



New Zealand
Law Society
Te Kāhui Ture o Aotearoa

Access to Justice

Stocktake of initiatives

Research report

December 2020

Foreword

Tēnā koutou katoa

Improving access to justice, and looking at this issue in new ways and through new lenses, is one of my priorities as President of the New Zealand Law Society | Te Kāhui Ture o Aotearoa. For that reason I am proud to provide you with this stocktake report of access to justice initiatives.

Assisting and promoting the reform of the law for the purpose of upholding the rule of law and the administration of justice is a key function for the Law Society and that remains unchanged.

This report, however, illustrates our willingness to explore these issues differently, taking a people-centred approach to better understand the issues from a consumer rather than a system perspective. We know this may challenge some conventional thinking or preconceptions of our role and I welcome that; fresh thinking can be the catalyst for innovation and new initiatives.

Ngā mihi

A handwritten signature in black ink, appearing to read 'Tiana Epati', with a stylized flourish at the end.

Tiana Epati, President

Executive Summary

1. Report Scope

- 1.1 Access to justice has been a strategic focus for the Law Society for a number of years. This project aims to increase understanding of the current landscape in Aotearoa New Zealand. It will also inform the future focus for the Law Society in its ongoing contribution towards improved access to justice in the criminal and civil justice systems. The objective is to develop an overarching programme of work on access to justice, including work delivered in partnership with others, along with a framework to measure its impact.
- 1.2 The purpose of this report is to identify the main barriers to access to justice in Aotearoa New Zealand and to take stock of initiatives that are proposed, or have been adopted, to address those barriers. This report also identifies areas where more work may be necessary to overcome the barriers identified.
- 1.3 An emerging picture of overseas initiatives is also included, reflecting that the challenge of safeguarding access to justice is a global one. Although different jurisdictions have their own unique issues, there are enough similarities that overseas initiatives may be able to usefully inform approaches that could be taken in Aotearoa New Zealand. The focus, however, has been to build as full a picture as possible of domestic initiatives whilst being mindful of international developments.
- 1.4 This report takes a person-centred approach and adopts a wide interpretation of 'access to justice' beyond just access to the courts and lawyers. This approach acknowledges that access to justice:

incorporates everything people do to try to resolve the disputes they have, including accessing information and support to prevent, identify and resolve disputes. This broad view of access to justice recognises that many people resolve disputes without going to court and sometimes without seeking professional assistance.¹
- 1.5 Out of scope for this project is the issue of people's ability to identify their problem as a legal one (i.e., one that engages people's legal rights and obligations and potentially has a legal remedy). This report assumes that this hurdle has been overcome, but the reality for many people is that they are unaware of how the law relates to their situation and never even identify that they have a legal issue. People instead often characterise their situation not as a legal problem but as just "one of those things" or "bad luck" that they just have to put up with.² This frustrates their chances of achieving access to justice.

1 See A-G of Australia's website <https://www.ag.gov.au/LegalSystem/AccessToJustice/Pages/default.aspx>

2 These attitudes were identified in a Community Needs and Services Study carried out in 2014, see http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf

- 1.6 A person-centred approach seeks to reflect the diverse needs of individuals when they encounter the systems aimed at delivering justice. Barriers to access exist in part because of people's circumstances – where they live, how financially stable they are, how educated they are, and how vulnerable they may be because of discrimination, disability or from other causes. This report does not delve into the reasons underpinning people's vulnerabilities, or explore how to overcome them, but recognises their potential impact on access to justice. We note that there is a growing movement towards systems, including the justice system, "meeting people where they are" to try and ensure equitable treatment and outcomes.

2. Consultation process

- 2.1 In our draft report, we built a preliminary picture of the range of access to justice initiatives in New Zealand in order to engage with stakeholders and to better understand that broader landscape. During the consultation period (May to August 2020), we heard from a range of stakeholders, including practitioners, academics, lawyers' groups and associations, the Ministry of Justice and internal stakeholders, informing us of further initiatives and suggesting ideas for inclusion in the final report.
- 2.2 Most respondents welcomed the approach taken, considered that the report had properly identified the barriers and were pleased to see the Law Society having this conversation. Some respondents wanted to see more emphasis on the disproportionate impact of access to justice inequities on Māori, and the compounding effect of unresolved legal problems on the most vulnerable members of our community. The role that lawyers can play in terms of fees was also highlighted as an area for further exploration. Several respondents confirmed that New Zealand's legal aid system presents significant access to justice issues, and were keen to see this emphasised more in the report. The case studies were well-received, with a desire to see further case studies relating to Family Law, Māori and youth. This is information for the Law Society to take forward as part of working with others as this project progresses.
- 2.3 We are grateful for the time taken to provide feedback on our draft report particularly during the disruption of COVID-19. As a result of that engagement, we have included additional initiatives in our stocktake tables and have made some modifications to the final report, including the addition of another case study. We have also considered the feedback received when making recommendations for potential next steps. The COVID-19 crisis has widespread implications for the prioritisation and allocation of resources. This report "draws a line in the sand" of initiatives at August 2020 and has been used as a starting point for the Law Society to assess its next steps in the project. We look forward to progressing this work further in 2021.

3. Report Structure

The report is divided into four main sections:

- 3.1 **Section A** begins with a person-centred approach, setting the scene via the development of a set of case studies illustrating the range of legal issues that New Zealanders are likely to experience.
- 3.2 The case studies draw on information from the country profile for Aotearoa New Zealand included in the World Justice Project, *Global Insights on Access to Justice 2019* report. Each case is then analysed to identify the range of issues within scope that prevent, or inhibit, access to justice.
- 3.3 We have identified five main categories of potential issues which create barriers to access to justice (set out in a diagram at on page 12):
 - Geography
 - Cultural and social
 - Cost
 - Service Delivery
 - Information
- 3.4 **Section B** provides a review of current access to justice initiatives, either active or proposed, in Aotearoa New Zealand as well as initiatives developed internationally. This section also considers the impact of COVID-19 on access to justice and some of the early steps taken to address the challenges presented.
- 3.5 **Section C** draws on the findings of Section A and B and considers remaining gaps.
- 3.6 **Section D** identifies some areas for possible action, and which of those may be appropriate for the Law Society to consider pursuing, either alone or in conjunction with others.

4. Introduction

4.1 The **Terms of Reference** (ToR) outline the objectives for the project, which are to:

- Research and engage with key stakeholders to build a picture of the current access to justice landscape in Aotearoa New Zealand, as well as domestic and international initiatives to close the justice gap, and prepare a report;
- Identify where the Law Society is uniquely placed to act (including in partnership with other access to justice stakeholders) and can have the greatest impact;
- Develop a programme of initiatives to improve access to justice in Aotearoa New Zealand; and
- Implement this programme of work (where relevant in partnership with other access to justice stakeholders) throughout 2020 and 2021. The disruption of COVID-19 and the focus for stakeholders on short term access to justice reactive work means this timeframe may be longer than originally anticipated.

4.2 Access to justice issues cannot be addressed without commitment from a broad cross-section of agencies and groups, with central Government having a pivotal role to play. The Ministry of Justice (The Ministry) has identified "improving access to justice" as a transformational opportunity in its "strategy on a page" (published in October 2019): <https://www.justice.govt.nz/about/about-us/our-strategy/> The Ministry identifies transformational opportunities as those that "reflect the particular challenges and opportunities we face today". This prioritisation of access to justice is welcomed.

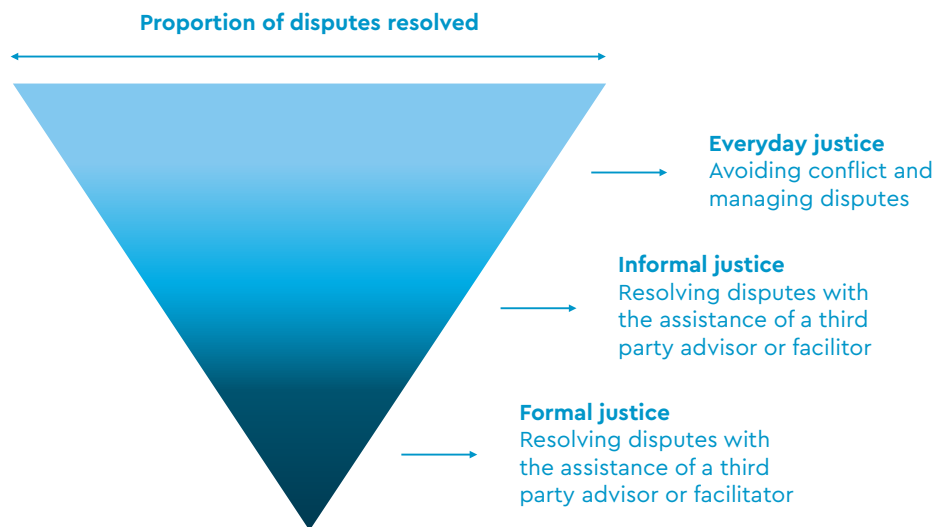
4.3 This report details the projects and initiatives we have found in Aotearoa New Zealand and (where relevant) overseas that seek to address barriers to access to justice.

4.4 "Access to justice" can mean different things to different people, depending on the perspective taken. As noted in the executive summary, this report takes a person-centred approach and adopts a wide interpretation of "access to justice". We recognise that:

Access to justice goes beyond courts and lawyers. It incorporates everything people do to try to resolve the disputes they have, including accessing information and support to prevent, identify and resolve disputes.

This broad view of access to justice recognises that many people resolve disputes without going to court and sometimes without seeking professional assistance.

The practical application of this quote (from the Attorney-General of Australia's website) is illustrated by the following diagram, which shows that the majority of disputes are resolved without engaging formal justice mechanisms and involve measures that avoid conflict and contain disputes. Only a minority are resolved by formal means with lawyers involved:



(Original Source: A-G of Australia's website www.ag.gov.au/LegalSystem/AccessToJustice/Pages/default.aspx)

4.5 This diagram accords to a large extent with the concept of access to justice advanced by Richard Susskind, who argues that access to justice should embrace the elements of dispute avoidance, containment and resolution. He also advocates for the inclusion of a fourth element: "legal health promotion", the purpose of which is to:

*help people, in a timely way, to know about and act upon the many benefits, improvements, and advantages that the law can confer, even when there is no perceived problem or difficulty. It is unsatisfactory that people often have legal entitlements of which they are entirely unaware, that there are legal benefits which they could secure if only they had the knowledge.*³

4.6 One submitter, barrister and dispute resolution lecturer at the University of Auckland Faculty of Law, Ana Lenard, provided us with the following valuable insights on ADR:

"ADR (commonly known as "alternative" dispute resolution, but no longer really alternative) is an important part of the access to justice landscape, as is recognised in the report.

ADR comprises various mechanisms for achieving the private resolution of disputes spanning consensual (conciliation, facilitation, mediation, negotiation) to determinative (determination, adjudication, arbitration) approaches.

Consensual ADR, in particular, offers a flexible and creative pathway to resolving disputes. It gives users autonomy over their disputes, and enables the airing of 'non-legally relevant' facts such as psychological interests, which often underpin and drive legal disputes. ADR also offers participants the opportunity to devise creative solutions to their disputes, comprising a much broader range of possible remedies than courts can offer.

Although public adjudication is and will remain a key plank of a properly functioning democracy, and acknowledging that private settlement often

³ Susskind, Richard. *Online Courts and the Future of Justice* (p. 69). OUP Oxford. Kindle Edition.

happens in the "shadow of the law"⁴, people need clearer and broader options to autonomously resolve legal claims. Equally, there are many conflicts and disputes that cannot be formulated into legal claims, but that nevertheless need resolution so that society can function more smoothly. The latter "interpersonal" disputes come within the wider interpretation of "access to justice" adopted in the draft report. True access to justice therefore involves education about conflict and communication dynamics as well as access to ADR practitioners and lawyers competent in advising on ADR."

These views on the value of ADR were echoed by other respondents, particularly those who work closely with Māori and Pacific communities, where relationships and a community approach can be key to resolving disputes.

- 4.7 We have found that many of the current discussions and initiatives in place in Aotearoa New Zealand focus on improving access to court-focused civil justice. This falls into the "formal justice/resolving disputes through the courts and tribunals" category in the diagram above. These discussions and initiatives are specifically in respect of the courts, with the main focus so far being on the High Court, as the District Court is rarely used for civil matters other than default and summary judgement applications.
- 4.8 Family and criminal matters are currently given priority in the District Court and there is little capacity for civil work. Even with this prioritisation of family and criminal work, waiting times for hearings can still be long; denying justice and certainty to all involved. Where defendants are remanded in custody for long periods awaiting trial, the consequences for them and their families can be significant. Local court closures or reduced schedules at local courts and the consequent requirement to travel, or delays to hearings can be very onerous for victims, defendants, complainants and witnesses.
- 4.9 Despite these capacity issues, when the Government announced the appointment of His Honour Judge Heemi Taumaunu as the new Chief District Court Judge in September 2019, it signalled an intention to increase the use of the District Court for civil cases. The Attorney-General observed that changes to District Court rules and processes were expected to be needed to enable more New Zealanders to cost-effectively resolve their disputes.⁵ The subsequent creation of 10 new District Court Judge positions, announced in January 2020, should also help to ease capacity issues.⁶
- 4.10 There is no doubt that changes are needed to address the affordability of litigating in the civil courts, which commentators including the Chief Justice have described as forums for the delivery of a luxury "user-pays" service exclusively for the limited

4 Hon Justice Helen Winkelmann "ADR and the Civil Justice System" (AMINZ Conference 2011 – Taking Charge of the Future, 6 August 2011) at 3; Nina Khouri "Civil Justice Responses to Natural Disasters – New Zealand's Christchurch High Court Earthquake List (2017)" 36(3) CJQ 316.

5 See the A-G's announcement here: <https://www.beehive.govt.nz/release/chief-district-court-judge-appointed-0>

6 <https://www.beehive.govt.nz/release/21-new-judges-boost-diversity-improve-access-justice>

number who can afford it⁷ or the fortunate few recipients of pro bono or legal aid-funded services⁸. Equality of access to justice is fundamental to the rule of law; the principle that everyone is equal before the law and all are bound by it. If people are unable to access the mechanisms for resolving their legal issues, and more powerful players receive the message that they can act with impunity, the rule of law is put at risk. The initiatives currently in place and underway in respect of civil litigation are included with the other initiatives discussed in Part B of this report.

- 4.11 Improved access to civil justice in the courts would be of public benefit in addition to assisting people on an individual level. This is especially true of the "missing middle", first referred to in the Australian Productivity Commission's 2014 report on access to justice. These are people who are ineligible for legal aid but not able to afford to pay for the high cost of litigation privately.⁹
- 4.12 Among those who meet the very stringent financial eligibility thresholds for legal aid, the level of unmet legal need can still be high, for a variety of reasons. These include concern about having to repay legal aid with interest, legal aid provider shortages and the fact that there are certain matters for which no legal aid is available for anyone.
- 4.13 Only around 10% of civil court claims filed in the High Court go to a hearing. This percentage is widely regarded as about right; achieving a balance between individuals' need for justice, ensuring there is a body of strong precedent for the public to rely upon, and maintaining the viability of the courts by not overloading them to breaking point.¹⁰ It is possible that a revitalised District Court civil jurisdiction could ultimately hear a greater proportion of claims filed than the High Court does. However, it is likely there will still be a very large number of civil matters that never reach court and need to be resolved by other means. Of course, many claims are settled with the assistance of a judges at 'case agreement' settlement conferences, so the proportion of claims resolved via the court system will be higher than 10%.
- 4.14 The issues that are inhibiting access to civil justice in the courts are significant and there are considerable efforts being made to address them (discussed in Part B of this report). The Law Society will no doubt have an important role to play in these initiatives, especially in respect of reforms needed to make the District Court a more viable civil justice option for a wider range of people. However, because access to justice issues extend beyond the civil court system, this report also considers access to justice barriers that people experience elsewhere in the civil, family and criminal

7 The "luxury, user-pays" description was first used by the now Chief Justice in her 2014 Ethel Benjamin Address, available here: <http://www.nzlii.org/nz/journals/OtaLawRw/2014/2.html>

8 Only 1171 civil cases were funded by legal aid in the year ended 30 June 2019. See <https://www.lawsociety.org.nz/news/lawtalk/lawtalk-issue-935/update-on-legal-aid/>

9 The Australian Productivity Commission's report is available here: <https://www.pc.gov.au/inquiries/completed/access-justice/report> (at page 20)

10 See the speech of Hon Justice Miller at the AUT and Victoria University Symposium 22 May 2019: *Barriers to Participation in Employment Litigation: What might make a difference, and would it work?*, available here: <https://www.courtsofnz.govt.nz/assets/speechpapers/bpm.pdf>

justice systems, and what is being done to overcome them.

- 4.15 People involved in civil and family legal disputes that don't reach the courtroom but are addressed more informally, if they are addressed at all, can also face access to justice barriers. Cost of resolution may be less of a barrier, but the other barriers in respect of accessing justice before the courts can still exist. These include a lack of access to quality information and people who can assist them. Sometimes social and cultural barriers inhibit people from exercising their rights. The financial stakes may be lower than in some court disputes, but inadequately addressed legal issues can still have an appreciable impact on people's lives, especially where there are multiple issues that compound.
- 4.16 It has been acknowledged that there are significant access to justice issues in our criminal justice system. Recently released Government reports describe the impact of 'institutional racism' which has disproportionately affected Aotearoa New Zealand's tangata whenua. There is a growing awareness of the need to 'meet people where they are', i.e. at the intersection where societal issues and the system meet, to try and ensure equitable treatment and outcomes. For those who encounter the criminal justice system, whether as someone who harms or someone who is harmed (or both), a heavy focus on access to civil justice in the civil courts has no relevance.

