region of Western Australia were 140.2c/L in July 2020, compared to 217.4 c/L in June 2023 – an increase of more than 50% in three years.⁸⁰
- Budget preparation does not reflect the requirements of each community in the service area regarding service models, the nature and extent of assistance or the frequency of visits (if based on an outreach model) as there are vastly insufficient funds for this.
- There is a budget line for travel and accommodation for service provision, the figures for which are very high compared to metro services working in a concentrated geographic area.

⁸⁰ FuelWatch (2023) 'Monthly average fuel prices': <https://fuelwatch.wa.gov.au/retail/monthly>

However, the 4Rs budget does not reflect the actual time required in 4R communities or the required service models because there aren't sufficient funds for this.

- Further, there aren't sufficient funds to employ, equip and support workers to be based in additional communities in the service area where this is needed and feasible.
- Salary levels are substantially below Legal Aid Commission levels for equivalent work, due to historical salary setting reflecting funding levels. Subsidies are also insufficient relative to the cost of living and housing costs and the budget line for relocation assistance for new staff is higher than metro counterparts.
- The budget results in substantially fewer staff than are required and this is compounded in many 4Rs locations by low access to lawyer volunteers, pro bono collaborations, law school collaborations and law student volunteers. Currently, volunteer leveraging, which is such a positive feature of many community-based legal services, is not achieved by many 4Rs legal services, for example where there are few or no private lawyers or law schools close by.

Needs-based funding model

- By contrast needs-based funding requires estimating needs, intended standards of access to legal assistance, relevant service models and actual service delivery costs. Decisions about service models include, accepting that face-to-face, relationship based, service provision may be required by disadvantaged groups in large parts of 4Rs Australia, while less personal and less intensive models may have more utility in some metro contexts.
- Needs-based funding requires and creates a strong orientation to, planning, collaboration and accountability with communities and stakeholders in the service area.
- In 4Rs areas the budget would likely include the progressive implementation of plans to employ, equip and support staff in additional communities in the service region. The budget may include implementing collaborations with new partners including specialist metro-based non-profit legal services, legal profession, pro bono partners, law schools, practical legal training programs and law students.
- Needs-based funding is likely to promote meaningful accountability to 4Rs areas, communities and groups and a stronger and more integrated and reflective approach which builds forward. There is likely to be more meaningful reporting and greater alignment with community development efforts by, with and for groups and communities in the 4Rs.
- Needs-based funding is also likely to have far more success in helping people avoid problems in the first place and work on problems earlier and more effectively.
- A needs-based funding will require adjustment by upstream factors to achieve workforce supply and re-orientation of services to needs based models.

3.7 Needs-based funding in the 4Rs – further issues

3.7.1 Disaster resilience legal assistance

Disaster preparedness and response is a major issue across 4Rs Australia due to the nature and prevalence of natural disasters and those emanating from human action and inaction.

While provision of resources to non-profit legal services covered by NLAP for disaster resilience legal assistance aligns with all current NLAP outcomes (clause 14 of NLAP shown below), 14 (d), (e) and (f) are highly reflective.

“Outcomes

14. The NLAP will facilitate achievement of the following outcomes, outlined within the National Strategic Framework:

- (a) legal assistance services are focused on, and are accessible to, people facing disadvantage;
- (b) legal assistance services are delivered in a client-centric manner in order to better consider people’s legal needs and capabilities;
- (c) legal assistance and other service providers and governments collaborate to provide integrated, client-centric services to address people’s legal and other problems;
- (d) legal assistance services are provided at an appropriate time, which best addresses an individual’s legal needs, including preventative action when appropriate;**
- (e) legal assistance services empower people and communities to understand and assert their legal rights and responsibilities and to address, or prevent, legal problems; and**
- (f) legal assistance providers are supported to build the capacity of their organisations and staff, to ensure they can effectively respond to evolving service demand.”**

The 4Rs requires full focus in relation to disaster preparedness and response due to patterns of occurrence and prevalence, and contextual requirements.

Community based legal service have major roles to play in building community awareness, resilience, preparedness, and response.⁸¹

Townsville Community Law, working in regions subject to repeated natural disasters, has been a community pioneer of disaster resilience research in relation to the legal assistance sector:

“Hoffman (2009) suggests that much can be done to anticipate and address the needs of vulnerable groups during catastrophic events. Adequate planning will help minimise the extent to which these groups suffer disproportionately and experience devastating outcomes. Further,

⁸¹ Bill Mitchell, [Disaster Readiness for the legal assistance sector: Disaster Legal Assistance in Queensland](#), Stage 1 Report and Proposal, January 2021, Townsville Community Law. This project was jointly funded under the Commonwealth/State Disaster Recovery Funding Arrangements 2018 to deliver a model for disaster legal assistance over 12 months (the 2020-2021 FY).

distributive justice theories justify allocation of scarce resources to members of vulnerable populations even if they require more intensive care or disproportionately large resource investments compared with others (Hoffman, 2009).”⁸²



Image: Bill Mitchell from Townsville Community Law talking about the impact of the Townsville floods on Townsville communities in the session [Deep Impact: Social Impact of Natural Disaster and Organisational Responses to Environmental Issues](#): at the [National Community Legal Centres Conference 2019, Power, Purpose Possibilities](#) Brisbane, 29 August 2019

All community legal services in the 4Rs are directly and indirect stakeholders in disaster resilience, and all need to be fully engaged and equipped.



(L to R): Sharon Keith - Program Manager at Disaster Legal Help Victoria, Holly McCoy – Legal Officer at Bushfire Community Legal Program (Community Justice Services SA), Bronwyn Lay – Climate Justice and Disaster Response Lead at Federation of Community Legal Centres Vic, and Ippei Okazaki, Sector Development Officer at Community Legal Centres SA at the Australian Disaster Resilience Conference, August 2022 (Adelaide).

