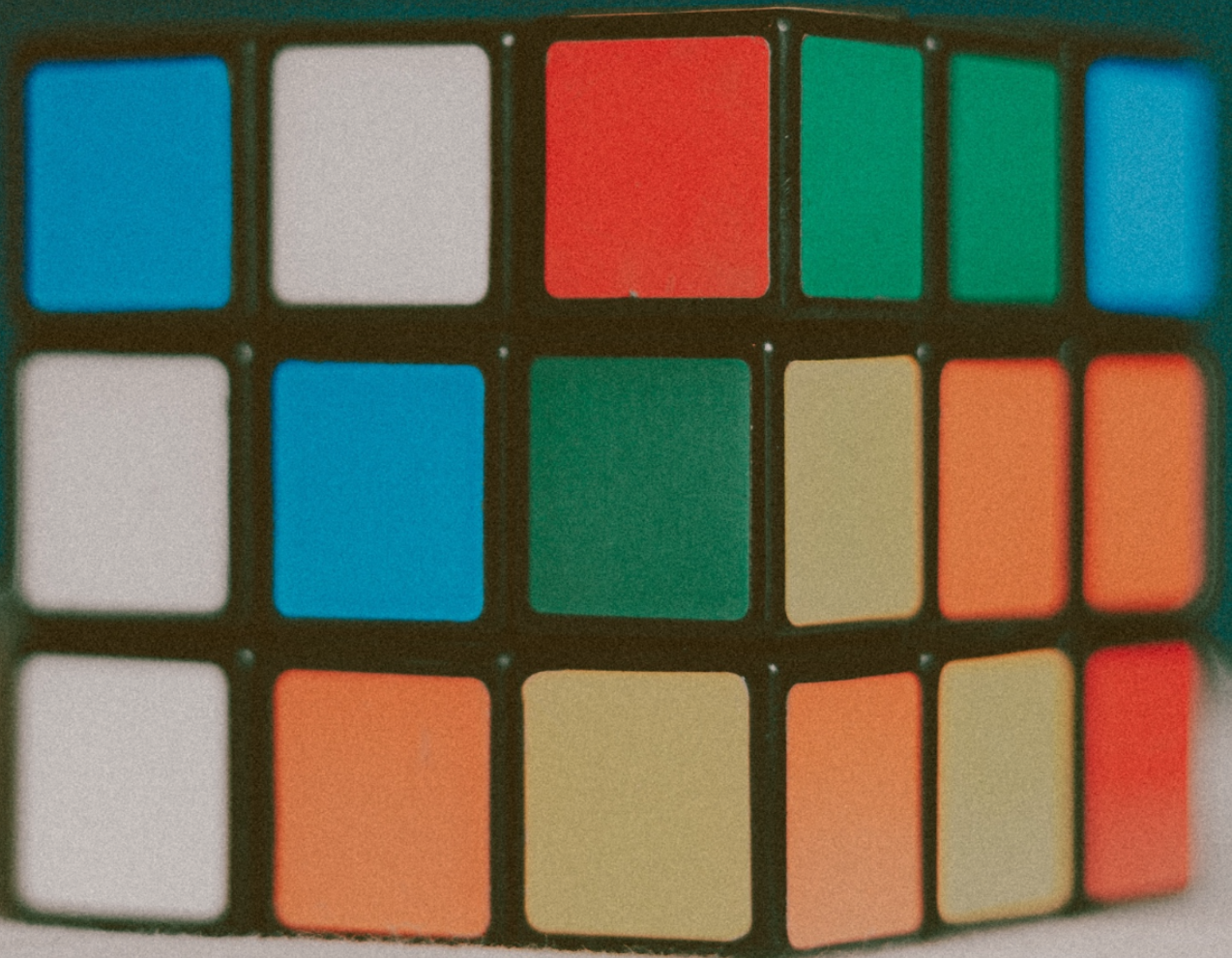


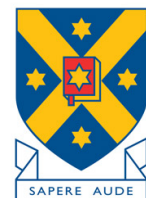
# Expressed legal need in Aotearoa: From problems to solutions

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**University of Otago Civil Justice Centre**

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The Civil Justice Centre is a socio-legal centre focussed on carrying out research to enhance and promote access to civil justice in Aotearoa.

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## Acknowledgements

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The idea for this report originates from a workshop held in March 2020, where the Chief Justice and Secretary of Justice brought together stakeholders who work to improve access to justice in Aotearoa New Zealand. One of the key findings from that workshop was that we need a better understanding of legal need to be able to target resources. The Access to Justice Advisory Group was formed after the workshop, with one of its purposes being to progress work on legal need. The Advisory Group then began discussions with the Citizens Advice Bureau, who participated in the workshop, to see if its data could be used to give some insight into expressed legal need in Aotearoa. This project is the result of that idea.

We thank the Citizens Advice Bureau, and particularly Sacha Green and Dr Andrew Hubbard, who have worked with us in bringing this project together. The Citizens Advice Bureau play a vital role in access to justice in Aotearoa and the time dedicated to this project is yet another manifestation of its ongoing commitment to helping everyone with the problems they face. We thank the Advisory Group for conceiving of the work and the Michael and Suzanne Borrin Foundation who made this project possible through their generous funding.

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## Abbreviations

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ACC	Accident Compensation Corporation
CAB	Citizens Advice Bureau
CGA	Consumer Guarantees Act 1993
CLCA	Community Law Centres o Aotearoa
CLC	Community Law Centre
CRT	Civil Resolution Tribunal
EPA	Enduring power of attorney
LCA	Lawyers and Conveyancers Act 2006
MBIE	Ministry of Business, Innovation and Employment
RTA	Residential Tenancies Act 1986



## Executive summary

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### The scope of this report

What are the most common legal problems people in Aotearoa New Zealand seek help for? What kind of help do they need to move towards solving these problems? Using data provided by the Citizens Advice Bureau from 2021, this project was designed to answer these two key questions. It is aimed at decisionmakers who fund or design interventions, suggesting ideas about where legal help resources could most effectively be concentrated to assist the largest number of people who express legal need. It also considers how to design a strong advice sector that can respond to everyday legal needs.

### Why do this research?

Everyday legal problems “go to the heart of people’s social, economic, and physical well-being” (World Justice Project, 2019, p. 4). By tending to these problems, we can mitigate the negative impacts of unresolved legal problems on people’s lives, uphold the rule of law, and foster economic and social development. With strong leadership and sector-wide collaboration, there is great potential for making significant strides in improving access to justice in Aotearoa.

### The most commonly occurring problems

The top five legal problem categories—consumer; employment; rented housing; wills, trusts, estate, and care arrangements; and neighbour problems—accounted for 59.2% (n = 3,326) of the problems in the total sample. The following summarises our recommendations by legal problem type.

#### **Consumer (17.4%, n = 980)**

Consumer problems touched on a wide range of issues and areas of law. A commonly occurring issue was problems after purchasing a used motor vehicle. There is some high-quality online information and assistance available for consumer problems. Recommendations:

- Improved online legal advice particularly through the development of interactive tools to help people action solutions;
- One-to-one advice and assistance to support consumers in understanding and enforcing their rights;
- Support for making claims when they cannot be resolved by negotiation.



### **Employment (12.7%, n = 713)**

A characteristic of the employment enquiries was a high need for individualised advice and support. We estimated that at least 60% of the enquiries needed individualised advice and strategy to advance the problem towards resolution. Recommendations:

- Resourcing one-to-one assistance as a high priority for this type of enquiry.
- Improving navigation of online resources and interactive tools to ensure people can use them effectively.
- Information and support for pay calculations as people frequently needed assistance understanding the correct pay calculation for their particular situation.

### **Rented housing (12.6%, n = 705)**

One of the characteristics of this group of enquiries was the vulnerability of tenants vis-à-vis the landlord or, in the case of house sharing, the head tenant or owner. This is exacerbated by housing scarcity which leaves tenants vulnerable to predatory behaviour and makes it hard for them to enforce their rights. Recommendations:

- Written agreements for all house sharing arrangements and regulatory change to increase protections for house sharing. There is a strong regulatory framework for leasing out a house but there is very little protection for people in other house sharing arrangements (e.g., sharing a flat, renting out a single room). This was a frequent form of enquiry and needs attention.
- Support for tenants to produce and serve notices to repair on landlords.
- Strengthened capacity for the regulator to enforce tenant rights given that tenants are in a weak position to do this.

### **Wills, trusts, estates, and care arrangements (8.3%, n = 466)**

Nearly half of these problems concerned wills and enduring powers of attorney, and over a third concerned a deceased estate. Many of the enquirers about wills and EPAs were concerned about the cost of having these documents completed, as they did not have the money to pay for a lawyer. Recommendations:

- Publicly funded wills and enduring powers of attorney to increase the number of people with these important legal documents and to avoid the problems that arise when they are not in place. This service would need proper oversight to ensure high quality product was being delivered to the public.
- Improved information about intestacy (what to do when someone dies without a will).
- Free or affordable one-to-one advice for estates disputes where there are legally complex matters (often in estates that are not worth enough money to support private legal fees).



## Neighbours (8.2%, n = 462)

These were commonly problems about fences, trees, building, and noise. There are various processes available at law, but they can be difficult to understand and carry out. Recommendations:

- Development of an online neighbourhood problem portal (similar to what is already available for consumers) to support people finding information to resolve conflict with neighbours.
- Better publicly available method to locate the owner of a tenanted or vacant property to resolve disputes.
- Free or affordable one-to-one assistance for neighbourhood disputes where legal advice is required.

