



Access to Justice

Stocktake of initiatives

Draft research report

Stakeholder Consultation
8 May 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 New Zealand Law Society | Te Kahui Ture o Aotearoa. For that reason I am proud to provide you with a copy of this draft 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.

Our aim is to build a picture of the range of access to justice initiatives across Aotearoa New Zealand and to engage with stakeholders to better understand that broader landscape. Alongside this, we are also building a fuller picture of international initiatives.

This draft report is intended to provide an overview of the breadth of access to justice activity. You may have additional initiatives that you would like to see captured in this stocktake and we welcome your suggestions for inclusion in the final report.

The stocktake report is only the first phase in this project. The next stage of the project will consider where the Law Society is uniquely placed to act (including in partnership with other access to justice stakeholders) to have the greatest impact. We have posed several questions throughout the report. These aim to generate thought and discussion rather than to act as a prescriptive survey.

We welcome your feedback and input. You can provide this in the following ways:

- Send written comments
- Indicate your interest in a meeting with our researcher, Jo Holland, via Zoom
- Indicate your interest in participating in a small group discussion with other access to justice stakeholders and our researcher, Jo Holland and Acting General Manager, Law Reform and Sections, Gabrielle O'Brien, via Zoom.

Please let us know via accesstojustice@lawsociety.org.nz how you would like to engage and we will facilitate this process. We look forward to engaging with you.

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 draft 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.
- 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.
- 1.6 A person-centred approach seeks to reflect the diverse needs of individuals when

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

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. Report Structure

The report is divided into three main sections:

- 2.1 **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.
- 2.2 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.
- 2.3 We have identified five main categories of potential issues which create barriers to access to justice (set out in a diagram at paragraph 2.13):
 - Geography
 - Cultural and social
 - Cost
 - Service Delivery
 - Information
- 2.4 **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.³
- 2.5 **Section C** draws on the findings of Section A and B and considers remaining gaps. This will provide some indicative direction for the next phase of the project which will focus on identifying where the Law Society is uniquely placed to act (including in partnership with other access to justice stakeholders) and can have the greatest impact.

3 The focus is on achieving a full view of New Zealand initiatives and a developing view of international initiatives.

3. Introduction

3.1 The strategic direction of the Law Society as the Kaitiaki, or guardian, of the public, the profession and the law of Aotearoa New Zealand is underpinned by our strategic principles of Partnership, Participation and Protection, and four strategic pillars of Sustainability, Equity, Wellbeing and Responsiveness.⁴ These are set out in the Law Society's Strategy on a Page document which was adopted in August 2019, and are illustrated below. This access to justice project engages the pillars of Equity and Responsiveness in particular. The Equity pillar commits the Law Society to pursuing the goals of:

- leading and advocating for system change and funding to increase equitable access to justice, based on evidence and evaluation;
- presenting the profession as a leading example of responsiveness and adaptation to societal need;
- evaluating and acting on the causes of legal inequity;
- improving outcomes for those least well served by the Aotearoa New Zealand legal system;
- reducing barriers that prevent equitable access to justice through the provision of quality, timely legal services; and
- increasing the availability of legal services that meet the changing demographic and societal needs of Aotearoa New Zealand.

In terms of the Responsiveness pillar, the following goals are relevant to this project:

- supporting a broader range of member communities, reflecting the changing nature of legal need within Aotearoa New Zealand;
- being trusted to be the voice of the legal community and representing the interests of a just society; and
- being the go-to place/first port of call at critical times when people need legal information and direction to services.

These goals will inform our consideration of possible solutions during the next phase of the project.

3.2 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

4 Strategy on a Page, New Zealand Law Society | Te Kāhui Ture o Aotearoa August 2019

Zealand; and

- Implement this programme of work (where relevant in partnership with other access to justice stakeholders) throughout 2020 and 2021.

3.3 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.