⁸² Ibid, p. 19

Image: Group at the Australian Disaster Resilience Conference, in Adelaide August 2022 including Ippei Okazaki, Sector Development Officer at Community Legal Centres Australia South Australia and Holly McCoy, Legal Officer at Bushfire Community Legal Program, Community Justice Services SA⁸³

Disaster preparedness and response plans should reflect insights from 4Rs community legal services, as outlined by Ippei Okazaki, Melanie Kallmier and Christine Robinson below.

Ippei Okazaki, Sector Development Officer Community Legal Services South Australia, Oct 2023

“Effectiveness within the 4Rs in relation to disaster preparedness and responses by community based legal services exhibits the following characteristics and resource implications:

Expertise in Community Engagement: This involves possessing extensive skills, local knowledge, and an ethical approach. It also entails developing a program logic that encompasses activities and a commitment to community integration.

Collaborative Ability and Flexibility: This involves working collaboratively with local services and utilising local resources, both within the community and from the project team's professional networks. This ability ensures the provision of holistic services and knowledge in areas beyond the team's expertise including involvement of local experts, Uni Law Schools and Aboriginal and Torres Strait Islander elders with on-country knowledge

Specialised Staffing Characteristics: Staff need the ability to quickly build trust and rapport. This adaptability and relatability to the 4R community are crucial, as respondents tend to respond positively when they perceive 'the right person' has been appointed for the job.

Creation of Legacy Resources and Knowledge for the community: This includes the development of specific services and materials. Some examples of effective initiatives are a flowchart for native vegetation law, fire-proof satchels for important documents, and a local telephone hotline."

Image below: Community Justice Service SA, Disaster Legal Support Program⁸⁴

⁸³Holly McCoy, [Providing Help to Bushfire Victims, The Bulletin, The Law Society of South Australia Journal, Vol. 44, Issue 10, November 2022](#), p. 21

⁸⁴ <https://www.communityjusticesa.org.au/how-can-we-help/dlsp/>



Melanie Kallmier, Legal Services Coordinator, Mid-North Coast Community Legal Centre, NSW, Oct 23

“CLCs are deeply connected to their communities and are a first point of call for many people when they realise there is a legal issue connected with the extreme weather event they have just experienced. The network of local and specialist CLCs and their pro bono partners form a natural partnership in addressing many of these issues. Trusted relationships between all partners, and disaster response plans ready for activation are essential in making sure the resources and knowledge needed are available to those impacted in our communities”.



Mid North Coast Legal Centre
Should I stay or should I go?
The view from our office this afternoon.
#MidNorthCoastfires
Community Legal Centres NSW

Timeline photos · 8 Nov 2019 · 🌐



Christine Robinson, CEO, Kimberley Community Legal Service, WA, Oct 23

“The region we work in is entirely different demographically to most of Australia. Recent experience says legal service disaster responses need to be locally coordinated, local services are best able to establish the level of need and initiate the calls for assistance to the wider sector. We need backing, at these times, including practical support. People need to listen to us.

However, in the Kimberley, the under resourcing of access to legal assistance is the continuing picture, and that’s the backdrop that an emergency then adds to. And this is what we have to resolve, there has to be proper funding and access to legal assistance at a base level.

Then in addition to that, there has to be capacity to work on disaster preparedness. Plus we need super responsiveness to local legal service leadership when natural disasters or other emergencies happen, so our services can be there for people, responding to these additional needs for as long as it takes.”

Image below: Are images from Facebook posts by Welfare Rights and Advocacy Service Western Australia, the Aboriginal Family Legal Service WA, Aboriginal Legal Service WA and Kimberley Community Legal Service relating to the January 2023 Kimberley floods.



The submission to the NLAP Review by Community Legal Centres Australia addresses disaster resilience and highlights examples of lessons learned to date. This includes aspects such as the importance of funders:

- reality testing proposed emergency funding responses with local 4Rs community based legal services and other trusted local stakeholders.
- funders recognizing and accepting the local expertise of 4Rs community based legal services and avoiding actions constrain the ability of these services to respond.
- ensure urgently needed resources are delivered when needed to avoid situations like resources arriving 6 months or more after they were needed, and
- being accountable for, and self-critical of, their contributions to disaster resilience preparedness and response.

There is a critical need for additional funding or community based legal services in 4Rs areas fully contribute to all initiatives recommended for community preparedness, capacity building and disaster response – including immediate-, short-, medium- and long-term response.

This includes the need to:

- Achieve **proper legal access to legal assistance** via all of the measures recommended in this submission.
- **Ensure 4Rs community representation** involving 4Rs community legal services and other contributors in all relevant local, regional and national disaster resilience efforts
- **Baseline inclusion of disaster resilience funding** for all community legal services including those in the 4Rs for full contributions to community disaster resilience and preparedness, including initial / surge, disaster response – this funding to be structured in a way which ensures accountability of funders for the adequacy of the component.
- **Ensure immediate access to surge funding and surge collaborations** on an as-needed-urgent basis.
- **Ensure funding adequacy for a holistic approach** across the stages in disaster preparedness and response in 4Rs areas, including groups with special vulnerabilities and needs in these areas.
- Strongly **integrate action learning and 4Rs community empowerment** across all stages.
- Provide access to funding for **4Rs community disaster legal research** and **4Rs legal capacity building locally, regionally and nationally** to include high profile topics/ concepts including ‘managed retreat’.

Recommendation 10: Implement Needs based funding

The current historical-distribution funding model should be replaced with a needs-based funding model, which is the most fundamental and critical improvement required for adequate access to legal assistance, and intended positive outcomes, in the 4Rs.

Funding for 4Rs legal assistance should immediately be doubled due to the nature and extent of gaps in availability of legal assistance.

In relation to the 4Rs costings for needs-based funding should be based on locally costed service delivery plans which reflect the estimated actual costs of service provision. Overheads in the 4Rs such as travel and related costs for service provision in 4Rs areas should be funded without this impinging on service provision.

Needs-based funding should also be implemented for 4Rs disaster resilience legal assistance, to include baseline and surge funding and funding for research for 4Rs disaster legal research and 4Rs legal capacity building local, regionally and nationally.