We also make two further recommendations from observations that cut across all categories of legal problem:

- Developing the legal glossary in plain English to help people understand the meaning of legal words that are used.
- Improving the register of lawyers (New Zealand Law Society register) to create better search functionality and including price transparency and availability to take legal aid cases.

## Our recommendations for creating a strong advice sector

Online legal information and tools are useful because people most commonly seek help from non-experts when faced with legal problems. Online information and tools can help the helpers, as well as helping people directly who have access to and can use online information. This information and self-help needs to be designed from a user-perspective, so that people searching for help do not become confused and lost in a maze of resources. Creating a coherent user experience for those seeking help requires cooperation and coordination across the government and non-government providers.

While online assistance is important, it *must* be paired with access to one-to-one services because:

1. Services need to reach everyone and not everyone can use online information and tools unassisted. Assistance must therefore be provided to ensure equality of access;
2. One-to-one services are important in unpacking the problems behind the problem the person presents with in a way online tools cannot; and
3. Online-only services may be dehumanising and alienating, creating disengagement when engagement is the aim. Easy access to one-to-one services allows the humanising element to remain present for those who want that support.



Initial one-to-one services need to be provided by clearly sign-posted entry points, so people know where to seek help and are not stuck in a loop of referrals. The entry point needs to be equipped and resourced to provide information, referrals to non-legal services, and identify when expert assistance is required to help the person solve the sub-set of complex legal problems.

The people facing the complex legal problems were often people with low income and/or problems that could not bear the cost of private legal assistance and would be unlikely to qualify for legal aid or pro bono assistance. For example, neighbours trying to have a tree removed, an intestacy for an estate of \$300,000, an employment dispute where the person is now unemployed, a consumer dispute over home renovations for a working family's home worth \$80,000. These disputes might all need expert assistance but are very unlikely to qualify for affordable full representation. We recommend that more salaried positions are created to offer one-to-one advice to people facing the most complex of the subset of problems.

## Chapter 1: Introduction

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What are the most common legal problems people in Aotearoa New Zealand seek help for? What kind of help do they need to move towards solving these problems? These are the two key questions this project seeks to answer. It responds to the focus from the judiciary and government on finding practical ways to help with access to justice in Aotearoa. Many of the answers to access to justice problems are complex, difficult to implement, require long term investment and the efforts of many stakeholders. Work is underway to respond to these ‘wicked’ problems of access to justice, but this report is directed at what might be thought of as the ‘low-hanging fruit’. It uses existing data about expressed legal need—people who have sought help for a problem (even if they themselves do not recognise the legal element of it)—and focuses on the most common of these problems. It then makes suggestions about how we could strengthen the help that is already provided or provide new types of assistance. It is aimed at decisionmakers who fund or design interventions, suggesting ideas about where legal help resources could most effectively be concentrated to assist the largest number of people who express legal need. The final substantive chapter of this report examines the larger context, discussing how to design a strong advice sector that can respond to everyday legal needs.

### Legal need

Estimates suggest that between 37% and 63% of people in Aotearoa experience a legal problem<sup>1</sup> within a two-year period (Colmar Brunton, 2018b; World Justice Project, 2019). These kinds of figures are not unique to Aotearoa with the incidence of legal problems being similar across majority of jurisdictions (Hadfield, 2009; World Justice Project, 2019). As commentators have noted, the high prevalence of legal problems is unsurprising given we live in a “law thick world” (Hadfield & Heine, 2015, p. 21; Pascoe Pleasence & Balmer, 2019, p. 140)—“More and more of our everyday work, family, and commercial life is hedged about by law” (Rhode, 2004, p. 375).

Solving legal problems is important because they can have a range of negative consequences on people’s lives including economic hardship, interpersonal problems, and poor health (Coumarelos et al., 2012a; World Justice Project, 2019). Providing the means for people to solve their legal problems is also crucial to upholding the rule of law: “the possession of rights is meaningless without mechanisms for their effective vindication” (Garth & Cappelletti, 1978, p. 185). Increasingly, access to justice and upholding the rule of law are also being linked to economic and social development: “the rule of law and development have a significant interrelation and are mutually reinforcing,

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<sup>1</sup> A problem or dispute with a legal dimension.



making it essential for sustainable development at the national and international level” (United Nations, n.d.). It is therefore vital we invest in understanding what type of legal problems people have and how we might be able to help them move those problems towards resolution.

What is required for people to solve their legal problems? Historically, the focus was on providing equal access to lawyers and the courts but that is not always possible or desirable (H. McDonald, 2021). There is “increasing realisation that citizens routinely look to resolve justiciable problems at a distance from courts and lawyers, and perhaps beyond even the ‘shadow of the law’” (Pascoe Pleasence, 2016, p. 6). In Aotearoa, the large scale *2006 National Survey of Unmet Legal Needs and Access to Services* found that over one third (34%) of participants wanted only legal information to solve their most serious legal problem so that they could sort the problem out for themselves (Ignite Research, 2006). Only 11% wanted someone to help sort out their problem for them (Ignite Research, 2006). Of those whose legal problem was resolved, only nine percent settled their problem through court or tribunal action (Ignite Research, 2006).<sup>2</sup> Addressing legal need is not, therefore, simply about lawyers and courts. It starts with “the ability of citizens (and businesses) to recognise and use law” and then to “travel the many potential ‘paths to justice’, access appropriate legal services and processes, and efficiently resolve justiciable problems” (Pascoe Pleasence, 2016, p. 6).

Assessing legal need has been addressed by large-scale surveys that “have built up a substantial evidence base around client and user perspectives of legal services and institutions” and “provide compelling evidence of inequity in legal need and access to justice” (H. McDonald, 2021, p. 729). They have been, therefore, crucial for policy reform and advancing access to justice (Pascoe Pleasence et al., 2013, 2019). At the time of writing, a new, large-scale survey for Aotearoa was being planned to provide up-to-date big picture insight into people’s experience of and responses to legal problems.

Quantitative data (large-scale surveys) are used to provide this big picture insight, but are unable to provide nuance and detail around experiences of legal problems are lacking (Pascoe Pleasence et al., 2019). Further, because these surveys ask only about a limited number of legal problems and rely on participant recall, forgotten events or those not asked about are not reported, which may lead to the underestimation of legal problems and reduced data about problem solving behaviour (Pascoe Pleasence et al., 2009; Rebecca L Sandefur, 2016).

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<sup>2</sup> Similar results were found in a smaller scale 2018 study, *Legal needs among New Zealanders*. Four in ten participants experiencing an impactful legal problem (problems that the participant reported as having a ‘slight impact’, ‘moderate impact’ or ‘severe impact’ on their everyday life) acquired their own information to help them to better understand or resolve their problem (Colmar Brunton, 2018b, p. 55) and two percent sought someone to appear on their behalf or represent them before a court or tribunal (Colmar Brunton, 2018b, p. 65).

To complement these large-scale surveys, other forms of research can be used to provide additional insight into legal problems and access to justice (Pascoe Pleasence et al., 2019). This study is a means of providing that complementary insight. It is important to understand that this project is about only one sub-set of legal need, however, expressed legal need.

### ***Expressed legal need***

“Expressed legal need” is the term applied to people asking for assistance for a legal problem (Coumarelos et al., 2012b, p. 4). Expressed legal need is only a sub-category of legal need because much legal need goes unexpressed. This is for a variety of reasons, including that people do not recognise their problems as having a legal dimension or because people’s various forms of knowledge, skills, psychology, and resources mean they might not frame their problem as legal or express their problem (H. McDonald, 2021, p. 728). Justice system administrative data—including the data we have accessed for this project—“cannot shed any light on justiciable problems handled informally or be used to measure latent or unexpressed legal need stemming from justiciable problems that are ignored” (H. McDonald, 2021, p. 735). The project data only records enquiries from people who have taken the step of asking for assistance. They may not be aware that their issue has a legal dimension, but they are expressing a need. The report and the recommendations are focussed, therefore, on assisting people with expressed legal need to move their problem to a solution.

In contrast, people with unexpressed legal need are likely to be more difficult to assist. As McDonald (2021, p. 728) observes, “legal outreach services may be necessary to meet the needs of those vulnerable and marginalized hard-to-reach groups with reduced ability to appropriately express their legal needs”. Identifying and understanding their needs also requires different data, the type that is collected by legal needs surveys that are designed to measure legal need, even if the person has never expressed a need for help with the issue. This study is therefore only about targeting assistance at people with expressed legal need.

### **The current study**

Citizens Advice Bureau (CAB) is a nationwide and locally based community organisation with a network of offices around Aotearoa. It is a generalist community information service offering free information and advice on a range of issues, including legal problems. The CAB service is provided primarily by approximately 2,500 trained volunteers at 80 locations around the country (Citizen Advice Bureau, 2020). The training consists of:



... an induction period and mentoring programme, as well as ongoing learning opportunities and peer support. A key area of learning, especially for new volunteers, is how to use the CAB website to research information for clients. (Citizen Advice Bureau, 2020)

CAB volunteers come from a range of backgrounds and people with legal professional experience may be part of the volunteer cohort. Volunteers are trained to refer to the CAB database “Cabnet” to answer questions, regardless of their own professional background. Some CAB branches have a clinic service where lawyers volunteer on a roster, providing advice sessions for people who need further legal assistance.

Clients can contact CAB electronically (by email, social media, using an online form, or by using the chat feature on the CAB website), by free phone, or face-to-face by visiting a CAB office. Volunteers create a record of each enquiry, and this study draws on those categorised as “client interview enquiries” for the analysis. These record a short narrative on the problem the person has encountered and a further short narrative on the information and assistance the volunteer provided.

