

# Access to Justice Research 2021

Prepared for the New Zealand Law Society |  
Te Kāhui Ture o Aotearoa

OCTOBER 2021





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# 3 | RESEARCH SUMMARY

# Lawyers are concerned about the ability of the legal system to provide everyone with access to justice.



Half of the lawyers we spoke to rate the legal system as poor or very poor at providing everyone in Aotearoa New Zealand with access to justice. Only one in ten think it does a good or very good job. The remaining lawyers we spoke to think it is OK or are not sure.



Half of lawyers have had to turn away clients in the last 12 months.



This is higher for legal aid lawyers – three-quarters have had to turn away people seeking legal assistance.

# Legal aid lawyers are motivated to provide people with access to justice and feel a moral duty to do so, however, legal aid provision in its current state is not sustainable.

84% agree their job gives them a great deal of satisfaction

80% agree their job is very stressful

79% agree they regularly work extended hours

Legal aid lawyers **express high job satisfaction** (in line with the wider legal workforce). Their driving motivation is to provide access to justice, and they **feel a moral duty to do so**. However, the work brings with it **high stress levels**, and **regularly extended work hours**; both factors are more pronounced for legal aid lawyers than the wider workforce.



This is placing access to justice at further risk. A quarter of legal aid lawyers plan to do less legal aid work - or stop altogether - over the next 12 months.



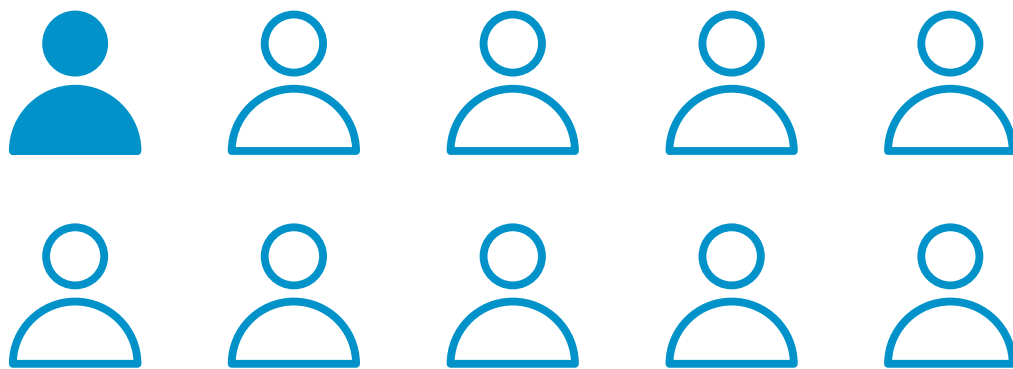
The key reason they plan to do less is inadequate remuneration (58% say this is a reason). Indeed, half of legal aid lawyers, on average, were not remunerated for almost half of the hours (48%) they worked on their last legal aid case.



The administrative burden and the stress of legal aid are also causing these lawyers to want to step back from legal aid provision.

In an average week, legal aid lawyers are working 50 hours per week vs. 46 hours for those not providing legal aid. On average this is 11 hours more than legal aid lawyers are contracted for.

Some lawyers are interested in stepping into legal aid work, but for the majority there are barriers that prevent them from doing so.



One in ten (12%) lawyers who are not currently doing legal aid are very or extremely interested in doing so. This equates to 58% of the current legal aid workforce. Despite their interest, around half of these lawyers are working in firms that do not undertake legal aid, however, they also have concerns about the administrative burden and inadequate remuneration.



Six in ten (63%) lawyers have no interest in undertaking legal aid and for them the administrative burden and inadequate remuneration are the key barriers.

## Lawyers are contributing to access to justice in other ways by reducing their fees or providing free services.

59%

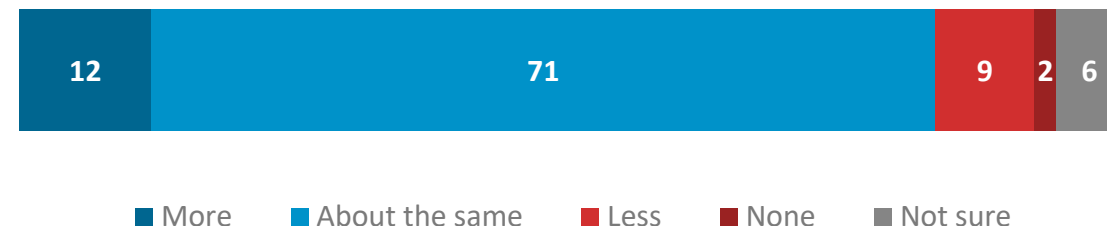
Six in ten lawyers have provided legal services at a discounted rate or reduced fee in the last 12 months, and 43% have provided legal assistance at a discounted rate or reduced fee to people who can't afford it. This increases to nearly six in ten legal aid lawyers. Most are simply reducing their fees, but one in three of these lawyers (who provide legal services at a discounted rate or reduced fee) provide payment plans.

81%

Eight in ten lawyers have provided some form of legal assistance for free in the last 12 months and nearly half have provided free legal assistance to individuals who cannot afford to access the legal system.

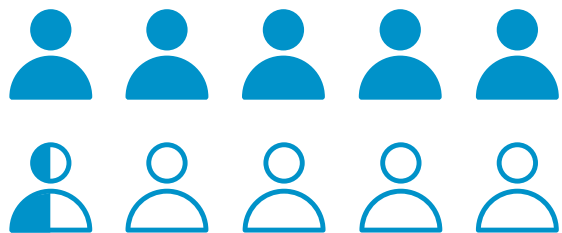


The motivations behind providing free services are similar to the drivers of legal aid provision. Lawyers feel this work aligns with their values, they want to give something back and do their bit to enable people to get legal representation they couldn't otherwise afford.

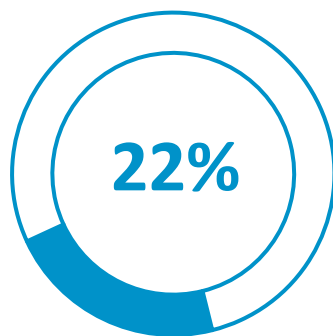


Positively the majority of lawyers plan to keep providing their services for free to those who need them. Nearly three quarters of lawyers intend to do the same amount, and one in ten intend to do more over the next 12 months.

## What about lawyers who are not providing free legal assistance?



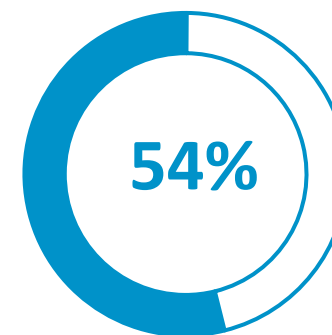
Nearly six in ten lawyers (55%) have not provided free legal assistance to people who cannot afford it. These lawyers are already feeling stretched and have heavy work commitments so most of them don't feel they are in a position to take this work on.



That said, 22% of them are very or extremely interested in doing this type of work. However, in addition to being overstretched and over committed there are further barriers for this group. Namely, 42% are in workplaces which don't allow or encourage them to provide free legal assistance to those who need it. Encouraging workplaces to allow their lawyers to undertake this work and giving them the time and space to do so will be a positive step towards overcoming this barrier.

Additionally, three in ten lawyers (who are very or extremely interested in this type of work) don't know how to get involved.

*Te Ara Ture is a service that connects volunteer lawyers with people who need free legal help. Lawyers register with the service, and Community Law Centres refer clients in need of assistance.*



Around one in five (19%) lawyers are aware of Te Ara Ture, which launched this year. However, there is a high level of interest: 54% of lawyers not already registered with Te Ara Ture were interested in receiving further information. Continuing to talk about and communicate the benefits of this resource while providing more information to those who are interested but are not sure how to get involved will be a step towards breaking down this barrier.



# 1 | THE TASK AT HAND



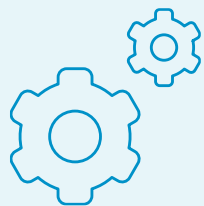
## The task at hand

The New Zealand Law Society | Te Kāhui Ture o Aotearoa commissioned Kantar Public (formerly Colmar Brunton) to undertake a survey of all lawyers to assess the current state of access to justice in Aotearoa New Zealand. The survey explores the legal aid system, and the types of services lawyers are providing for free or at reduced rates.

### KEY OBJECTIVES:

- Understand levels of engagement and motivation behind providing or not legal aid or free legal services.
- Identify any issues with the legal aid system or access to justice with the aim of removing barriers to provision.
- Tell the stories of legal aid provision in Aotearoa New Zealand.
- Build an evidence base that will support advocacy for better access to justice within the Aotearoa New Zealand legal system.

# 2 | RESEARCH METHOD



## Quantitative method

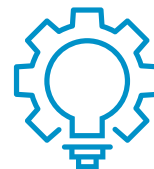


Secondary research was undertaken during the exploratory phase of the project, making use of publicly available information, as well as legal aid data provided by the Ministry of Justice. We also used questions from a survey shared with us by the University of Otago Legal Issues Centre.<sup>1</sup>

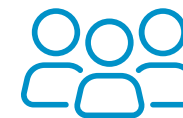
Following that, an online survey of lawyers was conducted from 30 August to 21 September, 2021.



The New Zealand Law Society emailed 14,628 lawyers an invitation to complete the survey. The email contained a secure link to a survey managed by Colmar Brunton. Two reminder emails were sent to maximise the response rate and the survey was promoted on social media. Confidentiality of responses was maintained at all times.



The survey took an average of 12 minutes to complete. During questionnaire development cognitive interviews were undertaken with six lawyers to stress test the questionnaire. This ensured respondents interpreted the questions as intended and were able to provide a meaningful response.



2,989 lawyers completed the survey – a response rate of 21%. The maximum margin of error on a total sample size of 2,989 (at the 95% confidence level) is +/-1.7%.



Following the completion of fieldwork, data was weighted to ensure survey findings reflect New Zealand lawyer population characteristics for gender, location and legal aid provision.






We conducted a total of 6 in depth interviews with respondents who indicated in their quantitative survey response that they were willing to be contacted further.

The interviews lasted 45 minutes to an hour, and took place over Zoom.

These interviews were conducted between the 20th September and 8th October.



## Qualitative method

6 individual interviews				
 AGE	 GENDER	 ETHNICITY	 REGION	 AREAS OF LAW
25-29: 1 30-39: 1 40-49: 2 50-59: 1 60-69: 1	Female: 5 Male: 1  *The majority of respondents who were willing to participate were female	New Zealand European: 4 Māori: 2	Auckland: 2 Otago: 1 Taranaki: 1 Wellington: 1 Nelson: 1	Family: 3 Criminal ( <i>including youth justice</i> ): 3 Employment: 2 Health: 1 Civil Litigation: 1



## Reading the survey results in this report

### How to read subgroup differences

Any differences between subgroups that are noted in the report are statistically significant at the 95% confidence level. This means that we are 95% confident that the observed difference is real and not simply a result of surveying a *sample* of the workforce.

When a subgroups result is significantly different it will be shown in brackets. As an example, (see image on right) overall 52% of the lawyers we spoke to give a rating of poor or very poor. 70% of Lawyers working in Māori / Te Tiriti o Waitangi law give a rating of poor or very poor and this difference is statistically significant from the overall result (52%).

#### SUBGROUP DIFFERENCES

Lawyers **more** likely than average (10%) to give a rating of **good or very good**:

- Aged 50-64 (16%)
- Work in property law (15%)
- Work in criminal law (14%).

Lawyers **more** likely than average (52%) to give a rating of **poor or very poor**:

- Work in Māori / Te Tiriti o Waitangi law (70%)
- Pacific lawyers (66%)
- Māori lawyers (63%)
- Work in employment law (61%)
- Have given free legal assistance in the last 12 months (58%)
- Work in Administrative / public law (58%)
- Work in civil litigation (58%)
- Based in Wellington (57%)
- Work in family law (56%).

### Interpreting charts

Unless otherwise specified, all results are shown on the charts are percentages.

### Reading footnotes

All slides with results have footnotes (example below). Each footnote shows the question that was asked and the group of people who were asked the question. The Base is the criteria of the group who were asked the question and how many (n=). In the example below, results for all respondents are being shown and there are 2,989 respondents in total.

Base: All respondents (n=2,989)

A5 Based on your experience how would you rate the justice system in providing all people in Aotearoa New Zealand with access to justice?

# 4

## ACCESS TO JUSTICE

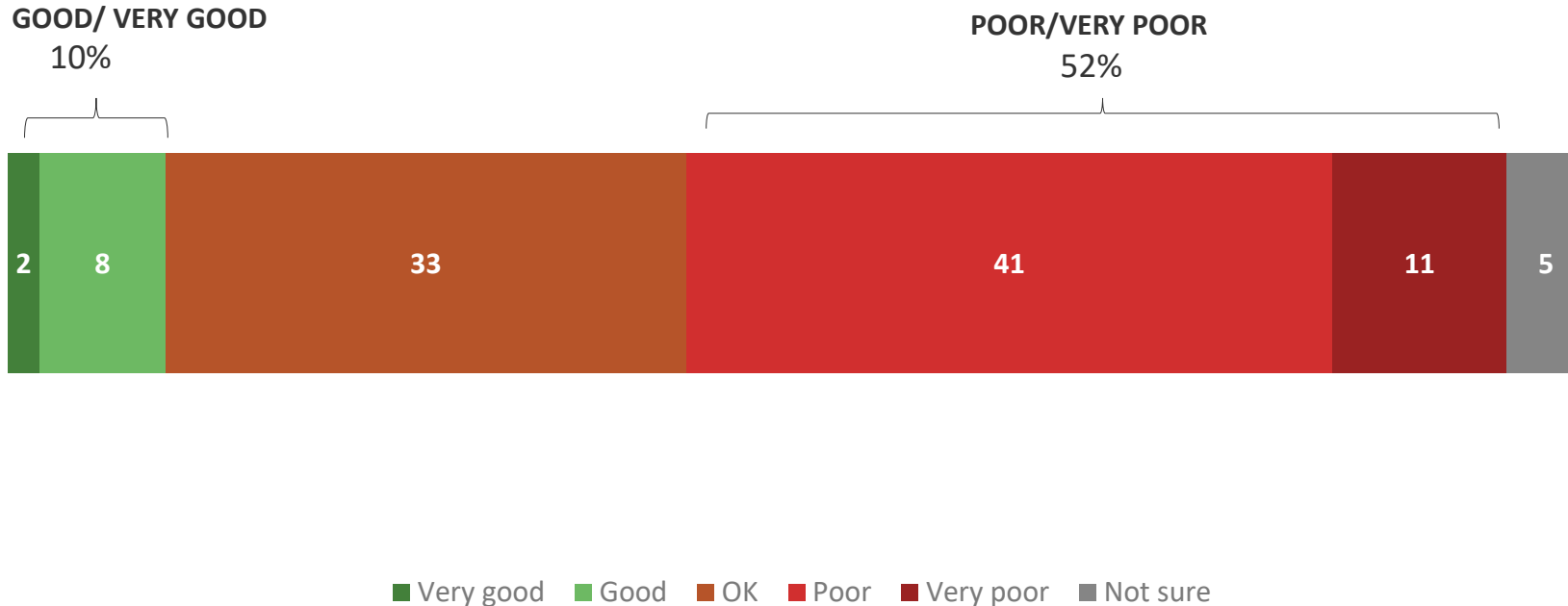


## Rating the legal system

Lawyers are concerned about access to justice in Aotearoa New Zealand. **52% rate the legal system as poor or very poor at providing everyone in Aotearoa New Zealand access to justice.** A further 41% rate it as OK. Only 10% rate it as good or very good. There are some subgroup differences in how lawyers rate the legal system. Lawyers working in Te Tiriti o Waitangi law are more likely than average to rate the system poorly, as are Pacific and Māori lawyers.