4. Responses to questions in the Issues Paper

This section responds to the key questions in the Issues Paper. These are summary responses arising from the preceding discussion. The Issues Paper section and page number are in square brackets.

4.1 First Nations communities: self-determination & cultural appropriateness [3.1 p.11]

How can self-determination and cultural appropriateness be best supported through legal assistance arrangements?

Consider:

1. the contribution of legal assistance programs to the Priority Reforms of the National Agreement on Closing the Gap, including prioritising, partnering and negotiating beneficial sector-strengthening strategies and activities
2. the extent to which the NLAP has addressed the need for the community-controlled sector to be actively and meaningfully involved in the development and implementation of legal assistance policies and programs.

Response: To best support self-determination and cultural appropriateness through legal assistance arrangements, these arrangements should reflect the following in relation to the 4Rs:

- Funding security for First Nations legal services and funding protected from mainstreaming.
- Partnership principles which confirm how First Nations legal services and other legal services work together, based on supporting First Nations self-determination and cultural safety of legal services for First Nations people.

- Needs-based funding for Aboriginal Community Controlled Legal Services for service provision in 4Rs and metro areas.
- Needs-based funding for all additional non-profit legal services for First Nations people in 4Rs and metro areas.
- Accountability of all legal service providers to First Nations people, communities, and groups for service provision to them.
- Cultural safety of all legal service provision in the 4Rs for First Nations people.

4.2 Intersectional & holistic legal assistance for First Nations people [3.2 p.12]

How do legal assistance arrangements (that is funding provided to ATSILSs, FVPLS, LACs and CLCs and other organisations) support intersectional and holistic approaches to legal assistance for Aboriginal and Torres Strait Islander people?

Consider:

1. the benefits or risks of achieving this through a single or separate agreement for Aboriginal and Torres Strait Islander legal assistance services (including both ATSILS and FVPLS)
2. whether or not Aboriginal and Torres Strait Islander legal services should be funded directly by the Commonwealth.
3. the role of the states and territories in the funding of services for Aboriginal and Torres Strait Islander people.

Response: Legal assistance arrangements will best support intersectional and holistic approaches to legal assistance for First Nations people when:

- Needs-based funding is reflected in legal assistance arrangements for service provision for First Nations people in 4Rs and metro areas.
- Funding arrangements for Aboriginal Community Controlled legal services maximise conditions for independence and self-determination for these services to flourish in their responsiveness and effectiveness for First Nations people.
- Total funding contributed by the Commonwealth, States and Territories reflects and achieves the above in each jurisdiction.

4.3 Funding models for legal assistance through First Nations organisations (3.2 p.13)

How should the funding models consider what funding is required to enable delivery of legal assistance through Aboriginal and Torres Strait Islander organisations?

Consider:

1. the contribution of current funding arrangements to the achievement of socio-economic outcomes and targets
2. access to interpreters in relation to both impact on outcomes and funding in delivery of services to ATSI people.
3. how the legal assistance needs of Aboriginal and Torres Strait Islander people should be reflected in the funding of LACs and CLCs.

Response:

- As outlined in this submission above, socio-economic outcomes and targets are insufficiently articulated by NLAP. NLAP should provide a relevant, quality, results framework.
- Needs-based funding for assistance in 4Rs communities should aim to include co-design of community legal assistance plans with communities and engage communities in dialogue about performance against the plan.
- Needs-based funding is required, and this should factor in all costs including to the cost of access to First Nations interpreters where charging applies.
- Funding models for Aboriginal and Torres Strait Interpreter Services should include needs-based funding for these services, sustainability, and promote ease of access for service users. The ideal funding model would achieve free access to these services on a highly responsive and flexible basis.

Image below: ABC Radio National and the Law Report, 11 August 2023⁸⁵

⁸⁵ ABC News: <https://www.abc.net.au/news/2023-08-11/law-report-investigates-indigenous-court-interpreter-shortages/102696730>

Chronic shortage of Indigenous interpreters in Australia's legal system risks violating human rights

ABC RN / By Kristina Kukulja for Law Report

Posted Fri 11 Aug 2023 at 5:00am



There's a declining number of Indigenous interpreters, such as these from the NT Aboriginal Interpreter Service. (Supplied)

4.4 Extent of NLAP achievement of the objectives and intended outcomes [4.1 p. 15]

To what extent has the NLAP achieved the overall objectives and intended outcomes?

Consider:

1. the appropriateness of the NLAP in achieving its objective and outcomes and delivering outputs
2. whether general, specialist and Aboriginal and Torres Strait Islander specific legal assistance services funded under the NLAP have been delivered in an effective, efficient and appropriate manner.

Response:

- As outlined in the submission above, many individuals, groups and communities in many 4Rs areas have highly insufficient access to legal assistance.
- Lack of needs-based funding under NLAP coupled with insufficient focus on, and accountability to, 4Rs areas have impeded progress.
- The NLAP results framework treats ‘activities’ and ‘outputs’ (namely delivering ‘services’) as outcomes / impacts. This largely counts the number of ‘services’ but reveals little about ‘the effects’, including the effects for clients, groups and communities in the 4Rs.
- Given the issues with NLAP itself, including inadequate funding levels for service provision in 4Rs areas and generally, and the inadequate results framework – the extent to which services ‘funded under the NLAP’ have been delivered in an effective, efficient and appropriate manner:
 - is unlikely to be referable, in a positive sense, to NLAP, and
 - is unlikely to be discernable or appreciable via NLAP measures.
- Services for Aboriginal and Torres Strait Islander people in 4Rs areas, via First Nations community-controlled organisations, and via other non-profit legal services, should be supported by 4Rs legal assistance standards which articulate requirements and benchmarks for access to legal assistance by for individuals, groups and communities in the 4Rs.
- Further, while ‘specialist’ services *for and/or in 4Rs areas* include generalist, specialist and Aboriginal and Torres Strait Islander - the specialisation *in 4Rs community legal service delivery* is under-recognised. This connects with the low visibility within NLAP of legal services for and/or in 4Rs areas and lack of mechanisms via NLAP to promote representation, inclusion, and development. The metro-containment of legal services specialising in areas of law, such as social security, tenancy, consumer, credit, and debt, is a further dimension of how NLAP has perpetuated structural barriers which have relegated the 4Rs.
- Improved availability effectiveness, efficiency, and appropriateness of legal assistance for individuals, groups, and communities in the 4Rs should be a priority for the next NLAP.