The dataset has several strengths which made it useful for this project. CAB is a high profile and well-established service in Aotearoa. In the 2018 *Legal needs among New Zealanders* study, 11% of the general population and 13% of the low-income population experiencing an impactful legal problem turned to CAB for assistance (Colmar Brunton, 2018b). As it is a general service, the people seeking help did not need to recognise that their problem was a legal problem, as would be the case if data were drawn from a legal service. Given the reach and prominence of CAB’s service, we have some confidence that its enquiries can be used to make general observations about expressed legal need in Aotearoa that can usefully supplement more robust legal needs survey methods.

While the study uses CAB data, the study is not about CAB or the service it provides. CAB agreed to provide data as a window into expressed legal need in Aotearoa, in general. Given the important role CAB has in providing help for everyday problems in Aotearoa, its data can provide a useful source to help Aotearoa plan and strategise about how to provide effective assistance to people who express legal need. CAB and other organisations are directing effort at responding to this need. This research is about how to strengthen what is already on offer and providing ideas about where investment could be made to help people with commonly occurring problems.

### ***Our analysis***

We analysed these client enquiries through two stages of coding. First, we coded a random sample (8,660) of client interview enquiries from the year 2021 for problem type to identify whether it was a legal or non-legal problem, and if it was legal, what type of law was engaged. If an enquiry contained multiple legal problems, these were

separated and coded as separate problems. Second, we identified the five categories of legal problems that occurred most frequently and analysed them further. We looked at what the person would need to move their problem towards resolution. For example, did they just want to know their legal rights? Or did they also need a letter drafted or a tribunal form filled out? Or did they need advice and strategy or a support person to help them solve the problem? We looked at each enquiry and created a further coding structure to identify the types of assistance people needed. For those readers interested in more detail about the data and analysis, this appears in Appendix A.

### ***The demands of the system and disadvantage***

An important caveat in understanding the scope of this project is its relationship to disadvantage. People experience varying levels of disadvantage. Their ability to meet the demands that the system places on them—including to spot legal issues, communicate in legal language and reasoning, be confident in the face of authority or high conflict situations, access money to pay legal fees, access technology to research and fill out forms—will be affected by disadvantage (H. M. McDonald & Wei, 2016).<sup>3</sup> Someone suffering from a health problem may be giving all their energy to managing that problem, and cannot therefore manage a legal problem as well. Someone with literacy challenges may not be able to meet the demand of researching information and filling out a form. Someone with limited access to transport will find it very difficult to attend appointments. Varying levels of support will be needed to help people meet the demands that the justice system places on them.

Furthermore, people who are disadvantaged are more likely to experience more legal problems than more advantaged people. Certain factors—including illness/disability, unemployment, and single parenthood—are consistently established as being associated with the experience of legal problems (Pascoe Pleasence et al., 2013). In Aotearoa, findings from a legal needs study published in 1999 (the first legal needs study in Aotearoa) indicated that Māori and benefit recipients were more likely to report legal problems of most types and were more likely to have unmet legal needs (Maxwell et al., 1999). The 2018 study, *Legal needs among New Zealanders*, indicated that particular participants were more likely than average to experience an impactful legal problem in the two years prior: single parents, people with frequent housing movements, those with

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<sup>3</sup> Note that we are drawing on Pleasence and Balmer (2019) and McDonald (2021) who frame the issues, as other authors do, in terms of 'legal capability'. We would argue that the idea of legal capability has a deficit framing. Deficit framing (also described as deficit thinking, deficit paradigm, deficit perspective) blames individuals and their perceived deficits for challenges they face, ignoring systemic influences and oppressive structures (Davis & Museus, 2019). "In doing so, deficit thinking prevents policy makers, educators, and communities from focusing on the actual root causes of the challenges..." and can perpetuate and reinforce inequities (Davis & Museus, 2019, p. 124). Further work to reframe 'legal capability' is needed but it is beyond the scope of this project.



a long-term health problem or disability, benefit recipients, Māori participants, and Pacific participants (Colmar Brunton, 2018b). Similarly, a study focussed on the low-income population,<sup>4</sup> *Legal needs among low income New Zealanders*, also found that these groups were more likely than average to experience an impactful legal problem (Colmar Brunton, 2018a).

We note that understanding more about people's circumstances is very important to understanding problem solving for legal issues. Data that would identify disadvantage are not collected by CAB. There are mentions in the records of enquiries of issues that the person was facing that may have made it challenging for them to action solutions unassisted. We noted these issues when we coded the data and present the types of commonly occurring challenges in Chapter 5. We also recorded when a client was contacting CAB on somebody else's behalf as this may suggest something has prevented that person from seeking assistance directly and as such, it may continue to make it more challenging for them to access or action assistance going forward. We discuss this further in Chapter 5.

## **The report**

In the next part of the report, we explain some of the context in which the data are situated: the year that was 2021 and the current landscape for legal assistance in Aotearoa. In Chapter 3, we present the findings from the first stage of the analysis, identifying the frequency of different categories of legal problems. We then turn, in Chapter 4, to the question of where resource might effectively be directed to assist the five most frequently occurring of these problems: 1) consumer, 2) employment, 3) rented housing, 4) wills, trusts, estates and care arrangements, 5) neighbours. Chapter 5 then considers the bigger picture of how Aotearoa's legal advice sector could be strengthened to respond more effectively to expressed legal need.

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<sup>4</sup> Low income was defined as a gross personal annual income of \$34,000 or less (if they had no financial dependents) or a gross household annual income of \$72,000 or less (if they had a financial dependent).

## Chapter 2: The context

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### The year that was 2021

Data are influenced by the context of the collection period. Where studies are repeated overtime, patterns can emerge showing the influence of particular events at different points. That is not possible in a point-in-time study like this one, but we note some important 2021 context to be kept in mind in interpreting the results.

The most obvious context for this period is that it was the second year of the Covid-19 pandemic. There were periods of 2021 where Aotearoa operated free of any community transmission of the virus but between August and December 2021 there were restrictions in place for all or some of Aotearoa (New Zealand Government, 2022). This undoubtedly effected the nature and frequency of some types of enquiries. The pandemic itself and the legal framework supporting its management touched on many areas of law, including immigration (where it is likely that there were less enquiries than usual due to the international border closure) and employment (where there were likely more enquiries due to the disruptions), as well as creating specific enquiries relating to the public health measures such as permitted travel during periods of restricted movement, and vaccination and facemask mandates.

There were also more indirect effects observable in the data. For example, in the most frequently occurring class of enquiries—consumer—we found three percent of enquiries related to cancelled air travel (and stated that Covid-19 restrictions were the cause of the cancellation) and a further five percent were related to delays in delivery of purchased items (possibly due to Covid-19-related supply chain disruptions). Other enquiries were indirectly linked to the pandemic response, such as this:

My two grandchildren (6 and 11 years old) spent \$2,500 in online purchases playing a game ... over two weeks. ... There are 190 items between \$1 and \$50 all on a game in two weeks. We were letting them have extra screen time due to lockdown. We have tried to get a refund but are being denied for about 90% of the charges. Do we have any rights?

The vast majority of the enquiries in the consumer category (90%) had no visible relationship to the pandemic, either directly or indirectly. So, while there is undoubtedly an effect on the data because of the pandemic, the period can also be seen as reflective of common problems in Aotearoa.

Another important part of the context in analysing the 2021 period is that there was a significant law change to the law governing residential tenancies.<sup>5</sup> We found that five

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<sup>5</sup> Residential Tenancies Amendment Act 2020.



percent of all the rented housing enquiries related to understanding the effect of those changes. Even without these enquiries, however, rented housing would still feature as one of the top five categories of legal need.

## **The current landscape**

It is important to briefly outline what is currently available by way of legal assistance in Aotearoa, the starting point from which our recommendations are situated. Sources include online material, individualised information, and one-to-one assistance services.

### ***Online assistance***

Publicly available online legal information for everyday legal problems in Aotearoa generally comes from one of three major sources:

1. Government publications (primarily online). For some topics, multiple ministries and departments publish legal information on the same topic;
2. Citizens Advice Bureau website. A comprehensive legal information site written largely in question-and-answer format;
3. Community Law Manual, published online but written primarily as a print document of over 1,000 pages with an online version. The print version is published annually, and the online version updated regularly.

Outside these sources there are other entities publishing legal information on their area of interest including the Public Trust (a Crown owned entity) on wills and trusts; Office of the Privacy Commissioner (a Crown owned entity) on privacy issues; Human Rights Commission (a Crown owned entity) on the protection and promotion of rights; Consumer NZ (a charity) on consumer issues; and Aratohu Tenant Advocacy (a tenant advocacy network) on tenancy law. Law firms also publish blog pieces or articles on certain topics. It should be noted that search engines may direct users to international sources, which are not relevant to Aotearoa, but this may not be apparent to the user.

### ***Free one-to-one assistance***

Free one-to-one assistance varies depending on location. We have already discussed CAB's services which are nationwide, with services provided primarily by trained volunteers. There are various local organisations, such as tenant advocates and family violence workers, who provide one-to-one assistance on a small scale. Free lawyer-provided advice is available through clinics staffed by volunteer lawyers at some CAB offices or through Community Law Centres o Aotearoa (CLCA). CLCA is the national body for 24 community law centres (CLCs) across Aotearoa, which run as independent charities, and each have their own funding arrangements (although there are also commonalities). CLCs are staffed by paid lawyers but also depend significantly on

volunteer law students and practising lawyers. Their services also vary by location. Pro bono advice is also provided on an ad hoc basis or through the recently established Te Ara Ture service, which matches lawyers with clients seeking pro bono assistance (Te Ara Ture, 2022).