### RATING OF THE NZ LEGAL SYSTEM FOR PROVIDING ALL PEOPLE IN AOTEAROA NEW ZEALAND WITH ACCESS TO JUSTICE

%



#### SUBGROUP DIFFERENCES

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- Work in family law (56%).



## Reasons for rating

Reasons for poor or very poor ratings are varied and complex. However, key themes that arise are poor legal aid remuneration, the excessive legal aid workload, and the stress involved with this type of work.

## REASONS FOR A POOR RATING OF THE AOTEAROA NEW ZEALAND LEGAL SYSTEM

*“Access to adequate criminal legal representation is limited, even for those who can afford it. The criminal court process is woefully slow to the point of denying access to justice. Access to the civil courts is cost prohibitive for almost everyone.”*

*“Civil legal aid does not pay enough for good lawyers to do the work. Serious criminal legal aid is very stressful and does not pay enough to have enough lawyers”*

*“Threshold is very low for people to obtain legal aid. Legal aid rates are extremely low for lawyers - no incentive to do legal aid work. Particularly as issues for legal aid clients often involve drug use, mental health issues etc. Can be very difficult clients and stressful work. Much easier to take on private work and get paid accordingly”*

*“Criminal justice is filled with lower-level lawyers completing an excessive legal aid workload. The top lawyers will be paid for by rich people who will get better outcomes. Not only does legal aid not pay well enough but it means that lawyers need to take on a greater workload.”*

*“Few people qualify for legal aid and few lawyers offer legal aid, at least in the civil jurisdiction. There is no incentive to become qualified for legal aid - rates are low and it is very difficult.”*

*“The justice system is currently a colonial system which is expensive. The justice system is not diverse enough to cater for people who come from diverse backgrounds. The justice system does not cater for our multicultural Aotearoa, this creates endless hurdles.”*

*“There are too many barriers to get access. Legal aid is clearly one but there are others such as the cost of litigation and communication and cultural barriers”*

*“Wider socio-economic factors affecting income and education + also cost, knowledge of how to access justice system for particular groups”*

*“Delays, lack of lawyers available to assist people who are not financially able to seek legal assistance, broken legal aid system”*

*“Difficult for people to understand the justice system, how to access and navigate it. Lack of transparency in the lower courts.”*

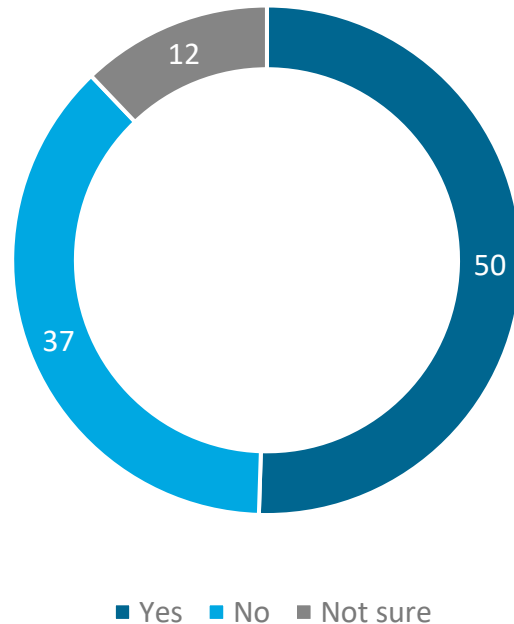
*“I am predominantly a legal aid provider. Proper representation for clients takes time, thought and a holistic approach. It is exhausting to have to fight their corner with legal aid as well as with the police or Crown just to ensure that clients have access to justice as opposed to access to a lawyer to run a cookie cutter court case.”*

## Turning clients away

Half of all lawyers (excluding those working in-house) have had to turn away clients in the last 12 months, and this increases to three quarters of legal aid lawyers. This occurs where lawyers do not have the time or capacity to help these clients, or where the firm has reached the maximum number of legal aid clients that it can afford. This demonstrates part of the reason why a majority of lawyers rate the legal system poorly in providing everyone in Aotearoa New Zealand with access to justice.

### PROPORTION OF LAWYERS WHO HAVE TURNED AWAY IN THE LAST 12 MONTHS

%



#### SUBGROUP DIFFERENCES

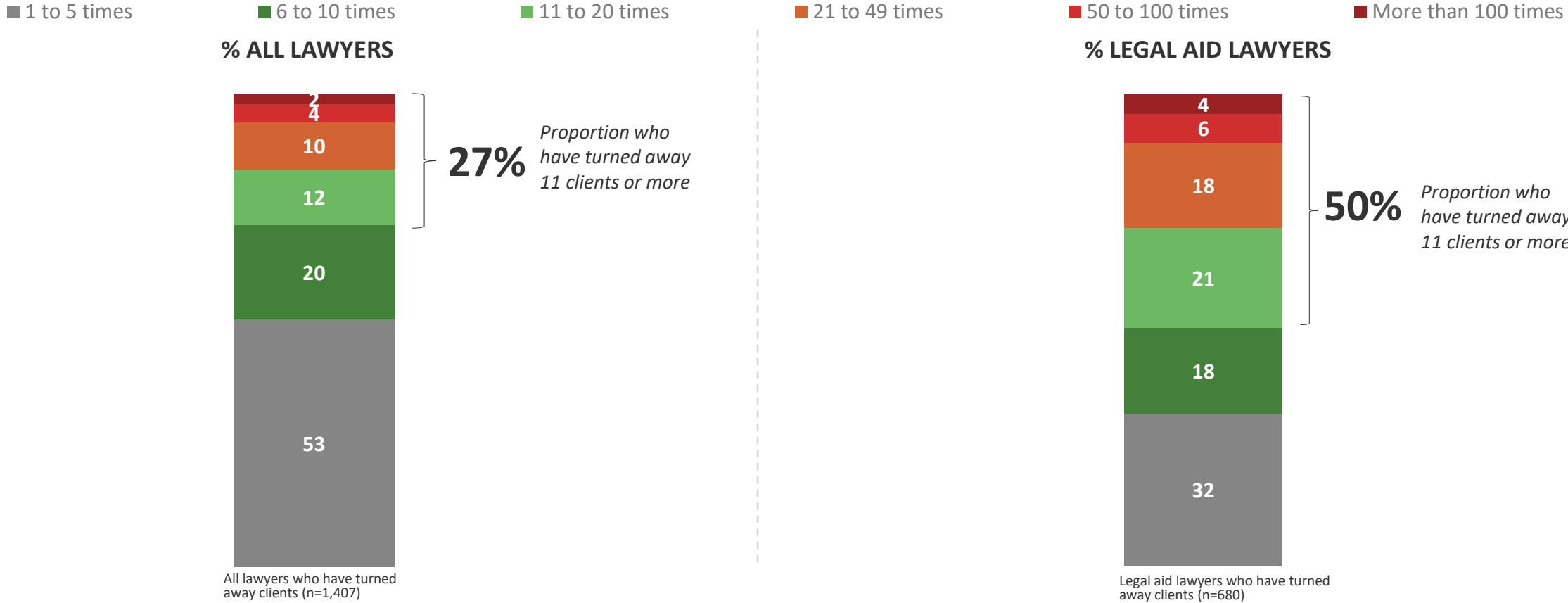
The following sub groups are **more likely** than average (50%) to have turned clients away in the last 12 months:

- Lawyers who have undertaken legal aid work (77%)
- Barristers (70%)
- Directors/partners (61%)
- Have been in the profession 11 years or longer (60%)
- Based in the North Island excl. Auckland, Waikato and Wellington (65%).

# Number of clients being turned away

Legal aid lawyers are having to turn away a greater number of clients. Among lawyers who have had to turn away at least one client, legal aid lawyers are twice as likely than other lawyers, to have turned away 11 clients or more in the last 12 months (50%, compared to 27% of all lawyers).

## NUMBER OF CLIENTS TURNED AWAY IN THE LAST 12 MONTHS



# 5

## THE SUSTAINABILITY OF LEGAL AID

Legal aid is government funding to pay for legal help for people who cannot afford a lawyer.

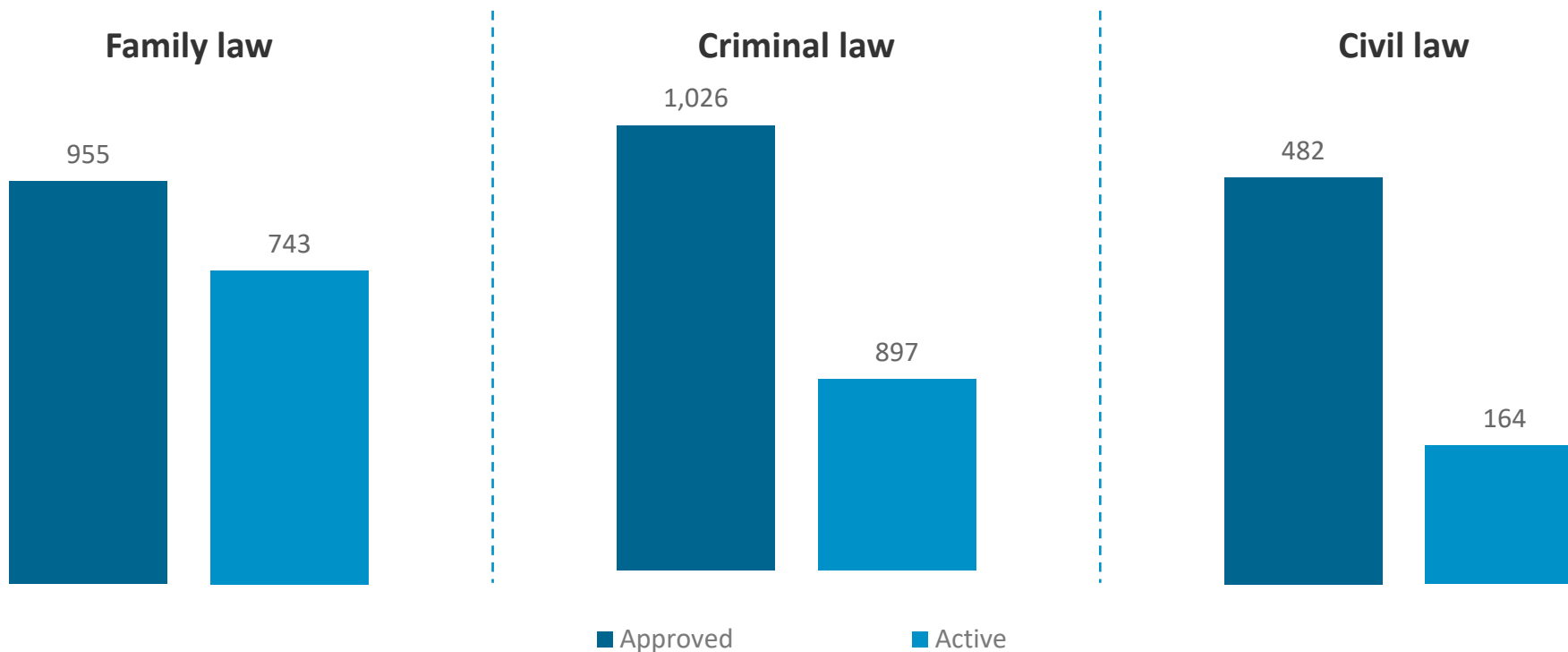
Legal aid is considered a loan, and those who receive it may have to repay it, depending on what they earn, and any property they have.

The latest Ministry of Justice data for 2021 show there are 3,111 approved legal aid providers. Of those, 2,000 are active. This means a third of lawyers approved to undertake legal aid cases are not currently doing so.

The below charts show the **number** of approved and active providers broken down for family, criminal and civil law.



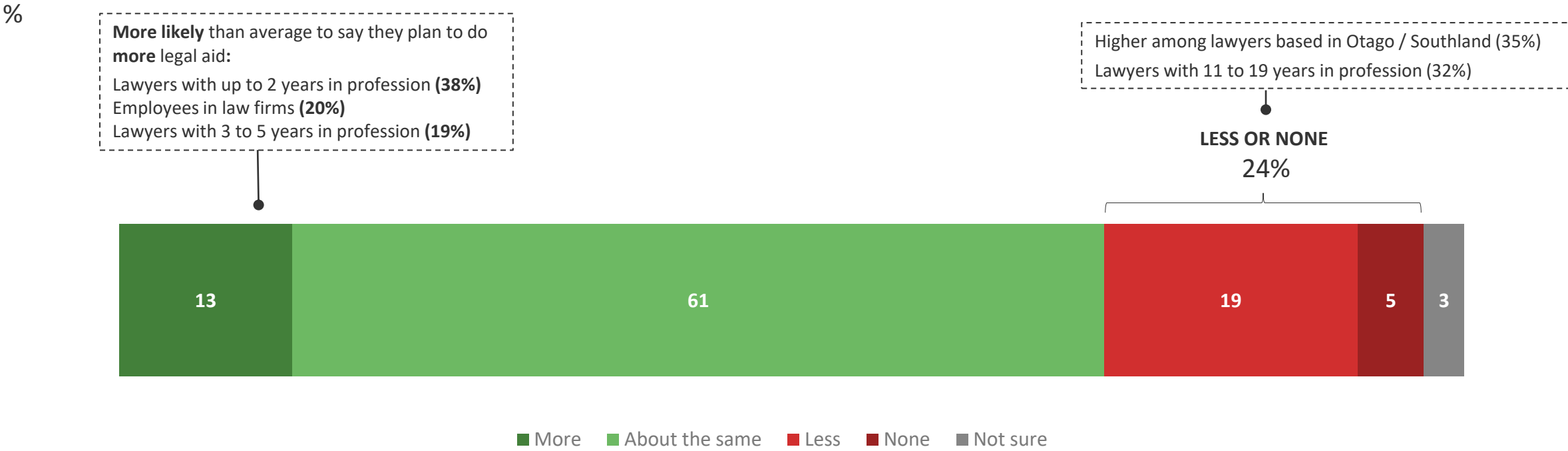
## LEGAL AID PROVISION IN AOTEAROA NEW ZEALAND



# Future of legal aid

24% of legal aid lawyers intend to do less or no legal aid work over the next 12 months, compared to 13% who intend to do more. This indicates a workforce under pressure. Just over a third of lawyers based in Otago or Southland plan to do less or no legal aid work (compared to 24% overall). Lawyers who are newer to the profession are more likely than average to say they plan to do more legal aid work in the coming months. It should be noted there are no statistically significant differences by the area of law practised (e.g. criminal, family or civil law).