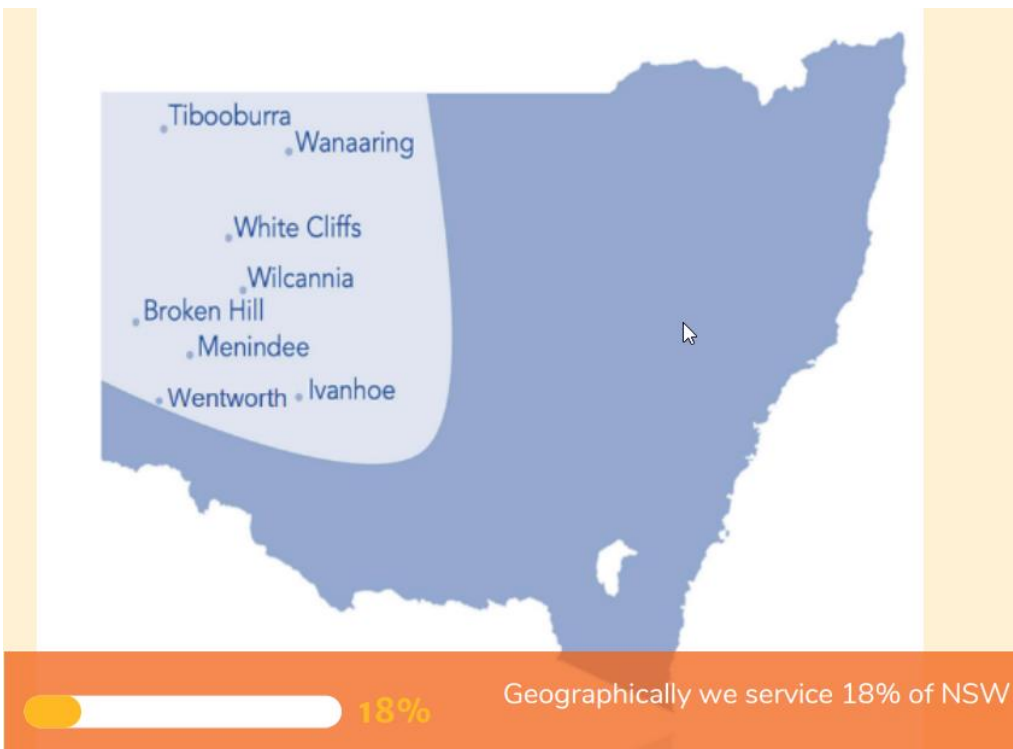


Image: from the Far West Community Legal Centre, Strategic Plan 2023-2028⁸⁶

⁸⁶ Online on the Far West CLC [web site](#)

4.5 Achievement of NLAP relative to the scale and breadth of legal needs [4.2 p. 16]

To what extent does current legal assistance meet the overall scale and breadth of the legal needs of disadvantaged Australians?

Consider:

1. the drivers of legal need, including where needs are and are not being met
2. how unmet legal need should be accounted for in the design and funding of legal assistance services
3. defining and measuring need and unmet need, including the benefits and design of a periodic national legal need survey.

The Review is also seeking your help in identifying credible data sources of unmet need that may exist.

Response: As outlined in the submission above:

- A nuanced approach is needed in relation to the definition of 'legal need' to encompass how access to legal assistance, legal information and community legal education can assist. This includes by preventing or reducing problems and negative effects.
 - This is particularly important for individuals, groups, and communities in the 4Rs experiencing disadvantage and insufficient access to legal assistance.
 - However, community legal education also supports and increases help seeking where more people come forward for legal assistance. Consequently, community legal education has to go hand in hand with resources for legal assistance to be available.
- The definitions of 'legal need' and 'unmet legal need' connect with development of a cogent theory of change and results framework for NLAP. This also connects with implementing needs-based funding.
 - This also connects with the importance of a holistic approach and the availability of case management with groups and individuals experiencing high disadvantage in the 4Rs.
- Bias against the 4Rs must be avoided in definitions of 'legal need' and 'unmet legal need' and in ways of monitoring and evaluating the impacts of access to legal assistance, including on the nature and extent of disadvantage in 4Rs areas.



Image: Mowanjum Services Expo poster, circulated by the Aboriginal Family Legal Service WA, 27 October 2023. Mowanjum is about 10km from Derby and about 220km from Broome where the closest non-profit legal services are located.

4.6 Roles of Commonwealth and jurisdictions in administering funding [4.3 p. 18]

What roles should the Commonwealth and the jurisdictions play in determining or administering funding distribution between legal assistance service providers?

Consider:

1. the benefits and risks of more specific roles with performance indicators and outcomes
2. the involvement of the Commonwealth in the distributional outcomes of CLC allocations of the states and territories
3. whether agreements should specify annual funding commitments for all parties.

Response: As outlined in the submission above:

- There is inadequate access to legal assistance in the 4Rs and roles and responsibilities under the NLAP have not addressed this.
- Needs-based funding for access to legal assistance in the 4Rs should be implemented based on the development of local plans, applying principles and standards regarding legal assistance in the 4Rs.
- Arrangements between the Commonwealth and jurisdictions to provide policy and contextual input in relation to the 4Rs and administer funding for legal assistance in the 4Rs - should avoid metro-normative biases and ensure expertise in addressing needs and improving outcomes in the 4Rs.
- Approaches to specifying funding commitments, should ensure responsiveness to standards and principles about the availability of, and access to, legal assistance in the 4Rs and promote aspects such as the adequacy and reliability of funding.