Defining Access to Justice Barriers

- 4.17 Access to justice barriers can be divided into two broad categories: cultural/social, and institutional. Cultural/social barriers include:
- Poverty
 - Discrimination
 - Literacy
 - Education
- Institutional barriers include:
- Insufficient governmental resources to guarantee, or facilitate, access to justice
 - The organisational structure of justice institutions
 - Limited legal assistance and representation to everyone
 - The lack of enforcement of decisions
- 4.18 These societal and institutional barriers can overlap to create intersectional barriers such as lack of trust in the justice system, or corruption.¹¹ Although these barriers are often associated with low and middle-income countries (LMICs), many exist in

11 This is explained in a paper by J Beqiraj and L McNamara, *International Access to Justice: Barriers and Solutions* (Bingham Centre for the Rule of Law Report 02/2014), International Bar Association, October 2014, available here: <http://www.cfcj-fcjc.org/sites/default/files//344//international-access-to-justice.pdf>

Aotearoa New Zealand, albeit to varying degrees. The impact on the "missing middle" and lower socio-economic groups is explored further in the body of the report. The diagram on the following page sets out the main categories of access to justice barriers we have identified in Aotearoa New Zealand. It is important to note that not all barriers are of equal weight or importance. Most commentators agree that cost is the most prevalent barrier and that even where the barrier might be wider e.g. information, cost is still a factor.

- 4.19 In the next section, we have created case studies to illustrate potential access to justice barriers faced by people when they experience legal problems. We also identify the systems and initiatives in place, if any, to help overcome those barriers. This also serves to highlight where the access to justice gaps are.

Barriers to accessing justice

A short summary of the main barriers that may be encountered when attempting to access justice



Cultural & Social

Institutional racism

Systemic racism in our institutions (including the justice system) perpetuates unjust outcomes. It can also lead to feelings of alienation, mistrust, fear and lack of participation in justice processes. The disproportionate impact on tangata whenua is a key focus of recent Government reports.

Cultural incompetence

Failure to understand or appreciate diverse social and cultural needs (including among specific communities, e.g. disability, rainbow, migrant and refugee) can inhibit access to justice.

Reluctance to act

Social and psycho-social constraints may inhibit the pursuit of legal remedies, e.g. power imbalances, fear of repercussions, fear, emotional responses to disputes and concern not to 'make a fuss'.

Knowledge

Gaps in knowledge among certain groups, especially regarding the use of technology.



Cost

Direct cost

The high cost, and perceived high cost, of accessing legal advice, representation and forums for resolving disputes.

Indirect cost

Costs associated with pursuing justice, e.g. time off work, childcare, travel.



Information

Patchy availability

The public (including the self-represented) may not have access to comprehensive, accurate and up-to-date information about legal rights, responsibilities and ways to prevent, contain and resolve disputes.

Technology

Online information is increasingly available, but only to those with adequate internet access and know-how.

Misinformation

Well-meaning friends or relatives may give misinformed advice.

Misunderstanding

Legal jargon can be confusing and inaccessible for some.



Geography

Isolation

Physical location and/or inability to reach services.

Transport and infrastructure

Limited access to vehicle and transportation, limited public transport, cost of travel/petrol.

Connectivity

Limited internet and mobile signal availability in some areas.



Service Delivery

Legal aid

A system that doesn't reach enough people in need due to low eligibility thresholds and unavailability for some proceedings and in some forums where power imbalances nevertheless exist, e.g. Benefits Review hearings, employment mediations and immigration proceedings, in some cases, fear of legal aid repayment.

Accessibility to providers

Provider shortages, low rates of remuneration to providers and complex bureaucracy.

Sustainability issues

e.g. lawyers retiring or departing from certain geographical and practice areas.

Government resourcing constraints and external factors

Negative impact on timeliness and the quality of justice system service delivery.

Self-representation

Justice systems and procedures can unfairly prejudice people who are unable to afford/find/choose not to have legal representation.

Structure and design of justice systems

Many forums make it impossible or very difficult to have representation (e.g. the Disputes Tribunal and Tenancy Tribunal claims under \$6,000)



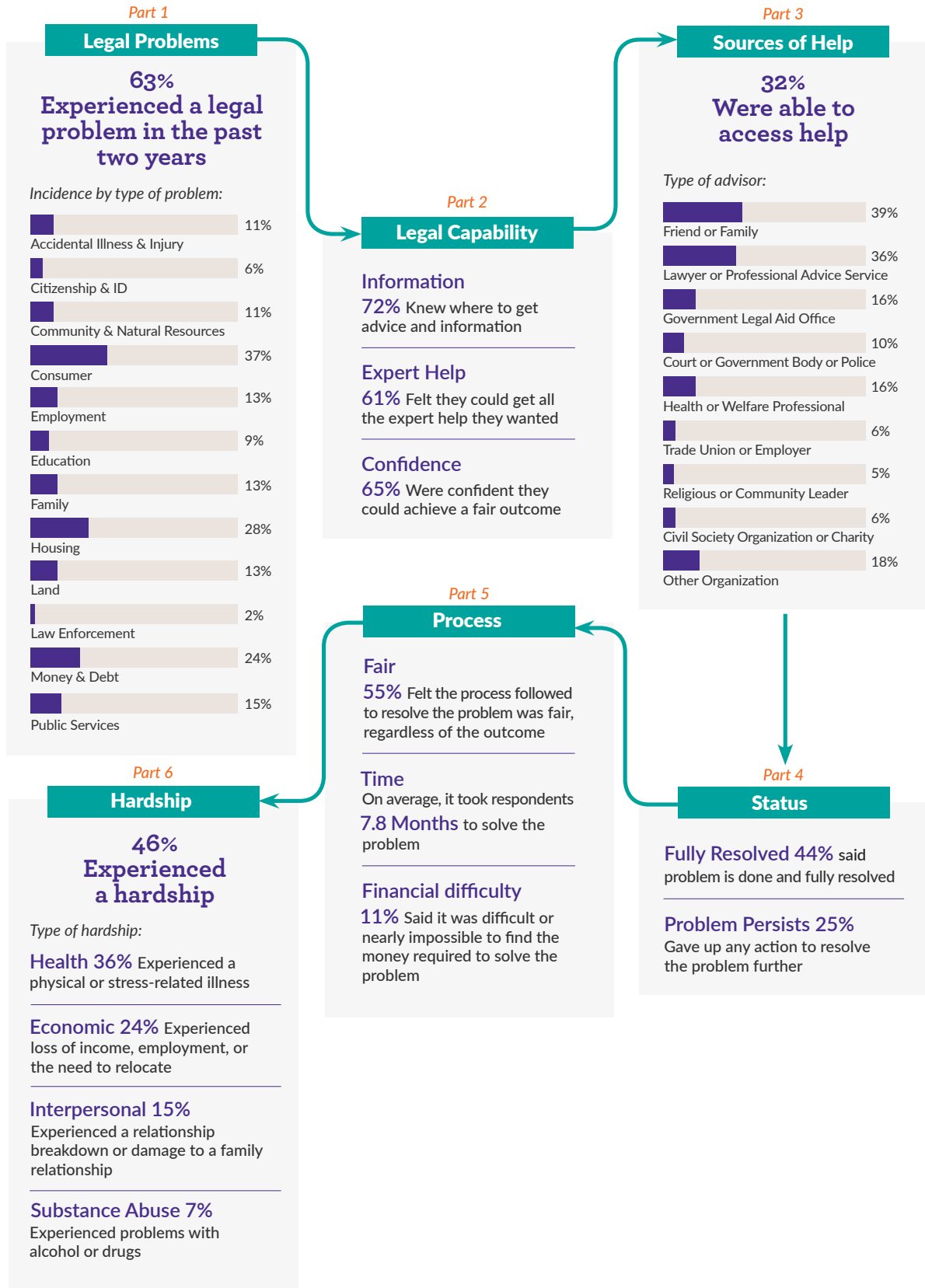
Section A — Everyday legal problems and case studies





New Zealand

Paths followed by people in New Zealand to deal with their everyday justice problems, summarising the incidence of legal problems, respondents' legal capability, access to sources of help, problem status, assessment of the resolution process, and problem impact.



Source: World Justice Project, 2017 General Population Poll survey module on legal needs and access to justice. Data collected by Big Picture Marketing Strategy & Research using a probability sample of 1000 respondents in the three largest cities of the country.

"Definitions of these legal problems can be found here, at page 8 of the report (Table 1): <https://worldjusticeproject.org/our-work/publications/special-reports/global-insights-access-justice-2018>"

WJP Global Insights on Access to J

5. Section A: Everyday legal problems and case studies

- 5.1 According to *Global Insights on Access to Justice – Findings from the World Justice Project General Population Poll in 101 Countries (2019)*, the (civil and administrative) legal problems most frequently encountered by New Zealanders polled (in 2017) were (with the most frequent first): consumer; housing; money/debt; and employment. Family law problems were also encountered at the same rate as employment law problems).¹² It is worth noting that the respondents were all from Aotearoa New Zealand's three largest cities, so there is no regional or rural aspect to the data. The infographic for Aotearoa New Zealand is reproduced (with permission) on the previous page.
- 5.2 The World Justice Project poll for Aotearoa New Zealand shows that 63% of people said they had encountered a legal problem in the last two years. Of these, only 32% were "able to access help" (i.e. an advisor of some kind), despite 72% knowing where to get advice and information, and 61% feeling they could get all the expert help they wanted.
- 5.3 Only 44% said their problem was fully resolved, and 25% gave up on any action to resolve their problem further. Of the 32% of people who did access an advisor, 39% were helped by a friend or family member, and only 36% were assisted by a lawyer or professional advice service.

(See here for an interactive version of the diagram on the previous page:

<http://data.worldjusticeproject.org/accesstojustice/#/country/NZL>)

- 5.4 It's not possible to provide an exhaustive account of all the legal problems people could potentially encounter. Instead, using the *Global Insights* report as a starting point, we have selected examples of some common types of legal problems faced by New Zealanders to create our hypothetical case studies. These case studies were "reality-checked" as part of the stakeholder consultation process. An additional case study focussing on a family dispute has also been added.
- 5.5 The New Zealand Law Society Family Law Section (FLS) has provided some detailed and useful general information about the Family Court.

The Family Court was established in 1981. It has a wide jurisdiction involving multiple pieces of legislation. Family law can touch on almost every aspect of New Zealanders' lives and the breadth of the Family Court's jurisdiction has often been described as encompassing issues from "the cradle to the grave".

Family law disputes frequently involve deeply personal and emotional issues and are inherently different from disputes that come before the courts in other

12 Interestingly, the very comprehensive (but never subsequently repeated) *Legal Services Agency Report on the 2006 National Survey of Unmet Legal Needs and Access to Services* found that the most frequently encountered legal problems were (again, with the most frequent first): consumer; money and debt; problems with welfare benefits (interpreted widely to include ACC); housing and land (not separated out); and employment (with family law problems also encountered at the same rate as employment law problems).

jurisdictions. The Family Court is very much the people's court. It makes orders in respect of unborn children, has jurisdiction in adoption matters, and is the forum for relationship matters involving marriage and civil unions, as well as separation and relationship property disputes.

The Family Court make protection orders where family violence has occurred and can make orders regarding the protection of elderly people. It is the forum for resolving disputes over a deceased person's will and estate.

Family Court proceedings often concern children. Over half the applications made to the Family Court are made under the Care of Children Act 2004. This includes applications for parenting orders determining how a child will be cared for after parents have separated when they cannot agree on parenting arrangements. It also allows other people, such as grandparents, to be appointed guardians. Guardianship entails many things, such as the authority to choose which school a child attends, where a child lives, medical issues and the cultural and religious denomination a child belongs to.

The second largest body of the court's work deals with applications brought under the Oranga Tamariki Act 1989. These applications are made when a child or young person needs care and protection. The court can make orders, such as determining who a child is to live with, and what supports and assistance will be provided by agencies and Oranga Tamariki, to ensure children are properly cared for and supported, and protected from harm.

There are some other lesser known aspects of the court's jurisdiction which do not necessarily fit within a simple construct of the idea of "family" matters. For example, it can determine a mental health patient's compulsory treatment status, make orders over a person's personal welfare and property when they are incapacitated as well as ordering a person to undertake assessment and treatment for a substance addiction.

The Family Court continues to be given more and more jurisdiction in differing areas of the law. For instance, there has been an international trend, reflected also in Aotearoa New Zealand, of more people entering into international surrogacy arrangements and inter-country adoptions. In 2017, the Substance Addiction (Compulsory Assessment and Treatment) Act came into force and provides for the Family Court to make the necessary decisions about a person's treatment for substance addiction.

In addition, Aotearoa New Zealand's Family Court is part of an international community of courts that share a framework and values about parental responsibilities for when family disputes cross borders. These are under the Hague Conventions on international family law and also form part of the Family Court's jurisdiction.

The Family Court therefore touches the lives of many ordinary New Zealanders. People involved in Family Court proceedings face many of the same barriers as in other areas of the law, especially those related to problems with the legal aid system (e.g., low legal aid threshold eligibility, requirements to pay user charges, provider

shortages resulting at least in part from poor legal aid remuneration and cumbersome administrative burdens). However, the consequences of delayed or failed resolution of family matters can take a greater personal toll, especially when children are involved.

In 2014, significant changes were made to Care of Children Act (COCA) proceedings. These included:

- the removal of lawyers being able to act for parties in most parenting and guardianship applications, and the removal of legal aid, meaning parties had to self-represent
- introduction of a mandatory Care of Children Act (COCA) form (originally around 40 pages long) meaning lawyers were unable to draft documentation as they normally would even if they were able to act (i.e. in urgent matters)
- introduction of the Family Legal Advice Service (FLAS) to replace legal aid (initial basic legal advice and assistance to parties to complete the mandatory COCA form)
- introduction of compulsory attendance at a Parenting Through Separation program (free of charge) and Family Dispute Resolution (around \$900 if parties were eligible for funding), unless an exemption was granted before applications were able to be made to the Family Court
- introduction of a three-tiered track system for all COCA proceedings.

FLS notes that prior to the 2014 changes, approximately 30% of all applications were filed without notice (i.e. urgent applications where there are risks of harm or safety to applicants and/or children) and 70% filed on notice. As at July 2020, that situation has been reversed with 70% of all applications being filed without notice. This has resulted in significant and ongoing delay in all Family Court applications (not just COCA) and significant pressure on the e-duty platform where most without notice applications are dealt with.

The 2014 reforms were heavily criticised, leading to an independent review which published its findings in 2019, declaring that the Family Court was "no longer fit for purpose". The Government accepted all 70 of the review's recommendations and new legislation came into effect in July 2020, which restored the right to legal representation at the start of a care of children dispute in the Family Court and allowed parties to those proceedings to access legal aid (where eligible). In August 2020, draft legislation was introduced aimed at improving the Family Court system for children. These initiatives are being funded by budget increases announced in May 2020.

These changes are welcome, but do not address the main access to justice barriers discussed in this report. Also, as noted above, there continue to be significant delays in matters being heard in the Family Court.

FLS provided invaluable feedback and took the time to write four case studies (one covering elder law, one discussing relationship property, spousal maintenance and child support, one relating to care and protection and family violence and one relating

to Care and Protection Orders).

These are all important issues and we have included the first three in an appendix to this report. As noted above, Care and Protection proceedings make up the second largest body of the Family Court's work. We have adapted the Care and Protection case study and added it to the case studies in this section.

Feedback received from the Pacific Lawyers Association also indicated an appetite for Care and Protection proceedings and the associated access to justice issues to be highlighted in our report, as this represents a significant proportion of their members' family law work. One issue they highlighted in particular was that legal aid is not available for legal advice received prior to children being taken into state care. This means that most families are unable to have a lawyer advise or support them at crucial initial meetings with Oranga Tamariki, unless the lawyer provides their services on a pro bono basis. The lawyers we spoke to noted that because of this, people usually seek legal advice only once a child has been uplifted.

Access to justice issues for Māori in Care and Protection proceedings have also recently been highlighted in the report published by Whakaue in July 2020, *Te Taniwha I Te Ao Ture-Ā-Whānau – Whānau Experience of Care and Protection in the Family Court*. That report features powerful first-hand accounts of participants who have felt alienated and uninformed during Care and Protection proceedings affecting them and their whānau. The report makes the following observation:

It is well understood that the trajectory for many tamariki Māori who come to the attention of Oranga Tamariki begins in the Family Court system and ends in the criminal justice system (Hāpaitia te Oranga Tāngata, 2019). What is not so well understood is how we enact change in the Family Court in order to stem this tide.

The options for achieving such change proposed in that report are presented as independent, and at progressive levels. Level 1 focuses on changing the behaviour of lawyers and the judiciary by improving their cultural competence; level 2 involves implementing a practical step of holding Family Court hearings on Saturdays to better accommodate the needs of whānau; and level 3 involves making a tangible commitment to tikanga Māori and Te Tiriti o Waitangi through placing more decision-making power in the hands of Māori via the establishment of a board (with at least 50% Māori membership). Under this proposal, the board would take over the Family Court's Care and Protection jurisdiction.