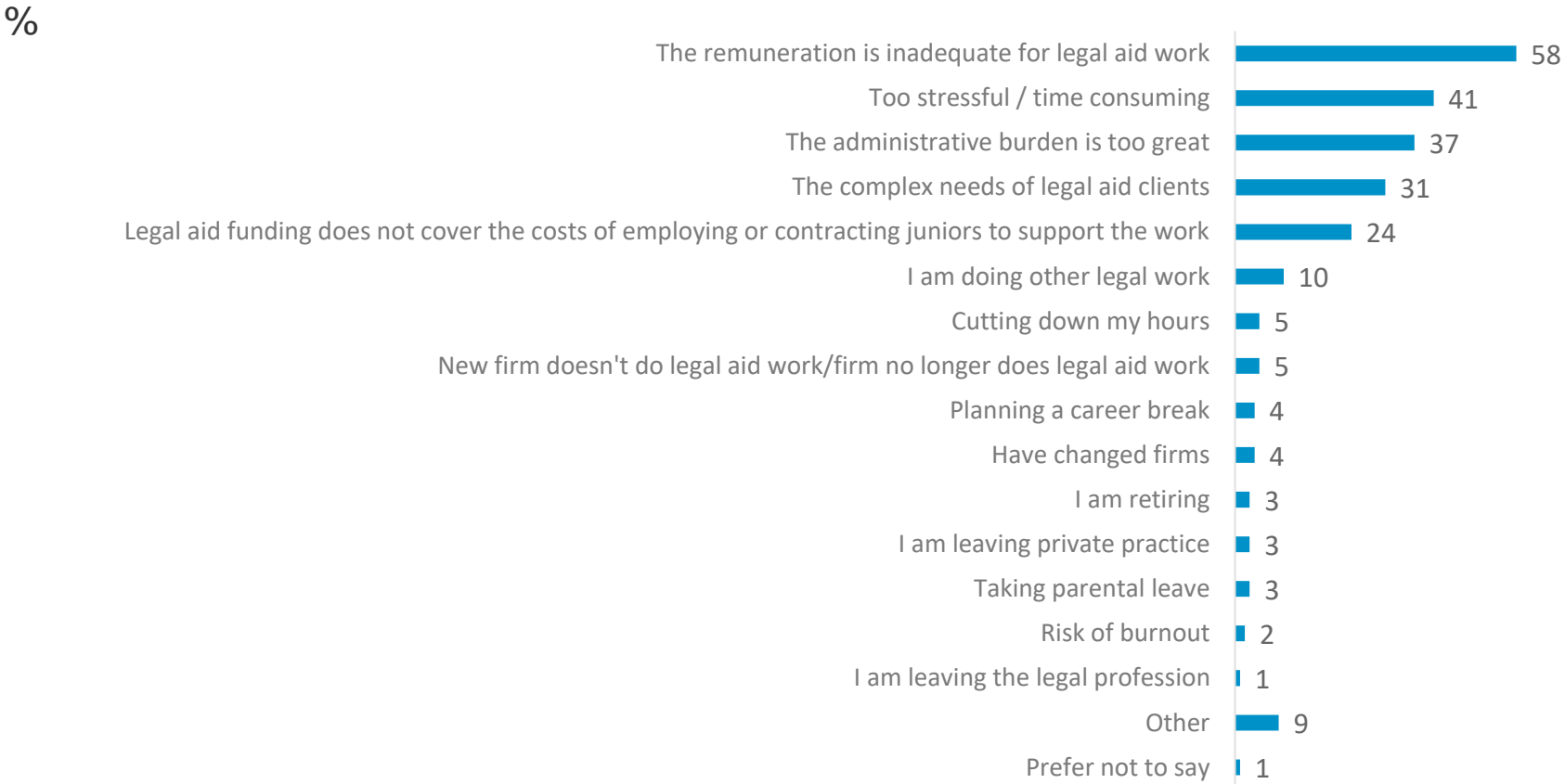
## THE IMMEDIATE FUTURE OF THE LEGAL AID PROFESSION



# Reasons for wanting to do less legal aid

The key reason for wanting to do less legal aid work over the next 12 months is inadequate remuneration. Secondary reasons include finding the work too stressful or time consuming, the administrative burden involved with undertaking legal aid cases and the complex needs of legal aid clients.

## THE REASONS SOME LAWYERS WANT TO REDUCE THEIR COMMITMENT



*“We are no longer really accepting legal aid for civil law due to **inadequacy of the payments and the admin burden.**”*

*“Jury trials at every level have become extraordinarily complex... Many **clients are difficult to work with** and clearly have complex needs.”*

*“It's primarily a financial reason. The legal aid **rates are simply insufficient** to run a decent practice”*

*It is **not economic** for a firm to do much legal aid in terms of the other costs of practice. We continue to do some for social justice reasons and it does have some benefit for new lawyers to gain experience, but it is becoming increasingly difficult to maintain. The **costs of practice have risen much faster than legal aid remuneration.***

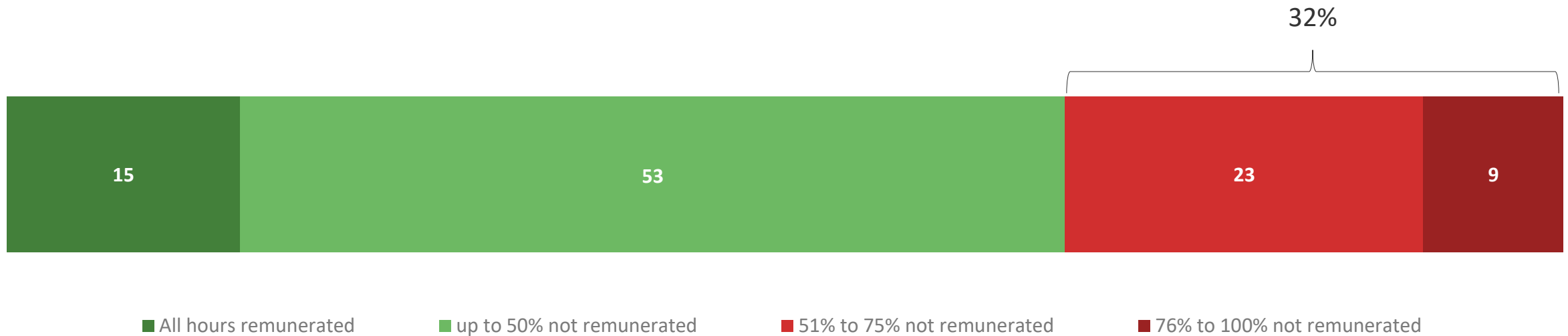
## Legal aid remuneration

This issue of remuneration is widespread. On average, legal aid lawyers were not remunerated for almost half (48%) of the hours they spent on their last legal aid case. Only 15% of legal aid lawyers were fully remunerated for the amount of time they spent on their last legal aid case, while one in three were not remunerated for over half of the time they spent on their last legal aid case.

### PROPORTION OF TIME NOT BEING REMUNERATED

%

**On average, 48% of hours spent on a legal aid case are not remunerated**





## Hours worked

In addition to hours not being remunerated, legal aid lawyers are working an average of 50 hours each week (compared to 47 hours on average across the profession). Pacific legal aid lawyers are working particularly long hours. In addition, legal aid lawyers who are on set contracts are working 11.5 hours over and above their contracted hours each week (compared to 9.3 hours for all lawyers).

## NUMBER OF HOURS LEGAL AID LAWYERS ARE WORKING

### AVERAGE NUMBER OF HOURS WORKED IN A WEEK



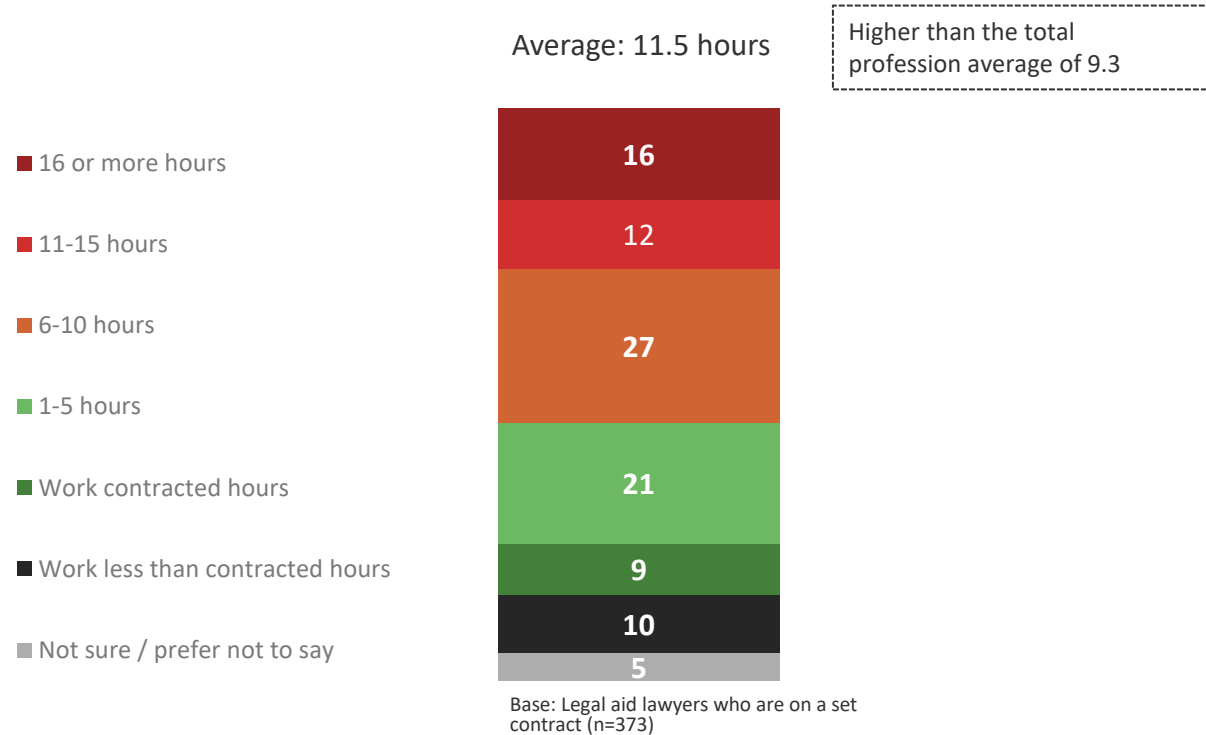
50

Higher than the total profession average of 47

The following groups of lawyers work **more** than the legal aid average of 50 hours a week:

- Pacific lawyers (54 hours)
- Directors / partners (53 hours)
- 20 years or more in profession (52 hours)
- Barrister soles (52 hours)
- Criminal lawyers (52 hours)
- Auckland based (52 hours).

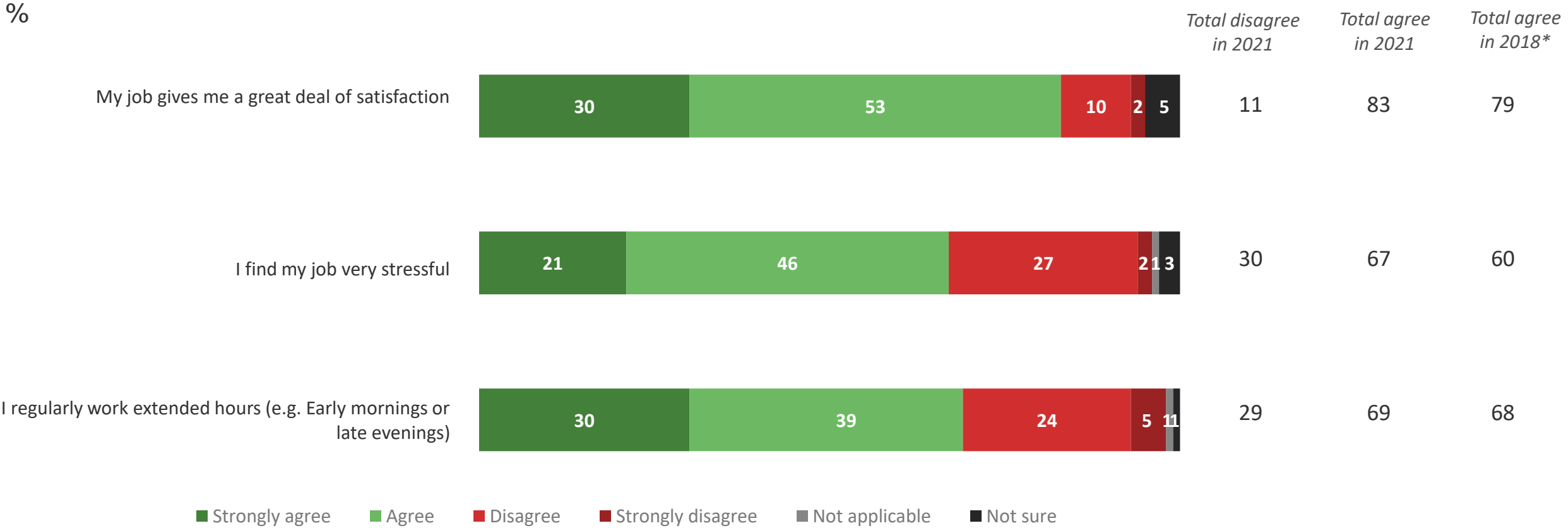
### % NUMBER OF HOURS WORKED ABOVE CONTRACTED HOURS



# Stress, satisfaction and work-life balance among all lawyers

Lawyers are feeling a greater degree of job satisfaction but also higher levels of stress compared to the last time we spoke to them in 2018.