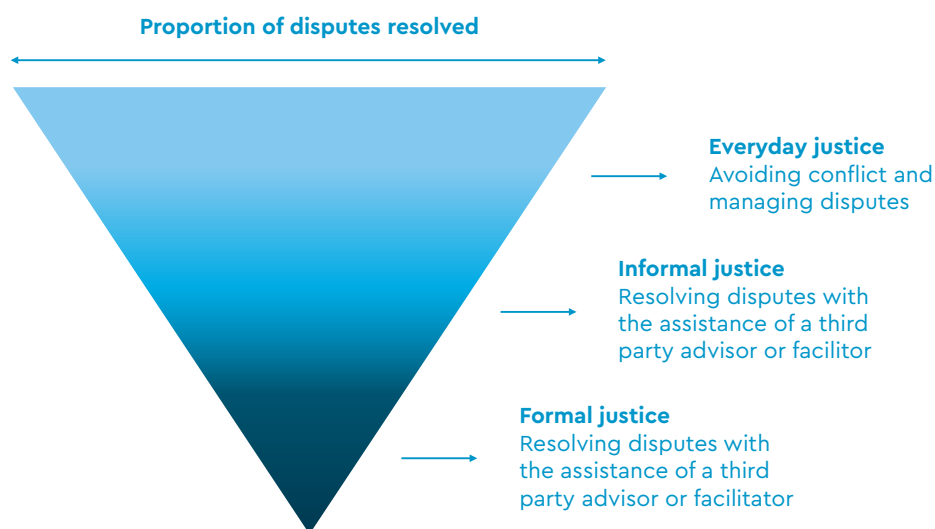
3.4 This draft report details the projects and initiatives we have found in Aotearoa New Zealand and (where relevant) overseas that seek to address barriers to access to justice.

3.5 "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 diagram below, 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)

- 3.6 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.*⁵

- 3.7 We have found that many of the current discussions and initiatives in place in Aotearoa New Zealand focus on improving access to adjudicative 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.
- 3.8 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.
- 3.9 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.⁶ The subsequent creation of 10 new District Court Judge positions, announced in January 2020, should also help to ease capacity issues.⁷
- 3.10 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 number who can afford it⁸ or the fortunate few recipients of pro bono or legal aid-

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

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

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

8 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>

funded services⁹. 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 are included with the other initiatives discussed in Part B of this report.

- 3.11 Improved access to civil justice in the courts would be of public benefit in addition to the assistance to 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.¹⁰
- 3.12 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.
- 3.13 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.¹¹ 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%.
- 3.14 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 justice systems, and what is being done to overcome them.
- 3.15 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

9 Only 1171 civil cases were funded by legal aid in the year ended 30 June 2019. See <https://www.lawsociety.org.nz/practice-resources/the-business-of-law/access-to-justice/update-on-legal-aid2>

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

11 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 barriers. Cost of resolution may be less of a barrier, but the other barriers that exist 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.

- 3.16 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 justice in the civil courts has no relevance.

Defining Access to Justice Barriers

- 3.17 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

- 3.18 These societal and institutional barriers can overlap to create intersectional barriers such as lack of trust in the justice system, or corruption.¹² Although these barriers are often associated with low and middle-income countries (LMICs), many exist in 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.

12 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>

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 constraints may inhibit the pursuit of legal remedies, e.g. power imbalances and fear of repercussions.

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, 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