- 5.6 The research projects referred to earlier do not cover criminal matters, but people's experience of the criminal justice system forms an important part of the access to justice landscape, so one of our case studies features a criminal matter.
- 5.7 There is growing acknowledgment that institutional racism is a significant problem in Aotearoa New Zealand. Māori and Pasifika people are heavily over-represented in the criminal justice system, both as people who have been harmed and as people who harm, and initiatives have been underway since the Criminal Justice Summit in August 2018 to address this and other associated issues via the Ministry of Justice's Hāpaitia te Oranga Tangata (Safe and Effective Justice) programme of work. The issue has been highlighted in a number of recent reports.

- 5.8 The Government's Chief Victims Advisor released her report, *Te Tangi o te Manawanui*, on 12 December 2019.¹³ This highlighted the ways in which the criminal justice system is failing victims and made a number of recommendations to remedy these.
- 5.9 Another report, *Ināia Tonu Nei – Now is the Time*¹⁴, released in July 2019, captured the kōrero at a Hui Māori in Rotorua in April 2019 about the ongoing failure of the justice system and how to lead its reformation. Recommendations were made for constitutional reform, and a call was made for a plan to accelerate and understand the change needed, and to establish a Mana Ōrite model of partnership, that puts in place Māori at all levels of decision-making.¹⁵ The report states:

It was clear from those who attended the Hui Māori that the justice system continues to hurt whānau. Whānau Māori are having to respond to the intergenerational effects of the racism, bias, abuse and colonisation that the justice system has created, enabled and continues to deliver almost 200 years since the signing of Te Tiriti o Waitangi. Māori did not sign Te Tiriti o Waitangi for tamariki to be in care, incarcerated or continually traumatised – this must stop now.

...

We heard from those who attended that the justice system cannot be reformed without leadership from Te Ao Māori.

- 5.10 The Safe and Effective Justice Working Group (Te Uepū Hāpai i te Ora) published its first report *He Waka Roimata [A Vessel of Tears]: Transforming the Criminal Justice System* in June 2019.¹⁶ That report discussed the need for transformational change to the criminal justice system, stating that:

we heard that the effects of colonisation undermine, disenfranchise and conspire to trap Māori in the criminal justice system and that racism is embedded in every part of it.

- 5.11 *Turuki! Turuki!*, the second report of Te Uepū Hāpai i te Ora was published on 11 December 2019 and describes the failings that Te Uepū Hāpai i te Ora found in our current system as follows:

"People told us they have no confidence in the current criminal justice system.

13 Her report is available here: <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/Te-Tangi-Final-PDF.pdf>

14 The report is available here: <https://safeandeffectivejustice.govt.nz/about-this-work/hui-maori/>

15 The 2013 thesis of Douglas B Mansill: *Community Empowerment or Institutional Capture and Control? The Development of Restorative Justice in New Zealand's Adult Systems of Social Regulation, Control and Punishment* (<https://openrepository.aut.ac.nz/bitstream/handle/10292/7373/MansillD.pdf?sequence=1&isAllowed=y>) defines Ōrite as "a Māori framework for analysing and interpreting personal, family, community and institutional approaches to wellbeing".

16 The report is available here: https://safeandeffectivejustice.govt.nz/assets/Uploads/7efb12cccb/teuepureport_hewakaroimata2.pdf

They want urgent transformative change. They described a system which is:

- *failing to help those who are harmed*
- *failing to stop harm and reoffending*
- *failing Māori*
- *racist, culturally blind and culturally biased*
- *failing to meet diverse needs*
- *confusing and alienating*
- *costly, especially in terms of the loss of human potential.*¹⁷

Our case studies seek to reflect a number of these issues, some of which are also relevant to the civil justice system.

Several respondents to the Law Society's draft report reiterated these comments and emphasised the importance of specifically addressing the access to justice needs of Māori. Community Law has kaupapa Māori services at five of its centres and wants to roll out more. Te Hunga Rōia Māori o Aotearoa indicated that Māori engagement increases significantly when kaupapa Māori services are available.

Both Te Hunga Rōia Māori o Aotearoa and the Pacific Lawyers Association commented that there are significant difficulties in obtaining good quality cultural reports for sentencing (known as 'section 27' reports) as there is a lack of people who know how to write them properly. These reports can make a substantive difference to justice outcomes.

- 5.12 The case studies on the following pages primarily feature people on lower incomes who are nevertheless ineligible for legal aid, either because of the nature of their legal issue or because their incomes exceed the legal aid eligibility thresholds.
- 5.13 Unless special circumstances (defined in regulations) can be established, in order to be eligible for civil or family legal aid, a two-adult household must have a gross income of no more than \$36,940 (and no more than \$5000 in disposable capital).¹⁸
- 5.14 The 2018 New Zealand Social Deprivation Index (prepared by the University of Otago's Public Health Department) sets the threshold below which people are considered to be income-deprived at an equivalised household gross annual income (which reweights a household income to a two-adult household). This is currently \$34,023.
- 5.15 The proximity of the legal aid eligibility thresholds to the level at which people are considered to be income-deprived demonstrates how low the legal aid eligibility threshold is.
- 5.16 It is difficult to identify the proportion of people in Aotearoa New Zealand who cannot

17 The report is available here: <https://www.safeandeffectivejustice.govt.nz/assets/Uploads/28ce04fd87/Turuki-Turuki-Report-Interactive.pdf>

18 See the Legal Services Regulations 2011, rules 5 and 6

afford legal services yet are excluded from the legal aid regime. This is because of the different metrics used by researchers (e.g. many reports refer to net income whilst others take into account housing costs).

- 5.17 For example, the Human Rights Commission's recent report: *In-work poverty in New Zealand (2019)*, based on data from the 2013 census, found that more than 50,000 working households in Aotearoa New Zealand live in poverty. There is no official agreed poverty line in Aotearoa New Zealand, but in that report the poverty line is defined as monthly net equivalised household income before housing costs of less than 60% of the median (as at 2013, because of the data set used for the research).¹⁹ Government departments often set that line at 50% of the median (we note for example that this is the measure used in the Child Poverty Reduction Act 2018).
- 5.18 This means that there is a lack of firm information about the extent to which people of low to moderate financial resources are excluded from the legal aid regime.
- 5.19 While legal aid eligibility thresholds are probably the most significant access to justice barrier presented by the legal aid system, those who are eligible still face access to justice barriers because of other problems with that system. One such problem is legal aid provider shortages. This is the result of:
- an increasing proportion of lawyers who do not offer any services at all that are funded by legal aid (particularly in Family and Criminal law and in certain regions of the country);
 - an increase in the number of established legal aid providers who, although they do some legal aid work, are taking on less of that work;
 - a reduction in the number of junior lawyers joining or remaining in firms who offer legal aid services, creating sustainability issues.

It would appear that the primary reasons for members of the legal profession moving away from/not being attracted to legal aid work are the very low remuneration rates for legal aid providers and the bureaucratic/administrative burdens of being a legal aid provider.

The Law Society and other professional bodies regularly advocate for improvements to the legal aid system, including seeking significant increases in remuneration and eligibility thresholds. The last full legal aid review took place in 2018, and the next is due in 2021. Despite this, eligibility thresholds and remuneration rates have remained almost unchanged for many years (with the only recent remuneration increase applying to lawyers for children, and then at an increased rate of just \$1 per hour).

There are however ongoing government projects to reduce administrative burdens and alleviate "pain points" for legal aid lawyers and their clients. There is also constant dialogue between Legal Aid Services and their professional stakeholders, including the Law Society, to enable timely responses to challenges that arise with the system. Details of initiatives to improve the legal aid system are set out in the tables in section B of this report. Some submitters have provided suggestions for further improvements, which are detailed in section D.

19 The Human Rights Commission's report is available here: https://www.hrc.co.nz/files/8215/7462/2882/In-Work_Poverty_Report_2019.pdf



Case studies

Margaret

Consumer

Margaret is a 78-year-old widow living in a country town. Margaret has mobility issues so she decided to buy an adjustable electric bed to replace her old one. It was so old it had to go to the landfill.

Margaret bought her new bed from a local retailer around six months ago for \$3000. The young man in the shop had tried to sell Margaret an extended warranty, but she'd heard about those on an episode of 'Fair Go', so declined the offer.

The bed's electric adjustment feature stopped working this morning and the bed is now stuck at an odd angle. When Margaret went back to the retailer to complain this afternoon, the shop assistant told her that they couldn't help her because she had probably been "too heavy handed" with the bed controller and she should have bought the extended warranty.

Margaret is distraught – that bed cost her more than she could really afford, but it was making life so much easier. Now she has no savings and nothing to sleep on! Margaret doesn't have a computer, a smartphone or an internet connection. Margaret doesn't see the point as she doesn't know how to use the internet anyway. There is a Citizens Advice Bureau (CAB) that operates out of the local library a few mornings a week. Maybe she'll try them. She thinks they open in the morning. Margaret calls

her friend and asks if she can stay in her spare room for the night.

What happens next?

Because Margaret doesn't have a computer or internet connection, or technological knowledge, she is unable to access the various websites that could provide her with information about her rights.

Luckily, Margaret knows about the Citizens Advice Bureau (CAB), so can contact them by phone or in person. She is also fortunate enough to live close to one of their offices. She gets some advice from the CAB about her rights as a consumer. This gives her the confidence to go and speak to the store manager and quote the Consumer Guarantees Act.

If this doesn't resolve the matter, Margaret now knows she can file a claim in the Disputes Tribunal. This would cost her \$90, which she may have to borrow from a friend. However, she would be able to repay it quite quickly if she won, because Disputes Tribunal matters tend to be dealt with within 6 weeks. Also, she would not need a lawyer as they are not allowed at the Disputes Tribunal.

The CAB has put Margaret in touch with a budgeting agency and a charity that helps people who need emergency items of furniture.



Potential sources of information and advice:

- Community Law Centre (CLC)
- Citizens Advice Bureau (CAB)
- Consumer Protection
- Disputes Tribunal
- Law Firms

Potential barriers



Geography

Though she lives near to a CAB, physical coverage of offices can be an issue in some areas. This is her only primary source of information. Had she not lived nearby, the outcome could have been quite different.



Cultural & Social

Knowledge – lack of knowledge and inclination necessary to navigate the internet.



Cost

Direct costs – with savings gone, she has no money available for paid legal advice or to file a claim with the Disputes Tribunal.



Information

No computer or internet connection to access websites for information. Entirely reliant on physical contact with an information provider.



Case studies

Ben

Debt

Ben is 42 and separated from his partner at the start of 2017. He pays child support for their 11-year-old son, Charlie, who stays with him every other weekend and for half of the school holidays.

The split took an emotional and financial toll on Ben, but he didn't want to let Charlie down that first Christmas when they were no longer living as a family of three. Ben took out a \$5000 loan from a private loan company to pay for a holiday and buy Christmas presents for Charlie.

The repayments were manageable, but six months ago Ben was made redundant. Ben has only been able to find casual labour jobs since, and the money from those doesn't go far. Ben wasn't eligible for a redundancy payment under his employment contract and has no savings. He missed last month's loan repayment and has received a letter requesting payment and notifying Ben of a "dishonour fee" of \$200. The letter also mentions the possibility of legal action. Ben is struggling to meet his child support payments and other bills but hasn't yet missed any payments.

What happens next?

Ben is shocked at the amount of the fee. He has very little in his bank account and no work lined up this week. He reluctantly calls his dad and

tells him about the state of his finances. His dad agrees to lend Ben (without interest) the money he needs, but warns Ben that this has to be a one-off. He also suggests Ben should find a budget advice service.

Ben is determined not to be in the same position again next month, so he follows his dad's suggestion and finds a budget advice service.

The budget adviser helps work out a plan for Ben, including prioritising the most important payments (e.g. child support, which if unpaid could result in IRD seeking an order against Ben from the Family Court). With regard to the personal loan, the budget adviser tells Ben that because of his redundancy, and also because he has missed only one payment, he may be able to apply for a variation to his repayment schedule under the hardship provisions of the Credit Contracts and Consumer Finance Act (CCCFA).

The adviser agrees with Ben that the dishonour fee seems very high and thinks that it is likely to breach the CCCFA. He tells Ben that the Commerce Commission could pursue enforcement action against the loan company but may exercise its discretion not to. The loan company Ben used is required under the CCCFA to belong to one of four approved dispute resolution schemes, and he could complain to them about the fee since he has had no luck with the loan company.



Potential sources of information and advice:

- Community Law Centre (CLC)
- Citizens Advice Bureau (CAB)
- Budget advice service
- Commerce Commission; CCCFA approved dispute resolution scheme (no lawyers needed)
- Consumer Protection website

Potential barriers



Cultural & Social

The stigma of debt can inhibit people from seeking help when things start to get out of control. Ben was fortunate to have a family member on whom he could rely and a subsequent willingness to seek professional help.



Information

The CCCFA is complex and Ben was able to access information about varying the payment schedule and challenging the dishonour fee thanks to the budget adviser. He only learned about the existence of budget advisers because of his dad.



Cost

Direct costs – without his dad's help, paying the dishonour fee and repaying the loan would have been very difficult.

Indirect costs – his ongoing living costs, including child support, make budgeting difficult.



Case studies

Hēmi

Public liability

Hēmi is a plumber and started working as a sole trader two years ago.

When he started up, he took out a \$5 million public liability insurance policy. At the annual renewal, his automatic payment failed to go through on the date Hēmi had requested. This was due to him having accidentally set up the payment to go from an account that he rarely used, with only \$20 in it, instead of the account he used for the business, which had sufficient funds in it. Hēmi didn't know this until he received an email a week later from the insurance company advising that his policy had been cancelled. He immediately called the insurance company and arranged for the policy to be renewed, using funds from the correct bank account.

During the period when he was uninsured, Hēmi worked on a bathroom renovation at a large and expensive home. Eight months after the job had been completed, the customer contacted Hēmi to advise that there had been a huge flood in the house because of his work, causing \$360,000 worth of damage to the property, and that he would be hearing from their insurance company. Hēmi still doesn't really know how the flood happened and has serious doubts about whether it was caused by his work. The homeowners' insurance company has filed a claim in the High Court against Hēmi. Hēmi contacted his insurance company but

they denied liability because he was uninsured at the time of the incident.

As the business is relatively new, Hēmi doesn't yet earn all that much and doesn't have many assets. The homeowners left a bad review online, which is causing work to dry up. Despite this, he doesn't meet the eligibility criteria for legal aid. Even if he were eligible, finding a legal aid lawyer would likely be a challenge. Community Law Centres generally don't assist with business issues. If he had set up his business as a company, he wouldn't be personally liable for the damage.

What happens next?

Hēmi will need to decide whether to defend the claim. Hēmi has no savings, however, he has heard that some lawyers offer initial consultations for free. He looks online for lawyers and finds one nearby who offers a free half-hour initial consultation.

The lawyer suggests that Hēmi may well have a defence, and it is far from clear-cut that his work was the cause of the flood. He feels he has too much to lose not to defend the claim, so agrees to let the lawyer file his statement of defence. It is full of legal jargon and doesn't make a lot of sense to him. When the bill comes, he manages to pay it – just, and hopes some more work comes in soon.



Potential sources of information and advice:

- Community Law Centre (CLC)
- Citizens Advice Bureau (CAB)
- Legal advice
- High Court website
- Support groups, e.g. McKenzie Friends or similar

Potential barriers



Service Delivery

Self-representation – the justice system could unfairly prejudice him without adequate representation.



Information

Misunderstanding – having to deal with large amounts of unfamiliar information is daunting and there is the potential for misinterpretation.

CLCs generally do not assist with business issues but there may be some general information in their online manual.



Cost

Direct costs – no savings or available funds for ongoing private legal advice.

Indirect costs – time taken off work to attend a potential court hearing would mean a loss of income.



Cultural & Social

Reluctance to act – pursuing the matter without legal support is a daunting task. Much of the information seems to be written in "legalese" and not very accessible.



Case studies

Talia

Traffic offences

Talia is 40 years old and lives in a small city, working as a part-time rideshare driver. She is a solo mum to three children aged 9, 11 and 14.

Talia is struggling with her eldest child's behaviour. He has been skipping school frequently for a while and has been seen more than once vaping with his friends outside the mall during school hours. When he's at home, he won't do anything except play online video games. Talia and her son, Makani had a big argument in the car about all of this last week. Although Talia was upset and angry, she didn't take her eyes off the road while arguing with her son. As Talia turned onto the main road near home, she collided with a car "that just seemed to appear out of nowhere". The passenger of the other vehicle was injured, so the police were called and Talia was charged with careless driving causing injury. Makani's school also rang Talia this morning, wanting to discuss ongoing issues around Makani's behaviour at school, and the truancy issue.

Talia doesn't earn much, so assumed she would be eligible for legal aid in relation to the careless driving charge. However, she discovered that because the offence carries a maximum prison sentence of less than six months, legal aid isn't available, regardless of income. She was told by the Police Detention Legal Assistance (PDLA) lawyer she talked to on the phone (from the Police station list) that if she is convicted, she will lose her licence for six months, and could be fined up to \$4500 or even

get a prison sentence of up to three months. As this is her first offence, the PDLA lawyer thought that a prison sentence would be very unlikely and the fine would probably be at the lower end of the scale. Talia is still terrified though; she has not been in trouble with the law before. The idea of losing her licence and not being able to work or get around is tough. She has no idea how she would pay a big fine as well. Talia really wished she could talk to a lawyer face-to-face. A phone call was so impersonal and didn't help to calm her down.