Image supplied: Simone Butschle Solicitor, Mackay Regional Community Legal Centre after delivering a presentation on Wills at The Neighbourhood Hub in Mackay on 1 March 2023, with the entire group.

4.7 Are there other systemically disadvantaged groups [4.4 p. 19]

Are there other systemically disadvantaged groups, either existing or emerging, who are not supported adequately?

Consider:

1. the approach to defining and measuring legal need (met and unmet) for priority cohorts
2. the level and categories of current unmet legal need for priority cohorts
3. how the needs of people experiencing multiple sources of disadvantage can best be addressed.

Response: As outlined in the submission above:

- ❑ The needs of individuals, groups and communities in non-metro areas consisting of regional, rural, remote, and very remote areas are not adequately addressed by NLAP.
- ❑ A needs-based funding model based on locally responsive and accountable legal assistance plans should be implemented. 4Rs costs, including staffing, travel and accommodation and the need for relevant office locations, should be properly funded.
- ❑ Measurement of legal needs in the 4Rs has received vastly insufficient attention, being one of many missing aspects. Other missing aspects include the absence of a National 4Rs Legal Assistance Strategy and Action Plan.
- ❑ There is a high degree of overload among legal services in or for 4Rs areas, including among services which are fully staffed at a point in time. In many highly disadvantaged communities and regions a much greater capacity to apply a case management approach is needed, especially for people and groups experiencing multiple sources of disadvantage.
- ❑ Low levels of data sharing, data relevance and insufficient investment in ongoing, independent, research capacity relating to 4Rs legal needs – are all contributors to insufficient progress in addressing 4Rs legal needs.



Image: North and North West Community Legal Service graphic indicating service area, [NNCLS Annual Report 2021-2, 27](#)

4.8 Addressing the challenges of service delivery in the RRR [4.5 p. 20]

How should the challenges of service delivery in regional, rural and remote locations be addressed through future agreements?

Consider:

1. the availability of appropriately trained legal assistance professionals
2. the cost of delivering services in these locations
3. other supports needed to overcome barriers, such as workforce incentives and access to housing.
4. challenges associated with conflict-of-interest issues

Response: As outlined in the submission above, there is chronically insufficient access to legal assistance for individuals, groups and communities in the 4Rs. The submission contains a full range of recommended responses. This includes:

- Funding models need to ensure sufficient resources for access to legal assistance based on local contexts and the costs of service provision.
- A National 4Rs Access to Justice Strategy and Action Plan is required – there isn't one and has never been one.
- National 4Rs legal workforce planning is a priority - there is currently no plan.
- Legal Aid Commission salary levels should be the minimum standard applicable to all non-profit legal sectors and resources should be increased to reflect this, without reducing service provision.
- The National 4Rs Legal Workforce Plan should engage all relevant sectors and stakeholders and ensure:
 - Sufficient availability of trained legal assistance professionals *and* staff for all relevant roles to ensure the availability, accessibility, quality and responsiveness of legal and related assistance in the 4Rs.
 - A full range and array of measures, incentives and backup arrangements to achieve and maintain full staffing – this should at least include those which are likely to be effective based on experiences in rural and remote health, education and other essential services.
 - Familiarisation and contributions through legal professional and law student pro bono.
- Conflicts of interest in the 4Rs are compounded by insufficient resources, such as where one or more legal services are conflicted and there is no alternative service (in the area or otherwise) due to lack of resources.