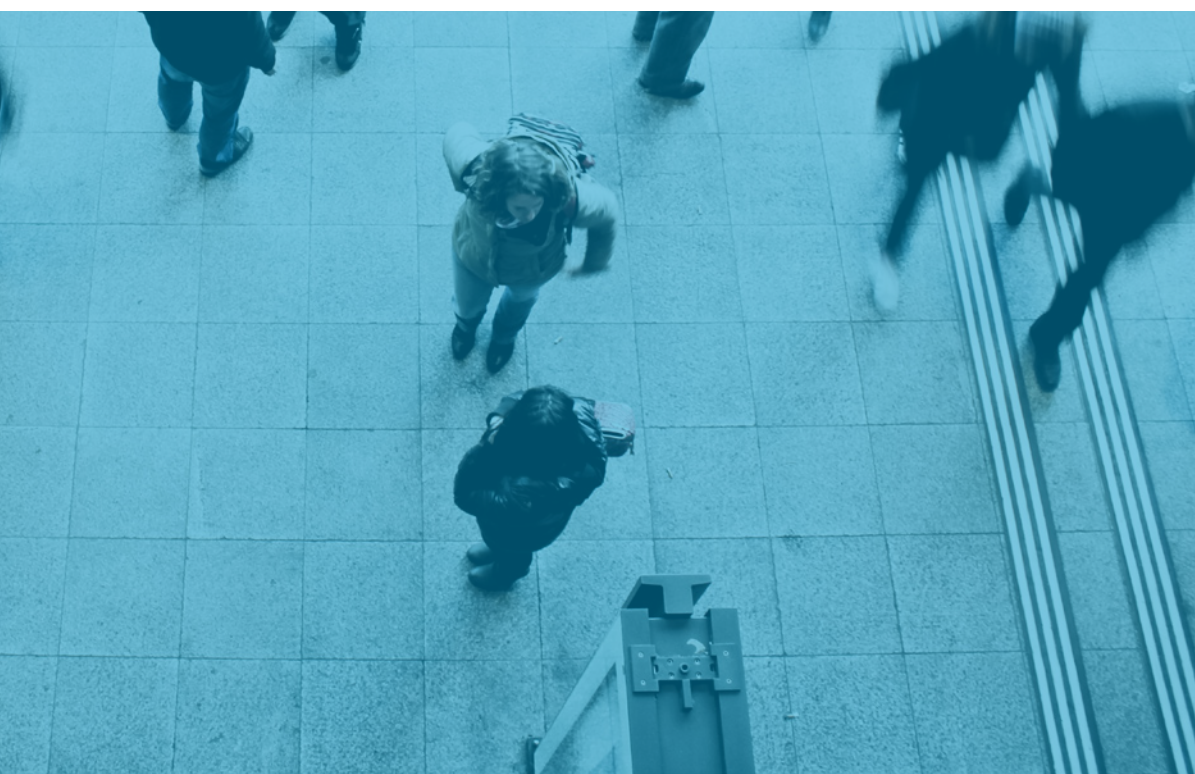
Justice systems and procedures can unfairly prejudice people who are unable to afford/find/choose not to have legal representation.

3.19 In the next section, we have created some hypothetical 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. At this stage of the project, we are not looking to propose solutions, nor identify where the Law Society may wish to involve itself further but are focussed on providing a picture of the overall landscape.



Questions

- Do you have any comments on the barriers identified?
- Are there others you think we should consider?





Section A — Everyday legal problems and case studies



4. Section A: Everyday legal problems and case studies

- 4.1 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).¹³ It is worth noting that the respondents were all from 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 following page.
- 4.2 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.
- 4.3 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 following page:

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

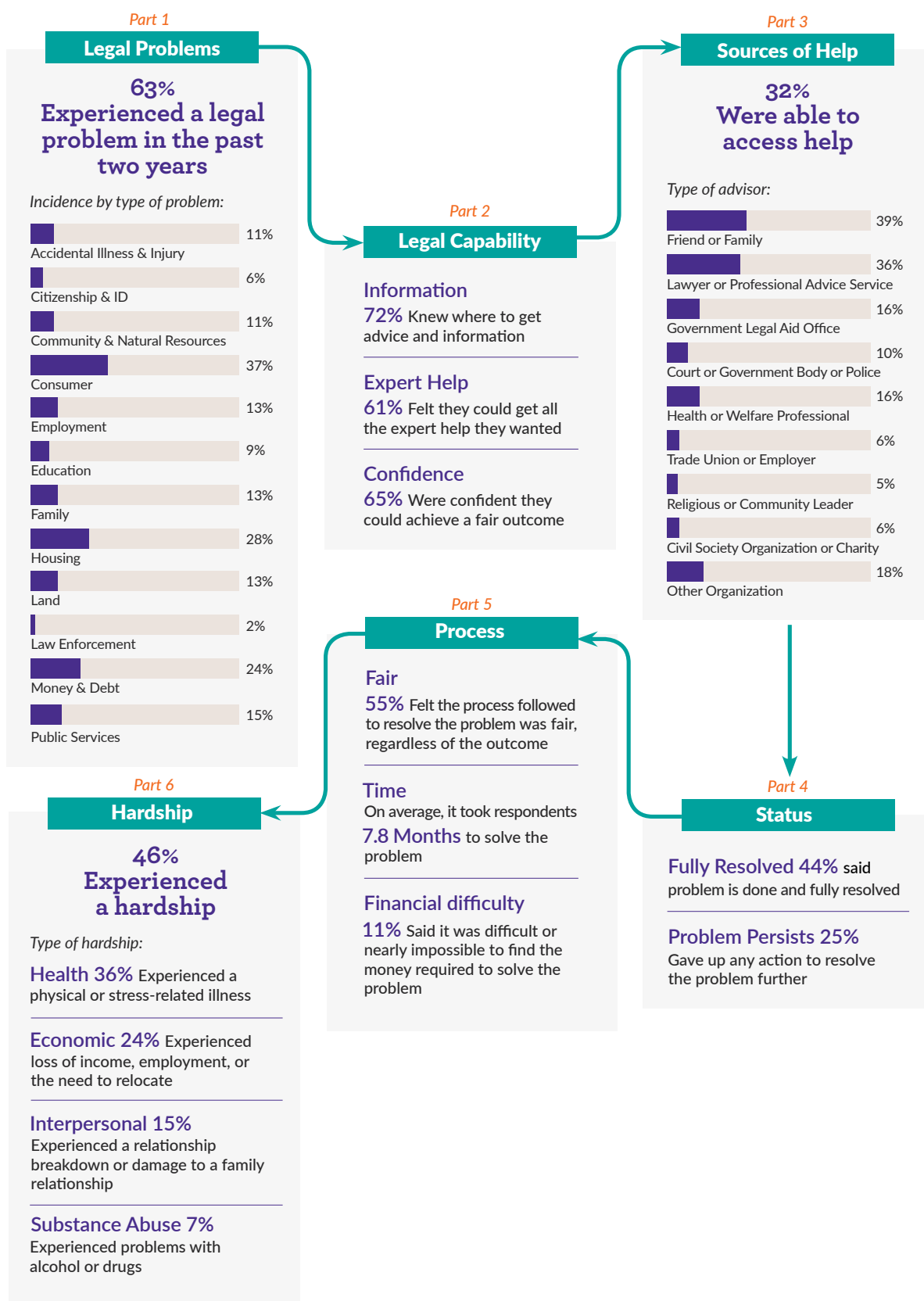
- 4.4 It's not possible to provide an exhaustive account of all the legal problems people could potentially encounter. Instead, using the *Global Insights* report as a starting point, we have selected examples of some common types of legal problems faced by New Zealanders to create our hypothetical case studies. These case studies will be "reality-checked" as part of the stakeholder consultation process.
- 4.5 Although family law problems are encountered with a high degree of frequency, we have not included in this draft report a case study that focuses specifically on a family law matter. The comprehensive family justice reforms of 2014 made significant changes to the way in which the family justice system assists separating couples to reach agreement about care and contact arrangements for their children. The changes included:
- mandatory (with an exemption system in place) parenting through separation (PTS) course and family dispute resolution (FDR) before a party can file an application for a parenting and/or guardianship order in the Family Court (although PTS is free, FDR costs around \$900 for those eligible for state funding and even more for those who are not eligible);

13 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).



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.

- the removal of lawyers to "act" for parties in all parenting and guardianship disputes except in cases of risk or urgency;
- the replacement of legal aid (for those eligible) with the Family Legal Advice Service (FLAS), which provides initial advice, information on navigating the family justice system and assistance for parties to complete the ministry's approved Care of Children Act (COCA) application form. These changes meant that parties had to prepare their own application/affidavit and had to represent themselves in court if they filed an on-notice application for a parenting or guardianship order;
- the introduction of cost contribution orders (CCOs) whereby parties are responsible for a third each of any costs of lawyer for child, lawyer to assist or a psychologist appointed by the court to prepare a report under section 133 of the Care of Children Act 2004.