## HOW ARE LAWYERS FEELING IN GENERAL?

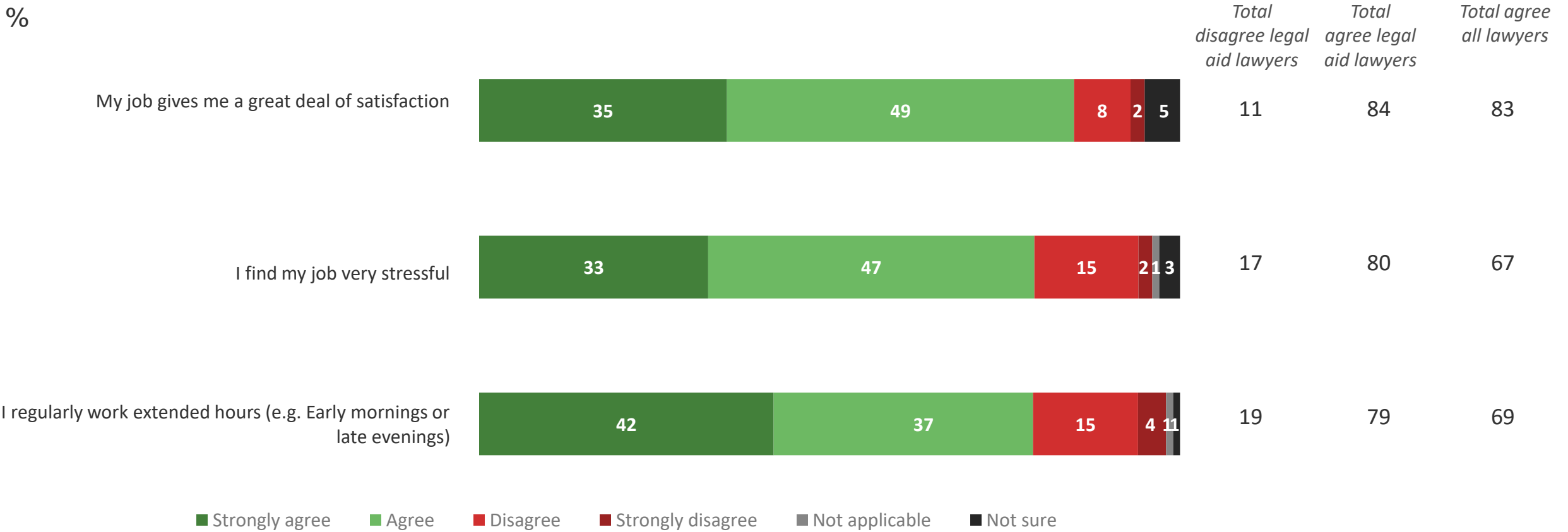


# Stress, satisfaction and work-life balance

The majority of legal aid lawyers find the work stressful and are having to regularly work extended hours – significantly more so than all lawyers. Despite this, the majority of legal aid lawyers report a high level of job satisfaction (in line with all lawyers).



## HOW ARE LEGAL AID LAWYERS FEELING?



■ Strongly agree  
 ■ Agree  
 ■ Disagree  
 ■ Strongly disagree  
 ■ Not applicable  
 ■ Not sure

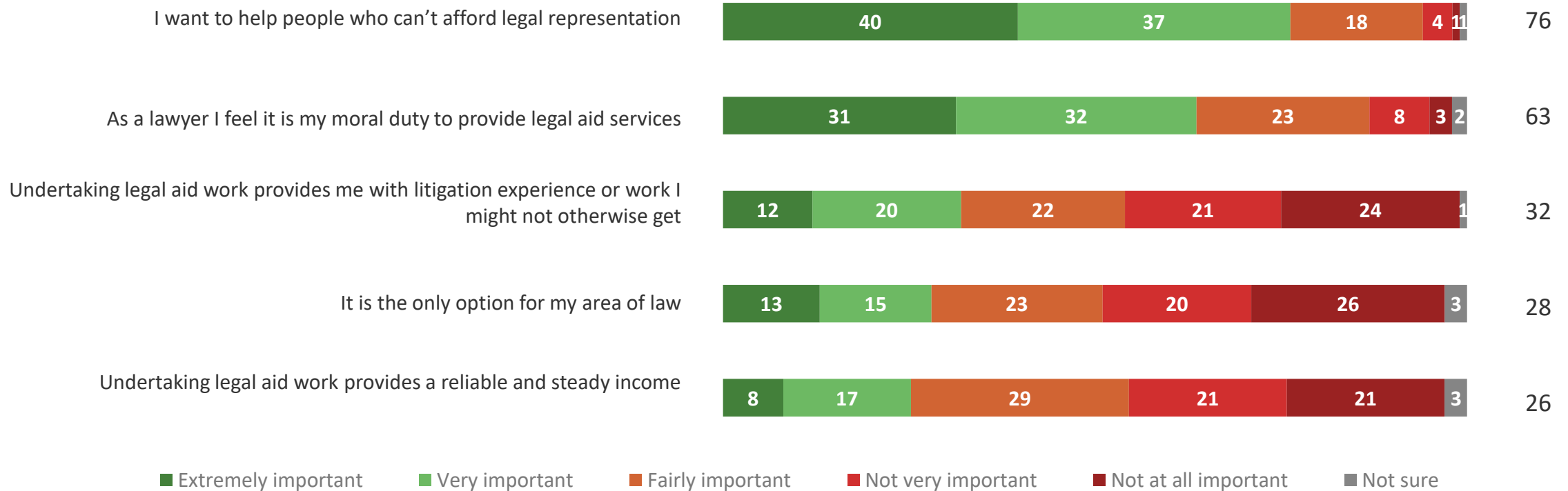
## Reasons for doing legal aid work

Legal aid lawyers are principally motivated to do legal aid work because they want to ensure people in Aotearoa New Zealand get access to justice and because they feel a moral duty to provide these services.

### REASONS LEGAL AID LAWYERS ARE UNDERTAKING THE WORK

%

Total very or extremely important



## Sub group differences for wanting to do legal aid work

Younger lawyers in the earlier stages of their career are more likely than average (32%) to say legal aid work provides them with litigation experience they wouldn't otherwise get. Criminal lawyers, those based in Waikato and barristers are more likely than average to feel legal aid work is their only option.

### LITIGATION EXPERIENCE

The following groups are more likely than average (32%) to say legal aid work provides them with litigation experience they might not otherwise get:

- Under 30 years (58%)
- 3-5 years in profession (58%)
- Employees in law firms (50%)
- Up to 2 years in profession (54%)
- Asian lawyers (47%)
- Aged 30-39 (45%)
- 6-10 years in profession (44%).

### ONLY OPTION FOR AREA OF LAW

The following groups are more likely than average (28%) to say legal aid work is the only option for their area of law:

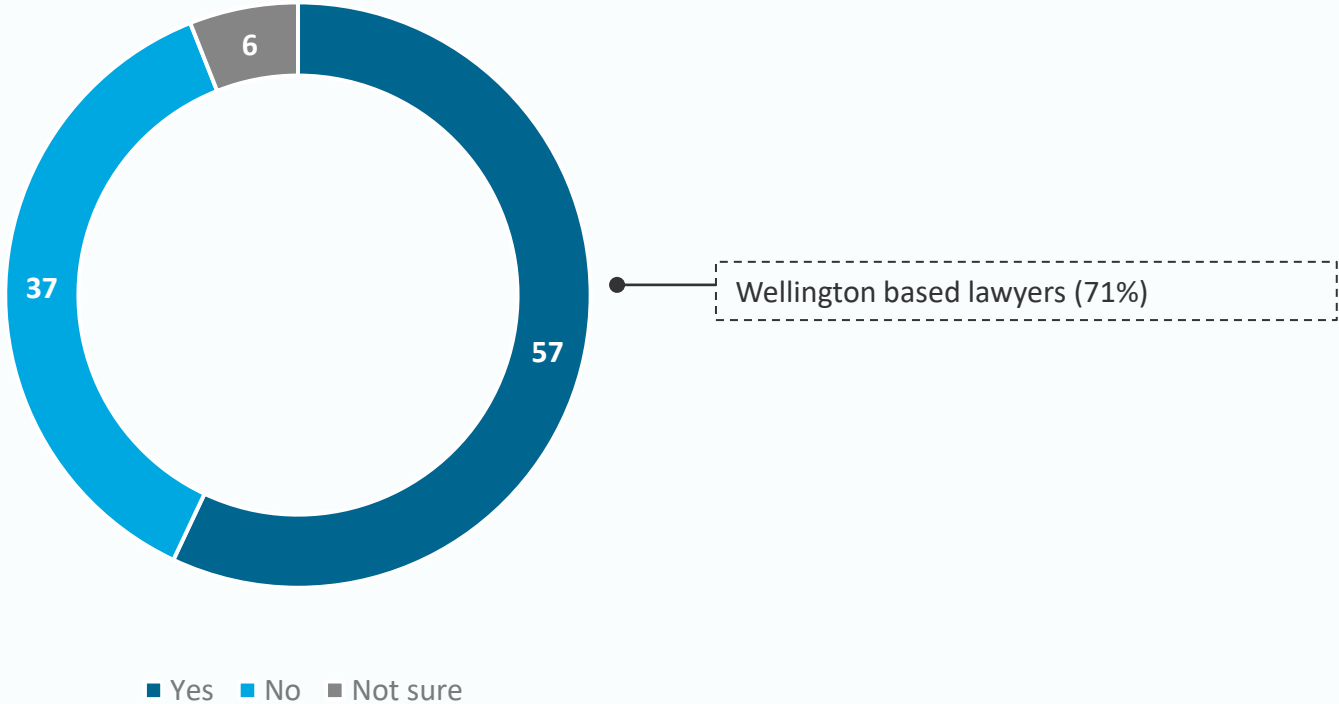
- Criminal lawyers (40%)
- Based in Waikato (40%)
- Barristers (34%).



### Active decision to undertake legal aid work

Many legal aid lawyers make an active decision to do this work. Nearly six in ten (57%) of the legal aid lawyers we spoke to made an active decision to join a law firm that undertakes legal aid work. This increases to 71% of Wellington based legal aid lawyers. This is consistent with the finding that legal aid lawyers feel a moral duty to carry out this work.

### PROPORTION OF LAWYERS WHO MADE AN ACTIVE DECISION TO WORK IN A LEGAL AID LAW FIRM



# 6

## LEGAL AID LAWYERS: 6 CASE STUDIES

# CASE STUDY ONE: DALE





New Zealand  
Law Society  
Te Kāhui Ture o Aotearoa

Dale  
Lloyd

AREA OF LAW: EMPLOYMENT,  
FAMILY, TRUSTS, ESTATES



CURRENT ROLE: PARTNER



LENGTH OF PRACTISE:  
20+ YEARS



LOCATION: OTAGO



*“People that represent themselves consume a lot more court time therefore there’s more delays and court risks becoming irrelevant.”*

## INTRODUCING DALE

Dale has been practising since 1990. Over the years she has acquired experience in a range of fields, including family, employment and property law. Today, she continues to work in those areas of law amongst other areas from her office in Queenstown.

Across the expanse of her career, Dale has witnessed many changes to the legal system, and believes some of them have been to the detriment of both clients and lawyers. Dale fears that if things don’t change, courts will lose their relevance and clients will continue to struggle to find legal aid representation, impeding on their access to justice.

## CURRENT BARRIERS TO PRACTISING LEGAL AID

Dale believes the changes that have been applied to the duty solicitor scheme and the legal aid system *“have not served our profession well”*. These changes have resulted in the bar to attaining legal aid status to be so high that it has become a barrier to those in the profession.

Additionally, Dale says that the level of administrative work that comes with attaining legal aid status *“drives lawyers pink.”*

Recently, Dale has only managed a handful of legal aid cases. She will often turn clients away or not open a file. *“Financially, it’s just not worth it.”* The rates that are offered does not cover overheads for a lot of lawyers, and the rates are *“probably less than what you would have a junior lawyers chargeout rate.”*

## THE IMPACTS OF BARRIERS TO PRACTISING LEGAL AID

From what Dale can see, this lack of economic return from practising legal aid means some firms must specialize for it to be profitable. *“There are some firms that do nothing but it, so they’ve got themselves set up. That’s a limited range of firms that would do that.”* Outside of this structure, it’s not so simple.

Dale thinks that legal aid work is a valuable opportunity for young lawyers to get experience. *“At the moment I do that work so that the young graduate or the young people that work with me can get that type of work.”* However, if rates don’t increase, young lawyers will continue to miss out on work experience. *“The remuneration is so poor that there are only a small pool of people doing it and it’s not worth firms training new young lawyers to embark on that course.”* This will only continue to contribute to litigation being conducted by an ageing profession.

## CURRENT BARRIERS TO ACCESSING LEGAL AID

Legal aid workers already have such low levels of capacity that they often have to turn clients away. This creates a huge obstacle for clients who are looking for representation. *“Mostly it’s that people can’t find a legal aid lawyer because they are so busy.”*

The inability of people to find legal aid representation is evident in the number of people unrepresented in cases Dale is a part of. Of the 11 cases she is due to appear in, 8 of those parties have people who are representing themselves.

Dale strongly believes that living up to the promise of a fair society means the provision of a fair legal aid regime that provides access to justice for all. She isn’t convinced that legal aid is serving this purpose. *“I think one of the problems with legal aid is that it’s trying to be equal. Fairness is actually giving people what they need.”*

## THE IMPACTS OF BARRIERS TO PRACTISING LEGAL AID

Due to the current barriers for those seeking legal aid, Dale has seen the numbers of people representing themselves in court increase. Self representation means the client is acting on their own behalf, presenting their case before the courts, often with no prior knowledge of the court system or legal skills. For clients who self represent, more often than not it will lead to an unfavourable outcome. *“Unless people are represented... I don’t think that they necessarily can achieve the outcome that they want.”*

In Dale’s view, self representation is a role that is extremely stressful. *“The legal system is an extremely stressful environment for the untrained to be in. They don’t know the process, they don’t know their rights, they don’t know how it’s going to work and often feel unheard...”* If the numbers of people self-representing continue to increase, it will not only have negative impacts on the individual, but also clog up the court system, slowing the process down further.

## CHANGES THAT NEED TO BE MADE TO THE SYSTEM

There are a number of changes that Dale wants to see in the system. One of them is an increase in specialist courts. *“I would have more of those specialist type courts where people are being heard and not coming back. I think it’ll take a long time but those specialist courts will ultimately be the best outcome for us.”*

Dale also believes the hoops that lawyers have to jump through to become legal aid qualified needs to change. For her, making the process easier for the few lawyers who are actually willing to take on legal aid cases is a must. As it stands currently, these processes are burdensome and discouraging lawyers from becoming legal aid qualified.

## WHAT WILL HAPPEN IF THINGS DON’T CHANGE

One of Dale’s biggest concerns for the future, is if the numbers of self-represented clients continue to increase, the courts will lose their relevance. Without changes to the current justice system, we will continue to see a shortage in legal aid practitioners, clients who are driven to self-represent and a court system that begins to lose its relevance. For Dale, *“If people can appear in court and have their voices heard and feel that they have had access to justice then we will get through this.”*

# CASE STUDY TWO: MELISSA



# Melissa Harward

AREA OF LAW: ACC



CURRENT ROLE: EMPLOYEE IN LAW FIRM



LENGTH OF PRACTISE: 1 – 2 YEARS



LOCATION: OTAGO



*“If an individual was to go off and take the same steps that a lawyer took, it would take them a lot longer, and would be more expensive and it would be really taxing for them to do all those same things...you put health issues on top of that... the battle that person is going to have is immense.”*

## INTRODUCING MELISSA

Self described as ‘socially minded’, her passion for people saw Melissa pursuing a career in law. Through her studies, her eyes were opened to all of the injustices that exist within the system and she is eager to change it. Her initial dream was to work in environmental law, but she has now found herself working in a small law firm in Wellington, with a focus on health law and ACC claims.

She believes that most people in her firm align with the belief that the system doesn’t serve everyone equally.

## CURRENT BARRIERS TO PRACTISING LEGAL AID

Melissa believes that the disparity between civil legal aid rates and private rates can be a key barrier to lawyers taking on legal aid work. *“Unless you do a range of areas of law, you’re not necessarily going to have a profitable business. Legal aid does not necessarily pay the bills.”* She explains that there are several overhead costs that need to be covered in order for a practice to be profitable.