What happens next?

Because the offence of careless driving causing injury carries a maximum prison sentence of less than six months, legal aid isn't available, regardless of income (and Talia is on a low enough income that she would qualify if it were available).

She calls the Community Law Centre who say that although they can represent people in criminal cases where no legal aid is available, they are unable to take on new cases at present. They provide a list of local lawyers for her to try.

After calling a couple of firms offering flat and discounted fees for people in hardship, she finds it is still more than she can afford. The firms are also really busy and unable to take on new cases.

Because of the barriers of cost and service delivery facing her, and because she really doesn't want to plead guilty, Talia reluctantly decides to represent herself in Court.



Potential sources of information and advice:

- **Community Law Centre (CLC)**
- **District Court website (criminal procedure)**
- **Police Detention Legal Assistance (PDLA)**
- **Community Law handbook**
- **Citizens Advice Bureau (CAB)**
- **Some law firms' websites**
- **Youthlaw, which has a range of services for under-25s, including advice on education law matters.**
- **Ministry of Justice website 'Going to Court without a lawyer'**

Potential barriers



Cultural & Social

Disengagement – mistrust of legal system (by not having a face to face meeting). Evidence indicates that as a Pasifika woman, Talia may also find the court experience alienating.



Cost

Direct cost – unable to pay for legal advice and representation.

Indirect cost – loss of income from losing licence, transport and childcare costs if attending court.



Service Delivery

Accessibility – no available lawyers at the CLC and the firms she contacts offering pro bono cannot take on new cases.

Self-representation – justice systems can unfairly prejudice people who are representing themselves.



Case studies

Lian

Housing and employment

Lian is 26 and works shifts at a petrol station in a small town in Aotearoa New Zealand. She currently walks to work as her car failed its last warrant and she can't afford to have the necessary work done. Lian earns minimum wage and rents a flat near to work.

The flat is in a bad state of repair, and although the landlord keeps promising to fix the broken shower and the faulty heat pump, it's been several months and there has been no sign of anything happening. He also keeps turning up unannounced to do inspections, which is really stressful. She has told her landlord that she needs notice, but he just ignores her.

Lian knows she could give notice to her landlord to end the tenancy and look for somewhere better to live, but affordable rental accommodation is really hard to find in her town, and about 100 people turn up every time a decent place that doesn't cost a fortune comes onto the rental market. Her boyfriend suggests Lian should take their landlord to the Tenancy Tribunal to get things fixed and to stop him turning up unannounced, but Lian has heard about other people who have done that being evicted or not being able to get a reference for their next place. Also, she knows that your name is published if you go to the Tenancy Tribunal, and landlords look at the decisions published online before letting a place. She's heard that if they see your name on there, there's no way you'll be offered a rental.

To add to her troubles, Lian has just been told that her hours are being reduced at work from 40 to 30 hours per week. She's the only staff member affected and she's pretty sure it's because her manager is racist. She's the only staff member there of Asian heritage and has been working at the petrol station for longer than most of her colleagues. Her manager is new and has made a few offensive comments about people of different ethnicities that have made Lian feel uncomfortable. She knows that she does a good job and works hard. She doesn't want to leave because there aren't that many jobs available in her town right now, but she's not sure what other choice she has. Lian doesn't feel able to talk to her manager about these issues, because he's so unfriendly towards her.

Lian knows about personal grievances, because her friend Lucy who works in the nearest city took one against her employer for bullying. That all went wrong for Lucy though. Lucy and her employer agreed on a confidential settlement and she left. Lucy still hasn't got another job. She came close but after a reference check she was told that another, better-qualified candidate had come along at the last moment and they withdrew their offer. Lucy's pretty sure that her old employer bad-mouthed her during the reference check. Anyway, Lian earns minimum wage so presumes that she can't afford a lawyer to help her bring a claim, even if she wanted to.



What happens next?

Lian's landlord and employer are both potentially in breach of their legal obligations towards her.

There are early resolution steps that she could take by herself in respect of both matters, such as serving a 14-day notice to remedy on her landlord or requesting a meeting with someone more senior than her manager at her workplace.

If that meeting was unsuccessful, Lian and her employer could consider using mediation, which is available free of charge through the Government's Employment Mediation Services.

Potential barriers



Geography

Isolation – small town in New Zealand, with potentially limited access to sources of information/support. Limited options for alternative accommodation.

Transport – car currently unavailable and limited funds for petrol/repairs.



Cost

Direct costs – reduced hours at work mean Lian has no money for legal representation.

She is not eligible for legal aid, but even if she were, she would struggle to make repayments at a rate of 6%.



Service Delivery

Legal aid – not eligible for civil legal aid with her current income. Even if she were, she may find it hard to find a civil legal aid lawyer.

Self-representation – may experience unfair prejudice in the justice system if she was representing herself.



Case studies

Danielle

Care and protection

Danielle is a 27 year old mother of four, aged 3, 5, 8 and 11. She lives on and off with her partner Josh but she is on a sole parent benefit as Josh does not support her financially. He is the father to her two youngest children. They live in a small town and are about 45 minutes away by car from the nearest main city.

There have been problems in the relationship including family violence and the police have attended a few times. Josh also has a problem with methamphetamine. The police have advised Danielle that she should end the relationship. Josh recently sold the car as he said he needed the money.

The three older children have been missing a lot of school lately, as Danielle cannot get them there easily without a car. When they do go to school, they sometimes do not take lunch. Danielle knows the situation is bad and has tried to move out previously but could not find alternative housing and did not know how to leave without getting into a fight with Josh.

A social worker went over to the home when she was out a couple of weeks ago and Danielle found his card tucked into the door when she got home. She got too busy to call the social worker back and did not know what it was about. Danielle has also noticed missed calls on her phone from an unknown number, but she does not answer calls from unknown numbers.

Danielle received a letter inviting her to a Family Group Conference, but her best friend told

her not to go as she had seen some really scary stories on Facebook about kids being taken away from their mothers. Danielle has now received some court documents from Oranga Tamariki. She does not know what the documents mean or what she should do. She has 21 days to respond.

What happens next:

There are no family lawyers in the town near where Danielle lives. She has phoned all of the 15 family lawyers in the nearest city, but none of them are able to help her as some are not approved legal aid providers and others are unable to take on new clients at this time.

Danielle does not have the internet at home and only has limited data on her phone. She tries to find some advice about what she should do next but cannot find any information. She phones the 0800 number for the Family Court but waits a long time and then gets put through to someone who advises her to get a lawyer to file her response.

She phones the Legal Aid section of the Ministry of Justice who advise her that she will be eligible for legal aid but that she will need a lawyer as the proceedings are serious and if she does not respond, there could be significant consequences for her.

There is no local CLC or CAB for her to access advice or information. The only advice she is able to get is from friends, relatives and the local public library.



Potential sources of information and advice

- [Community Law Centre \(CLC\)](#)
- [Citizens Advice Bureau](#)
- [Ministry of Justice website \(contains information on how to respond to an application for a Care or Protection Order, including forms to download\)](#)
- [Local Family Court](#)
- [NZLS Family Law Section website](#)

Potential barriers



Information

Danielle has an internet-capable phone but has very limited data so can't spend a long time researching. She also wouldn't really know where to look even if she had the time and data to spare. What little information she does find doesn't make a lot of sense to her.



Geography

Danielle is geographically isolated and lacks transport and the means to get to the nearest city to access better information.



Cost

Although Danielle is eligible for legal aid, her financial constraints affect her ability to access a wider range of services.



Service Delivery

There is a shortage of family lawyers even in the nearest city. Danielle will not be able to get legal help in order to file her response to the court proceedings in time. This will mean that orders could be made against Danielle regarding her children, without her having the chance to have some input into decisions. Not all the lawyers in the nearest town are approved legal aid providers, due to the low remuneration rate, and those that provide legal aid services are badly overloaded with cases and cannot take on more work.

The case studies are intended to be illustrative rather than a complete analysis of the myriad of issues that New Zealanders may face.

Their purpose is to provide a platform for the identification of access to justice issues based on the "consumer" rather than the "system".

The potential sources of information and advice referred to in these case studies may not always be available and are not weighted in terms of how much assistance they may be in the specified situation. Not all sources listed are able to offer legal advice.





Section B — Initiatives underway to address access to justice barriers





This word cloud was generated from the tables in this report that relate to the access to justice initiatives identified in New Zealand (excluding the table of awareness-raising initiatives). The larger the text, the more frequently those initiatives appear in the tables.



This word cloud indicates the people and organisations most commonly involved in the access to justice initiatives identified in the tables below. The larger the text, the more frequently those people and organisations appear in the tables. The word cloud was generated from the tables in this report that relate to the access to justice initiatives identified in New Zealand (excluding the table of awareness-raising initiatives).

Aotearoa New Zealand

The following tables set out the initiatives found to date (including systems that are already in place) that seek to address or overcome the barriers to access to justice in Aotearoa New Zealand that we have identified. They are organised by the main barrier that each initiative addresses, but where more than one barrier is addressed, this is noted. Initiatives that are marked (T) are technology-based. Explanatory notes are included to show: who is involved in the delivery of the initiative; the target audience (i.e. who the initiative is intended to help) and potential challenges.

The main barriers



Geography



Cultural & Social



Cost



Service Delivery









Information










Geography

(Physical location and/or an inability to reach services)

Overcoming geography-based barriers to access to justice requires recognition that safeguarding physical accessibility to services is worthwhile and essential for some people, while appreciating that in-person contact is not always helpful. Appropriate use of digital technology is an essential tool in overcoming a number of geographical barriers and there is scope for development and extension of this. Initiatives that address or seek to address barriers of geography often also address other access to justice barriers (e.g. cost).

 Initiative	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Increased use of Audio-Visual Links (AVL) for hearings and interviews (T)	Ministry of Justice	Ministry, witnesses in remote locations, vulnerable witnesses. Used in civil and criminal jurisdictions.	Technology failure risks. Cost of installing and maintaining infrastructure. Burden on court staff (bookings etc). Missing nonverbal communication cues and other disadvantages arising from lack of in-person contact, including missed information and alienation, especially for some cultural groups. Lost opportunities to "reach" defendants and reduce offending. Chief Justice has expressed the view that AVL should be for truly procedural matters only, e.g. timetabling. ¹ AVL use can result in disengagement with system, especially for defendants.	 
Maintaining a local physical presence – including by providing outreach clinics and travel to clients (e.g. in prisons, marae, suburbs, remote areas).	Courts, Citizens Advice Bureau, Community Law Centres, law firms	Services provided from local physical locations enable face-to-face contact. This may be preferable, or the only viable option, for people without access to transport or the internet e.g. some older people, people of limited financial means and some cultures, including Māori.	Operating from physical spaces, especially in more remote areas can be expensive and inefficient. Unexpected disruption is not uncommon (such as requirements to close buildings for earthquake strengthening (Levin courthouse being a recent example). Local coverage is therefore not comprehensive. For lawyers travelling to meet clients/hold outreach clinics, travel can be costly in terms of time and money.	  

¹ See her comments here: <https://www.adls.org.nz/for-the-profession/news-and-opinion/2019/9/27/chief-justice-%E2%80%98bring-the-defendant-back-into-court%E2%80%99/>






Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Online filing of documents (T)	Courts and tribunals	Ministry, some court and tribunal participants	Currently only available in higher courts and some tribunals. Not yet a complete replacement for hard copy filing and, in some instances, both are required (e.g. High Court).	 
Investigating viability of online courts (T)	Otago Legal Issues Centre. ²	Ministry, Participants in civil proceedings	No disadvantages to investigating viability. Risk that if adopted, online courts could be used only for cutting costs, with wider implications for justice ignored. Could result in two-tier justice if introduced as optional. Operational risks include system design and technology failures.	 
Phone services – 0800 numbers for mediation/employment/tenancy	Government agencies (e.g. MBIE, employment.govt.nz, tenancy.govt.nz)	Members of the public looking for advice and information	Most of the services are not able to provide legal advice.	 






2 This article explains more: <https://www.lawsociety.org.nz/news/lawtalk/issue-928/aotearoa-future-courts-should-online-courts-be-our-future/>

Cultural and social

(Institutional racism, lack of understanding or appreciation of social and cultural needs and differences; social constraints that inhibit the pursuit of legal remedies)

Many initiatives seeking to address cultural and social barriers to access to justice are quite nascent, with much work still at the proposal stage following the publication of some seminal reports including those from the Safe and Effective Justice Advisory Group, the Chief Victims Advisor and the Superdiversity Institute for Law, Policy and Business.

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed 
Interpretation and language services (including facilitating the right to speak Māori) in courts and tribunals (including guidelines for interpreters).	Ministry of Justice	Māori; Culturally and linguistically diverse (CALD) parties; decision-makers.	Ensuring that there is a sufficient supply of appropriately trained interpreters who are available to meet the needs of a rapidly changing demographic	
Cultural awareness and bias training for professionals involved in the justice system (including the judiciary, court and tribunal staff, lawyers).	Range of providers offering training to public and private sector legal professionals; Institute of Judicial Studies (the professional development arm of the New Zealand judiciary).	Māori; Culturally and linguistically diverse (CALD) parties; lawyers, decision-makers.	Ensuring quality and consistency of training and reach of that training (including uptake); Embedding learnings into everyday practice. Cost of training Adapting systems and processes to accommodate different needs and perspectives.	
Programmes of work to transform the criminal justice system, with a strong focus on more equitable outcomes for Māori.	Ministry of Justice (Safe and Effective Justice Working Group; Hui Paneke Working Group following up on the April 2019 Hui Māori in Rotorua); Action Station/Otago University "They're Our Whānau" report. December announcements from Justice Minister: www.beehive.govt.nz/release/new-direction-criminal-justice-reform	Māori (as both victims and offenders); whānau of those in the system; wider society.	Identifying and implementing effective initiatives. Allowing sufficient time for effects to become evident while keeping alert to initiatives that may be less effective and responding appropriately. Balancing the range of varying groups' needs.	

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Use of culturally and socially responsive courts (e.g. Rangatahi and Pasifika Courts (for young Māori and Pasifika offenders); Matariki court (delivering culturally appropriate pre-sentencing rehabilitation programmes); and Alcohol and Other Drug Treatment (AODT) court pilots. Young Adult List pilot launched August 2020.	Ministry of Justice	Youth, Māori and Pasifika offenders, their whānau and wider society.	Monitoring outcomes for those going through these courts to capture data about their effectiveness and secure their future (or enable changes to be made to respond to challenges they may present).	
More socially and culturally responsive courthouse design (see announcement re new Tauranga Courthouse being a model for future courthouse design)	Ministry of Justice (with input from stakeholders, e.g. The Law Society)	All court users	Meeting the expectations of different groups with a diverse range of needs	
<i>Benchmark</i> , an online resource that "provides a range of tools [including guidelines and case law] that legal professionals can use to ensure that vulnerable people are fully included in the legal issues and proceedings that concern them." ³	Hosted by the Donald Beasley Institute (a non-profit disability research and education organisation in Dunedin), with involvement from lawyers and academics and funding from The Law Foundation and IHC.	Vulnerable witnesses and defendants, and the lawyers and judges working with them.	(Presumably) securing ongoing funding for maintenance and expansion of these resources. Monitoring how well-used and well-received the resources are.	
Establishment in 2019 of the Justice International Network, which provides impartial informed testing and validation of New Zealand's criminal justice reform initiatives; publication of reports, including What were they thinking? A Discussion Paper on Brain and Behaviour in relation to the justice system in New Zealand https://cpb-ap-se2.wpmucdn.com/blogs.auckland.ac.nz/dist/f/688/files/2020/02/What-were-they-thinking-A-discussion-paper-on-brain-and-behaviour-in-relation-to-the-justice-system-in-New-Zealand-updated.pdf , which found that those with brain injuries are over-represented in our prisons.	Chief Science Advisor to Government (Justice), Ian Lambie, supported by Hāpaitia te Oranga Tangata (Safe and Effective Justice)	Government; people involved in the criminal justice system; wider public	N/A	

3 Further information about Benchmark can be found here: <https://www.benchmark.org.nz/about-us>



Initiative

Who is involved?

Who does/will it help?