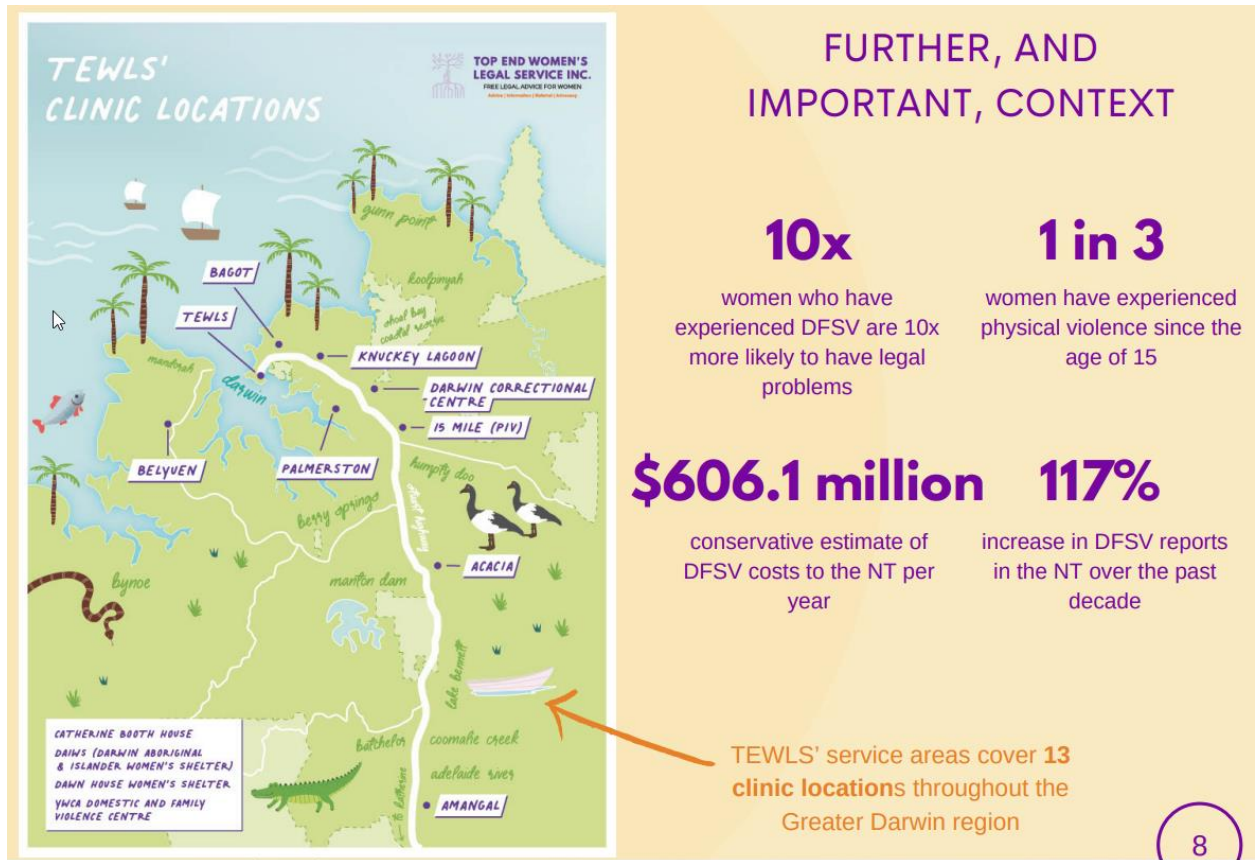


Image: Top End Women's Legal Service Clinic Locations, [TEWLS Annual Report 2022-3](#), p. 8

4.9 Funding model, distribution and quantum of Commonwealth resources [4.6 p. 23]

To what extent does the funding model support appropriate distribution and quantum of Commonwealth resources to meet current and future needs?

Consider:

1. the need to maintain the principle of 'Commonwealth funding for Commonwealth matters'
2. gaps in current funding and the quantum of any funding gaps
3. how should the level of baseline funding for the next agreement be determined and distributed
4. should terminating funding under NLAP be rolled into baseline funding and if so how
5. whether Commonwealth funding should continue to be provided both within and outside NLAP and/or within the Attorney-General's portfolio and if so how.

Response:

- As outlined in the submission above the amount of funding is grossly insufficient for access to legal assistance in the 4Rs areas and the historical distribution funding model ("**HDFM**") should

be replaced by a needs-based funding model (“**NBFM**”).

- The quantum of the funding gaps in the 4Rs should be calculated by costing realistic service plans developed with and for groups and communities in the 4Rs. These plans should implement 4Rs legal assistance principles and standards (see 3.1 in the submission). The principles and standards should be finalised and implemented via relevant mechanisms.
- The costings should reflect local cost factors and local trends, so resources are tailored to conditions and the intended outcomes. Special care should be taken to ensure that the costs of establishing/maintaining offices in 4Rs locations, and the travel and related costs of servicing 4Rs locations, are properly funded to avoid these costs impinging on service provision.
- As time will be required to develop 4Rs service plans, the funding shortfalls for access to legal assistance in 4Rs areas should firstly be addressed through the affirmative step of doubling current funding via an overall increase rather than one which is offset against reductions in other areas.
- The approaches to Commonwealth and State/Territory funding contributions in relation to access to legal assistance should ensure needs in the 4Rs can be met and avoid demarcations and gaps which disadvantage individuals, groups and communities in the 4Rs.
- The Commonwealth should be accountable for sufficient resources to ensure:
 - Access to legal assistance in the 4Rs under Commonwealth laws and complaints mechanisms and relating to Commonwealth policy priorities, including Closing the Gap
 - Access to legal assistance in the 4Rs in collaboration with the jurisdictions concerned, to ensure realistic resources for the needs and intended positive outcomes.
 - That 4Rs stakeholders have access to data and analysis to deliberate progress in achieving access to legal assistance in the 4Rs, reducing disadvantage and increasing wellbeing.
- Commonwealth and State/Territory contributions to ensuring access to legal assistance and intended outcomes in the 4Rs should not be limited to funding provision and initiatives via NLAP. NLAP should not have a dampening or restrictive effect and it should not reduce flexibility or responsiveness.



Photo supplied by Mid North Coast Legal Centre, Burrell Creek Hall Bushfire Recovery barbecue, March 2020

4.10 Timeframe for the next NLAP [4.7 p. 24]

What timeframe is most appropriate for the next national legal assistance partnership agreement, and how can flexibility be embedded to accommodate changing needs?

Consider:

1. the most appropriate timeframe for the national legal assistance partnership agreement
2. the most suitable way to index the funding over time to ensure funding adequacy
3. how best to adjust funding in the event of unforeseen changes in demand or input prices.

Response: As outlined in the submission above, needs-based funding is central to access to legal assistance and positive impacts on rights, inclusion and wellbeing of disadvantaged groups in the 4Rs.

- The adequacy of funding, and continuity of funding, link with 4Rs workforce planning including recruitment and retention across all non-profit legal sectors in the 4Rs.
- Longer funding timeframes reduce uncertainty and churn resulting in loss of capacity and diseconomies due to staff turnover.
- Funding levels for service provision in 4Rs areas must keep up with local cost factors and avoid projecting inadequate averages which are distorted by lower costs in other locations.
- The best way to address increased legal needs caused by Commonwealth, State or Territory Government initiatives, is firstly for these to be avoided where possible, through timely legal needs assessment and secondly for the portfolio area/s concerned to contribute.
- However, where legal needs increase due to progressive changes different arrangements may be required. Also, various anomalies can arise from a portfolio responsible approach – including refusal – and consequently safety nets (fall back measures) are also required.



Images: Macarthur Legal Centre, montage [MLC Annual Report 2019-20](#), based in Campbelltown NSW, the service region extends to Goulburn, the Yass Valley and Upper Lachlan Shire.

4.11 Holistic service provision improving outcomes [4.8 p.25]

How should holistic service provision improve outcomes and reduce the demand for legal assistance services?

Consider:

1. what approaches to wrap around services have worked well and what have not
2. the impact of access to justice on wellbeing and other outcomes of individuals
3. the contribution to broader wellbeing agendas
4. barriers in the current arrangements to the provision of such support services.