4.6 Those reforms have been reviewed by an independent panel which reported the findings of its review in June 2019 and made 70 recommendations for change. Rosslyn Noonan, who led the review, said the current Family Court was "no longer fit for purpose". The Government accepted the report, with the Minister for Justice saying:

*"These changes were meant to make things easier for families at a difficult time, but they have had the opposite effect. Cases are taking longer to resolve, and many family members involved in the court processes say they are not well supported."*¹⁴

4.7 The Minister for Justice has indicated that changes to the law to address the report's recommendations will be made in 2020. In light of the Government's acceptance of the independent panel's comprehensive report, and the forthcoming reforms to address the failures of the current system, with which the Law Society's Family Law Section will be heavily involved, we considered that a case study based on that system would not be helpful.

4.8 It is, however, important to note that even if the 2014 reforms are reversed, they will leave a legacy for access to justice in the future because of the number of experienced family lawyers who have ceased working in the field since the reforms were introduced.¹⁵

4.9 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.

4.10 There is growing acknowledgment that institutional racism is a significant problem in 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

¹⁴ See the Government's release here: <https://www.beehive.govt.nz/release/independent-panel%E2%80%99s-report-family-justice-system-welcomed>

¹⁵ This is explained here: <https://www.justice.govt.nz/assets/Documents/Publications/Without-notice-applications-in-the-Family-Court-Final-Report.pdf>, at paragraph 14.

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.

- 4.11 The Government's Chief Victims Advisor released her report, *Te Tangi o te Manawanui*, on 12 December 2019.¹⁶ This highlighted the ways in which the criminal justice system is failing victims and made a number of recommendations to remedy these. We discuss these further in section 4 of this report.
- 4.12 Another report, *Ināia Tonu Nei – Now is the Time*¹⁷, 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.¹⁸ 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.

- 4.13 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 2019.¹⁹ 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.

- 4.14 *Turuki! Turuki!*, the second report of Te Uepū Hāpai i te Ora was published on 11

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

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

18 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".

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

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. 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."*²⁰

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

- 4.15 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.
- 4.16 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).²¹
- 4.17 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.
- 4.18 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.
- 4.19 It is difficult to identify the proportion of people in Aotearoa New Zealand who cannot 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).
- 4.20 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 New Zealand, but in that report the poverty line is defined as

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

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

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).²² 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).

- 4.21 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.
- 4.22 Our next report is likely to make a recommendation that closer expert examination of these issues be undertaken, to provide an indication of the percentage of people living in or close to poverty who are excluded from the legal aid regime. Further work could also involve establishing the percentage of people who are of less modest means but are still unable to viably afford legal representation (and who are excluded from legal aid eligibility).

22 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 had a big argument in the car about all of this last week. Although she was upset and angry, she didn't take her eyes off the road while arguing with her son. As she 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. Her eldest child's school also rang Talia this morning, wanting to discuss her son's truancy.

Talia doesn't earn much, so assumed she would be eligible for legal aid. 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
- Wagbot (truancy advice service from Youthlaw)
- 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 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 mini-



mum 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.



Potential sources of information and advice

- Community Law Centre (CLC)
- Tenant Advocate organisations
- Tenancy Services
- Citizens Advice Bureau (CAB)
- Employment New Zealand
- Trade union
- Employment lawyers and advocates (possibly no win/no fee)
- Rentbot (online tenancy advice service)
- Social Justice project (LexisNexis)
- Human Rights Commission (racial discrimination)

Potential barriers



Cultural & Social

Disengagement – negative impact on friend may affect her wish to pursue justice.

Reluctance to act – fear of repercussions from prejudiced manager.



Information

Misinformation – She has been deterred from pursuing a case against her employer due to her friend Lucy's experience. Although Lucy's account may be accurate, Lian could be missing something by not seeking out other sources of information.

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".