When weighing up the decision to take on legal aid work, she thinks many lawyers see the costs outweighing the benefits. Melissa expresses that once firms cover a range of areas, their time might become too valuable to allocate towards legal aid work. *“At that point I guess it would be easy to just be so busy you wouldn’t necessarily have time for the other stuff. And that’s why I guess people do other pro bono work on a one-off basis rather than having a portion of their clients coming in and not necessarily covering the costs.”* Melissa also notes issues around fixed fees for legal aid work, which rarely reflects the value, time and energy a lawyer has put into a case. *“Unless the case is straightforward, you would do far more hours than the case allows for”.*

## THE IMPACTS OF BARRIERS TO PRACTISING LEGAL AID

The reality of working in legal aid means working with vulnerable people, who are often experiencing a number of issues. For Melissa, it’s all part of the job, but is something that needs to be recognised. *“I had a client ring up the other day and say he had no food, so I rang up the local food bank and sorted him out some kai, but I can’t bill for that. And that’s fine. But it is part of my job.”* These additional responsibilities and services are common practise for legal aid lawyers. On top of their allocated rates, they spend time responding to clients and taking care of their needs that fall far outside the scope of their immediate responsibilities as a lawyer.

## THE CURRENT BARRIERS TO ACCESSING LEGAL AID

Melissa knows all too well the vital role that legal aid plays in facilitating access to justice for vulnerable people, especially those who are suffering from debilitating injuries. For these individuals, access to legal aid means access to entitlements that could be the only thing keeping them afloat. However, due to the threshold for eligibility being far too high, it means that even some families who are sustaining on a single income cannot qualify for legal aid. A high threshold means there is a huge portion of those seeking legal aid that do not qualify for legal assistance, but also cannot realistically afford legal advice through private services. *“It’s become a fallacy that a family can live on a single income. To exclude people from legal aid who are relying on one income, doesn’t mean those people have a lot of money, and certainly don’t have a lot of spare money to pay for legal aid or any legal services.”* Through her work, Melissa is determined to help her clients access their entitlements to get back on their feet, but too often she has seen people become locked out of services due to rates that they simply cannot afford.

## THE IMPACTS OF BARRIERS TO ACCESSING LEGAL AID

Melissa is concerned that due to the current threshold of qualifying for legal aid, those who are suffering from debilitating injuries are forced not to pursue help. *“For those with a significant injury...they are in so much pain and its not really an option to leave it, and some people do just have to leave it as is and I really worry about how people get on with their lives.”* Melissa has seen firsthand the ways in which clients can become disenfranchised and ‘fall out of the system’ due to a lack of access to adequate legal aid. For some it leads to losing their homes, for others their injury becomes the catalyst for a range of other mental and physical health issues.

## CHANGES THAT NEED TO BE MADE TO THE SYSTEM

Through her studies, Melissa discovered that *“the system is not made for certain people ... if you’re not in that group, then the law isn’t necessarily going to serve you.”* As someone who has always been ‘socially minded’, Melissa wants to see changes to the law that make it accessible to all. As it stands, the expense of pursuing a claim is enough to deter clients from attempting to access justice.

## WHAT WILL HAPPEN IF THINGS DON’T CHANGE

Melissa’s fear is that without improved access to legal aid, people will continue to have to take matters into their own hands. In order to navigate the justice system, the individual would have to resource a number of parties to support them through a decision that would otherwise be undertaken by a single lawyer. The additional involvement of inexperienced parties causes the system to be slowed down, and only prolongs the wait for the individual to have access to justice. *“If an individual was to go off and take the same steps that a lawyer took, it would take them a lot longer, it would be more expensive and it would be really taxing for them to do all those same things.”* For those lodging claims due to injuries, the wait time not only increases mental and emotional distress, but can also in some cases cause physical health to deteriorate further, meaning a lower likelihood of ever returning to normalcy.

# CASE STUDY THREE: CAROLINE



Caroline Silk

AREA OF LAW: EMPLOYMENT, CRIMINAL DEFENCE AND CIVIL



CURRENT ROLE: PARTNER



LENGTH OF PRACTISE: 20+ YEARS



LOCATION: NEW PLYMOUTH



*“There are some really simple fixes I think that could happen within the system but its not just the justice system, its the whole social justice equity system”*

### INTRODUCING CAROLINE

Born and raised in Wellington, Caroline spent most of her childhood in the multi-cultural suburb of Porirua. In her primary years she was relocated to a predominantly Pākeha school, where she became aware of the differences in her peers' perceptions towards her due to where she was from. These experiences early in life had a lasting impact and influenced her want to work in the justice system. Caroline completed her studies at Waikato University, and moved to Taranaki shortly after, where she has lived ever since. Over the course of her career, Caroline has become particularly passionate about the close relationship between legal issues and health issues, and believes this relationship needs to be addressed if things are to get better.

### THE CURRENT BARRIERS TO PRACTISING LEGAL AID

Caroline believes that for lawyers looking to practise legal aid, the bar has been set too high. *“From an agency point of view, it’s really difficult to get that legal aid qualified status.”* Although Caroline understands the importance of a robust process for lawyers to go through in order to attain legal aid status, as the Government needs to ensure that the legal aid services they are funding are qualified, she questions if these obstacles are helping or hindering access to the system for both lawyers and their clients. *“There is good reason why there are hoops to jump through to become a legal aid provider... but it seems like it’s a huge high jump, or really tiny hoops so it’s really hard to get through.”* Caroline also highlights the lack of remuneration for legal aid work in comparison with other work. *“It’s also somewhat uneconomic when you compare it to what you get privately.”*

### THE IMPACTS OF BARRIERS TO PRACTISING LEGAL AID

Caroline is concerned that if gaining legal aid status continues to be difficult, less lawyers will choose to do legal aid work, and those who do practise will continue to be overloaded by the demand of people needing help. *“What I see happening in the system is that the harder it is to become a provider, and the harder it is to interface as a provider, so the amount of I guess paperwork and bureaucracy that you have to keep dealing with when you are a provider, it just becomes too hard, so people are not wanting to do it.”*



## CURRENT BARRIERS TO ACCESSING LEGAL AID

In Caroline's experience, it has become increasingly common for clients to give up on pursuing their case due to sheer difficulty and the toll the process can take on one's life. *"They had got to the point where they just weren't going to bother with what was in front of them. Some of those issues are quite serious issues, so that's parents potentially giving up their rights to see their kids."* The challenges that come with pursuing legal aid in the current system are so great, it is forcing people to give up their right to an opportunity to argue their case.

Caroline also discusses several other factors that act as barriers to justice, including inadequate access to housing. *"I believe...there are unwritten policies that if you have any kind of bail condition you are not entitled to housing. You can't get bail unless you have a suitable address."* Without access to adequate health services or adequate housing, the outcomes for clients will continue to be poor, and their vulnerable position through the system will continue to be reinforced. If barriers continue to get higher and bigger for clients, Caroline fears we will only see an increase in people giving up on the system, and in turn, giving up on their chance to gain access to justice.

## THE IMPACTS OF BARRIERS TO ACCESSING LEGAL AID

Caroline's philosophy is that legal issues are inextricably linked to mental and physical health issues. This is particularly evident in the criminal justice system. *"If you have a very difficult legal issue in your life, you are probably stressed, and we all know that the physical body will react to stress in different ways and will lead to some kind of health issue. Or it might be that you have a health issue that has led to the legal issue."* If this correlation continues to be left unaddressed, the struggles that vulnerable people experience whilst moving through the system and beyond will only increase. *"We see a lot of people that have mental health issues, cognitive issues, addiction issues that just aren't getting treated, and those issues lead them to commit crimes... If we could solve the health issue, then you're going to reduce the number of people in the criminal system."*

## WHAT WILL HAPPEN IF THINGS DON'T CHANGE

*"What it looks like is you'll have what we have now but worse and an ageing profession because you won't have people staying to do the work. You will have a shortage of availability of younger lawyers doing legal aid work...you'll have people who will avoid dealing with problems. In my view you're going to have a bigger load on the mental health system and a bigger load on the health system generally, and you're going to have this ongoing blow out of court time and resources because there just isn't the capacity for the court to keep up with the work."* Caroline believes that not addressing barriers to accessing legal aid will create knock on effects that will exacerbate negative social outcomes, particularly around mental health.



# CASE STUDY FOUR: STORMIE



Stormie  
Waapu

AREA OF LAW: FAMILY



CURRENT ROLE: SOLE BARRISTER



LENGTH OF PRACTISE:  
11 – 19 YEARS



LOCATION: AUCKLAND



*“There’s a lot of people that should be getting (legal) help. There are some really tricky issues before the court. And they’re not legally represented because they don’t qualify.”*

### INTRODUCING STORMIE

From an early age, Stormie recalls her whānau being active members of the community. Born and raised in Hawkes Bay, Stormie has many memories of growing up on the Marae, with close connections to her whakapapa.

Since 2006 Stormie has been practising family law in South Auckland. Her initial career path of choice was to become a police officer, however as opportunities opened up whilst attending Victoria University of Wellington, she decided to continue on the pathway to law.

Stormie has experience working in a range of fields, including youth law and criminal law, but now works as a sole barrister and has been practising legal aid since 2008.

### CURRENT BARRIERS TO PRACTISING LEGAL AID

When legal aid cases come her way she really ‘has to think twice’ before taking them on, particularly if the case is complicated or likely to go to a hearing. While a large part of her personal motivation for pursuing law was to help vulnerable members of the community, legal aid cases always involve more work than can be billed which can take a personal and financial toll. Sometimes she’ll need to write off as much as 50% of the bill. *“The work we put in (for legal aid)... we’re never ever going to be properly remunerated.”* As a result, lawyers are becoming less willing to take on legal aid cases, when they have other opportunities that see them adequately remunerated for their work.

### THE IMPACTS OF BARRIERS TO PRACTISING LEGAL AID

She sees less and less people willing to take on legal aid work, and more and more people saying that they can’t find a legal aid lawyer who is able to represent them. Stormie has contacts in other firms that she usually refers legal aid clients to, but even these firms are becoming less able to take on these cases. She used to work in criminal legal aid but made a conscious decision to walk away from it. *“I don’t even know how they are able to do that work. With fixed fees and what lawyers can seek, I got to the point where I couldn’t even do criminal legal aid. There are plenty of others who just said, no, I’m not doing anymore criminal legal aid. These are also Māori lawyers, and there’s a real need for Māori lawyers. People want someone they can relate to, someone they feel comfortable with, someone who has an appreciation of their background and their values. The vulnerable people lose out. The system has to change.”*

## CURRENT BARRIERS TO ACCESSING LEGAL AID

Stormie is approached daily by people who are unable to afford legal aid. Too often she has to turn people away because of what she describes as the threshold being too high. Her rule of thumb is that generally speaking, if people aren't on the benefit, then they are not going to qualify for legal aid. She has concerns for what she describes as the 'working poor'. These are people who may be working but are earning minimum wage. These are the people who don't qualify for legal aid but who are unable to afford legal representation. She will sometimes provide pro bono for these people or write it off, because she knows that in reality, they simply can't afford it.

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## WHAT WILL HAPPEN IF THINGS DON'T CHANGE

Stormie believes the whole system is broken, and is not serving the vulnerable people who need it most. She also feels that the burnout legal aid lawyers experience from consistently going over their allocated hours is going to drive lawyers away from taking legal aid cases, and away from the profession. *"A lot of us, long term, we're thinking is this really what we want to be involved in? Can we sustain this long term? And the answer is no. If the system doesn't change, doesn't adapt, then for me I'll be looking at other options. I'm not going to burn myself out. I have aroha, I want to help people, but it's emotionally draining."*

## THE IMPACTS OF BARRIERS TO ACCESSING LEGAL AID

For Stormie, those people who don't have the income, and don't have the resources, often don't get the access to justice that they are entitled to. She recalls a case of a father who she was representing in a family court dispute. He had a change in income which meant he no longer qualified for legal aid but left him unable to pay a private fee. Stormie had to withdraw from the case, and the father was left to self-represent in the High Court. Stormie feels like this is a case where the legal aid threshold failed someone in need, with dire consequences. *"I'm not sure that that was the right decision that came out of the high court. He had to do it alone. That's a hard one to swallow, what he ended up going through."*

She sees people all the time who self represent due to an ineligibility for legal aid, and often they break under the pressure and just can't cope. *"There was one father I was dealing with as a Lawyer for Child. I needed him to get involved. He just couldn't deal with the stress. He kept saying 'I just can't cope with this, I already have so much to deal with'. Even the kids were saying 'we want to see our dad'. It's well known that there's better outcomes for kids when both parents are involved."*

She worries too that the financial strain of those who don't qualify for legal aid, in combination with other underlying personal or health issues, mean that some people simply give up. She sees this a lot, particularly when working as a lawyer for the child. *"I really feel for them, and what they're going through. As a Lawyer for Child, there are parents I come across that can't afford legal representation, and they are trying to do it themselves, and it's a lot of work on me, trying to just help them through."*

# CASE STUDY FIVE: PARTICIPANT A

*\*Participant A did not wish to be identified*



## Participant

A

AREA OF LAW: CRIMINAL



CURRENT ROLE: EMPLOYEE IN  
LAW FIRM



LENGTH OF PRACTISE:  
3 - 5 YEARS



LOCATION: AUCKLAND



*“Legal aid is key for us as a society...it is critical that people have access to representation.”*

### INTRODUCING PARTICIPANT A

Participant A has been working in criminal legal aid for the last six years. Prior to that he also gained experience in the field of Restorative justice. Participant A’s passion for the law and for people are his motivating factors for working in legal aid. *“It’s people, helping people, being involved with people is really what drives me.”*

One of participant A’s favourite things about his work is the variety it presents, *“It’s never the same. Each day brings something new. That’s a really exciting part of the job, it keeps things fresh.”* From participant A’s perspective, access to legal aid is fundamental.

### CURRENT BARRIERS TO PRACTISING LEGAL AID

Participant A believes there are many lawyers who are driven to practise legal aid regardless of the remuneration, however they do recognize the importance of fair pay, especially because of the importance of legal aid in its purpose to provide access to justice. *“I work for a community, work for people, I like people and that’s where my strength is, that’s where my passion is. So, I think people would get into or someone like myself got into it regardless of the money, but money is a factor to consider...I think it should be fairly paid. It’s an important role, it’s important for society.”*

### THE IMPORTANCE OF LEGAL AID

Participant A firmly believes that legal aid plays a vital role in providing access to justice. *“That’s where I see the importance of legal aid giving access to people who would otherwise not be able to. Particularly for vulnerable and marginalised communities where often there is a mistrust of the system as well.”*

### WHO NEEDS ACCESS TO LEGAL AID

Participant A believes that those who are of lower socio-economic backgrounds make up a portion of those who need access to legal aid, however there are a variety of people who also need access to legal aid. *“The majority of clients and particularly with legal aid are those who aren’t able to afford a lawyer, but it covers all spectrums of people, demographics, that sort of thing.”*

## CURRENT BARRIERS TO ACCESSING LEGAL AID

From Participant A's perspective, there are a number of barriers that clients can encounter when trying to access legal aid. Some of these barriers include not being eligible due to being over the threshold of income, or simply not being able to find someone to represent them. As a result, clients may go down the route of self representation. *"It would be a pretty daunting prospect I'd imagine for anyone trying to formulate their own defence."* Clients are having to represent themselves in court and argue their defence without any formal assistance.