Potential challenges

Additional A2J barrier(s) addressed

<p><i>Improving diversity among the judiciary (of the 21 recent new District Court judicial appointments ten are Māori, one is Māori/Chinese and two are Samoan. Twelve of the new judges are women. See https://www.beehive.govt.nz/release/21-new-judges-boost-diversity-improve-access-justice</i></p>	<p>Ministry of Justice</p>	<p>Wider society, people from diverse backgrounds involved in the court system. Increased numbers of Māori judges could also inspire more young Māori to pursue legal careers. See the comments of the Māori law Society co-president Marcia Murray https://www.rnz.co.nz/news/te-manu-korihī/407875/maori-dominate-in-new-appointment-of-district-court-judges</p>	<p>N/A</p>	
<p>Symposiums considering barriers to people accessing the employment institutions under the Employment Relations Act (i.e. mediation services, the ERA and the Employment Court).</p>	<p>AUT, Employment Relations Authority, Employment Court.</p>	<p>Employees, employers, professionals working in the system.</p>	<p>Ensuring that discussions translate to actions facilitating cultural change that encourages people to access the systems available to protect and uphold their rights.</p>	<p>N/A</p>
<p>Te Korimako – an initiative to train and educate Iwi and Māori social service providers to assist whānau who come to the attention of Oranga Tamariki to navigate the care and protection process, including within the Family Court. www.mwwwl.org.nz/te-korimako-legal-education.</p> <p>In light of COVID-19, a FaceBook page has recently been created to provide current information about the Family Court, Youth Court and District Court as well as Oranga Tamariki.</p>	<p>Founded by four Māori women lawyers in 2018. Some sponsorship has been provided by the Ministry for Social Development. Member/s of the Pacific Lawyers Association intend to adapt the model for Pacific communities.</p> <p>See: https://www.renews.co.nz/whanau-read/</p> <p>https://www.rnz.co.nz/news/te-manu-korihī/360933/whanau-with-children-in-state-care-lack-clarity-on-rights</p>	<p>Māori and Pacific communities</p>	<p>Impact of COVID-19 on reaching people</p>	




Cost

(High cost and perceived high cost of accessing legal advice, representation and forums for resolving disputes)

Cost is probably the biggest barrier to access to justice and initiatives that seek to address cost barriers are wide-ranging. They include:



- the government's legal aid system, which is intended to safeguard access to advice and representation for those otherwise unable to afford it;
- community-based free legal services;
- pro bono (or reduced fee) initiatives;
- innovative fee or legal service delivery structures;
- work undertaken by legal sector organisations to encourage the reduction or elimination of cost barriers;
- Low cost dispute resolution mechanisms (either Government or industry-funded); and
- self-help efforts to reduce cost.

As demonstrated throughout this section, many initiatives that seek to overcome access to justice barriers include an element that has the effect of or is aimed at reducing cost. However, the initiatives included below are those where that appears to be the initiative's **primary** purpose.

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed 
<p><i>Legal aid is government funding to pay for legal help for people who cannot afford a lawyer ... Legal aid helps people to resolve legal problems that may go to court and makes sure that people are not denied justice because they can't afford a lawyer.</i></p> <p>(Source: Ministry of Justice website)</p>	<p>Government (Legal Aid Services; Legal Aid Commissioner); lawyers approved as legal aid providers</p>	<p>It is intended to help people who cannot afford a lawyer (criminal and civil jurisdictions)</p>	<p>Legal Aid reforms implemented in 2011 significantly reduced the reach of the legal aid scheme, and this reduction has continued. Although legal aid is still available, eligibility thresholds are so low, it can no longer be said that the system "makes sure that people are not denied justice just because they can't afford a lawyer".</p>	
<p>Family Legal Advice Service. This is not legal aid funded, but a limited initial advice service introduced in 2014 to replace legal aid for Care of Children Act proceedings.</p>	<p>Ministry of Justice; lawyers</p>	<p>Eligible parties in dispute over arrangements involving the care of their children.</p>	<p>Although FLAS has a higher income eligibility threshold, is income tested only, not asset tested, does not attract a user charge, and does not have to be repaid, FLAS is extremely limited as it offers only initial legal advice and assistance with completing the Care of Children Act form that must be used by self-represented litigants. It does not enable that same lawyer to then continue, under the legal aid system, representing that party in Family Court Proceedings that follow.</p>	





Initiative	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
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Community-based free legal services

<p>Community Law Centre free advice clinics</p> <p>Citizens Advice Bureau free advice clinics</p> <p>Community Mediation Service pilot (South Auckland and Franklin), operating since 2017, not funded and relies on pro bono services from mediators and lawyers. Civil work only.</p> <p>Auckland Disability Law (free advice and information)</p> <p>YouthLaw (free advice and information)</p>	<p>Lawyers and law students (volunteers and paid staff) at Community Law Centres and Citizens Advice Bureau.</p> <p>Some government funding is provided for most of these services.</p>	<p>People who cannot afford to pay for private legal services (but services involving representation or individual advice, beyond a brief initial consultation, are limited and generally means-tested)</p>	<p>(NB All of these challenges apply to community-based free legal services)</p> <p>Securing sufficient funding to provide a full range of services with the widest possible reach.</p> <p>Not well promoted/known of in some cases</p> <p>Resource limitations mean that eligibility criteria (either financial or by case type) are required. Drawing those lines can be difficult and some of the more "everyday" cases are likely not to be taken on.</p> <p>Depending on financial thresholds and service availability, some people with meritorious cases and relatively low incomes may still miss out.</p> <p>Co-ordination and direction of resources to areas of highest need can be challenging.</p>	 
<p>Tenants' advocacy services (available in Auckland, Christchurch, Palmerston North, Tauranga and Wellington (the latter as part of the CAB service))</p>	<p>Free tenancy independent advice and advocacy services. Government and philanthropic organisation funded</p>		<p>N/A</p>	<p>N/A</p>



Pro bono or reduced fee services

<p>Equal Justice Project (which includes pro bono work in the form of law student volunteers providing legal research and analytical assistance to practitioners).</p>	<p>University of Auckland</p>	<p>Lawyers (and clients, indirectly)</p>	<p>Lack of visibility of law student assistance as an option for members of the public (and possible regulatory issues);</p> <p>Lack of visibility of law student assistance as an option for practitioners to obtain support for their pro bono work;</p> <p>Extra-curricular pro bono initiatives which can put a lot of pressure on law students' time are often not recognised in any formal way within the LLB, thus reducing the scope of potential recruits (i.e., to those who can afford not to work part-time or who do not have other obligations etc);</p> <p>Issues with scale and availability of supervision of law student pro bono groups;</p> <p>The culture of law schools continues to prioritise traditional pathways in the law (employment and then partnership at a law firm).</p>	<p>N/A</p>
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Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Pro bono offering via clinical legal studies course	University of Canterbury student volunteers	Members of the public unable to afford legal services.	N/A	
Pro bono work following Christchurch mosque shootings coordinated by the Law Society's Canterbury/Westland branch and student bodies	Lawyers and student volunteers		N/A	
<p>Investigating ways to improve the delivery and promotion of pro bono services, possibly including a pilot pro bono clearing house, subject to securing funding.</p> <p>Update: Funding was secured and Government announced in May 2020 the establishment of a Pro Bono Clearing House (operated by Community Law Aotearoa) to maximise the use of volunteer legal expertise nationwide. This is to be funded as part of a \$7.7 million increase in funding for Community Law, which will also provide a case management system for each of the 24 Community Law Centres and improved wages so that community law can recruit and retain experienced staff.</p>	Pro bono law project working group – group made up of those interested in progressing pro bono and low bono activities (led by Community Law Centres and supported by an advisory committee including the Law Society, New Zealand Bar Association and other volunteers).	Members of the public unable to afford legal services; lawyers willing to undertake pro bono work.	<p>Securing both funding and lawyers available for pro bono work</p> <p>Potential for governments to see pro bono as a substitute for a properly funded legal aid system. Range of views expressed here: https://www.lawsociety.org.nz/news/lawtalk/lawtalk-issue-941/pro-bono-clearing-house/</p>	
Providing reduced or fixed fee legal services.	Some lawyers	Members of the public unable to afford legal services.	<p>Ad hoc</p> <p>Not widely promoted/known about</p> <p>Not universally available</p>	N/A



Innovative fee/legal service delivery structures

Providing legal services on a no-win, no-fee basis.	Some lawyers	Members of the public unable to afford legal services.	<p>Although they pay nothing if they lose, the fees payable by the client if they win can be quite high</p> <p>Conditional fee arrangements are not permitted for some areas of work (e.g. criminal, immigration, family)</p> <p>Lawyers may be unwilling to take on regulatory risks of entering into conditional fee agreements</p>	N/A
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Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Increased use of class actions and litigation funding.	Law firms	Parties in civil claims who may not otherwise be able to afford to bring a claim or where individual litigation may be uneconomic.	The law relating to class actions and litigation funding is not entirely clear. (A Law Commission review is in the process of being reactivated and the Rules Committee is also looking at what rule changes could be made in the meantime.) Litigation funders tend to take a large proportion of the damages in a successful claim.	N/A
Providing and supporting 'disruptive' alternatives to legal services as currently/traditionally delivered.	Private enterprises, Centre for Legal Innovation https://www.collaw.ac.nz/about/centre-for-legal-innovation	People who want lower cost access to legal services.	A number of disruptors are providing services to in-house legal teams, which do not provide a direct benefit to the public, who are in need of cheaper services. There are some 'disruptors' providing unregulated services to the public that could put clients at risk.	



Legal sector organisations' work to encourage the reduction or elimination of cost barriers

Advocating for increases to eligibility thresholds for legal aid.	The Law Society and New Zealand Bar Association.	People who are ineligible for legal aid at present	Legal aid needs to be seen by the government as a priority for them to extend the scheme to cover all those who cannot afford legal assistance	N/A
Advocating for self-represented parties' rights (e.g. for their right to have the value of their labour taken into account in costs awards. The Rules Committee is consulting on the issue of costs awards for self-represented litigants: https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/lay-litigants-costs-consultation/).	Professional bodies e.g. ADLS Inc, the Law Society and New Zealand Bar Association.	Self-represented parties	N/A	N/A
Advocating for court fees and user charges to be reduced/waived.	Professional bodies e.g. ADLS Inc, the Law Society and New Zealand Bar Association.	Parties to a court case	N/A	N/A



Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
<p>Investigating ways to enable employed lawyers to provide pro bono legal services other than in the course of working at a Community Law Centre.</p> <p>In-house lawyer John McLean advocated for legislative change to enable employed lawyers to provide pro bono services outside of their employment. This was taken up by Hon Chris Bishop MP and his Member's Bill.</p> <p>(Lawyers and Conveyancers (Employed Lawyers Providing Free Legal Services) Amendment Bill) was drawn from the ballot in July. The Bill is currently awaiting its first reading.</p>	<p>Parliament; Government (at implementation stage); stakeholders (e.g. the Law Society including ILANZ, community sector).</p>	<p>Community groups and organisations (and possibly low-income individuals) needing free legal services.</p>	<p>Keeping a balance between providing additional pro bono support whilst ensuring that consumer protection is maintained.</p>	<p>N/A</p>
<p>Enabling and promoting unbundling of legal services (This is intended to enable lawyers to provide advice on discrete parts of a case when an unrepresented litigant is unable to afford to pay for the whole case. See LawTalk article https://www.lawsociety.org.nz/lawtalk/lawtalk-archives/lawtalk-884/just-an-hour-of-your-time).</p> <p>Rule change from 20 July 2020 (r5.40(1A), High Court Rules) which provides that a litigant in person is not required to file a notice of change in representation if they appoint a lawyer for a limited purpose, other than to file documents in the proceeding. See https://www.lawsociety.org.nz/news-and-communications/latest-news/news/recent-rules-amendment-encourages-provision-of-legal-services-under-a-limited-retainer</p>	<p>Rules Committee, the Law Society and Otago Legal Issues Centre</p>	<p>Clients in civil matters with some knowledge and skills who cannot afford to pay a lawyer for whole case.</p>	<p>Requires some knowledge and confidence on the part of the client to conduct a large proportion of a matter unassisted.</p> <p>Reputational, regulatory and negligence risks for lawyers assisting if they don't have full understanding of a matter when advising/representing.</p>	

Self-help efforts

<p>Avoiding legal fees/overcoming lack of available lawyers by self-representation.</p>	<p>Members of the public</p>	<p>People who cannot afford to pay for a lawyer (or cannot find a suitable lawyer) can access the courts and save money in the short term by representing themselves.</p>	<p>The self-represented lay party is likely to be disadvantaged by their lack of legal knowledge and expertise in more complex proceedings.</p> <p>Can create delays and increased cost for both parties</p>	
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Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Pursuing non-legal avenues of support and advice.	Friends, family, non-legal advisory services	People who cannot afford (or don't think they need) legal advice	Possibly issues with accuracy of advice Potential to miss out on legal rights and entitlements	

Low cost dispute resolution mechanisms

Providing low cost (generally without the involvement of lawyers) dispute resolution and containment systems for lower-level matters.	Ministry of Justice (Tribunals, including e.g. the Disputes Tribunal and Tenancy Tribunal), government agencies and private industry (with regulatory oversight); involvement of Government Centre for Dispute Resolution to help government agencies design and implement dispute resolution systems.	Members of the public affected by "everyday" legal problems.	<p>The advantages of proportionate justice (i.e. keeping costs low and procedures simple) may be outweighed by the potential compromises to a just outcome of not having a full legal process and the benefit of representation.</p> <p>Often confidential processes, which leads to a lack of precedent and potentially inconsistent decision-making.</p> <p>Often more informal forums (e.g. Disputes Tribunal) not constrained by legal focus, resulting in a lack of precedent.</p> <p>Another potential challenge for low cost dispute resolution mechanisms is lack of awareness by general members of the public of these services, and also stigma that asking someone to go to mediation, for example, names the existence of conflict and creates an awkward situation.</p>	
Alternative (additional) Dispute Resolution mechanisms including facilitative (conciliation, facilitation, mediation, negotiation) and adjudicative (determination, adjudication, arbitration) approaches.	ADR organisations that connect users with ADR professionals: AMINZ, Resolution Institute, Fairway and NZDRC; Farm Debt Mediation Scheme; CODR; Greater Christchurch Claims Resolution Service	Helps people involved in both legal and non-legal disputes, enables creative resolution and can provide a greater range of remedies than the courts.	Accessibility/awareness of ADR may be an issue.	

Service Delivery

(Legal aid system that doesn't reach enough people in need; provider shortages; Government resourcing constraints; systems and procedures that unfairly prejudice those who have to self-represent)





Gaps in service delivery refer to deficiencies in the Government's obligations to safeguard access to justice (including by providing an adequately resourced and well-functioning justice system, of which the legal aid system is a part). Legal aid provision is currently inadequate because of:

- the low eligibility thresholds (discussed in the "Cost" barriers part of this section) keeping legal aid out of the reach of most people, not just the well-off; and
- provider shortages and quality issues in certain areas of work as experienced lawyers cease offering legal aid services or fail to apply for approval as a legal aid provider (because of a combination of problems with the administration of the scheme and low remuneration rates).

Advocacy work by the Law Society and other bodies is having some impact, and the Ministry of Justice is seeking to make improvements to the system (including simplification of forms and approval processes) but eligibility remains problematic.

Safeguarding a well-functioning justice system in the face of an increase in the number of self-represented litigants (most of whom are in that position because of affordability or an inability to find a suitable lawyer) is a challenge for the judiciary and the Ministry, and responses include looking at ways to support the self-represented with information resources and procedural changes. Much of this work is at an early stage.

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
<p>Advocating for legal aid system improvements (including submissions and stakeholder working groups).</p> <p>Examples of this advocacy include recommending changes to:</p> <ul style="list-style-type: none"> • Increase legal aid rates to ensure delivery of high-quality legal services • Increase training and mentoring for junior lawyers (particularly those in the criminal private bar) to ensure long-term sustainability of the legal aid workforce • Establish a 'high-trust' relationship with legal aid providers to reduce burdensome administrative processes. • Introduce initiatives to increase the pool of legal aid providers • Improve access to legal aid providers 	<p>The Law Society, New Zealand Bar Association, ADLSi</p>	<p>Legally-aided clients and legal aid providers</p>	<p>N/A</p>	<p></p>

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
<p>Legal aid improvements including form simplification and a project to: 'Improve the experience lawyers have with the approval and contract processes for legal aid services' delivered in two phases (phase 1: provider application, approval and contracting processes; phase 2: quality assurance processes including the complaints and audit processes). Phase 1 has been completed, with consultation feedback and a new step-by step guide to applying to become a legal aid provider published in July, which includes relaxation of some requirements for existing supervised providers and QCs. MOJ states "These changes clarify what's required and should reduce the time and effort needed to fill out the form and collate supporting documents."</p> <p>Phase 2 is still underway, having been scheduled to commence in April 2020.</p> <p>Step-by-step guide: https://www.justice.govt.nz/assets/Documents/Publications/Applying-to-be-a-Legal-Aid-Provider-Step-by-step-guide.pdf</p> <p>The consultation results can be viewed here: https://consultations.justice.govt.nz/osd/improving-the-legal-aid-provider-experience/</p> <p>The Ministry of Justice is also undertaking a project looking at provider coverage in key problem areas (for example Nelson/Marlborough and Wairarapa) with the aim of ascertaining where there are significant shortages and why.</p>	<p>Ministry of Justice (Legal Aid Services)</p>	<p>Initiatives to reduce bureaucracy and admin time may encourage more lawyers to undertake legal aid work, thus enabling more clients who are eligible for legal aid to access a legal aid lawyer</p>	<p>Although legal aid scheme administration improvements are welcomed, without remuneration and eligibility threshold increases, their impact on access to justice is likely to be minimal.</p>	
<p>Considering ways to simplify and streamline procedures to reduce complexity, delays and cost of litigation and minimise impact of inequality of arms, balancing justice with proportionality. Possibly including more fundamental changes to the current adversarial system. Public consultation open until September 2020. See https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/access-to-civil-justice-consultation/#consultation-paper</p> <p>The Rules Committee also produced a "plain English" version of the consultation paper to enable wider participation in the consultation.</p>	<p>Rules Committee</p>	<p>Self-represented parties and parties without unlimited resources in civil court proceedings, courts, judges.</p>	<p>Buy-in from lawyers and the judiciary will be necessary, and could prove difficult, especially where culture change is needed, or major systemic change proposed.</p> <p>Any major changes are likely to take a long time.</p>	
<p>The Public Defence Service (PDS) provides a service for legally aided defendants. There are still shortages of providers approved to conduct certain work. PDS is not intended to replace the private criminal bar (which has sustainability issues because of low legal aid pay rates and fewer training opportunities)</p>	<p>Ministry of Justice (PDS operates independently within Ministry)</p>	<p>Legally-aided defendants</p>	<p>Only available for legally-aided defendants (except for the duty solicitor scheme which is available to anyone without a lawyer, regardless of income).</p>	