The Ministry of Business, Innovation and Employment (MBIE) runs free phone helplines for assistance on three of the top five categories of legal need:

- Consumer: Consumer Protection Helpline is an 0508 freephone number for “consumer rights questions or enquiries” (they do not provide legal advice). They note that they do not “manage complaints and we have no investigation or enforcement powers” (Ministry of Business Innovation and Employment, 2022a).
- Employment: Employment New Zealand has an 0800 freephone number to answer general enquiries and provide information. They note that “We can't interpret employment agreements, provide legal advice or bring personal grievances on your behalf” (Ministry of Business Innovation and Employment, 2022c).
- Rented housing: Tenancy Services has an 0800 freephone number giving legal information to both tenants and landlords in relation to the Residential Tenancies Act 1986 (RTA). It does not provide information for any other rented housing matters such as house sharing arrangements.

Neighbourhood enquiries often engage the authority of the local council, and councils are therefore a source of assistance for this type of issue. There is no obvious source of freephone information about wills, trusts, estates, and care arrangements. The Public Trust has a freephone number and may provide some information if called, but its services are not free.

### ***Paid one-to-one assistance***

The most common form of paid one-to-one legal assistance is instructing a lawyer. Lawyers can be paid at their private rates or via the legal aid scheme. The private rates vary widely but surveys suggest an average of \$250-\$350 per hour (New Zealand Law Society and Niche Consulting Group, 2018). In general, instructing a lawyer will entail instructing them in the whole case. There is very little unbundled assistance available in Aotearoa (Toy-Cronin, 2016) and while there are a few firms who offer fixed price advice sessions, this is very uncommon.<sup>6</sup>

Legal aid is very difficult to access (Stewart et al., 2020; Stewart & Toy-Cronin, 2018). Legal aid is a loan rather than a grant, although the obligation to pay the loan back is

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<sup>6</sup> For example, a law firm in South Auckland offers a 30-minute advice session for \$75 ([www.inderlynch.co.nz/services/law-help/](http://www.inderlynch.co.nz/services/law-help/)).

sometimes waived making the service free.<sup>7</sup> The larger problem with accessing lawyer-provided services is that the price of the legal service is likely to quickly outstrip the amount at dispute in everyday legal problems. The flow on effect of this economic reality is that lawyers have limited practice experience in everyday legal problem management.

If the legal need relates to a reserved area of work (as defined in statute),<sup>8</sup> then only a lawyer can offer the advice and representation. Non-lawyers may offer advice and representation outside the reserved areas. Employment law, for example, is outside the reserved areas and there are non-lawyer advocates offering fixed price or hourly rates to provide one-to-one assistance in this area of need (Choe, 2021). We provide further discussion about who can provide legal advice on page 23.

This is a rough sketch of the assistance landscape that currently exists; there may be services in a particular location that differ from this outline. In the next section, we report our findings about the frequency of different categories of problems, before turning to how the current landscape could be improved to help meet the most common categories of expressed legal need.

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<sup>7</sup> Legal Services Act 2011, s 42.

<sup>8</sup> Lawyers and Conveyancers Act 2006, s 6.







## Chapter 3: Common categories of legal problem

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In this section we answer our first research question: what are the most common legal problems that people in Aotearoa seek help for? Answering this question helps us to identify where legal resource needs to be directed to help the most people and can also identify categories of legal problems that are prevalent, but which might not yet be well understood. This can inform where new resources need to go to ensure we are responding to these problems.

### Selecting the sample of legal enquiries

We have conducted this analysis through coding a random sample of 2021 enquiries to CAB.<sup>9</sup> We removed from the random sample all enquiries that were non-legal in nature i.e., that did not disclose a legal question on the face of them. Importantly, the person making the enquiry did not need to self-identify whether it was a legal problem; we made the decision based on the facts recorded in the enquiry. Where there was insufficient information to make this decision, we also removed these from the sample.<sup>10</sup> The following are illustrations of enquiries we removed from the sample:

- Client was referred to us by Plunket for a food parcel. She was specifically in need of baby formula.
- Client wanting to find a doctor to register with. Client lives in [location] and is having trouble finding one locally.
- Regular client wanted to know how to roast a chicken and vegetables.

We removed 3,285 enquiries from the sample through this process, a large number of which were requests for information on food parcels or for an appointment with a Justice of the Peace. Our final sample consisted of 5,372 interview records. Some interview records included more than one legal problem. The total number of legal problems in the sample was 5,617. When this is extrapolated on an annual basis, we estimate that CAB receives 84,000 legal problem enquiries each year (approximately 350 legal problem enquiries per working day).

### Categories of legal problem

Table 1 presents the total number of legal problems broken down into legal problem categories, ordered by frequency. There was considerable variation in the prevalence of

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<sup>9</sup> More detail of the method we employed to create the sample appears in Appendix A.

<sup>10</sup> Insufficient information could be for a number of reasons, including that the enquirer did not want to disclose detail about their problem.

different legal problems. The most common type of legal problem reported was consumer (17.4%,  $n = 980$ ), followed by employment (12.7%,  $n = 713$ ); rented housing (12.6%,  $n = 705$ ); wills, trusts, estate, and care arrangements (8.3%,  $n = 466$ ); and neighbour problems (8.2%,  $n = 462$ ). In contrast, the least common legal problem type reported was online safety (0.7%,  $n = 37$ ).

Legal problem category	Total sample % (n)
Consumer	17.4 (980)
Employment	12.7 (713)
Rented housing	12.6 (705)
Wills, trusts, estate, and care arrangements	8.3 (466)
Neighbours	8.2 (462)
Family - children	6.9 (390)
Central Government	5.8 (328)
Other civil	5.2 (292)
Family - divorce and separation	4.4 (248)
Crime - offending	3.2 (179)
Immigration	2.8 (159)
Crime - victim	2.3 (131)
Motor vehicle	2.3 (131)
Debt and lending money	2.0 (110)
Owned housing	1.6 (89)
Health services	1.4 (76)
Local Government	1.2 (65)
Business	1.0 (56)
Online safety	0.7 (37)
<b>Total % (N)</b>	<b>100.0 (5617)</b>

**Table 1 Legal problems in order of frequency as identified in CAB client interview records**

While methodological differences between legal needs studies and the present study (and indeed across legal needs studies generally) makes direct comparison with findings from these studies fraught, when cautiously compared to these studies there are some commonalities. Our overarching finding that there is considerable variation in the types of legal problems experienced is consistent with findings from legal needs studies (Coumarelos et al., 2012b; World Justice Project, 2019). Also consistent with the findings of legal need studies is that there are some legal problems that people are more likely to encounter than others—the top five legal problem categories in the present study accounted for 59.2% ( $n = 3,326$ ) of the problems in the total sample. As in the present study, legal needs studies have demonstrated that consumer-based legal problems are a frequently occurring legal problem. The World Justice Project on access



to justice (which surveyed people in 101 countries about their civil justice problems) for example found that within Aotearoa and globally, the most common civil legal problems are related to consumer issues (World Justice Project, 2019). Consumer problems were also identified as commonly occurring in Aotearoa-specific studies (Colmar Brunton, 2018b; Ignite Research, 2006). Housing, employment, and neighbour related problems are also reasonably common (Coumarelos et al., 2012b; World Justice Project, 2019). As Pleasance et al. (2004, p. 13) explain:

The frequency of reporting of different problem types in large part reflects the frequency of experience of the 'defining circumstances' from which they can arise. The most common problems arise from circumstances routinely experienced across the adult population. Consumer problems arise from transactions for goods and services. Problems with noisy or anti-social neighbours arise where people live in proximity. Money and debt problems arise from financial dealings. Employment problems arise from being employed. Rare problems, on the other hand, arise from circumstances that people experience much less frequently.

One category of legal problem which Pleasance et al. (2004) identify above and which other legal needs studies have identified as being common is money and debt related problems. However, only 2.0% ( $n = 110$ ) of the legal problems in the present study were categorised as 'debt and lending money'. This may be an artefact of methodological decisions around categorisation and what is deemed a legal problem. For example, in the *Legal needs among New Zealanders* (Colmar Brunton, 2018b) and *National Survey of Unmet Legal Needs and Access to Services* (Ignite Research, 2006) studies, 'money or debt problems' included instances when a person had difficulty with meeting their day-to-day living needs (in both studies this was the most common type of 'money or debt' problem). In the present study, such problems were not identified as legal problems unless they had a legal dimension, such as eligibility for government assistance in which case they were coded as a 'Central government' problem. As Coumarelos et al. (2012b, p. 5) note, there is "no agreed-upon measure" for legal need and there is considerable "complexity in defining all situations which constitute legal problems". Those studies also classified 'difficulties paying child support' as 'money or debt problems' while in the present study, these were included in the 'Family – Children' category.

While the 'Wills, trusts, estate, and care arrangements' category featured in the top five legal problem categories in the present study, this is not a trend observed in legal needs studies. Again, this may be the result of methodological decisions around categorisation. The World Justice Project on access to justice for example categorised will disagreements as a 'Family' problem (World Justice Project, 2019). In the *National Survey of Unmet Legal Needs and Access to Services* (Ignite Research, 2006) study, problems pertaining to wills and trusts were categorised as 'Other' and in the *Legal needs among New Zealanders* study (Colmar Brunton, 2018b), wills and power of attorney problems were also categorised as 'Other'.





## Chapter 4: Directing resources to help with the most common problems

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Having identified the most common legal problems, the next stage of analysis was to determine the type of assistance people would need to progress their problem towards resolution. The purpose of this analysis is to guide what type of resources could be developed or strengthened to help the most people. For example, in the consumer category (the most frequently occurring), what type of help did people most often need? Did they just need to know their legal rights? Did they need help drafting a letter or email to the other party setting out rights and obligations? Did they need more individualised and/or expert assistance?