For others who are seeking legal aid, it is the daunting prospect of having to repay their legal fees *"...when finances are basically on a knife's edge, an extra bill here or there could tip the balance and send you spiralling down into really severe poverty."* Those who are seeking legal aid are already in a vulnerable position, and these barriers only add to their vulnerability.

Participant A is also conscious of the serious consequences that can arise at all stages of a court case, and the need for representation. For example, strict bail conditions can inhibit a person from earning a living. This restriction can mean the difference between them 'keeping their head above water' or not.

## THE IMPACTS OF BARRIERS TO ACCESSING LEGAL AID

Participant A has witnessed first-hand what it is like for clients to represent themselves. *"It's like turning up to a job that you have never done before that's fairly technical and trying to give it a shot."*

Self representation can not only lead to poor outcomes for the client but can also impact on the running of the court systems, where judges are given no choice but to take on responsibilities outside of their role. Participant A talks about a case where the other party was representing themselves, and how the events unfolded *"I felt like the judge felt sorry for the person so almost by defacto became a bit of an advocate for them."* The impacts of a lack of access to legal aid are not only felt by the client, but also have repercussions for the wider court systems also.

## CHANGES THAT NEED TO BE MADE TO THE SYSTEM

Participant A wants to see a change in the threshold for eligibility for legal aid in order to increase access for those who need it *"Raise the threshold, I think that's the most important...it increases the size of the net and those who can access it."*

Participant A believes that enacting these changes will not only improve access for the clients who are seeking assistance but will also contribute to positive social change in the long run.

## WHAT WILL HAPPEN IF THINGS DON'T CHANGE

*"I'll see someone and go through a legal aid form with them, and they might signal that they are employed and they might just be over the threshold in terms of being eligible for legal aid, but only just. And the bill that comes that they have to foot themselves... they can't afford it. So you're left between two places where you can't on one hand afford a lawyer, or you earn too much money to get legal aid, and that's a tough boat to be in."* Participant A believes that without changes to the system, clients who are ineligible for legal aid will remain in a vulnerable position, unable to afford legal help and will be left without access to justice.

# CASE STUDY SIX: SANDRA

## Sandra Heney

AREA OF LAW: FAMILY



CURRENT ROLE: PARTNER



LENGTH OF PRACTISE:  
30 YEARS



LOCATION: NELSON



*“It’s a numbers game. Its just that the rates are so far below what the normal charge out rates are... the bottom line is just too high when you’re running a firm and you’ve got three offices ”*

### INTRODUCING SANDRA

Sandra has practised for 30 years. She is originally from Christchurch but has moved to Nelson where she currently practises. She is the New Zealand Law Society Nelson Branch President, and has worked in legal aid, family law and done lawyer for child work. In the past she has taken on as much legal aid work as she can, but due to the low remuneration among other reasons, her firm has decided to no longer take on legal aid cases, and she is finishing up her last few case files. Sandra is concerned that if drastic changes aren’t made to legal aid, the current legal system will become overburdened, and access to justice will only become more difficult.

### CURRENT BARRIERS TO PRACTISING LEGAL AID

Low levels of remuneration and the administrative burden that legal aid puts on lawyers means that there just aren’t enough lawyers available or prepared to take on legal aid work. This puts more pressure on the lawyers who are prepared to do legal aid work. Sandra’s firm is inundated with approaches from people desperate for legal aid representation after unsuccessful attempts at other firms. Sandra has even had to bring in lawyers from Wellington and Christchurch to help out because they just can’t keep up with the demand. *“I have a case where I’m lawyer for child and both parties just couldn’t find a lawyer to represent them, despite both being eligible for legal aid. They just couldn’t find anyone.”* Providing pro bono work isn’t something her firm does as a policy, but she says they all do it, depending on the circumstance. Sometimes the admin involved in charging clients for services just isn’t worth it. *“The admin for the Family Legal Advice Service is so difficult that I would just do it for free because it’s just easier. We all do things like that.”*

### THE IMPACTS OF BARRIERS TO PRACTISING LEGAL AID

For Sandra, she knows when taking on a legal aid case that she will do so much more than she will ever be paid for. Although she does what she can, she can see that this way of working is unsustainable for the legal profession as a whole. *“A couple of times I’ve had people with mental health issues and I’ve either had to ring the mobile community [assessment] team, or just stay on the line with someone. And of course, that’s not chargeable. You end up doing so much more than you are ever paid for.”*

And it’s not just about the remuneration, but the number of hours spent on legal aid cases that are causing lawyers to burn out. *“Our local ones have burnt out or had to have time off, because of their stress levels. It’s not viable for a lot of people, that’s another reason people aren’t wanting to take legal aid cases on.”*



## CURRENT BARRIERS TO ACCESSING LEGAL AID

Sandra often sees people in court who can't afford lawyers but are just out of the range of being eligible for legal aid. As a result, people are often left no choice but to represent themselves. These people often have big issues going on and are left to navigate their way through the complexities of the court system alone, usually resulting in unfavourable outcomes. *"They really struggle in the court system, and they generally don't get a great outcome, just because they don't know how things work."*

## BARRIERS TO FINDING A LEGAL AID LAWYER

Sandra feels bad not being able to take on clients that she knows need help, but she feels like there is little choice but to turn people away. *"We would have so many calls every day, and every firm is the same. People need help and you feel terrible."*

She thinks that it's easy to underestimate the emotional toll that trying again and again to finding a legal aid lawyer and being turned down every time can have, particularly given the personal issues that people in a vulnerable situation are experiencing.

## WHAT DO WE WANT TO SEE CHANGE IN THE SYSTEM?

Sandra would like to see the legal aid system change. She believes more access through lowering income thresholds, an increase in legal aid rates and lessening the administrative burden on lawyers who are willing to take on legal aid cases should be the priority for change.

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## WHAT WILL HAPPEN IF THINGS DON'T CHANGE

Sandra worries that if things don't change, the legal aid system might go down the same path as in the United Kingdom. She fears we'll have less lawyers willing to take on legal aid cases and more people self-representing which will make the court system chaotic and create more work for judges. She also fears that people will feel disconnected and angry at the system if they can't access the right help at the right time. *"If you can't get help and you can't get someone to explain what's going on, no wonder you get people not feeling like the system is helping them. It'll be quite sad to see if we don't get some change."*

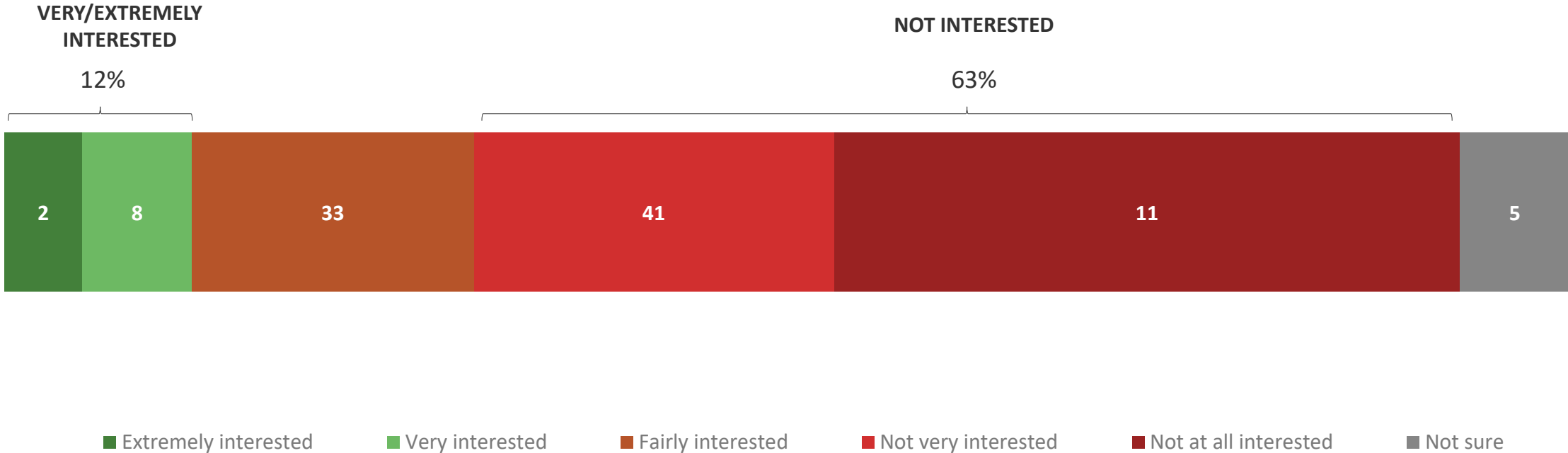
# 7 | ATTRACTING EXISTING LAWYERS INTO LEGAL AID

# Interest in providing legal aid services

One in ten (12%) lawyers who do not currently provide legal aid services are (very or extremely) interested in doing so in future. This equates to 58% of the current legal aid workforce, and does represent an opportunity to attract new talent. However, the majority of lawyers who are not currently providing legal aid have no interest in doing so.

## LEVEL OF INTEREST AMONG NON-LEGAL AID LAWYERS IN PROVIDING LEGAL AID SERVICES

%



## Sub group differences for those interested in providing legal aid services

Of those lawyers not currently providing legal aid services, Pacific lawyers, and those in the earlier stages of their career have the greatest interest in providing legal aid in the future. Experienced lawyers and those who have previously provided legal aid are more likely to have no interest in providing legal aid in the future.

### INTERESTED IN PROVIDING LEGAL AID

The following lawyers are **more** likely than average (12%) to be **very or extremely interested** in providing legal aid:

- Pacific lawyers (37%)
- Have been in the profession 2 years or less (36%)
- Work in immigration law (33%)
- Aged under 30 (27%)
- Have been in the profession 3-5 years (22%)
- Māori lawyers (22%)
- Work in criminal law (22%)
- Work in employment law (21%)
- Employee in law firm (18%).

### NOT INTERESTED IN PROVIDING LEGAL AID

The following lawyers are **more** likely than average (63%) to have **no interest** in providing legal aid:

- Director / partners (84%)
- Have been in the profession 20 years or longer (84%)
- Based in the South Island excl. Canterbury and Otago (83%)
- Aged 50+ years (81%)
- Work in Trusts and Estates (77%)
- Have provided legal aid but not in the last 12 months (76%)
- Work in property law (75%)
- Men (73%)
- Work in family law (71%)
- Barristers (70%)
- Have provided reduced rate or free legal assistance in the last 12 months (70%).

## Barriers for those interested in legal aid

There are a number of barriers that prevent those who are interested in undertaking legal aid work from doing so. A key barrier is having the opportunity, with over half noting their firm does not provide legal aid. There are also concerns around the administrative burden and inadequate remuneration. Barristers have significantly greater concerns about the administrative burden and stress involved with legal aid work, whereas employees in larger law firms are significantly more likely to lack the opportunity because of the situation in their firm.

### BARRIERS FOR LAWYERS WHO ARE INTERESTED IN PROVIDING LEGAL AID



## Barriers for those not interested in legal aid

There is an opportunity to encourage some of the 63% of lawyers who are not currently interested in providing legal aid. The two main reasons they are not interested in providing legal aid are the inadequate remuneration (54%) and the administrative burden of applying for and being a provider (47%). If these barriers can be reduced, more lawyers may be interested in providing legal aid.

### REASONS FOR NO INTEREST IN PROVIDING LEGAL AID



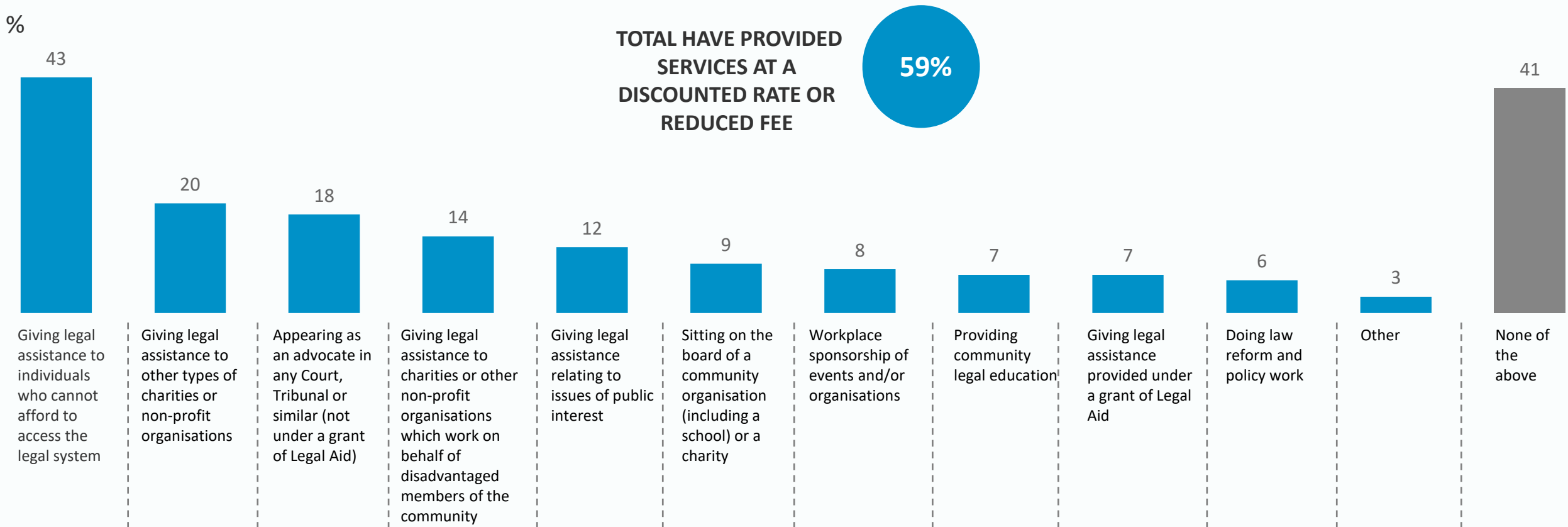
# 8

## WHAT LAWYERS ARE CURRENTLY DOING TO SUPPORT ACCESS TO JUSTICE

## Services provided by lawyers at a discounted rate or reduce fee

Most lawyers are providing services at a discounted rate or reduced fee with six in ten (59%) having provided some kind of service. Four in ten (43%) have provided reduced fee legal services to people who otherwise would not be able to afford it.

### PROVIDING SERVICES AT A DISCOUNTED RATE OR REDUCED FEE





## Sub group differences for providing services at a discounted rate or reduced fee

Established lawyers in the later stages of their career are more likely than average to be providing services at a reduced fee.