Initiative	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Guidance for self-represented parties, prepared with judicial input: https://www.justice.govt.nz/courts/going-to-court/without-a-lawyer/	Ministry of Justice	Self-represented parties	Information is quite general in nature and does not cover all courts (e.g. there is no guide for self-representing in criminal matters before the District Court). A self-represented person still has a lot to do by themselves, which the guidance does make clear.	N/A
Litigant in Person Service (preceded by the Auckland Community Law Centre Pilot pro bono scheme, supported by the Law Society (Law Foundation funded report 2019): ⁴	Auckland Community Law Centre		N/A	N/A
University initiatives to encourage law students to become involved in a wider range of law services, including public interest/social justice areas of law: "Law for Change" student organisation <i>The New Zealand Law Students' Career Guide</i>	University of Canterbury University of Auckland	Wider society; people who may need legal services in the future	One commentator noted that the Law Students' Careers Guide, while an admirable effort at showcasing different pathways in the law, continues to have a narrow lens on career options.	N/A
Providing McKenzie Friend assistance to self-represented parties.	"McKenzie Friends Professionals"	Self-represented parties	Limited in assistance they can offer and limited capacity for training and resources.	N/A
Ture.co.nz, a service which connects people looking for legal services with available lawyers.	Private enterprise led by in-house lawyers including Julia Steenson.	"Everyday Kiwis" looking for legal advice; lawyers looking for work	N/A	N/A










⁴ The report is available here: [https://www.lawfoundation.org.nz/wp-content/newClientLibrary/97751_2017.44.9_Pro_Bono_Pilot_-_Final_Report_\[23_July_2019\].pdf](https://www.lawfoundation.org.nz/wp-content/newClientLibrary/97751_2017.44.9_Pro_Bono_Pilot_-_Final_Report_[23_July_2019].pdf)

Information

(Patchy availability to the general public (including the self-represented) of high quality and useful legal information; digital divide)

Empowering people with readily accessible, digestible and usable legal information to help them take control of the legal issues they face is an important but challenging task. Done well, it will enable the promotion of "legal health" and the prevention of escalation of problems to a more serious point. Access to such information is also essential to those who need to represent themselves in legal proceedings (assuming that self-representation is here to stay).

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Development and use of AI chatbots to provide tailored legal information (T)	Government, private and community organisations (e.g. Community Law's Rentbot is a partnership between them and Citizen AI). Community Law Wellington and Hutt Valley also offer Wagbot. The government's Tenancy Services has its own chatbot "Nancy".	Members of the public looking for free legal information/ answers to general questions about their rights, obligations and where else to go for help.	AI is at an early stage of development and chatbots are still quite basic in their functions, especially in responding to specific questions or scenarios. Potential regulatory challenges if/when the information provided becomes legal advice that would be a regulated service if provided by a lawyer.	  
Greater use of websites and other digital technologies to provide legal/procedural information to the public (T)	Government departments and agencies, Courts, community organisations (including Community Law Centre's online manual and YouthLaw's), and other not for profits (e.g. NZLII, the Law Society's Law Awareness guides), OpenLaw's open source legal data platform: www.openlaw.nz , private businesses (e.g. LexisNexis Social Justice Project), law firms providing informative legal articles and basic legal information for potential clients; start-ups such as Haast Law, which (among other projects to address access to justice barriers) is working on creating legal information databases for the public. Free official legislation online www.legislation.govt.nz	Members of the public looking for free legal information, including those who intend to represent themselves in proceedings.	Online legal information is often general in nature and limited in scope. Some online sources of information are much more helpful than others (e.g. NZLII and Community Law Manual, which are very reputable, regularly updated and consequently heavily used). Some information may be impenetrable to a layperson (e.g. legislation/case law) Not comprehensive and cannot fully replace individualised legal advice. Keeping online information up to date is time-consuming and carries a cost to the provider – funding can be a challenge. There is a risk that some information may not be up to date or accurate, so reliance on it could cause problems for users. Difficult for layperson to know the cases that have precedent value and how precedent works. Access to cases alone is not enough.	  

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Rights Education Project (T) https://communitylaw.org.nz/resources/rights-education/about/ (education modules for young people, covering a range of topics). YouthLaw leaflets (primarily about Education Law issues) and free telephone advice service.	Community Law Centre	Young people under 25	N/A	N/A
Online Legal Information Project (held July 2019), bringing together stakeholders involved in the delivery of online legal information to build community and trust with others in the sector; aiming to reduce duplication and increase cooperation to overcome the challenges of providing online legal information in New Zealand.	Led by University of Otago Legal Issues Centre funded by New Zealand Law Foundation and Borrin Foundation	Self-represented litigants and others needing to access legal information; providers of online legal information	N/A	 
Automated Open Access Analytics project, funded by the New Zealand Law Foundation's Information Law and Policy Project Fund. Researchers have worked with OpenLaw NZ to use its platform to develop software that can be used by anyone to analyse large volumes of judicial decisions.	NZ Law Foundation, OpenLaw, academics	Academics, lawyers, self-represented litigants, members of the public needing to access case law information.	N/A	 
Initiative: Access to Justice Workshop (held March 2020). Justice stakeholders met to share current projects and ideas for improving access to justice. Part of a wider project with short and long-term goals.	Ministry of Justice-led; Courts, access to justice stakeholders (including NZLS, NZBA, PCO, Law Commission, Community law, CAB, Equal Justice Project, ADR organisations and others)	Wide range of people encountering barriers and needing improved access to justice.	Overlap with the Law Society's project and potential duplication of work; achieving access to justice improvement goals may take a long time	   

Awareness-raising initiatives and research

NB Much of the current Access to Justice research is funded by the Marsden Foundation, the Government, and the Borrin Foundation (which also funds a number of legal chatbot initiatives). The Law Foundation has historically provided significant funding for legal research but is currently on hiatus. However, a number of Law Foundation funded projects are still ongoing.

Source	Details
Extrajudicial commentary	Speeches highlighting access to justice issues have helped drive the debate and appetite for improvements to access to justice, including: 2014 Ethel Benjamin address: <i>Who Needs Lawyers?</i> (Hon Dame Helen Winkelmann CJ); <i>Civil Justice: Haves, Have-nots and What to Do About Them</i> , 2016 (Justice Kós); <i>Access to Justice: A constant quest</i> , 2015 (Justice Venning); Recent comments from the Chief Justice to the media about access to civil justice, including a warning for lawyers that they need to innovate to make themselves available to people on lower and middle incomes: https://www.stuff.co.nz/business/119196703/no-silver-bullet-for-fairer-access-to-civil-justice-says-chief-justice
New Zealand Bar Association	Establishment of an Access to Justice Working Group and publication of a report: <i>Access to Justice</i> , 2018 (focusing on civil adjudicative justice, by reference to four "access points": Legal Aid; Pro Bono, Court Procedures; Barristers' services and fees). The report made a number of recommendations, including the establishment of a clearing house for pro bono work and the establishment of a stakeholder group from across the profession to advocate for legal aid improvements (including an increase in funding). The stakeholder group is in place and the Law Society is represented there (see table above).
<i>Culturally and Linguistically Diverse Parties in the Courts: A Chinese Case Study</i> ¹ (funded by the Borrin Foundation)	Mai Chen, lawyer and chair of the Superdiversity Institute for Law, Policy and Business, 2019. The report examined the key issues and challenges faced by the justice system in ensuring equal access to justice for culturally, ethnically and linguistically diverse (CALD) litigants in New Zealand courts and made 36 recommendations, including that the Law Society run and facilitate appropriate cross-cultural communication training for law graduates and lawyers, apply a superdiversity lens to its resources for members of the public looking for legal representation and include questions regarding country of birth when gathering ethnicity data from lawyers.
Otago Legal Issues Centre (important source of academic research and knowledge)	OLIC's focus is on civil jurisdiction access to justice issues. Research covers: AVL, online courts; litigants in person; accessing legal services (including heat-mapping the availability of free and low-cost legal services; online legal information (including the online legal information forum referred to above); the price of litigation services). Current projects include research on lawyer-less forums (e.g. Tenancy Tribunal, Disputes Tribunal), a project on eviction and its impacts. Dr Bridgette Toy-Cronin is the key academic leading OLIC's projects. Her PhD thesis in 2015 was about litigants in person in the civil jurisdiction. She has a personal blog related to her research: https://civiljusticewatch.blog/ Dr Toy-Cronin also sits on the New Zealand Bar Association's (NZBA) Access to Justice Working Group. She was not an author of the NZBA's 2018 report but did author a report for the NZBA Access to Justice Working Group in August 2016: <i>New Models for Legal Services</i> https://www.otago.ac.nz/legal-issues/otago643085.pdf . Dr Toy-Cronin has provided access to justice data and research to the Rules Committee and is working with the Law Society on the unbundling of legal services. List of OLIC publications: https://www.otago.ac.nz/legal-issues/publications/index.html#free-low-cost-legal-services

1 The report is available here: https://www.lawfoundation.org.nz/wp-content/uploads/2019/11/2019_46_6_RESEARCH-REPORT-Embargoed-till-8am-18th-Nov-2019.pdf

Source	Details
NZLS Law Reform and sections access to justice submissions	The Law Society's law reform committees and Sections have worked on access to justice issues over many years. Some significant examples of that work include: <ul style="list-style-type: none"> • submissions on the most recent triennial review of the legal aid system in late 2018 • numerous other submissions aimed at improving the legal aid system (outlined in the tables above) • submissions on the Rules Committee's consultation paper: Improving Access to Justice.
Mainstream media exposure of access to justice issues	Particularly in respect of access to civil adjudicative justice. ²
Public comments from New Zealand's Attorney-General	Made clear that the District Court will have a strong focus on improving access to justice, which has been reinforced by comments from the new Chief District Court Judge. The A-G has also commented that barristers wishing to be considered for appointment as QCs will need to undertake pro bono work.
New Zealand Institute for Economic Research (NZIER) Report: <i>The Value of Investing in Community Law Centres</i> (2017)	The report highlights the work done by Community Law Centres and its immense value socially and economically. The report states: <i>In 2015/16 the Community Law network, or CLCs provided almost 107,000 hours of advice, assistance or representation to at least 48,000 clients on over 53,000 legal issues and over 16,000 hours of legal service information and law-related education services to 32,335 participants ... The Ministry of Justice (MoJ) funding provided for this advice totalled just under \$11 million in 2015/16 (of which about \$7 million was from interest earned on solicitors' trust fund accounts). We estimate that if this role had to be undertaken by an alternative publicly-funded service along the lines of the Public Defence Service, the costs to provide these services would have been \$30 million to \$50 million.</i> ³
Citizens Advice Bureau's Spotlight Report: Face to Face with Digital Exclusion (February 2020) https://www.cab.org.nz/assets/Documents/Face-to-Face-with-Digital-Exclusion-/9c5f26012e/Face-to-face-with-Digital-Exclusion.pdf	Defines digital exclusion and explores its extent and impact in Aotearoa New Zealand, particularly in light of the Government's digital approach. Demonstrates how digital exclusion disproportionately impacts vulnerable groups.

- 2 For example, RNZ panel discussion: How to Make Civil Justice More Accessible: <https://www.rnz.co.nz/programmes/otago-university-panel-discussions/story/2018714651/how-to-make-the-civil-justice-system-more-accessible-discussed-by-a-panel-of-experts>; and Newstalk ZB article highlighting the number of self-represented parties in court: <https://www.newstalkzb.co.nz/on-air/mike-hosking-breakfast/audio/michael-bott-thousands-brave-new-zealand-courts-without-a-lawyer-due-to-cost/>
- 3 A recently announced funding increase of \$8.42 million over four years brings total annual funding for community law centres to \$13.26 million. Revenue from the Lawyers and Conveyancers Special Fund contributed 84.2% of the total funding provided to community law centres in the year to 31 May 2019 (see <https://www.lawsociety.org.nz/news-and-communications/latest-news/news/lawyers-and-conveyancers-provide-bulk-of-community-law-centre-funding>)

International and overseas initiatives

As noted above, our stocktake of international and overseas initiatives is ongoing, and will be used to inform the next stage of the project, when potential solutions are being considered. Initiatives of note found to date are set out below:

Australia

The Law Council of Australia's Justice Project

The project resulted in the 2018 publication of a comprehensive person-centred report on the state of access to justice in Australia, focusing on those experiencing significant social and economic disadvantage. The report made 59 recommendations, including:

- a full review of the resourcing needs of the judicial system;
- significant Government investment in legal assistance services required to address critical gaps (at a minimum \$390 million per annum) and ensuring future funding through an evidence-based, sustainable and stable funding model;
- funding and supporting multi-disciplinary, holistic servicing models which address people's complex legal and non-legal problems;
- a Council of Australian Governments (COAG) Access to Justice Framework to underpin a whole-of-Government commitment to justice access;
- implementing a National Justice Interpreter Scheme; and
- initiatives to ensure that all justice system actors are culturally responsive, informed, accessible and include needs of diverse groups.²⁰

Piddington Justice Project (WA)

This was "born out of recognition of two issues in the law – community legal centres (CLCs) face a funding crisis and need new sources of revenue and law graduates face increasingly poor job prospects and need new pathways to employment."

The Piddington Society is a provider of Australia's mandatory professional legal training course for law graduates wishing to be admitted (equivalent of NZ's "Professionals" course). Piddington students are provided with work experience and training via placements as volunteers at a range of community law centres. The placements are for a period of 80 days. The CLCs provide the training and assessment for some of the essential core graduate skills and receive a modest funding contribution in partial recognition of this training. <https://www.piddingtonsociety.org/>

²⁰ A summary of the report can be found here: <https://www.lawsociety.org.nz/news-and-communications/latest-news/news/aust-law-council-makes-dozens-of-justice-recommendations>

Justice Connect

Charitable organisation, connecting people directly with pro bono lawyers via a range of social agencies. Also using digital technologies in its Gateway Project to scale its service and provide access to justice for a wider range of people <https://justiceconnect.org.au/>

amica

A digital (AI) Family Law information and dispute resolution tool to enable "relatively amicable" separating couples to resolve their legal issues without recourse to the courts. Supports people to work out parenting arrangements, split their assets, and record their agreements in plain language. Free until January 2021, then a nominal fee will be payable for users of the dispute resolution service.

amica was developed by National Legal Aid (NLA) with \$3 million in funding from the Australian Government. NLA represents Australia's legal aid commissions, the nation's largest providers of family law legal assistance.

<https://www.attorneygeneral.gov.au/media/media-releases/new-amica-online-service-assist-couples-separate-amicably-30-june-2020>

The Judicial Council on Cultural Diversity

A judiciary-led initiative whose purpose is "to develop a framework to support procedural fairness and equality of treatment for all court users – regardless of their race, colour, religion, or national or ethnic origin – and to promote public trust and confidence in Australian courts and the judiciary." <https://jccd.org.au/>

Australian Supreme Court of Queensland Equal Treatment Benchbook (launched 2006)

Comments from the President of the Human Rights and Equal Opportunity Commission at its launch included:

"It is part of a judge's function to ensure, as far as possible, that there is equality between the parties to litigation. At times this requires careful and sympathetic assessment of the potential disadvantage suffered by a party, and intervention to achieve a fair balance. None of this is possible unless the judge in a particular case is made aware of, or recognises, factors that might produce inequality. Recognising the potential indicators of inequality requires knowledge in the part of those involved in the court process – judges and magistrates, and lawyers and court staff as well."

The Canadian Bar Association

Provides details of public legal education and information available throughout Canada's ten provinces and three territories: <http://www.cba.org/For-The-Public/Public-Legal-Education-and-Information-in-Canada>. There are some interesting and innovative initiatives operating in Canada to provide information and increase the community's legal capability. Examples are included below.

The Centre for Public Legal Information Alberta

The CPLIA "is a public legal education organization dedicated to making information about the law available in readable and understandable language for Albertans. Through a variety of approaches (web, print, presentations, and answering questions) we help educate the public to enable them to make better decisions about many aspects of their daily lives. The Centre is comprised of a multi-disciplinary team of lawyers, librarians, teachers, and web specialists. CPLEA uses a collaborative approach to develop materials and strategies for teaching people about the law." <https://www.cplea.ca/what-we-do/>

The People's Law School in British Columbia

A non-profit society "dedicated to making the law accessible to everyone. We provide free education and information [but not legal advice] to help people effectively deal with the legal problems of daily life ... Our vision is a province where people have the knowledge, skills and confidence to resolve everyday legal matters." https://www.peopleslawschool.ca/sites/default/files/trifold_brochure_-_final_-_2016-02-07.pdf

"Since 1972, People's Law School has provided British Columbians with resources to help solve your everyday legal problems. These resources are free, and in a variety of formats to best match your needs:

- On the web, with interactive tools you can use
- Booklets in print and digital formats
- Live classes in communities around the province, led by lawyers, notaries and other experts
- Drama performances by Justice Theatre, to engage students on law-related topics"

Legal aid funding

Canada faces similar issues to Aotearoa New Zealand and other countries in respect of legal aid funding, and the Canadian Bar Association is campaigning for improvements. This recent article highlights some of the issues and benefits of legal aid: <https://www.nationalmagazine.ca/en-ca/articles/law/access-to-justice/2019/the-roi-from-funding-legal-aid>

Free legal advice

Means-tested legal advice is available at community legal clinics (similar model to Community Law Centres)

Telephone advice service

Free legal answers provided via a telephone advice service: <https://www.legalline.ca/> Also offers online legal information in a searchable manual style format.