Response:

- The discussion in the Issues Paper relating to the above questions, includes a focus on intersectionality, however this does not include reference to 4Rs location.
- As outlined in the submission above, 4Rs location can be a factor in itself. 4Rs location also intersects with Indigeneity, gender, disability, age, and all others, and it should be included and made visible.
- The Issues Paper also refers to the Australian Government's Wellbeing Agenda noting that there are 5 wellbeing themes of Healthy, Secure, Sustainable, Cohesive and Prosperous and that 'access to justice' informs in particular the 'Secure' theme.⁸⁷
- However, this is too narrow in that 'access to justice', should inform all themes. Additionally, this approach should inform the theory of change and results framework for the next NLAP.
- The approaches to wrap around services that have worked well in 4Rs areas often include:
 - Consistency in service provision
 - Presence of champions
 - Effective problem-solving relationships
 - Sufficient resources
 - Sufficient organisational capacity among collaborators
 - Sufficient staff including availability of relevant attributes.

⁸⁷ Issues Paper p. 25

- Many 4Rs community based legal services wish to provide, extend, and contribute to wrap around services but are blocked by insufficient access to relevant resources.

Images: Marninwarntikura Women's Resource Centre, Fitzroy Crossing, Western Australia, [Strategic Plan 2022-27](#), and [web site](#).



The Marnin Family Support and Legal Unit (MFSLU)



MEASURES OF SUCCESS

Marninwarntikura Women's Resource Centre is an Aboriginal Community Controlled Organisation (ACCO) with a long-standing commitment and mandate to provide services responding to the needs of community.

Staying close to community and remaining responsive and flexible is central to our day to day accountability. *Marrooryawarrani Ngambiriyawarrani Yoowarnia*, our Healing Framework, provides guidance on the ways we support Fitzroy Valley communities and MWRC staff.

4.12 Supporting reduction and prevention of legal needs [4.9 p. 26]

How should legal assistance funding support activities that at an early stage reduce or prevent legal need, including activities not purely of a legal character?

Consider:

1. the benefits and risks of funding preventative services, including legal education and information services
2. the potential for cost shifting
3. what indicators should be used to measure the success of such services.

Response: As outlined in the above submission, NLAP's adoption of a siloed approach, which has not attempted to involve or leverage other portfolio areas (such as social security, health, housing etc.), misses opportunities to prevent and reduce legal needs and other negative impacts.

Lack of involvement in NLAP of peak groups representing disadvantaged groups and lived experience, including these in relation to 4R areas – is a further dimension.

Community based legal services in 4R areas are not sufficiently resourced to undertake the nature and extent of preventative work required with individuals, groups, and communities in the 4Rs.

As such, NLAP shifts costs onto other sectors including health, social services, and housing.

In 4Rs areas, where access to other legal services and help is limited, there is a strong case for legal services to include 'the missing middle' (Issues Paper p. 26). However, considerations include:

- Maintaining focus on those in greatest need
- Avoiding conflicts of interest, especially where there is no access to an alternative service
- The threshold issue of achieving needs-based funding, so that new service provision is realistic.

4.13 Funding for advocacy and law reform [4.10 p.28]

How should legal assistance funding be provided to legal assistance providers for advocacy and law reform activities?

Consider:

1. the benefits and risks of the outcomes that can be achieved through funding advocacy activities
2. how such activities should be funded and how might this funding vary across different types of legal assistance providers
3. the flow-on effects of funding law reform activities.

Response:

- The above questions relate to strategic advocacy and law reform, rather than to individual client assistance which involves advocacy by a support worker, caseworker, paralegal or similar and/or by a lawyer.
- However, all forms of individual client advocacy are integral for 4Rs community based legal services, all are highly insufficient compared to levels of need and unmet needs.

- Further, there isn't a strong line between individual client assistance and strategic advocacy as client matters can involve, prompt or contribute to strategic advocacy. Additionally, there are positive reasons to assist individual clients, groups and 4R communities to advocate about systemic issues and to have the opportunity to participate.
- Effective involvement of 4Rs community based legal services in systemic advocacy and law reform should be encouraged and viewed as an indicator of vibrancy, community responsiveness and effectiveness.
- Historically, the issues for many 4Rs communities have been around insufficient resources for strategic advocacy and law reform efforts, in addition to service delivery. Additional resources are needed, including resources to undertake special projects.
- Bi-partisan commitment to strategic advocacy and law reform, by non-profit legal services, is also needed.

4.14 Administrative processes of funders and regulatory burdens [4.11 p.29]

To what extent are administrative processes of funders placing unnecessary regulatory burdens on legal assistance providers?

Consider:

1. the current costs of compliance and red tape that impact the delivery of legal assistance, and how these can be reduced or streamlined
2. the effect of regulatory burdens on the cost of delivering legal assistance services and subsequent impact of reducing availability of private practitioners to undertake legal aid.

Response: The current costs of compliance with the administrative requirements of funders varies substantially among 4Rs community based legal service.

In common with other non-profit legal services, factors include:

- the number of grant sources
- experience with the relevant grant source requirements
- corporate and organisational capacity, and
- quality, capabilities and management of systems.

Factors which can be particular to community based legal service in the 4Rs can include:

- Staff turnover, number of vacant positions and retention of corporate knowledge
- Long standing barriers to implementing contemporary systems
- Insufficient access to expertise including long term access and access during critical periods

4.15 Commonwealth administrative and appeals processes [4.12 p.29]

How might Commonwealth administrative processes, including appeals, be reformed to reduce the demand for legal assistance services and improve outcomes for legal assistance service clients?

Consider:

1. how should legal assistance be provided for Commonwealth Administrative law matters
2. what should the criteria be for access to legal assistance for these matters
3. how might tribunal process be modified to improve outcomes for people requiring legal assistance and/or reduce the demand for legal assistance services
4. whether Aboriginal and Torres Strait Islander Australians being afforded appropriate access to justice in Commonwealth administrative proceedings and how might legal assistance services address this.