Questions

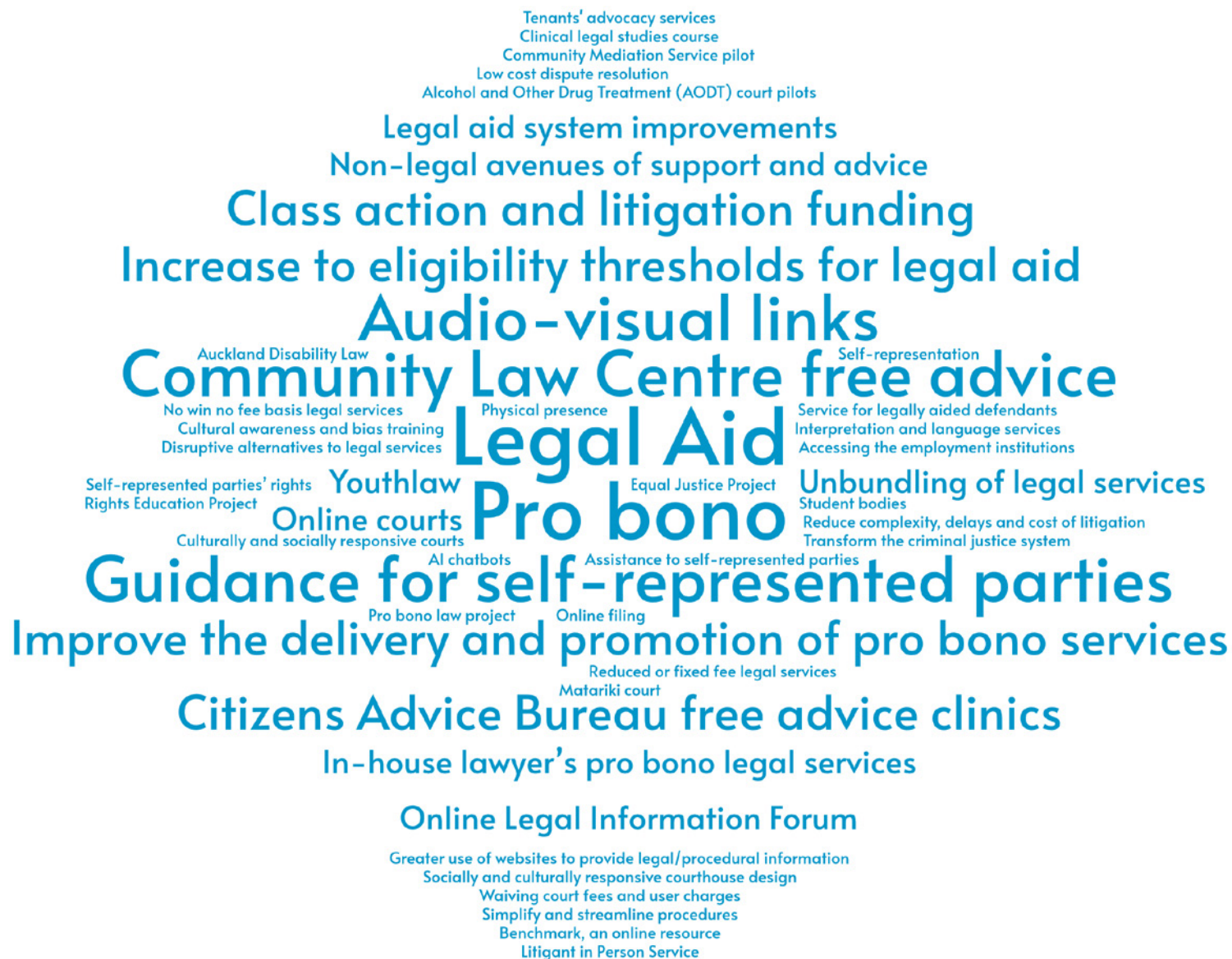
- In your experience, do these case studies reflect the "real world"?
- What, if anything, is missing that may be helpful to include for the purposes of identifying access to justice issues?
- There has been a deliberate decision not to include a case study based on family law though the situations described will, on occasion be relevant to those dealing with family issues. Would a case study focussed on a family dispute add value? Are the access to justice issues that impact on those involved in family disputes adequately identified?





Section B — Initiatives underway to address access to justice barriers





This word cloud was generated from the tables in this draft 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 draft report that relate to the access to justice initiatives identified in New Zealand (excluding the table of awareness-raising initiatives).