Pro bono resources

The Canadian Bar Association provides details of pro bono resources available in Canada <https://www.cba.org/Sections/Pro-Bono/Pro-Bono-Resources-in-Canada/Resources>

The British Columbia Civil Resolution Tribunal (CRT)

The CRT is Canada's first online tribunal and is available 24/7. <https://civilresolutionbc.ca/> The CRT resolves: Motor vehicle injury disputes up to \$50,000; Small claims disputes up to \$5,000; Strata property (condominium) disputes of any amount; Societies and cooperative associations disputes of any amount; Shared accommodation and some housing disputes up to \$5,000.

Canadian access to justice research

A list of Canadian access to justice research is available here: <https://www.srln.org/node/687/srln-brief-canadian-access-justice-research-srln-2016>

Law Foundation of Ontario

Has a statutory mandate to receive and use the interest on lawyers' and paralegals' mixed trust accounts to support legal education, legal research, legal aid, and law libraries in Ontario. They do this through grant making to non-profits and providing funds to Legal Aid Ontario.

"We are the sole foundation in Ontario with the mandate of improving access to justice. A priority for the Foundation is to pay particular attention to groups who have experienced injustice or inequity – past or current – and those who have experienced exclusion or barriers in society. The Foundation also administers the Class Proceedings Fund, which provides cost assistance in class actions. The Class Proceedings Committee is responsible for deciding who will receive funding."

The Law Foundation of Ontario also operates the Access to Justice Fund (funded by cy-près awards from class actions) which distributes grants to non-profit organisations across Canada. As the Law Foundation of Ontario explains, courts make cy-près awards when it is not practical to distribute all the proceeds of a class action to individual plaintiffs. In such a case, courts have the power to direct the money to meritorious organizations. The Access to Justice Fund makes national calls for applications in priority areas and areas determined by the direction of the cy-près awards received. More information is available here: <https://lawfoundation.on.ca/apply/access-to-justice-fund/>

Canadian Legal Information Institute

CANLII offers free access to case law, legal commentary and legislation and is funded by CanLII was founded and is paid for by the lawyers and notaries who are members of Canada's provincial and

territorial law societies, which comprise the Federation of Law Societies of Canada.

CanLII is a founding member of the Free Access to Law Movement and a signatory to the Montreal Declaration on Free Access to Law.

<https://www.canlii.org/en/>

United Kingdom

Bach Commission report *The Right to Justice* (2017)

Numerous recommendations including the enactment of a new "Right to Justice Act" to establish a new right for individuals to receive reasonable legal assistance, without costs they cannot afford; the establishment of a new, independent body called the Justice Commission, whose function would be to advise on, monitor and enforce the right to justice; significant legal aid reforms; and the creation, maintenance and promotion of a Government-backed central portal for online legal information and advice.

Law Society: *Technology, Access to Justice and the Rule of Law* (2019)

Makes a number of recommendations while acknowledging the technology is not a "silver bullet" for access to justice issues. Aims to help practitioners and firms to "develop their own innovation blueprint, according to their own resources and capacity." <https://www.lawsociety.org.uk/support-services/research-trends/technology-access-to-justice-rule-of-law-report/>

Law Society targeted campaigns on Legal aid "deserts"

Campaigns for housing advice; early advice; criminal justice "crumbling system"/Write to the Lord Chancellor campaign; Criminal Duty Solicitor shortage campaign www.lawsociety.org.uk/policy-campaigns/public-affairs/parliamentary-briefing/criminal-justice-system-in-crisis/

Law Society guidance on unbundling of legal services

<https://www.lawsociety.org.uk/support-services/advice/practice-notes/unbundling-civil-legal-services/>

Law Society report: *Legal needs of Individuals in England and Wales*

<https://www.lawsociety.org.uk/support-services/research-trends/legal-needs-of-individuals-in-england-and-wales-report/>

Courts and tribunals Judiciary: Equal Treatment Benchbook

The Equal Treatment Bench Book aims to increase awareness and understanding of the different

circumstances of people appearing in courts and tribunals. It helps enable effective communication and suggests steps which should increase participation by all parties. <https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>

Citizens Advice, Community Law, Advocate (free representation by barristers)

Various sources of free legal advice for eligible people: <https://weareadvocate.org.uk/do-you-need-help.html>

Professional McKenzie Friends

<http://www.mckenziefriends.directory/index.html>

Solicitors Regulation Authority

Consultation on regulation of legal technology: (part of Corporate Strategy consultation 2020-23): <https://www.sra.org.uk/globalassets/documents/sra/consultations/corporate-strategy-2020-2023-consultation.pdf?version=4a79e7>

SRA Legal Technology

Competition to address justice gap <https://www.solicitorsjournal.com/news/201905/sra-calls-tech-start-ups-apply-legal-access-challenge>

Courts' shorter trial scheme

To resolve disputes on a commercial scale. It was trialled for three years and made permanent from 1 October 2018 in the Business and Property Courts: <https://www.lawgazette.co.uk/law/shorter-trials-scheme-goes-permanent/5067460.article> Information re pilots: <https://www.judiciary.uk/wp-content/uploads/2015/09/Shorter-and-Flexible-Trial-Schemes-Announcement.pdf>



A2J Lab (Harvard University)

"For individuals and families without lawyers, courts are complex, full of jargon, hard to navigate, and scary. The good news is that there are already many proposed solutions to these challenges. The problem is that we don't know which of those solutions make a difference ... the A2J Lab creates *randomized control trials* to evaluate potential solutions in access to justice and then generalizing results into actionable lessons. The A2J Lab creates knowledge, constructs best practices, and trains current and future scholars and practitioners to transform the U.S. justice system." <https://a2jlab.org/about/>

DoNotPay

"The World's First Robot Lawyer" lawyer on your phone (USA): <https://donotpay.com/>

Self-represented Litigation Network

"A network of judges, court managers, attorneys, librarians, scholars, technologists, and community leaders who believe everyone deserves access to justice and that when people come to court, they have a right to procedural justice and to understand the proceedings in which they are participating. As the only organization in the United States focused on the needs of the self-represented in civil courts, we envision a nation in which **every person can get some form of effective assistance with their civil legal needs**. To that end, SRLN identifies, supports and evaluates innovative services and strategies to create a user-friendly legal system for self-represented litigants." <https://www.srln.org/node/21/about-srln>

China

Robot judges

Robot court filing and legal advice (China) <https://radiichina.com/china-now-has-ai-powered-robot-judges/>; <https://www.law.com/international/2018/07/31/need-legal-advice-in-china-ask-a-robot/>; http://www.xinhuanet.com//english/2017-08/30/c_1121566225_2.htm

International organisations

World Justice Project

Reports produced include Global Insights Report <https://worldjusticeproject.org/our-work/publications/special-reports/global-insights-access-justice-2018> and Measuring the Justice Gap <https://worldjusticeproject.org/our-work/research-and-data/access-justice/measuring-justice-gap>).

Of its Global Insight Report, The WJP said "this study reveals that legal problems are ubiquitous, and most people do not turn to courts and lawyers to navigate these problems".

The Measuring the Justice Gap report estimated that there are "1.5 billion people who cannot obtain justice for civil, administrative, or criminal justice problems. These are victims of crime and people with civil and administrative justice needs **who may live in contexts with functioning institutions and justice systems**, but who face obstacles to resolving their everyday justice issues." [*emphasis added*]

International Bar Association/World Bank report: ***A Tool for Justice, A Cost Benefit Analysis of Legal Aid***

Concluding that funding legal aid saves money and is "as important for economic growth as providing functioning hospitals, schools and roads". <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=341684c7-5ad5-4f20-810a-54473bfa5829>

OECD 2016 Issues Brief *Leveraging the SDGs for Inclusive Growth: Delivering Access to Justice for All*

<https://www.oecd.org/gov/delivering-access-to-justice-for-all.pdf>. Discusses the OECD Sustainable Development Goal 16.3 agreed by UN member nations in 2015: to "Promote the rule of law at the national and international levels and ensure equal access to justice for all" and how it is connected to other SDGs; identifies barriers to access to justice and discusses strategies for implementing people-focused access to justice. The Issues Brief stresses the importance of legal needs surveys and foreshadows the World Justice Project work.



Section C — The remaining gaps



6. Section C – The remaining gaps

- 6.1 Access to justice barriers across all identified domains remain, despite the initiatives noted in Section B. Initiatives are funded from a variety of sources with several dependent on philanthropic funding from organisations such as the Borrin Foundation.
- 6.2 The initiatives described in this report vary in terms of how developed they are and the reach and impact they are likely to have. It is clear that access to justice barriers have the biggest impact on the most vulnerable New Zealanders – those in poverty and facing social disadvantage. Often this disadvantage is multi-layered and both legal and non-legal responses are needed to help resolve legal problems.
- 6.3 It is evident that there is no one solution or "silver bullet" to address the remaining gaps, and that a combination of approaches will be necessary to make improvements across the board. Some initiatives have the potential for greater impact than others.
- 6.4 Digital technology has the potential to address a number of barriers: geography; information gaps; cost; and service delivery gaps. It can be used to prevent the need to travel and meet in person with all of its attendant costs; quickly delivering large amounts of relevant information and automating labour-intensive systems. All of those benefits have a flip side though; face-to-face contact can be vital in some contexts and certain groups of people can become lost when presented with too much information and uncertainty about reliability of sources. Additionally, automated systems aren't failsafe. Caution should be exercised when considering technology solutions to overcome cost or geographical barriers, especially in the criminal justice context.
- 6.5 People in areas without fast and reliable broadband are less able to access this technology. Some of Aotearoa New Zealand's most remote and isolated areas, where this tends to be an issue, are among the most economically deprived; so, the availability of individual resources to overcome this barrier by travelling and hiring private lawyers is likely to be limited.
- 6.6 Much of the technology, especially AI, that could revolutionise access to justice is still at an early stage. There are differing views about how much and how quickly change for the legal world will occur, and what that should look like. However, it is well-known that technological change is exponential. While we may currently be at the *Benz Patent Motorwagen* stage of legal technological disruption (to use Professor John Hopkins' analogy in his 2018 lecture *Law without Lawyers: Does legal education have a future?*), the legal equivalent of the *Mercedes-Benz Vision Urbanetic* concept car, unveiled at the CES trade show 2019, is likely not far away.²¹
- 6.7 It is clear though that what is currently available cannot yet fully replace human expertise (in whatever form that is delivered). So, access to justice still requires people who can deliver legal services at an affordable cost and meet people where they are. And, as one submitter noted, it is important not to rely on technology advances coming in to "save us".
- 6.8 It appears that civil and family legal aid eligibility criteria exclude the majority of the population, including many of the "working poor". For those who are eligible yet struggle to find a legal aid lawyer to help them, it is not evident that much is happening to encourage lawyers to stay in or move to currently less popular areas of the law/geographic areas, in order to meet legal needs. Systemic changes that encourage lawyers to apply to become legal aid providers are underway but may not be enough to prevent and reverse "advice deserts", both

21 The Benz Patent Motorwagen is acknowledged as the first production automobile, built in 1885.

geographic and by subject-matter.

- 6.9 A reversal some of the failed 2014 family justice reforms has occurred, but the effects of those reforms are likely to have long-lasting structural consequences for the future of the Family law profession.
- 6.10 Efforts to change the culture and practice of civil litigation and to better address the needs of unrepresented (or partially represented) parties are gaining traction. The Courts of New Zealand's Rules Committee is leading a consultation on a range of potential changes to the High Court and District Court rules, aimed at making litigation more affordable. This recent comment from Justice Miller is instructive:
- What the court really needs from a lawyer is the identification of a claim that the court recognises, and the facts that are relevant to allow the court to decide that. And that's a skilled task. The court doesn't really need the lawyer so much for advocacy.*²²
- 6.11 Community Law Centres and Citizens Advice Bureaus help to fill gaps in service delivery and address cost barriers for many people but are constrained by budgets. While the information these organisations are able to provide is useful, and their geographic reach is reasonably good, community organisations can offer tailored individual legal advice and representation only when they have capacity, and to those who meet financial eligibility criteria. Community Law Centres o Aotearoa CEO, Sue Moroney noted earlier this year (after the Government had announced increased funding for CLCA) that: "our current resources only allow us to get our services to 30% of low-income people with unmet legal need."
- 6.12 In terms of private sector offerings, fee and delivery structures for many legal professional services have not transformed sufficiently to put those services within the reach of most people, and members of the public considering using cheaper, unregulated providers may encounter substandard services with no means of redress.
- 6.13 Pro bono services are not currently well-coordinated or promoted and are potentially difficult to access. There is work happening to address this, including work to establish a pro bono clearing house (funding for which was announced by the government in May 2020). This will increase access to free legal assistance and support people who cannot afford a lawyer by matching them with lawyers who are offering their services for free. There are, however, different philosophies around who should benefit from pro bono services, and what types of cases should be taken on. Law students and junior lawyers can demonstrate great willingness to offer pro bono services, but for pro bono work to deliver strong results, senior practitioners often need to be involved too, especially for difficult matters. The new Queen's Counsel guidelines require evidence of a commitment to improving access to justice, which should help in this regard. However, as others have noted, pro bono work has its place but cannot and should not be a complete solution to market and Government failures.
- 6.14 While criminal legal aid is more generous than civil legal aid in terms of eligibility, and there are far fewer self-represented litigants in the criminal system, there are still some who are self-representing for financial reasons. Many people are not eligible for legal aid because

22 See *Rethinking civil justice in Aotearoa – how to make it accessible* (University of Otago Winter Symposium Panel discussion, 24 July 2019), broadcast on Radio New Zealand on 13 October 2019: <https://www.rnz.co.nz/programmes/otago-university-panel-discussions/story/2018714651/how-to-make-the-civil-justice-system-more-accessible-discussed-by-a-panel-of-experts>

of the nature of the offence with which they are charged or because they do not meet financial eligibility criteria. The stakes are often higher for people facing criminal charges, so it is important to identify where the funding and service provision gaps are in the criminal jurisdiction.

- 6.15 Cultural and social barriers are starting to be addressed, but it is evident that more work needs to be done in this area. There is a current political will to create genuine and lasting change. If this is done well it will have flow-on effects for the most vulnerable in our justice system.

The impacts of a Pākehā-centric legal system on generations of Māori have been well illustrated in recent reports addressing Māori intergenerational disadvantage and systemic racism, and calls for Māori-led justice institutions and tikanga-informed practice are growing stronger.

There are also indications that lawyers sometimes contribute to the problem by (consciously or otherwise) alienating clients. In her submission, Ana Lenard (barrister, researcher on cultural change in the legal profession, and professional ethics/dispute resolution lecturer) noted:

I have observed on many occasions the discomfort some clients feel in dealing with a suit-wearing lawyer speaking legalese. That the legal profession is removed culturally from regular New Zealanders creates a particular lens through which decisions by lawyers are made. I believe this is likely to create an impediment to access to justice, for example, via the unconscious filtering that goes on in lawyers' minds for the kinds of pro bono work they take on, or in prospective clients' willingness to deal with lawyers at all.

- 6.16 The Government's Hāpaitia (Safe and Effective Justice) programme of work in the criminal justice arena has been described as a once in a generation opportunity to improve the criminal justice system, and it is evident from the reports produced by the Safe and Effective Justice Working Group (Te Uepū Hāpai i te Ora) and the Chief Victims Advisor that there is plenty of scope for improvement. The Minister for Justice has welcomed these reports, announcing in December 2019 that the Government would be taking a "new direction" for criminal justice reform.²³
- 6.17 This includes "comprehensive system change over time that treats victims with respect and dignity, treats offenders more effectively in order to reduce offending, and makes the system more responsive to community expectations of accountability and harm prevention."
- 6.18 It also includes the immediate steps of making the pilot Alcohol and Other Drug Treatment (AODT) Courts in Auckland and Waitakere permanent, and funding a new AODT Court in Hamilton "because of the impact these courts have on reducing offending. Within two years, AODT Court participants are 23% less likely to reoffend for any offence, 35% less likely to reoffend for a serious offence, and 25% less likely to be imprisoned because of their reoffending.
- 6.19 Other areas identified as in need of improvement in both reports that are of particular relevance to the legal profession are those relating to courts (including delays) and courthouse design. The Law Society is already a very active voice in those areas, through its Courthouse Committee and other engagement with the Ministry of Justice and judiciary. It is pleasing to see that the Government has responded to calls for change with its announcement that the new \$100million courthouse to be built in Tauranga will be a "model for future courthouse design

23 The announcement can be viewed here: <https://www.beehive.govt.nz/release/new-direction-criminal-justice-reform>

in Aotearoa New Zealand" and "be designed in partnership with iwi, the local community, the judiciary, the legal profession, court staff and other court users. It will draw on Te Ao Māori values, and directly address victims' safety needs in the court building."²⁴ Additionally, a further \$163 million has been allocated to the Ministry of Justice to upgrade a number of other courthouses throughout the country.