Response: As outlined in the above submission:

- NLAP has been a poor vehicle to generate improvements which could reduce legal problems arising for those in 4Rs areas and reduce the extent and negative impacts.
- Most legal services in 4Rs communities have not been funded to provide legal assistance in specialist areas of law, including social security and NDIS being two areas of Commonwealth administrative law. In these areas of law, people in 4Rs areas often need face-to-face assistance or strong support for a conduit approach to available legal assistance if this is by distance. However, sufficient legal assistance has not been available.
- Needs-based funding should be provided to ensure legal assistance is available in or via 4Rs legal services in all relevant areas of law. This applies to Aboriginal and Torres Strait Islander Community Controlled legal services and other legal services in, and in relation to, legal needs in 4Rs areas.
- A cross-portfolio approach is required to identify and respond to legal needs and portfolio areas (such as social security, health, housing and employment programs) should build facilitating and promoting access to independent legal assistance into program requirements. One example is the replacement of the Community Development Program with a new remote jobs program⁸⁸ which is an opportunity to interface wellbeing focused legal assistance for Aboriginal and Torres Strait Islander people in relation to areas such as social security, housing, employment, credit and debt, caring needs and carer responsibilities and NDIS.

⁸⁸ National Indigenous Australians Agency, 'Replacing the Community Development Program with a new remote jobs program', <https://www.niaa.gov.au/indigenous-affairs/employment/remote-jobs>

4.16 Workforce supply and provision of legal assistance [4.13 p.31]

How does workforce supply and remuneration impact on the provision of legal assistance services?

Consider:

1. the current employment arrangements, including levels of remuneration, of lawyers and other staff, by level across legal assistance service providers
2. how have these developed over time, how do these compare domestically and internationally
3. barriers to the training or supply of adequate legal assistance workers, and how would addressing these increase the size of the legal assistance work force.
4. the adequacy of grants of legal aid for Commonwealth assisted matters, how might this be address and how adequacy can be maintained through time
5. the extent of pro-bono services provided by small and large firms to support the work of legal assistance providers.

Response: As outlined in the above submission:

- The levels of remuneration of lawyers and other staff, by level among community based legal services in or for the 4Rs, are highly insufficient and substantially below Legal Aid Commission salary levels. The latter should be become the minimum standard, with funding increases to achieve this to avoid reduction in service levels.
- Inadequate salary levels, and remuneration packages, are a barrier to training and supply of adequate legal assistance workers and other barriers include:
 - Lack of 4Rs legal workforce planning
 - Virtually no initiatives, programs or financial measures of the kind applied in support of the rural and remote health workforce
 - Insufficient focus by Law Schools and Practical Legal Training providers regarding inclusion of 4Rs justice issues in the curriculum and orientation to 4Rs legal careers
 - Insufficient programs and financial measures in support of clinical legal education and other experiential learning opportunities with 4Rs legal service
 - Insufficient measures and support for legal practitioner and law student pro bono in 4Rs areas.
- Insufficient private lawyers in 4Rs areas to act on grants of aid from Legal Aid Commissions and insufficient Legal Aid Commission staff based in 4Rs areas. This compounds levels of unmet legal need, including unmet legal needs that other non-profit legal sectors in 4Rs areas are also under-resourced to address.

- While pro bono legal assistance is highly skewed towards contributing within metro areas, there have been substantial benefits to 4Rs legal assistance over the years. Legal practitioner and law student pro bono require more support for equitable inclusion of 4Rs areas.



Image: Albany Community Legal Service, Seniors Expo, Mt Barker, 20 November 2020

4.17 Sufficiency of reporting for monitoring, improvement and objectives [4.14 p. 32]

To what extent are the current reporting processes sufficient to support monitoring, continuous improvement and achievement of objectives?

Consider:

1. the adequacy of current key performance indicators, data standards and collections,
2. ability for data collection to reflect the complexity of service delivery, level of digital transformation required
3. how legal assistance data could be integrated with existing and emerging data sources providers
4. are the current arrangements supporting Priority Reform 4 of the National Agreement on Closing the Gap and how might they be improved

Response: As outlined in the submission above:

- The NLAP results framework is not sufficient for meaningful reporting and analysis about performance and progress in responding to disadvantage in the 4Rs and reducing disadvantage.

This is coupled with insufficient research and reporting about unmet legal needs in the 4Rs.

- Key performance indicators do not reflect the complexity of unmet legal needs in the 4Rs or the challenges and complexity of service delivery in the 4Rs. The level of digital transformation which non-profit legal services need for data collection, reporting and analysis has not been matched by support and assistance to 4Rs legal services.
- There are insufficient resources and mechanisms for research and data expertise regarding legal needs in the 4Rs.
- As noted in the NLAP Issues Paper, Priority Reform 4 of the National Agreement aims to ensure that that “Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.” Progress on Priority Reform is highly insufficient in relation to the 4Rs for Aboriginal and Torres Strait Islander people, and additionally for non-Indigenous people and communities in the 4Rs.

4.18. Other changes: improved service delivery, outcomes, effectiveness [4.15 p. 32]

What other changes to the NLAP would further improve service delivery outcomes and maximise use of resources?

Consider how the NLAP could be changed to better support innovation and improved best practice throughout the life of the agreement.

Response: As outlined in the submission above:

- Access to justice issues in the 4Rs need to be specifically represented and considered in all relevant NLAP processes.
- Legal services and networks in the 4Rs have much to share in terms of innovation and ways of promoting innovation, however, there is currently insufficient support for this to occur. Mutual learning, support and sharing are strong themes in the 4Rs network.

5. Conclusion

This submission has highlighted the highly insufficient treatment of regional, rural, remote, and very remote areas in the NLAP, and measures required to properly address needs for access to legal assistance in the 4Rs and rights, inclusion and wellbeing in the 4Rs.

This requires an **inversion** to achieve the accountability of NLAP to individuals, groups and communities in the 4Rs, in addition to other accountabilities, including accountability to funders.

It also requires approaches to **inclusion**, which recognise and promote the rights of individuals, groups and communities in the 4Rs. These are equal rights to those in the metro, although the methods of ensuring access may differ. The inclusion of the 4Rs in all NLAP processes, and inclusion of the 4Rs in all relevant policy and program development and in law and systems reform, would be among the measures of progress.

Finally, there are major opportunities for **innovation** – including thinking relating to concepts and approaches to 4Rs inclusion, establishing principles and standards to promote 4Rs access to legal assistance and contextually relevant solutions.