We draw on two forms of analysis to answer these questions, which are detailed in Appendix A. First, we used the sub-categories for the initial coding of problem type. Second, we created a random sample of at least 15% of the enquiries in each of the top five categories. Two coders—both with experience in general civil law—conducted qualitative analysis of this sub-sample and then discussed the results and developed a list of priority areas to be addressed. We then searched currently available resources in Aotearoa and abroad, to make suggestions about where resources could be most usefully directed to help the most people.

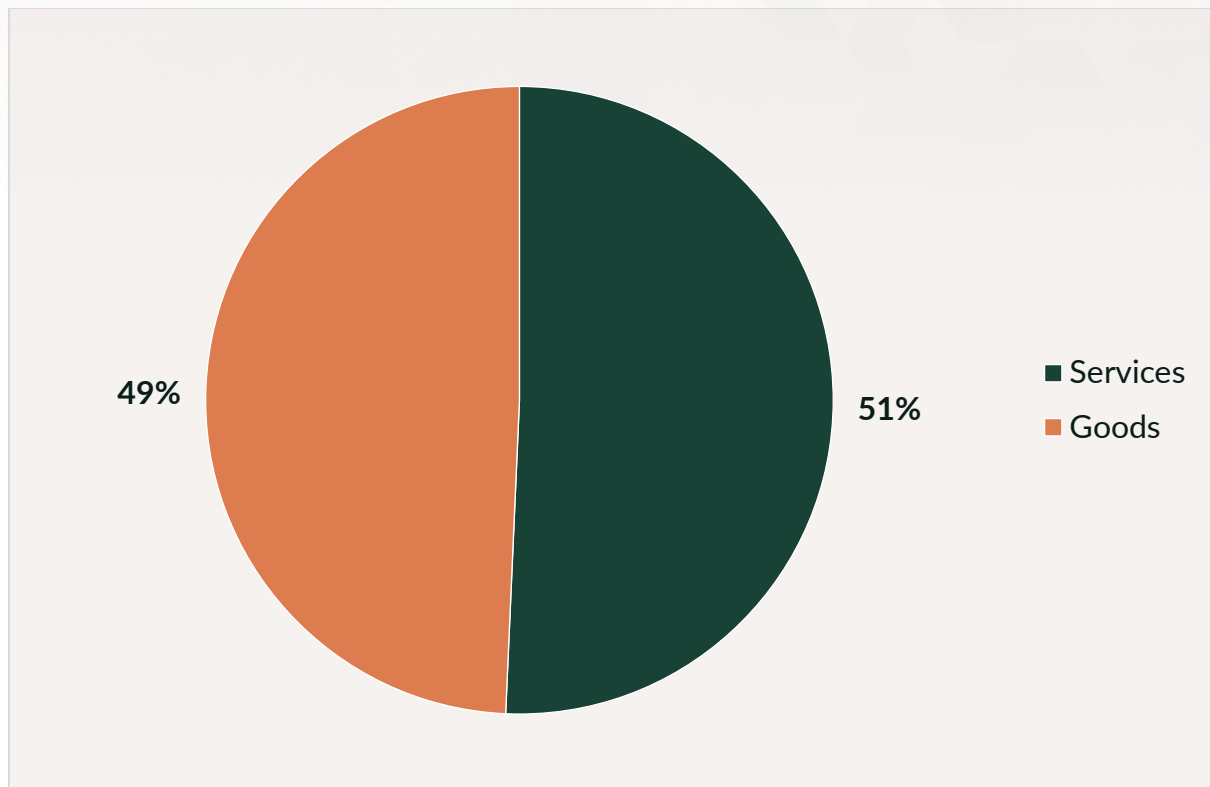
In the next sections, we present the findings of these two forms of analysis for each of the top five most frequently occurring problems. We first present the stage one coding with the sub-category analysis and then follow it by a discussion of the qualitative second stage analysis.

### Consumer

Figure 1 compares the different types of consumer-based legal problems. Within the consumer legal problem type ( $n = 980$ ), there was little difference in the proportion of goods and services problem types with consumer services comprising just over half of consumer problems (51.1%,  $n = 483$ ) and consumer goods making up just under half (49.3%,  $n = 497$ ).



Figure 1 Problem types within the consumer category



A distinctive feature of the consumer disputes (compared to other categories such as neighbours and rented housing, discussed below) was that the enquiries were very wide ranging in the topics, the areas of law they engaged, and the scale of the problems.

There were some consumer problems which could not be characterised as impactful, in the sense that is used in when analysing legal need (see Colmar Brunton, 2018b). While small amounts of money may have a large impact when the person has a low income, in some of the enquiries the person had not suffered any or any significant loss. For example:

Client called seeking advice on his complaint regarding the purchase of three bags of wholemeal flour. His issue related to the price the retailer was wanting to sell [the flour to] him ... he hadn't paid for the flour yet.

Client tried on a pair of [shoes] in the shop and purchased them. On getting them home she found they were uncomfortable and wanted to get a refund. The shop would only give store credit. Can they do this?

Most of the consumer issues were impactful and some involved key assets such as the family home (problems with contracts to build new homes, major repairs, and renovations) or motor vehicles. We discuss the most frequently occurring, impactful problems we identified.

## ***Frequently occurring issues***

Issues relating to the sale and purchase of motor vehicles were so common that they accounted for over a third (36.0%,  $n = 174$ ) of the goods enquiries. Other frequently occurring categories were help with faulty goods (other than motor vehicles), how to address poor quality service, and pricing. We present the results for these below, along with a discussion of the type of assistance needed to advance these problems.

### ***Motor vehicles consumer issues***

Almost half of these problems (47%) concerned the purchase of a second-hand vehicle from a registered dealer that subsequently developed—or had a pre-existing—mechanical fault. All of these enquirers needed information about their rights under the Consumer Guarantees Act 1993 (CGA), practical information about how to negotiate with the dealer, and further dispute resolution options should the negotiation fail. They also needed information about the interaction between the CGA and the warranties that many had purchased. These sometimes caused confusion as it is difficult to understand that the expiry of a purchased warranty does not mean the end of all recourse. A further 20% of the motor vehicle issues concerned purchases from a private seller where the vehicle then developed problems. These enquirers also needed information about their (more limited) rights and options for dispute resolution.

It is important to observe that while almost 70% of motor vehicle problems after purchase could be advanced by the enquirer being given information about their rights and processes for resolution, there was another 23% of problems that needed more detailed one-to-one advice from someone with relevant expertise. These included problems that engaged multiple areas of law. For example, in one case a purchaser returned a car to the dealer for repairs and was given a courtesy car. When the purchaser returned to get the car, the dealership had either been sold or liquidated and the new occupier of the premises did not know where the purchaser's car was. The purchaser needed help retrieving his car and managing the possession of the courtesy car which was due for a warrant of fitness. Another example was a contractor who had bought a car on finance from the principal. The principal was deducting payments for the car from the contract payments. However, the principal was failing to provide any records of the payments (including the deductions) and had failed to make promised repairs to the car. These types of enquiries needed expert one-to-one advice.

### ***Faulty goods and warranties***

A significant portion of the consumer enquiries related to understanding and applying the CGA. We estimated that 20% of the general consumer enquiries, and almost half of the motor vehicle enquiries, needed an explanation of the CGA and its applicability to that person's situation to move the problem towards resolution. Providing an

understanding of the CGA would potentially empower the enquirer to negotiate with the other party to find a solution to the problem but may not be sufficient. There is an imbalance of power between consumers and retailers, and it is easy for the consumer to feel unsure of their rights and walk away from their claim (Toy-Cronin, in press). In addition to the power imbalance, this also relates to the open-ended nature of the CGA. For example, the legal test includes wording such as whether the goods are of “acceptable quality” (s 6) which includes consideration of whether they are fit for purpose and free from minor defects. All of these terms import a significant element of judgement, which means even consumers who can access and understand information about the CGA, may need help or reassurance about the applicability of it to their particular situation.

A further layer of complication is created by the interaction between the guarantees pursuant to the CGA, the manufacturers warranties, and in some cases, the extended warranties that the consumer has purchased. Again, this can make it difficult for even a well-informed consumer to confidently understand their legal position. This example illustrates some of the complication:

Man rung to talk about an electric wheelchair that his wife has. There have been a series of repairs over approximately four years that has meant the wheelchair has been sent away for extended periods of time. Some repairs they have paid for rather than making a fuss. They had purchased an extended warranty. The wheelchair has eventually been replaced. He is worried about what the information [for the new wheelchair] says about guarantees, which is not clear but seems to state that it lasts from the original purchase rather than from when they received the new one. He is worried about this given the history they have had. He has researched the Consumer Guarantees Act but couldn't find the exact answer.

Underlying the consumer enquiries was sometimes quite complicated and/or fact specific legal questions, which could only realistically be addressed by expert one-to-one advice by someone with time to interview the client, to review documents, and to advise on rights and strategy.