- 6.20 In the next section, we discuss possible options for the Law Society to consider when it decides how best to provide input to address access to justice barriers. A major consideration will be whether to focus on ways to increase the depth of existing initiatives or to widen the breadth of initiatives by adding something new to meet a gap that is not being addressed (or a combination of both).
- 6.21 There are many initiatives underway, but, as noted above, a number of them are at an early stage and it may be too soon to evaluate their effectiveness. Even where an initiative is in place that seems to meet a perceived need, it may not be sufficient, either because it is under-resourced or doesn't fully address the relevant need. As the case studies illustrate, people under stress and facing a legal issue or a range of interconnected legal issues may still find it very difficult to navigate their way through to a satisfactory resolution. When working either to deepen the available initiatives to address unmet need, or to create something new, it will be important to test ideas at every stage from a user's perspective to see if the initiatives will actually address the challenges people are likely to have.

It was pointed out during consultation that evaluation of initiatives is important, in order to avoid the problem that has sometimes been encountered overseas, where initiative after initiative has been implemented, with no evaluation. We were advised that some legal chatbots now have evaluation tools built-in.

24 The announcement can be viewed here: <https://www.beehive.govt.nz/release/courthouse-redesign-model-future>



Section D — Where to from here?



7. Section D – Where to from here?

- 7.1 The consultation process has generated many ideas about how various access to justice issues can be addressed. Many of these ideas involve organisations other than the Law Society. A key question for the Law Society to consider will be which desired outcomes it can and should focus on. Some consider that the Law Society's primary focus should be on supporting and creating initiatives that assist the most vulnerable and disadvantaged people in society. These are the people who often struggle to cover the cost of the basic necessities in life, let alone pay for legal services. They may struggle to access information or have their voices heard in a system that does not feel as though it is designed for or cares about them.
- 7.2 Although high lawyers' fees have been referred to by some commentators as "the elephant in the room" when discussing access to justice barriers, no amount of fee reduction (short of pro bono) is likely to impact the most economically disadvantaged in society.
- 7.3 Depending on how much they were reduced, lower fees would of course go a long way to alleviating the cost barriers for the "missing middle" (those too wealthy to be eligible for legal aid, but too poor to afford a lawyer). As discussed earlier in this report, that "missing middle" is arguably now most people in Aotearoa New Zealand (although it would be helpful to conduct research to establish the percentage of people who are in this category). This is because legal aid eligibility thresholds are so low and many lawyers' fees are so high.
- 7.4 However, before investigating ways to control fees charged by lawyers in private practice, the Law Society may wish to consider conducting or supporting research that thoroughly investigates the fees charged by lawyers in different practice areas as well as geographically, to establish where the "pain points" are. A more targeted approach to the issue of fees could then be considered.
- 7.5 Law firms are businesses that are also having to deal with difficult economic conditions and many do not make large profits. Some lawyers charge high fees but have wealthy clients, and also provide pro bono or reduced fee services to clients of more modest means. Dr Bridgette Toy-Cronin's article "Explaining and Changing the Price of Litigation Services" explores some of the reasons for the current price structures in place and has some suggestions for effecting change, which the Law Society may wish to consider.²⁵
- 7.6 Some of the ideas discussed in this section involve securing funding to create new or build on existing initiatives, while others require making or advancing procedural or cultural/attitudinal changes.
- 7.7 Securing significant funding in a post-COVID environment is likely to be challenging, at least in the short to mid-term, so where money needs to be spent, it will be even more important than usual to give priority to supporting or leading initiatives that provide the best outcomes for the lowest cost.
- 7.8 For those access to justice barriers that need cultural and attitudinal changes, there may be scope for the Law Society to make changes in areas within its direct control (such as education requirements for lawyers) and to exert its influence in new ways over relevant institutions and organisations such as the courts and the New Zealand Council of Legal Education. This is of course in addition to the important work it already does in advocating for law and practice changes and checking that proposed changes in those areas are not problematic.

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7.9 Ideas generated from feedback received during this project include:

Improving training for law students and newly qualified lawyers, and finding ways to make better use of their skills to improve access to justice	Reviewing the LLB and Professional Legal Studies to find ways to expedite the process of learning basic practical legal skills, to reduce the amount of time learning these skills in legal practice. Currently a large number of lawyers are not sufficiently experienced to provide basic advice or assistance to individuals with low-level legal disputes. Find ways to reduce overreliance on learning practical skills from senior practitioners currently in practice, many of whom are not necessarily taking advantage of cutting-edge technology, billing formats and effective practice management, which can all assist with enhancing access to justice.
	Considering alternative educational pathways to careers that could assist access to justice (e.g. creating a year long Advocates' course)
	Exploring pathways to utilise the skills of law students and new lawyers, e.g. providing educational seminars for high school students and the broader public; helping members of the public fill out forms or navigate online material, and helping with editing and proofreading correspondence or court documents. Possibly even drafting basic correspondence in a pre-dispute scenario for a client to use / coaching clients on negotiation tactics. It has been suggested that the Law Society could consider issuing guidance on the role that students can play, and could also issue guidance on what compliant unbundled conflict coaching services might look like.
	Greater involvement in encouraging cultural change among law students and lawyers to discourage "superior" attitudes towards certain areas of the law and clients and ensure better plain language communication and cultural competence of potential and qualified lawyers;
Improving pro bono offerings	Considering whether lawyers should be required to provide a minimum number of pro bono hours each year, or whether to introduce aspirational targets.
	Further promotion and support of pro bono legal services;
Serving Māori and Pacific communities better	Finding new ways to increase community understanding of the law and promote legal health, e.g. through pro bono legal education in schools and the community (including Māori and Pacific communities who may be less likely to attend events aimed at the wider general public)
	Extending Kaupapa Māori services to all Community Law Centres.
	Providing training for writers of section 27 cultural reports for sentencing; encouraging more people to undertake these reports.
	Stepping up efforts to encourage more Māori, Pacific Islanders and other minority groups to enter the legal profession;
Improving accessibility of legal information and services	Supporting tech initiatives that facilitate access to justice
	Promoting and supporting the provision of free, plain English legal information.
	Re-establishing the Law Society's Access to Justice webpage – making it more visible and regularly updating its content.
	Continuing to support court rule changes and court design changes that facilitate access to justice.
Better promotion of alternatives to using the Courts	Considering changes to Rules of Client Care and Conduct to better connect people to ADR services (perhaps following the example of Ireland where lawyers have to: provide clients with information about mediation services; explain the benefits of mediation and the advantages of resolving a dispute out of court; and certify to the court when filing the originating documents that these obligations have been performed).

Evaluation and further research	Evaluating existing initiatives, including identifying successful pilot schemes and other "pockets" of effective work.
	Commissioning or supporting research into the reasons behind some geographical and legal work areas suffering more legal aid provider shortages than others.
	Undertaking/supporting research to provide an indication of the percentage of people living in or close to poverty who are excluded from the legal aid regime.
Legal aid improvements	Campaigning more heavily for significant financially-focused legal aid reform as well as continuing the already constant dialogue to improve the Legal Aid bureaucracy.
	Greater involvement in promoting and supporting the work of legal aid providers to attract more law graduates to those areas of work covered by legal aid.



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Appendix

Family Law case studies prepared by the Family Law
Section of the New Zealand Law Society





Family law case studies

Fred

Elder law

Fred is 88 years old. He and his wife Margaret have lived in a suburb together for many years, some way from the centre of town. Margaret is now in a rest home close to their home where Fred visits her every day.

Fred has just had a fall and is now in respite care some 35 kilometres from home. There are plans to send him home, but he uses a walking frame and cannot drive. His medical team tell him he still has capacity, and that he should take the opportunity to create an Enduring Power of Attorney. Fred only has a vague idea of what people are talking about but has heard rumours that these are complex documents which only lawyers can prepare and witness. Friends have told him that the legal fees are very high and can get higher if something called 'independent advice' is required. This makes Fred feel very stressed.

Margaret's rest home management are asking Fred whether she has an Enduring Power of Attorney. Margaret thinks she has a will, but suspects that the individual lawyer who prepared it is long-since retired and that his practice may have been taken over by some other firm. Fred knows no lawyers in either his home city, or in the town where his DHB respite care is located.

Fred has asked a friend to help him by talking to his bank because Margaret's rest home needs to be paid and Fred cannot travel to the bank. The bank teller says he knows Fred, but cites privacy issues and will not discuss details with the friend. Neither Fred nor Margaret have ever heard of internet banking. They do all their banking 'over the counter' and are worried about loss of mobility.

What Happens Next?

Fred's only child is estranged and is rumoured to be overseas. Fortunately, he has a close friend (the one who approached the bank) who knows a lawyer who may be prepared to act quickly.

Because, and only because, the lawyer knows the friend well, the lawyer agrees to a meeting, but explains that the cost of an Enduring Power of Attorney will be substantial, as it involves some risk management, a lot of travel, and the preparation of engagement documentation. The lawyer also warns that there are strict rules about client identification, and these will apply despite Fred protesting that he is not a money-lauderer.

The lawyer also explains that new wills are a priority, and that if he accepts instructions to draw up new wills for the couple, there'll need to be some discussion about the Family Protection Act and impact on their plans to leave all their wealth to charities they know and respect. Fred says he can probably afford all this but asks for time to reflect. In the meantime, he signs a standard power of attorney in favour of the friend, which the bank accepts, but only on the basis that Fred and Margaret 'get their affairs in order'. Fred is a proud man who is embarrassed now he realises he should have acted sooner. He hates relying on other people. He makes a note to talk to his GP about accessing services from Age Concern.



Family law case studies

Tania

Relationship property, spousal maintenance and child support

Tania has recently separated from her husband of 30 years, although their relationship had been going downhill for a number of years. She believes he has been having an affair. The couple's four children (aged 9, 12, 15 and 17) are witnessing regular arguments.

Tania and John live on a farm, which they bought from John's parents, with their financial assistance. During their relationship, John paid Tania housekeeping money after she gave up her job as a successful midwife, to care for the children fulltime. John stopped the payments a few years ago, prompting Tania to get odd jobs around town so that she can continue to buy groceries and other necessary items for herself and the children. Tania would need to retrain to be able to recommence practice as a midwife.

After another big argument John has told Tania to leave. Tania successfully applies for protection and occupation orders. John has to leave the house and only have supervised care of the children.

When Tania goes to see a family lawyer, Tania is largely unaware of how the farm was purchased, what the financial arrangements were with John's parents or how John operates his farming business. Tania has some documents she managed to take with her when she left the farm, including a contracting out agreement from 20 years ago.

Through her lawyer, Tania tries to negotiate a division of relationship property, on the basis that the contracting out agreement would be invalid. John is furious. He will only offer Tania a tiny sum, claiming that the farm is owned by his trust, the transfer occurring at the same time the contract-

ing out agreement was signed. Tania was not aware of this at the time and has only a vague recollection of going to John's lawyer's office to sign documents about the farm purchase.

John refuses to pay Tania any maintenance. He does not think he is obligated to and claims that his farming business has declined and he cannot afford to. He is stalling in providing his bank statements.

Tania has applied for child support and has now found out that she will receive the minimum amount of child support (about \$68 per month) to support the four children in her care. Her grocery bill alone for the household is \$300 per week. When she queried why the child support was so low, she was advised that John receives his pay via a company which manages the farm. It appears he earned a minimal wage last year, despite the family enjoying a comfortable lifestyle in the years they lived together.

What happens next?

There are a number of complex legal issues between the parties and significant costs involved including:

- Tania needs to obtain legal advice about her relationship property entitlements and potential trust claims. If she files proceedings, she will need to borrow the funds to pay the \$700 relationship property application filing fee, as well as legal costs.
- Tania is advised she may have an economic disparity claim for giving up her career. She will need to find the funds to pay for an expert accountant to calculate this.
- Tania is weighing whether spousal maintenance proceedings would be worthwhile filing, given John is claiming he has no funds.
- Tania needs to decide whether to file a review of the child support assessment on the basis that it does not reflect John's true income.



Family law case studies

Brad and Kathy

Family violence and care of children

Brad and Kathy have been living together for 15 years. They have three children aged 8, 10 and 13. Kathy hasn't worked in paid employment for the last 14 years but instead has been a full-time mother caring for the three children. Brad works fulltime, with flexible hours enabling him to have full involvement as a parent.

After an 18 year relationship, Kathy obtains on a without notice basis an interim protection order under the Family Violence Act and an interim parenting order under the Care of Children Act reserving her interim day to day care of the children and restricting Brad's contact with the children to "supervised contact by someone approved by the Family Court". Brad is served documents by the Police. This is the first time he has been advised that the relationship is over and that his wife wants to separate from him. He has 30 minutes to pack his personal belongings and leave with the Police. Brad luckily is able to stay with friends, otherwise he would have needed to find a place to rent, or until that time, stay in a hotel or motel until he was able to find accommodation.

Brad is the sole income earner for the family. His income of \$80,000 per annum is too high for him to qualify for legal aid. He is still paying the mortgage on the family home and all the living expenses for the children and Kathy, including the children's school fees. In addition, he is now liable to pay child support as well as cover the new cost of his own board and food. It was difficult for Brad to find a lawyer initially as he was not able to afford to pay a "retainer" of any sort initially and did not qualify for legal aid. It took him some time to find a lawyer that was willing

to do the work for him, whilst being paid over several years by way of small automatic weekly payments. His income is insufficient to meet all these costs and he has had to ask his bank to increase the limit on his visa card – his level of debt is increasing.

Kathy's affidavit evidence is strongly refuted by Brad and through his lawyer he has filed affidavit evidence supporting him, from numerous witnesses. The matter has been set down for a three-day court hearing, nine months after Brad was first served.

Because the court application involves family violence, Brad is only able to see his children if that is supervised by a third party as that is the only contact that Kathy will agree to. There are no supervised contact agencies or providers anywhere near where the family live.

His lawyer has spoken to the lawyer for the children appointed by the court. That lawyer has spent significant time talking to the children and to Kathy before Kathy would agree that mutual friends of hers and Brads could provide the supervised contact. It took two months for contact to begin and Brad is only allowed to see the children once a fortnight for four hours on a Sunday. Brad has no option but to wait until the court hearing, to get more time with his children.

The Family Court is busy, so the first review of the interim orders (a 15 minute conference with a judge) takes place ten weeks after the orders were made. The court orders that the current supervised contact is to remain as that is all that Kathy will agree to.

The lawyer representing the children reports

to the court his concerns that Kathy is exposing the children to her negative views about Brad, and the children begin to express reluctance to see their father at all using adult-typical language. Concerned about the negative impact Kathy is having on the children's relationship with him, Brad asks the court to obtain a psychological report. Because there is a shortage of psychologists available to provide such a report, this will delay the case by a further six to nine months. During this time, Brad would only be able to have supervised contact with his children.

Brad is really concerned about the cost contribution orders he might have to pay – one third of lawyer for child's total costs, and a further \$2,000 to \$3,000 toward the psychologist's costs on top of his lawyer's fees. This could ultimately be an amount of \$10,000 despite the fact that from Brad's perspective, he has always been a good and involved parent and his wife has been untruthful in her affidavits. It is almost certain that Kathy will not have to pay any of these costs as she qualifies for legal aid and has been lucky enough to find a family legal aid lawyer to represent her.

What happens next?

Luckily for Brad, English is his first language, he has many friends and supports within the local community willing to offer to supervise his contact with the children. As a European New Zealander, there are no particular cultural considerations or needs that the Family Court needs to address. Had this not been the case, it is possible that a cultural report may have been necessary if cultural considerations were necessary for the Court, when making long-term parenting orders. This would take a significant period of time and delay the proceedings further as there is a significant shortage of available experts to report on cultural issues.

Brad has no surplus income and is running up significant debt in terms of paying the mortgage and the living costs for Kathy and the children as well as school fees and his own living costs. In addition, his debt will continue

to increase due to paying legal costs and a likely costs contribution order for the costs of the lawyer for the children and possibly for a psychologist.

Because of the financial costs, Brad had thought about representing himself. However the large number of affidavits that needed to be filed to clear his name, his confusion around the court process, the serious nature of the allegations being made against him by Kathy, and the fact that he was very worried that his relationship with his three children would be ruined forever), Brad felt it was essential that he had a lawyer representing him.

There are no formal supervised contact facilities nearby the children's home. Brad's lawyer had to negotiate supervised contact and get the court to vary the order, enabling Kathy and Brad's mutual friends to supervise Brad's contact with the children. This took several months and over that period Brad did not see his children at all. In some ways, Brad is lucky there is no supervised contact facility nearby the children's home as Brad would have had to pay the facility approximately \$140 for each supervised contact session.

Matters were initially delayed as Brad was unable to easily find a family lawyer that would take on his case. The matter was urgent from his perspective as he had suddenly been removed from the family home and from his children's lives. All the lawyers he contacted were too busy to take on his case and he found it difficult to even know where to start finding a family lawyer.

Despite Brad's lawyer quickly filing Brad's documents, he was frustrated by having to wait 10 weeks until the court could even look at his matter, which was only at a short conference, not a hearing. He was left watching (in his view) Kathy alienate the children from him, with limited supervised contact of four hours a fortnight. He also had to wait nine months for his "day in court" and to respond to Kathy's allegations so that a judge could rule that he was a safe and good parent, and to resume having care of the children overnight.