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.	<p>Technology failure risks.</p> <p>Cost of installing and maintaining infrastructure.</p> <p>Burden on court staff (bookings etc).</p> <p>Missing nonverbal communication cues and other disadvantages arising from lack of in-person contact, including missed information and alienation, especially for some cultural groups.</p> <p>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.²³ AVL use can result in disengagement with system, especially for defendants.</p>	 
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.	<p>Operating from physical spaces, especially in more remote areas can be expensive and inefficient.</p> <p>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.</p> <p>For lawyers travelling to meet clients/hold outreach clinics, travel can be costly in terms of time and money.</p>	  

²³ 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 ²⁴	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.	 







²⁴ This article explains more: <https://www.lawsociety.org.nz/practice-resources/the-business-of-law/access-to-justice/aotearoas-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.	
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	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).	

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed 
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.” ²⁵	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	
<i>Improving diversity among the judiciary (of the 21 recent new District Court judicial appointments 10 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>	Ministry of Justice	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-korihi/407875/maori-dominate-in-new-appointment-of-district-court-judges	N/A	

²⁵ 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
Symposiums considering barriers to people accessing the employment institutions under the Employment Relations Act (i.e. mediation services, the ERA and the Employment Court).		AUT, Employment Relations Authority, Employment Court.	Employees, employers, professionals working in the system.	Ensuring that discussions translate to actions facilitating cultural change that encourages people to access the systems available to protect and uphold their rights.	N/A



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
The Legal Aid system <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> (Source: Ministry of Justice website)	Government (Legal Aid Services; Legal Aid Commissioner); lawyers approved as legal aid providers	It is intended to help people who cannot afford a lawyer (criminal and civil jurisdictions)	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".	



Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
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>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>	 
Tenants' advocacy services (available in Auckland, Christchurch, Palmerston North, Tauranga and Wellington (the latter as part of the CAB service))	Free tenancy independent advice and advocacy services. Government and philanthropic organisation funded		N/A	N/A
Pro bono or reduced fee services				
Equal Justice Project (which includes pro bono work in the form of law student volunteers providing legal research and analytical assistance to practitioners).	University of Auckland	Lawyers (and clients, indirectly)	N/A	N/A
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	

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
Investigating ways to improve the delivery and promotion of pro bono services, possibly including a pilot pro bono clearing house, subject to securing funding.	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.	Securing both funding and lawyers available for pro bono work	
Providing reduced or fixed fee legal services.	Some lawyers	Members of the public unable to afford legal services.	Ad hoc Not widely promoted/known about Not universally available	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.	Although they pay nothing if they lose, the fees payable by the client if they win can be quite high Conditional fee arrangements are not permitted for some areas of work (e.g. criminal, immigration, family) Lawyers may be unwilling to take on regulatory risks of entering into conditional fee agreements	N/A
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.	

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
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).	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
Investigating ways to enable in-house lawyers to provide pro bono legal services.	The Law Society (ILANZ)	Community groups and organisations (and possibly low-income individuals) needing free legal services.	Deciding where to "draw the line" re eligibility and scope. Regulatory issues to overcome.	N/A
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).	Rules Committee, the Law Society and Otago Legal Issues Centre	Clients in civil matters with some knowledge and skills who cannot afford to pay a lawyer for whole case.	Requires some knowledge and confidence on the part of the client to conduct a large proportion of a matter unassisted. Reputational, regulatory and negligence risks for lawyers assisting if they don't have full understanding of a matter when advising/representing.	
Self-help efforts				
Avoiding legal fees/overcoming lack of available lawyers by self-representation.	Members of the public	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.	The self-represented lay party is likely to be disadvantaged by their lack of legal knowledge and expertise in more complex proceedings. Can create delays and increased cost for both parties	
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	

Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed
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.</p> <p>Often more informal forums (e.g. Disputes Tribunal) not constrained by legal focus, resulting in a lack of precedent.</p>	

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. This includes 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
Advocating for legal aid system improvements (including submissions and stakeholder working groups).	The Law Society, New Zealand Bar Association, ADLSi	Legally-aided clients and legal aid providers	N/A	
Making legal aid system improvements – implementation of some initiatives (e.g. form simplification and relaxation of provider approval process for QCs) and wider consultation on proposed changes to the approval process (consultation from Oct-Nov 2019: feedback due in December).	Ministry of Justice (Legal Aid Services)	Legally-aided clients and legal aid providers	N/A	
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 1 May 2020. See https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/access-to-civil-justice-consultation/#consultation-paper	Rules Committee	Self-represented parties and parties without unlimited resources in civil court proceedings, courts, judges.	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. Any major changes are likely to take a long time.	