### ***Poor quality service***

Enquiries about whether services provided breached the CGA also required the application of general standards to specific facts. There were a number of enquiries in this category, mostly relating to either new builds or renovations and repairs to existing homes. Examples of poor-quality work included installation causing damage to an appliance or to the surrounding property. Several enquirers needed to be directed to, or were already considering, the Disputes Tribunal after attempts to contact the tradesperson had either failed or negotiation had been unsuccessful. For example:

Client hired a painter to do the exterior painting of his house. The painter was recommended by his friend. There was a contract stating the amount to be paid and the



timeframe of the work. The contract is amounting to \$15,000. But on the last day of the timeframe provided, the painter called the client over the phone at work verbally abusing him about things the client did not do in order for the painter to finish the job. The client wants to give him a chance to finish the job after the tradesman will agree to a checklist the client made. No reply from the tradesman. He messaged the tradesman to meet with him today in order for him to return his copy of the house keys and maybe to have a face-to-face discussion. But if that will not happen this afternoon, client is set to take this matter to the Disputes Tribunal.

Enquirers needed practical assistance on how to file their claims in the Disputes Tribunal and assistance understanding the evidence they would need.

### ***Itemised accounts, estimates, quotes***

There was a small recurring group (approximately three percent) of enquiries that were seeking information about obligations to provide an itemised account for services rendered. The enquirers expected that this should be required:

Client had electrical work done some time ago and has been requesting an itemised invoice before paying.... is she within her rights to do so? This has been dragging on for some months now. The account is still outstanding and she has email trail of correspondence between both parties. ... She states that she wants a 'break down' so she knows what she is being charged for.

There is no obligation at law to provide an itemised account, which created confusion for consumers who did not see that they should pay without one. There may still be a question over whether the client had originally been given an estimate or a quote and whether the service delivered met the requirements of the CGA. Services provided by lawyers occurred frequently in this group of enquiries, where there were concerns about the lawyers charging more than originally indicated and failing to clearly itemise the invoice.

## **Recommendations for consumer issues**

Consumer issues are particularly difficult to manage given the self-enforcing nature of most of the legislation, the variety of facts behind disputes, and the power imbalance that is often evident. This indicates a continued need for one-to-one assistance supported by quality online information.

### ***Improved online legal information***

There is existing high-quality information on consumer rights provided by a range of sources, some of the largest being Consumer Protection (the MBIE website), Consumer NZ (independent), CAB, and CLC. Consumer Protection has elements of best practice for communicating legal information, including interactive aspects, modern graphic

design, and some visual elements (Hagan, 2016). We suggest it should continue to be developed, underpinned by user-testing, to ensure it is responsive to user needs (see page 50 for a brief outline of the importance of user-testing). In particular, development of interactive tools could help consumers (and their advisers) action solutions. The Consumer Protection website already has template letters,<sup>11</sup> but their useability could be increased via developing the type of interactive assistance explained on pages 35-38. Online legal information also needs clear process information about what to do if the attempt to enforce rights is unsuccessful (e.g., the trader refuses to comply) and the costs of those options.

Given the frequency of post-purchase motor vehicle problems, it would be very worthwhile to continue to invest and improve on the information already available on this topic, again through user-testing. The Consumer Protection website has a specific section on motor vehicle issues. Waka Kotahi, the New Zealand Transport Agency, duplicates much of this information but in less accessible form. Ensuring Waka Kotahi is aware of Consumer Protection's website and can link to it, rather than duplicating in less accessible form, would also be valuable.

### ***One-to-one advice***

The underlying power imbalance between consumer and retailer or service provider may make it difficult for consumers to confidently assert their rights. These factors point to the need for strong one-to-one services for consumer issues, including general advice, consumer advocates to assist people in asserting their rights, and more specialised advice for the sub-set of problems that had legal complexity.

The majority of consumer disputes could be supported with generalist advice. There is a role, however, for consumer advocates who are well-versed in consumer law and who are therefore well equipped to provide accurate information, encouragement, and support for consumers to enforce their rights. A further sub-set had legal complexity. Like most consumer disputes, those in the sub-set of problems with legal complexity are unlikely to involve large sums of money, meaning the expert advice must be affordable. At page 23, we discuss who can provide legal advice under the current regulations and in Chapter 5 we discuss policy considerations in developing a body of experts to meet this need.

It should also be noted that a means to avoid the need for so much one-to-one advice would be to expand the Commerce Commission's ambit to include enforcement of the CGA on behalf of consumers (Sims, 2010). Sims (2010) argues the costs for consumers

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<sup>11</sup> <https://www.consumerprotection.govt.nz/general-help/how-to-complain/tips-when-complaining/#writing-a-complaint>

to enforce their rights are high (time, emotional, financial) and that the amount at stake is often too small to make this investment. Where multiple consumers are involved, however, the injustice is large and the Commerce Commission could have a role to take these cases on consumers' behalf.

### ***Support for making claims***

Support is also needed for consumers to take complaints to the Disputes Tribunal when they have otherwise exhausted their efforts at resolution. This is an issue that cuts across a number of different areas of legal need. We note that at the time of writing, the judiciary is developing a Digital Strategy for Courts and Tribunals. The strategy aims to facilitate and expand access to justice by “enabling the court system to adopt innovative ways of working to better meet the diverse needs of existing users and of people with unmet justice needs” (New Zealand Judiciary, 2022, p. 7). An example of technology that can facilitate and expand access to justice is shown on page 38. This needs to be supported by one-to-one assistance to ensure that people who cannot meet the demands made by such systems without assistance, have access to a helper for them to do so.



# Who can give legal advice?

We have found that in all categories of the most commonly occurring legal problems, a sub-set of the problems need help that goes beyond the provision of information and basic advice. These people need more than information about their rights, a form to fill out, or to be pointed in the direction of a strategy. They need someone to sit down with them, take a full case history, advise them of options, strategise and support them. The question then arises: **who can provide this assistance?**

In some cases, the answer is that a lawyer must provide this advice. This is where the assistance needed falls within the ‘reserved area of work’ for lawyers (Lawyers and Conveyancers Act 2006 (LCA), ss 6, 24). Advice on a contemplated proceeding for an estates dispute is one area that clearly falls within the reserved area of work and a non-lawyer giving advice in this area would be committing an offence (LCA ss 24 and 27(1)). For other areas of law, a non-lawyer might be able to provide advice, depending on the interpretation of the LCA, while in other areas, advice can be provided by a non-lawyer because the area is specifically excluded from the reserved areas of work.

The grey area—where non-lawyers might be able to assist—exists because of unclear drafting in the LCA. Only lawyers can offer “legal advice” in the reserved areas of work but what this term means is not defined. It was intended that the LCA would “be explicit about the work that only lawyers can do” (Goff, 2003, p. 332). This was because the previous legislation had “the effect is that no one is clear about the boundaries around legal work” and it was observed that it was “desirable to have transparency and certainty around this issue” (Goff, 2003, p. 332). The LCA did not achieve this goal, however, as the term “legal advice” appears in the LCA but is not defined. New Zealand is not unique in this regard. North American commentators have observed that “legal advice” has “no inherent meaning” (Greacen, 1995, p. 10), and the difference between advice and information is a

“dubious” distinction (Macfarlane, 2013, p. 69). As Lanctot (2002, pp. 579–580) notes, “Our profession may be quite adept at giving legal advice, but it has never been very good at defining it” (see also Center for Public Legal Education Alberta, 2019; Greacen, 2001). There is no settled definition in New Zealand.

In addition to the grey area, there are explicit exceptions that mean non-lawyers can offer legal advice in what would otherwise be a reserved area of work (LCA s 27). Importantly for this project, employment law lies outside the reserved area. Employees and employers may be represented by non-lawyers in the Employment Relations Authority or the Employment Court (Employment Relations Act, s 236). There are further exceptions, the cumulative effect is that in New Zealand, “the reserved areas are quite narrow” and non-lawyer advice and assistance services can undertake “very important work” in a range of legal areas (Mize, 2017, p. 136). A policy objective of leaving so much outside the reserved area of work is to facilitate access to assistance, as non-lawyer provided services may be affordable or even free (in the case of community organisations and many government provided services). In a study of employment disputes in New Zealand, the cost for resolving disputes using non-lawyer employment advocates was considerably less than disputes using lawyers (Shulruf et al., 2009). Allowing non-lawyers to undertake work of a legal nature may also introduce competition to the market thereby bringing down the price of lawyer-provided services, although it is not yet known whether this is the case (Choe, 2021; Mize, 2017).

When we discuss the provision of one-to-one assistance in this report, we are thinking of this range of possibilities. In Chapter 5, The bigger picture, we take this discussion further, moving from who can provide advice, to outline factors to take into account when thinking about who should provide advice.