### PROVIDES DISCOUNTED OR REDUCED FEE SERVICES

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The following lawyers are **more** likely than average (59%) to have provided services of some kind at a discounted rate or reduce fee:

- Directors / partners (82%)
- Barristers (80%)
- Legal aid lawyers (75%)
- Aged 50+ (73%)
- 20 years or more in the profession (72%)
- Based in South Island (68%)
- Based in Upper North Island - Northland or Bay of Plenty (67%)
- Males (66%).

### DOES NOT PROVIDE DISCOUNTED OR REDUCED FEE SERVICES

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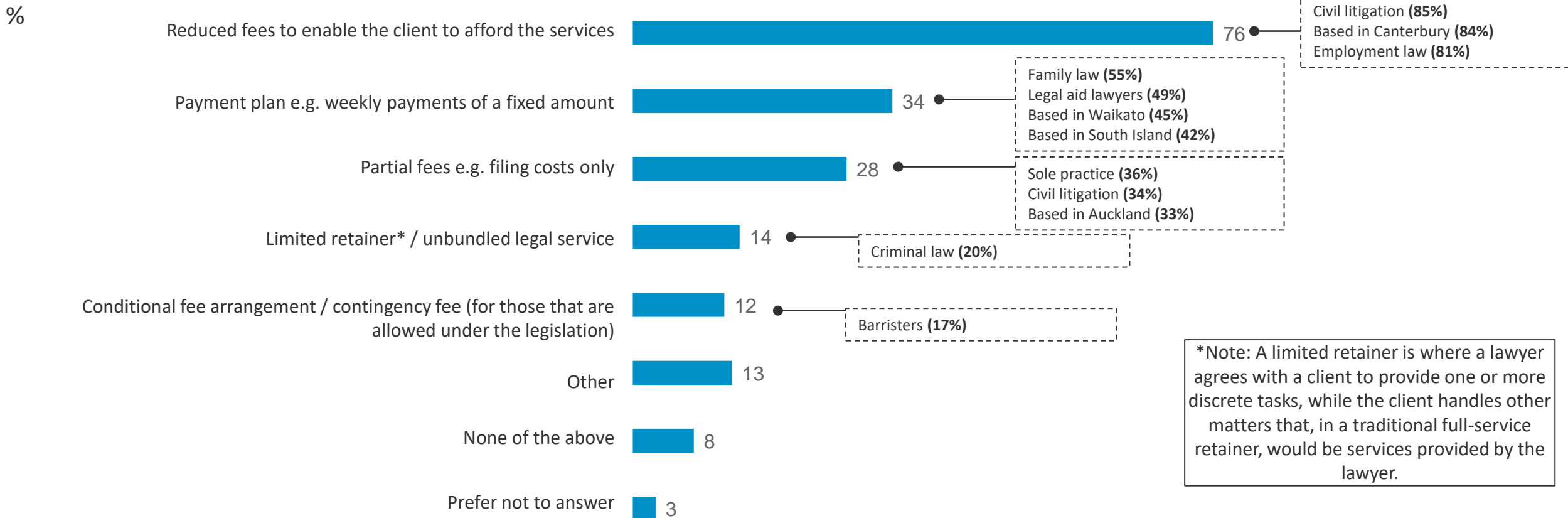
The following lawyers are **more** likely than average (41%) to have not provided any services at a discounted rate or reduce fee:

- Employees in-house (85%)
- Aged under 40 (55%)
- Up to 10 years in the profession (54%)
- Based in Wellington (51%)

## Payment arrangements for low bono services

The most common payment arrangement used for 'low bono services' is simply reduced fees. Three quarters of lawyers use this payment arrangement, and this is higher for civil litigators, Canterbury based lawyers, and employment lawyers. A third of lawyers are using payment plans and 28% use partial fees. Although limited retainers are a less common payment arrangement, criminal lawyers are more likely to use these than average.

### PAYMENT ARRANGEMENTS BEING PROVIDED FOR WORK DONE AT A REDUCED RATE

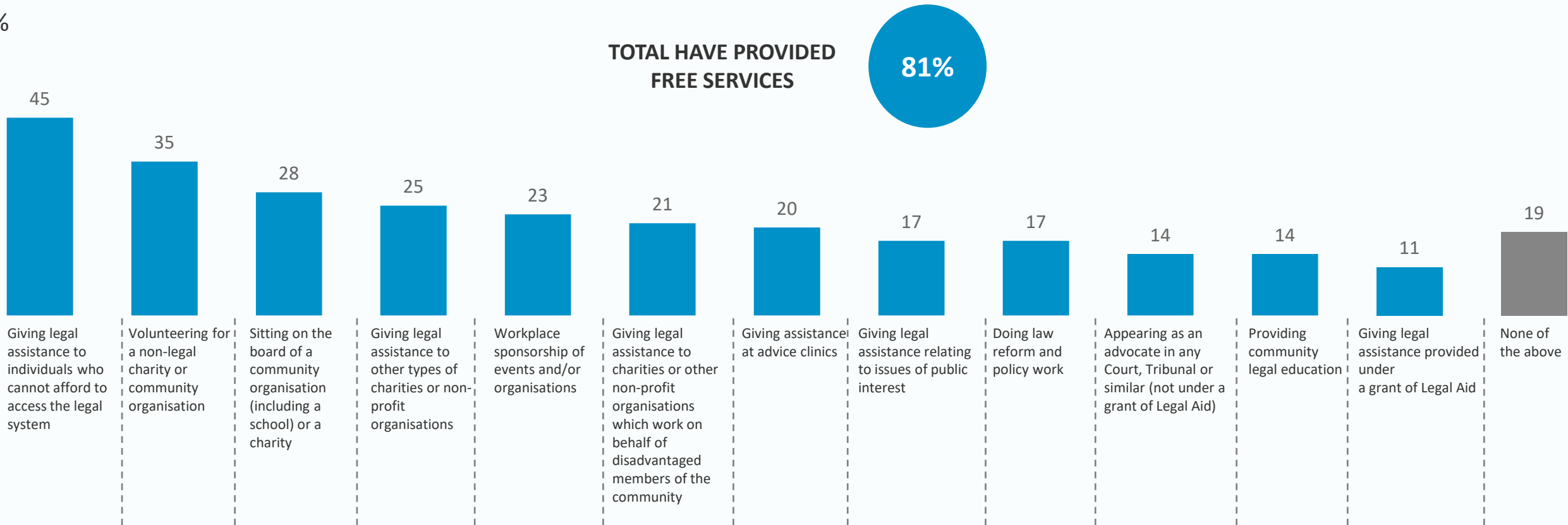


## Services provided by lawyers for free

Most lawyers (81%) have provided services for free in the last 12 months. The most common type of service provided for free is legal assistance for people who cannot afford to access the legal system – nearly half (45%) lawyers have done this in the last 12 months.

### PROVIDING SERVICES FOR FREE

%



## Sub group differences for providing services for free

As with low bono services, longer serving lawyers are most likely to be providing free legal assistance to people who cannot afford legal representation. In addition to undertaking legal aid, two thirds of legal aid lawyers are also providing legal assistance for free. However, this may include hours for legal aid cases which are not remunerated (see page 24).

## PROVIDES FREE LEGAL ASSISTANCE TO THOSE WHO CAN'T AFFORD IT

The following lawyers are **more** likely than average (45%) to have provided free legal assistance to individuals who cannot afford to access the legal system:

- Barristers (70%)
- Legal aid lawyers (67%)
- Directors / partners (64%)
- Aged 50+ (63%)
- 20 years or more in the profession (59%)
- Based in South Island excl. Canterbury and Otago (56%).



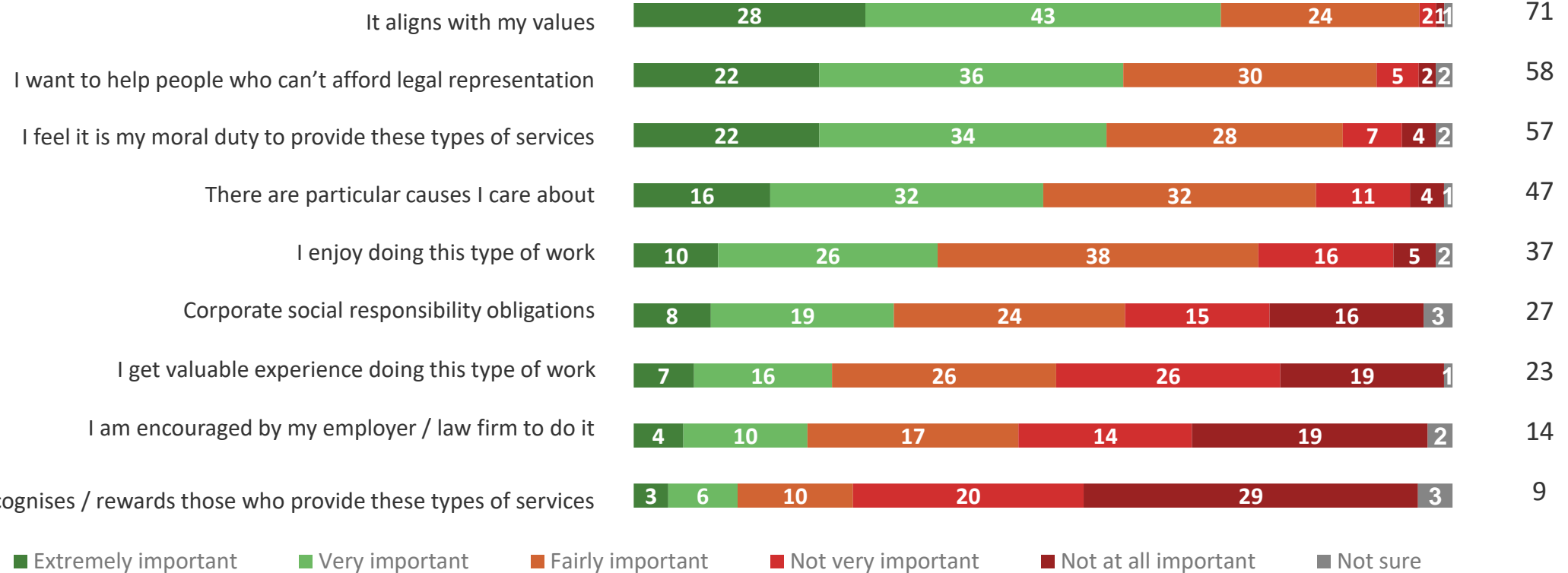
## Reasons for providing free services

Providing free services speaks to lawyers values, and allows them to help people who wouldn't otherwise be able to afford legal representation. **Like legal aid, lawyers feel it is their moral duty to provide free services.**

### REASONS LAWYERS ARE PROVIDING SERVICES FOR FREE

%

Total very /extremely important



## Time spent

In an average week, lawyers are spending 6 hours of their time providing free services. At 11 hours a week Te Tiriti o Waitangi lawyers are providing the most hours for free.

### TIME SPENT PROVIDING FREE SERVICES



**AVERAGE NUMBER OF HOURS  
SPENT ON FREE LEGAL  
SERVICES**

The following groups of lawyers are spending more hours each week providing free services:

- Work in Māori / Te Tiriti o Waitangi law (11 hours)
- Legal aid lawyers (9 hours)
- Work in criminal law (10 hours)
- Work in immigration law (10 hours)
- Pacific lawyers (10 hours)
- Māori lawyers (9 hours)
- Work in administrative / public law (9 hours)
- Work in family law (8 hours)
- Barristers (8 hours)

# Future of free services

The provision of free services in future looks stable. Most lawyers (71%) plan to keep providing their services for free, and one in ten (12%) plan to do more, while 11% plan to do less or none at all.

## THE IMMEDIATE FUTURE OF FREE SERVICES

%

More likely than average to say they plan to do more :  
Aged under 30 (24%)  
Pacific lawyers (23%)



More About the same Less None Not sure

# 9

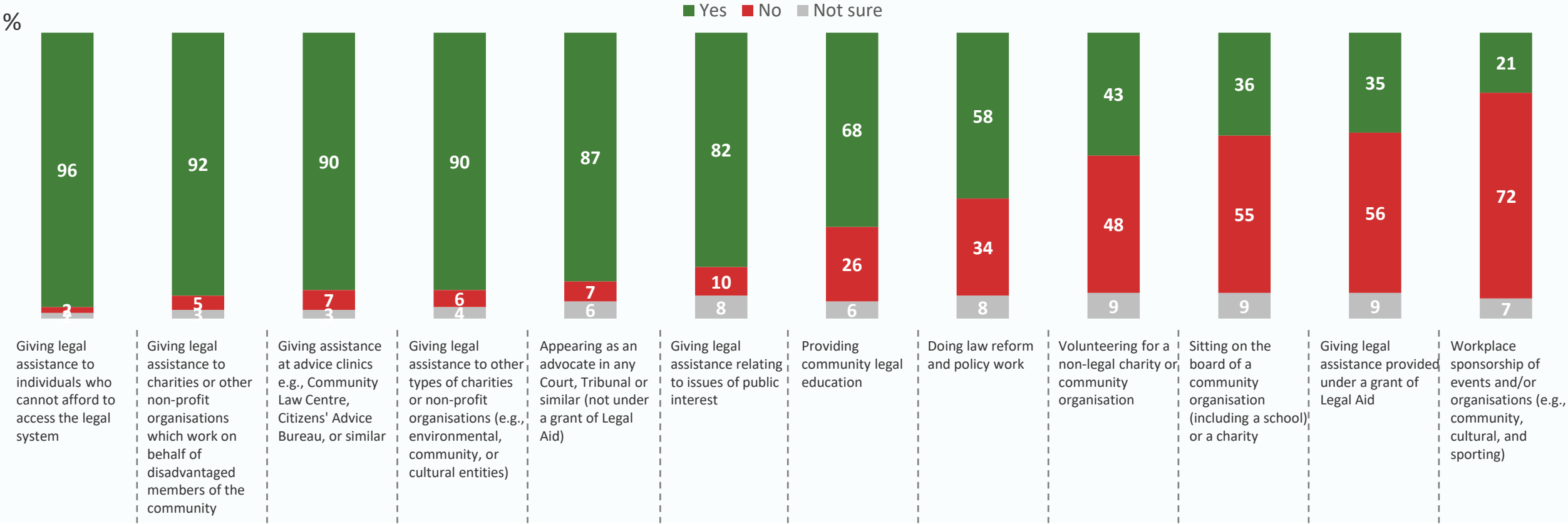
## DEFINING PRO BONO SERVICES



# Pro bono definition

Most lawyers agree giving free legal assistance to individuals, organisations or at advice clinics or appearing as an advocate in court constitutes pro bono services when done for free. However, there is less agreement around other types of services.