Initiative 	Who is involved?	Who does/will it help?	Potential challenges	Additional A2J barrier(s) addressed 
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)	Ministry of Justice (PDS operates independently within Ministry)	Legally-aided defendants	Only available for legally-aided defendants (except for the duty solicitor scheme which is available to anyone without a lawyer, regardless of income).	
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): ²⁶	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	N/A	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




²⁶ 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 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 pamphlets), private businesses (e.g. LexisNexis Social Justice Project) and law firms. 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 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
<p>Rights Education Project (T) https://communitylaw.org.nz/resources/rights-education/about/ (education modules for young people, covering a range of topics).</p> <p>YouthLaw leaflets (primarily about Education Law issues) and free telephone advice service.</p>	Community Law Centre	Young people under 25	N/A	N/A
<p>Online Legal Information Forum (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.</p>	Led by University of Otago Legal Issues Centre	Self-represented litigants and others needing to access legal information; providers of online legal information	N/A	 

Awareness-raising initiatives and research

NB: Much of the current Access to Justice research is funded by 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 in hiatus.

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> ²⁷ (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). 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
The Law Society's Access to Justice webpage	Dedicated webpage created in November 2018, regularly updated with news and articles highlighting access to justice issues (but could be placed more prominently on the Law Society website (currently found in Practice Resources/The Business of Law)

²⁷ 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
Mainstream media exposure of access to justice issues	Particularly in respect of access to civil adjudicative justice ²⁸
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)	<p>The report highlights the work done by Community Law Centres and its immense value socially and economically. The report states:</p> <p><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>²⁹</p>

28 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/>

29 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>)



Questions

- Are the initiatives you are involved with accurately described?
- Is there anything that we need to add to capture the scope and intent of the initiative?
- Are there any gaps? For example, what other initiatives are you aware of that need to be included in this stocktake?
- What other potential challenges, if any, do you think may be faced in realising the full value of any particular initiative?



International and overseas initiatives

As noted earlier in the report, 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 the needs of diverse groups.³⁰

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/>

30 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/>

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 on the part of those involved in the court process – judges and magistrates, and lawyers and court staff as well."

Canada

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 Education Alberta

The CPLEA "is a public legal education organisation 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/>

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>

USA

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



5. Section C – The remaining gaps

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 People in areas without fast and reliable broadband are less able to access this technology. Some of 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.
- 5.5 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.³¹
- 5.6 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.
- 5.7 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 geographic and by subject-matter.

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

- 5.8 A reversal of the failed 2014 family justice reforms is looking likely, but the effects of those reforms are likely to have long-lasting structural consequences for the future of the family law profession.
- 5.9 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.*³²
- 5.10 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".
- 5.11 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.
- 5.12 Pro bono services are not currently well-coordinated or promoted and are potentially difficult to access. There is work happening to address this (including a Community Law Centre led initiative supported by the Law Society and others to establish a pro bono clearing house pilot, subject to funding, which is yet to be secured). 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 need to be involved too. 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.

32 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>

- 5.13 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. Many people are not eligible for legal aid because 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.
- 5.14 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.
- 5.15 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.³³
- 5.16 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".
- 5.17 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.
- 5.18 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 in 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".³⁴

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

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

- 5.19 At the next stage of our Access to Justice project, the Law Society will consider the best ways in which it can 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).
- 5.20 There are many initiatives underway, but 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.



Questions

- Do you agree with summation of the remaining gaps?
- If not, what else do you think should be considered?
- What comment, if any, do you have on the gaps identified?
- What other potential issues, if any, do you think may impact on realising the full value of any particular initiative?



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