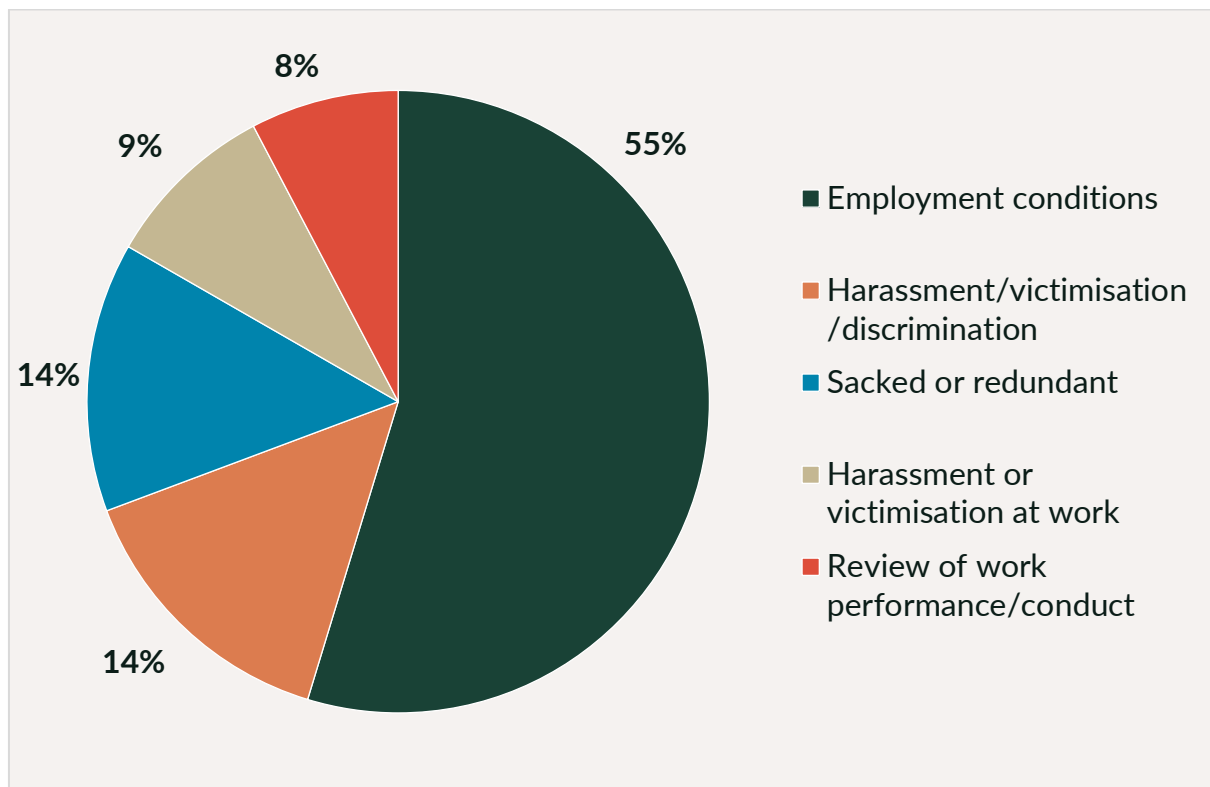
## Employment

Employment problems were the second most frequently occurring legal problem ( $n = 713$ ).

### *Frequently occurring issues*

As shown in Figure 2, employment conditions was the most common type, making up over half of the employment legal problems (54.7%,  $n = 390$ ). 'Other' problems accounted for 14.6% ( $n = 104$ ), closely followed by terminated or redundant (14.0%,  $n = 100$ ), harassment/victimisation/discrimination (9.0%,  $n = 64$ ), and review of work performance or conduct (7.7%,  $n = 55$ ).

Figure 2 Problem types within the employment category



### *Individualised support*

A characteristic of the employment enquiries was a high need for individualised advice and support. We estimated that at least 60% of the enquiries needed individualised advice and strategy to advance the problem towards resolution.

This was because a helper needed to undertake an action such as reading the employment contract, knowing how to negotiate a response, or advocacy to reduce a

power imbalance. Many of the enquirers were vulnerable people, or people enquiring on behalf of vulnerable people.<sup>12</sup> Some people presented with multiple, complex employment problems. A client came in with multiple problems with her employer and was “in great fear of losing her job”. Her concerns were that:

- She had been put on a 90-day trial period even though she had been with her employer for five months;
- She had been told she had taken too many sick days, though these were unpaid as she had been told she had no entitlement to sick leave until she had been working for six months;
- Her manager told her co-workers she had mental health problems;
- Her payslips indicated she had only been accruing annual leave for one week (despite working for five months); and
- She had worked unpaid overtime.

As she was a member of a union, she was referred to her union who then advocated for her.

Other clients needed strategic advice to resolve a dispute with a former employer:

The client's dispute with his ex-employer began [several months before] when he finished with his employment. He is owed outstanding backpay and holiday pay, not included in his final pay. When the client realised that he was being “brushed off” by his ex-employer he got an employment lawyer to write a letter on his behalf requesting he be paid all monies owing to him. It's been more than a month since the letter was sent and the client has followed up with a phone call to the employer. Nothing has happened to date. The client wanted advice about his options and next steps.

Enquiries such as these are not particularly amenable to just legal information. They require assistance from someone appraised of the facts and who is also familiar with using procedure or other pressure points to resolve disputes. Having industry knowledge would also be helpful in many of the enquiries, where different employment practices were common, for example in hospitality or elder care.

### ***Basic information***

There were requests for basic information and instances where basic information and general education would assist in resolving the problem, and these accounted for approximately 20% of the enquiries. There were recurring themes, often related to the need for not only substantive rights information but process:

- What notice period was reasonable where the employment agreement was silent (or more commonly, there was no employment agreement) and how to give notice in this situation;

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<sup>12</sup> See Chapter 5 for a discussion of enquiries made on behalf of others. Nearly 1 in 10 employment enquiries were made by someone on behalf of another.



- Rights of privacy for employees—what is allowed and not allowed in terms of accessing and using health information;
- The steps that must be taken in a disciplinary meeting;
- How bullying complaints should be handled.

### ***Pay calculations***

A significant subset of enquiries—almost half of those coded as ‘employment conditions’—related to understanding the calculation of pay and deductions from pay. This included for those currently employed, and calculations of final pay at the end of a contract.

Like other aspects of employment law enquiries, they were often highly fact specific and/or needed advocacy to resolve. For example, this client was seeking help to claim unpaid wages at the end of a contract:

[Client] has been working 44 weeks a year, but the remuneration has been annualised, i.e. paid out over 52 weeks. She is on two week's sick leave, with a doctor's letter, but after that her employment will cease. She wants to make sure that she is paid for the work done, as the year to date would then be completed, but her pay wouldn't be complete until the end of January, i.e. if her remuneration ceases at that point she will be underpaid. There is an 8-week payout as part of the negotiation and she wants to make sure that is added on to her full salary for this year.

There were many enquiries, particularly from part-time workers, regarding pay for various individual circumstances. These examples give a flavour of the range of issues:

[Client] works in hospitality part time. If [he is] on the roster until 5pm, but completes all [his] work by 4pm, [is he] entitled to that extra hour's pay?

Client asked to work on Anzac Day public holiday on the Monday [Mondayised public holiday]. He was paid time at 1.5 and wanted to know if he should have a day in lieu as well.

The client wants to know if his employer should have paid him out his last holiday pay while the client was on ACC.

Answering these enquiries requires both a thorough working knowledge of the legislation and the ability to apply this to clients' individual circumstances.

## **Recommendations for employment issues**

### ***One-to-one assistance vital***

A high rate of individual assistance is needed to help people address employment problems. While there are some services available (CLCs, unions, employment advocates for example) this varies from region to region and is not necessarily affordable. Individualised services could be provided in a number of different ways:

- Funding more employment law clinics to provide in-depth one-to-one assistance, ensuring these are accessible across the country and are staffed by people with sufficient knowledge;
- Funding advocates to accompany people to negotiations and meetings;
- Encouraging union membership so that people have access to assistance when they need it (this has the added advantage of increased industry specific knowledge);
- Establishing a scheme (like ACC) where employees pay a part of the wages to cover the cost of employment advocacy, a kind of legal insurance for when employment troubles arise.

### ***Improving navigation of online resources***

High quality legal information is needed to both support advice services and to educate employers and employees. There is existing high-quality information from both non-government sources and government websites and improvements could be made to strengthen it. In particular, tools and process information could be strengthened to help people move from explanation of rights and responsibilities to support them in implementation. This could be supported by interactive resources, as explained on pages 35-39. The MBIE website offers various tools for solving problems or generating documents. Indeed, there are some 22 pages of them, but there is no option to filter them by problem type. We suggest a programme of user-testing to identify if navigation could be improved. (More information about how to identify and respond to user needs can be found on page 50). For example, employer and employee information is presented together, rather than options to enter the website from one perspective or another. This may be motivated by a desire to be seen as neutral and serving both parties equally, but it is unlikely to satisfy the needs of many users. It means the person seeking information must do the filtering themselves and read through or past irrelevant information.

### ***Information about pay calculations***

Pay calculation issues may be addressed by better education to employers or stronger requirements about how the information is presented to employees. Enquirers had difficulties understanding the calculation of their pay and the deductions made. Sometimes this was because payslips were unclear or because payslips were not presented at all. Individual advice about pay entitlements, particularly for part-time workers, requires detailed knowledge. Either much more sophisticated online advice is needed (which advisers, employers, and workers can use) to assist in applying the law to the facts, or the MBIE employment freephone needs to be well equipped to answer these enquiries.