## WHAT CONSTITUTES PRO BONO PROVISION WHEN DONE FOR FREE



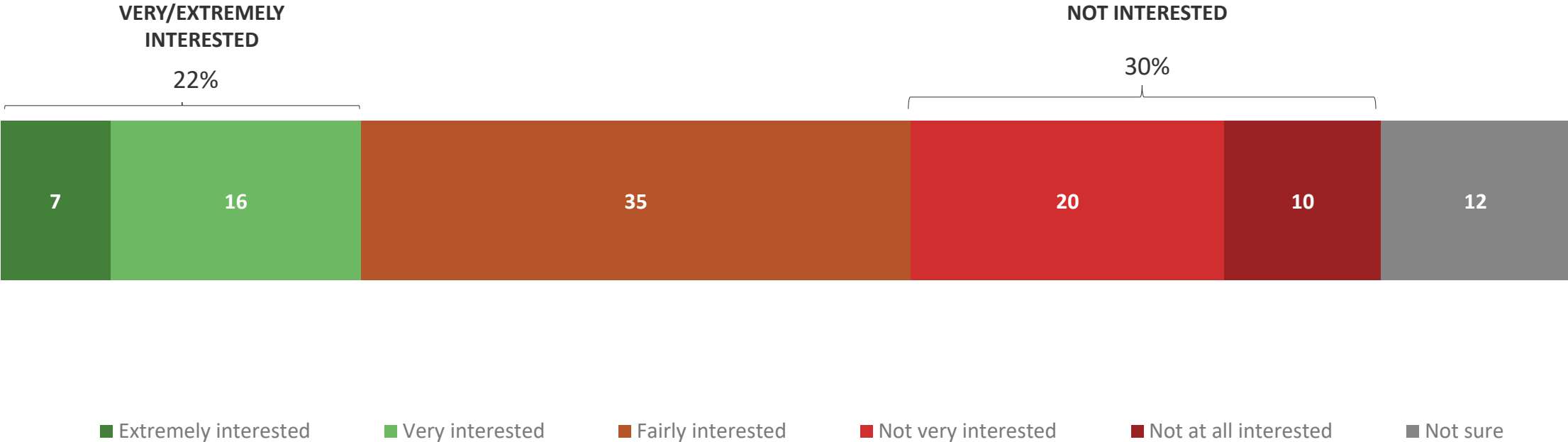
# 10 | SUPPORTING MORE LAWYERS TO PROVIDE FREE LEGAL ASSISTANCE

# Interest in providing free legal assistance to people who can't afford to access the legal system

A fifth of lawyers are very or extremely interested in providing free legal services to people who cannot afford to access the legal system. This equates to 29% of lawyers who are already doing this, representing an opportunity to further increase access to justice for people who cannot afford legal representation.

## LEVEL OF INTEREST IN PROVIDING FREE LEGAL ASSISTANCE TO THOSE WHO CAN'T AFFORD TO ACCESS THE LEGAL SYSTEM

%



## Sub group differences for interest in providing free legal services to people who can't afford to access the legal system

Pacific lawyers and younger lawyers are more likely than average to be interested in providing free legal services to those who can't afford to access the legal system.

### INTERESTED IN PROVIDING FREE LEGAL SERVICES

The following lawyers are **more** likely than average (22%) to be **very or extremely interested** in providing free legal services to people who can't afford to access the legal system:

- Pacific lawyers (49%)
- Administrative / public law (37%)
- Aged under 40 (34%)
- Up to 10 years in the profession (33%)
- Māori lawyers (32%)
- Criminal lawyers (31%)
- Employees in-house (30%)
- Employees in law firms (27%)
- Females (27%).

### NOT INTERESTED IN PROVIDING FREE LEGAL SERVICES

The following lawyers are **more** likely than average (30%) to have **no interest** in providing free legal services to people who can't afford to access the legal system:

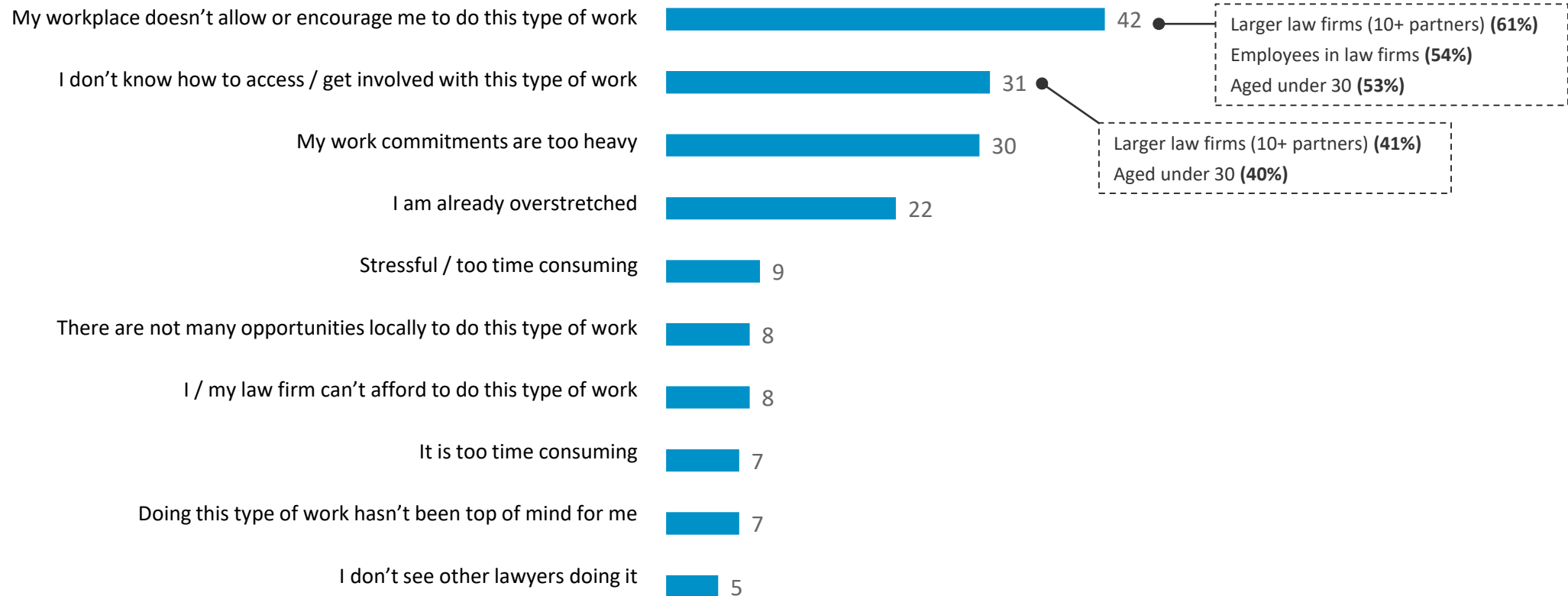
- Aged 60+ (59%)
- Director / partners (58%)
- 20 years or longer in the profession (52%)
- South Island excl. Canterbury and Otago (51%)
- Barristers (46%)
- Aged 40-59 (39%).

## Barriers for those interested in providing free legal services

However, there are several barriers to providing free legal services. The greatest barrier is the immediate environment i.e. working in a law firm that doesn't support this type of work. In particular, **61% of lawyers who work in large law firms and are interested in providing free legal services, feel their workplace does not allow or encourage them to do so.** Additionally, a third (31%) of lawyers don't know how to access or get involved with providing free legal services. Being overstretched or time poor act as an additional barrier for lawyers to take on more commitments.

### BARRIERS FOR LAWYERS WHO ARE INTERESTED IN PROVIDING FREE LEGAL SERVICES

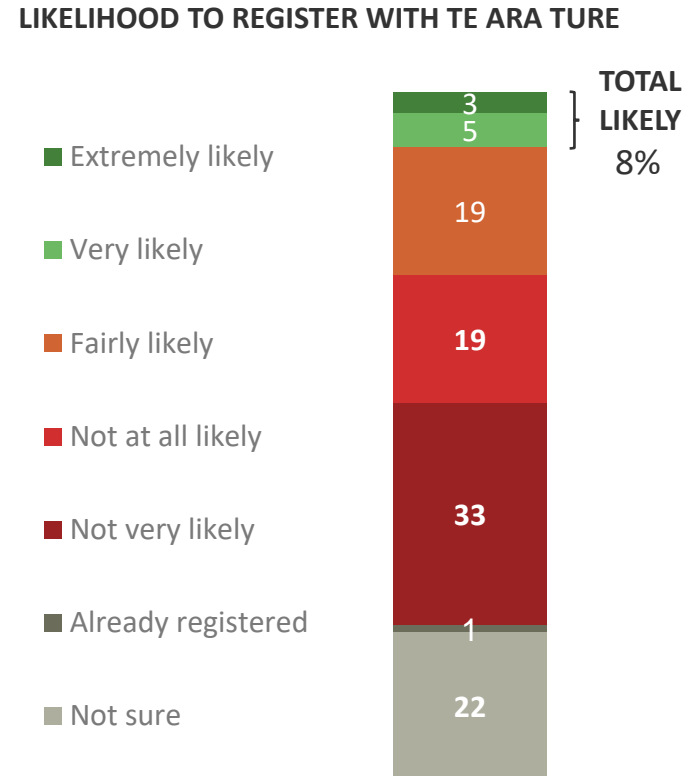
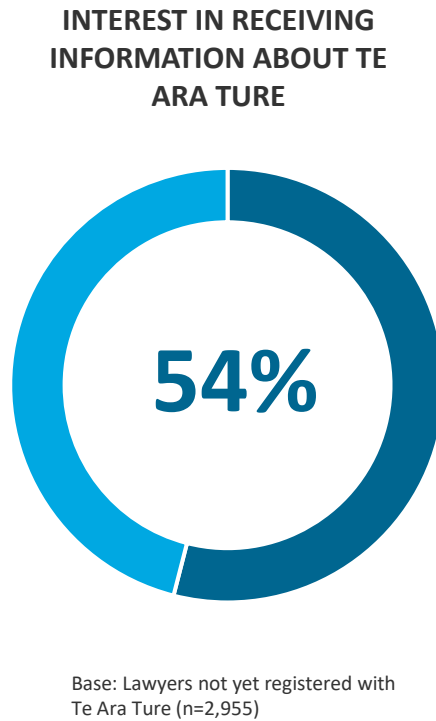
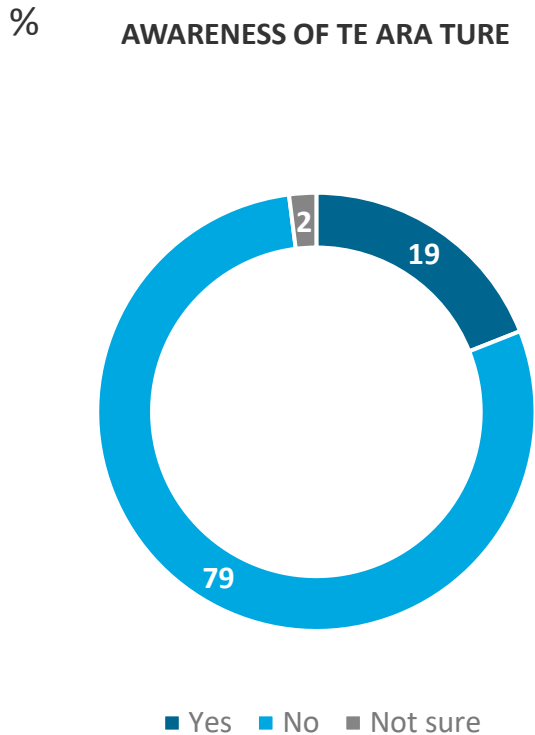
%



## Connecting lawyers with clients in need

There is an opportunity to help lawyers who don't know how to get involved in providing free legal services. Te Ara Ture is a service that connects volunteer lawyers with people who need free legal help. Lawyers register with the service, and Community Law Centres refer clients in need of assistance. One in five lawyers have heard of Te Ara Ture (which launched in 2021) and while a small number indicate a current likelihood to register, over half are interested in hearing more about the service.

### AWARENESS AND LIKELIHOOD TO REGISTER FOR TE ARA TURE



#### SUBGROUP DIFFERENCES

The following sub groups are **more likely** than average (8%) to be extremely or very likely to register with Te Ara Ture:

- Interested in providing free legal assistance (23%)
- Pacific lawyers (22%)
- Māori lawyers (13%)
- Employees in-house (14%)
- Work in Māori / Te Tiriti o Waitangi law (14%).

# 11 | APPENDIX: SAMPLE PROFILE

# Sample Profile (weighted)

GENDER		CURRENT WORKPLACE TYPE		MAIN LEGAL PRACTICE AREAS (UP TO 3)		GEOGRAPHIC LOCATION	
Male	46%	Law firm – over 20 partners / directors	13%	ACC	1%	Auckland	43%
Female	51%	Law firm – 10 to 19 partners / directors	4%	Administrative / Public	10%	Northland	2%
Gender diverse	*	Law firm – 4 to 9 partners / directors	14%	Banking & Finance	4%	Bay of Plenty	4%
Prefer not to say	3%	Law firm – 1 to 3 partners / directors	19%	Civil Litigation	26%	Canterbury - Westland	11%
AGE		Sole practice (barrister and solicitor)	6%	Company/Commercial	22%	Gisborne	1%
Under 25	2%	Sole practice (barrister and solicitor) with employees	4%	Competition	1%	Hawkes Bay	1%
25-29	14%	Barrister sole (not in chambers)	6%	Construction	4%	Manawatu	1%
30-39	22%	Barristers' Chambers	10%	Criminal incl. youth justice	15%	Marlborough	*
40-49	24%	Government department or agency	10%	Employment	13%	Nelson	1%
50-59	18%	In-house private entity	6%	Family	18%	Otago	3%
60-69	13%	Local government	1%	Governance	4%	Southland	1%
70-79	4%	Academic institution	*	Government/local government	9%	Taranaki	1%
80 years or over	*	Not for profit	1%	Health incl. mental health	3%	Waikato	4%
Prefer not to say age	3%	Other type of workplace	2%	Immigration	3%	Wellington	21%
ETHNICITY		Employee in law firm	34%	Insurance	4%	Whanganui	*
New Zealand European	76%	Employee in-house	15%	Intellectual property	3%	Other region	1%
Māori	9%	Partner	15%	Māori/Te Tiriti o Waitangi	4%	LEGAL AID PROVISION	
Samoan	2%	Director	10%	Media	1%	Have undertaken legal aid in the last 12 months	14%
Cook Island Māori	*	In-house lawyer in charge of staff	4%	Property	22%	Have undertaken legal aid but not in the last 12 months	31%
Tongan	1%	Barrister sole	17%	Resource management	4%	Have never undertaken legal aid	55%
Niuean	*	Employed barrister	2%	Tax	1%		
Fijian	1%	None of the above roles	5%	Trusts and estates	20%		
Other Pacific group	1%	LENGTH OF TIME IN LAW PROFESSION		Unsure of practice areas	*		
Any Pacific (nett)	5%	Less than a year	4%				
Chinese	2%	1-2 years	6%				
Indian	2%	3-5 years	14%				
Pakistani	*	6-10 years	13%				
Sri Lankan	1%	11-19 years	22%				
Other Asian group	2%	20 years or longer	40%				
Any Asian (nett)	7%						
Other European group	6%						
Another ethnic group	3%						
Prefer not to say ethnic group	6%						



FOR FURTHER INFORMATION  
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