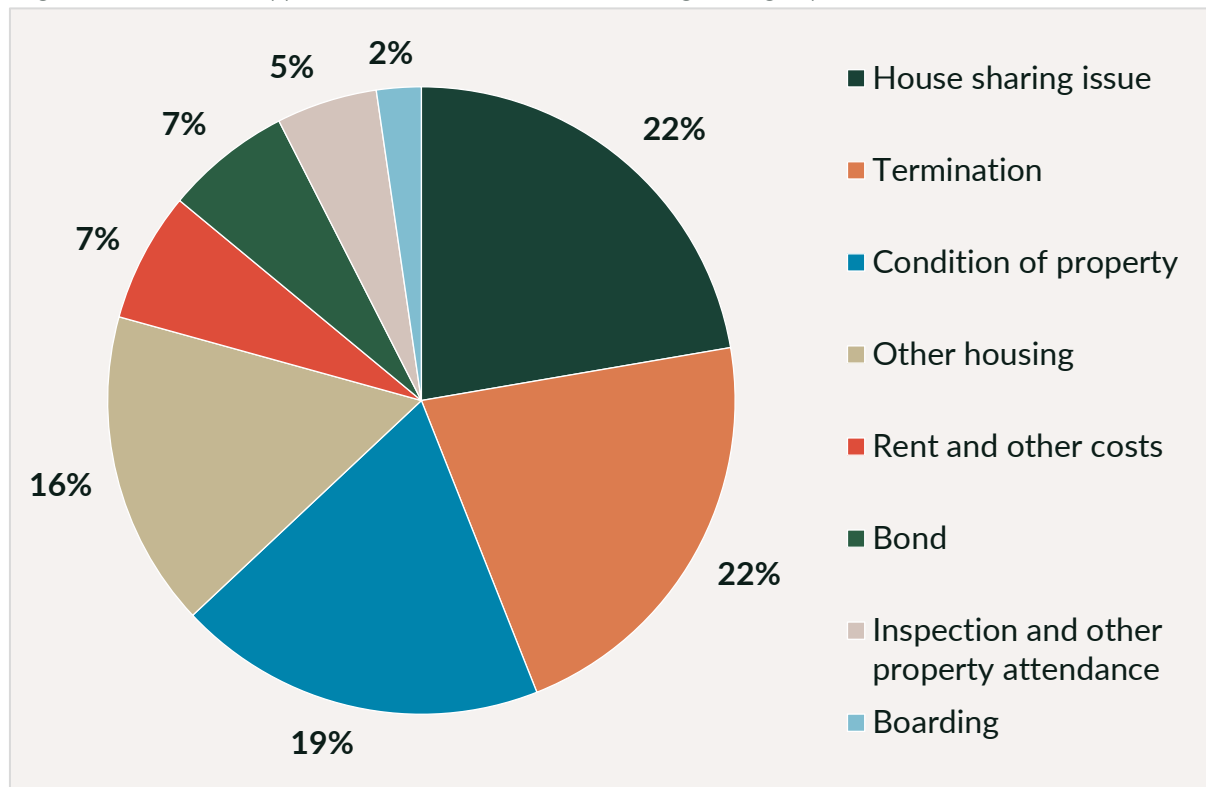
## Rented housing

Issues related to rented housing were the third most frequent type of enquiry (n = 705).

### Frequently occurring issues

As Figure 3 illustrates, the most common types of problem were issues relating to house sharing (e.g., flatting, leasing a single room in a house) (22.3%, n = 157) and termination of tenancy (21.7%, n = 153). These were followed by condition of property (19.0%, n = 134), 'other' problems (16.3%, n = 115), rent and other costs (6.7%, n = 47), bond (6.5%, n = 46), inspection and other property attendance (5.2%, n = 37) and finally boarding (as defined in the RTA) (2.3%, n = 16).

Figure 3 Problem types within the rented housing category



Around a quarter of the enquiries required a relatively straightforward legal answer, the type that could be accessed either by a person themselves or where a helper could access that information for them. These were across a range of topic areas including rights and obligations most commonly around ending fixed term tenancies, the process at the end of a tenancy, and rules around inspections.

Our second stage of analysis suggested that assistance was needed to resolve the house sharing disputes (including boarding), issuing of 14-day notices to address maintenance



issues, support filing out Disputes and Tenancy Tribunal applications or replies, and specific advice on how the law applied to the person's own situation.

### ***Tenant vulnerability***

One of the characteristics of this group of enquiries that was apparent in the analysis was the vulnerability of tenants vis-à-vis the landlord or, in the case of house sharing, the head tenant or owner (see Chisholm et al., 2020). It is well recognised that scarcity of housing and the cost of relocating “inhibits tenants from exiting predatory, substandard, or otherwise adverse housing conditions” (Michener, 2022, p. 1397). This dynamic was evident in some enquiries:

Client and I discussed what options were available to her to get some of the more grievous issues (mainly leaks) fixed. e.g. 'notice to remedy', Tenancy Tribunal, mediation etc. Client was not keen to take steps against the landlord.

Where power dynamics such as this are at play, simply knowing legal rights would likely be insufficient to move the problem towards a solution. Assistance would be needed to bolster the power of the more vulnerable party. This needs to be taken into account when considering what assistance is useful for these disputes.

### ***House sharing and boarding***

Given house sharing and boarding accounted for almost a quarter of the rented housing enquiries, we have considered what assistance this group commonly needed.<sup>13</sup> The type of arrangements in this category varied. We coded as “boarding” only arrangements that appeared to meet the limited RTA definition of boarding,<sup>14</sup> which accounted for only 2.3% of all rented housing inquiries. The further 22% of shared housing issues had varied arrangements: what we might think of as traditional flatting arrangements (e.g., students sharing a house), to what are colloquially—but not legally—regarded as boarding arrangements (e.g., a grandmother letting a room to a grandson; a woman letting rooms in her house to a mother and her children).

More than half of this category of enquiries were about the process for ending a house sharing arrangement. Enquirers were unsure of the process and wanted to know what law applied, particularly when the agreement was not a traditional flatting arrangement. Very few of the enquirers had written agreements so they wanted to know about the enforceability of verbal agreements. There was also confusion about obligations to pay

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<sup>13</sup> We do note however that this category of enquiries will be inflated (relative to other types of rented housing enquiry) because Tenancy Services do not answer questions about issues that lie outside the RTA.

<sup>14</sup> RTA s 66B. A boarding house has common facilities for tenants and “is occupied, or intended by the landlord to be occupied, by at least 6 tenants at any one time”.

bond in these situations, whether it could be lodged with Tenancy Services, and when it would be repayable.

### ***Repairs—14-day notices***

Another category of enquiries related to the need for repairs to property, coded as part of the sub-category “condition of property”. Some of these were straightforward in the sense that they related to how to ensure the landlord made repairs to the rented property:

Caller's flat was leaking in the rain today. Had previously leaked and when asked, the landlord says it is fixed but it isn't. Has been an ongoing issue as previous tenants also had this issue.

Caller rang wanting to know her rights as a renter of a cabin in the caravan park. It is not insulated and hot water doesn't work.

The legal process is that the tenant can issue a 14-day notice to repair. Carrying out this process, however, is difficult for tenants who may be vulnerable (as discussed above) and who fear retaliatory action, even though retaliation is prohibited at law. Some tenants articulated this concern:

Client says his landlord is ignoring his complaints about mould and lack of heating in his rental house. Says landlord told him to clean off the mould but the house is damp and it keeps coming back. There is no heater in the house. He said he's concerned the landlord will kick him out if he complains.

The process for serving a 14-day notice must be clear, but that will not be sufficient for many tenants to move their situation forward to resolution. They may need assistance and support to undertake this process.

### ***Support filling out Tribunal Applications***

Around five percent of the enquiries were people needing assistance filing a claim to move their issue towards resolution. This included filling out online forms for the Tenancy Tribunal or Disputes Tribunal. For example, this client in a house-sharing dispute:

[I] asked him to do this [use the link to the Disputes Tribunal that CAB had sent by email] while we were on the phone and pointed out that flatmate issues were listed. Ended up having to run through the online form with him as he filled it in even though he was ok with computers. This took quite a long time.

As we have previously noted, this is a recurring problem across the different problem types, and we discuss ideas for supporting this process on page 38.

### ***Application of law to specific fact scenario or individual support***

Enquirers often needed help applying the general legal principles to their particular, sometimes quite unusual, fact situation. An example of this type of enquiry included a tenant who had been told before signing a tenancy agreement that a heat pump would be installed within a month of the tenancy beginning. The landlord had not honoured that promise and was telling the tenant that if he wanted the heat pump soon, rather than at a later (unspecified) date, the tenant had to pay the landlord \$1,000. Another example is:

Client's fixed term tenancy is ending. He had negotiated a cheaper rent with the landlord for the next 12 months but decided to look around to see if there was anything else available. He decided there wasn't so went back to the landlord and said he was happy to sign but [the landlord] took umbrage that he looked elsewhere and told him that he will need to vacate at the end of the tenancy. He was wanting to know his rights.

This example illustrates that the answers to enquiries might lie outside the basic tenancy law information, drawing on contract law, and also on strategy for dispute resolution. Other cases involved a need to determine what type of agreement it was (boarding, flatting, tenancy) and fixed term versus periodic tenancies, all requiring someone to take the time to interview the client, review documents, and advise.

Another possibility is the complexity of the social situation, where a third party is needed to advocate on behalf of someone to reach a resolution. For example, in the following situation the tenant had received a request to mediate but "was highly emotional and said she did not think mediation was appropriate at this time":

Client [the tenant] requested information after her landlord of 21-22 years presented her with a letter to vacate the rental property. [The landlord] has given [the tenant] a 90-day notice to do so. Client did not have a tenancy agreement and all prior and current discussions were verbal agreements. She paid two weeks bond and did not know whether it had been lodged. Client thought that the note to vacate is a retaliatory response to her refusing to let the landlord store his [property] in [the garage at the tenanted property]. When [the landlord] arrived with his [property], [the tenant] locked the gate and called the police who sided with [the tenant]. A breakdown in relationship has occurred and the client told of her anger, hurt and disappointment because of all the work she had done on the property which included planning the renovation of the property [the tenant] now has to vacate.

As the tenant did not want to mediate alone, she would need some support to either engage in the mediation or attempt other forms of dispute resolution. This points to the need for individualised support, which includes both legal knowledge and time to spend with the tenant one-on-one. Although it is difficult to glean from the data, we estimated that at least 25% of rented housing inquiries would need some form of more intensive support, beyond information.



## Recommendations for rented housing issues

There is a large amount of existing legal information for rented housing online, provided by a range of providers including Tenancy Services, CAB, Aratohu Tenant Advocacy, and CLC. These recommendations point to where this could be strengthened, or additional services need to be provided.

### *Written agreements for house sharing*

The data suggest a need for more assistance around house sharing agreements, particularly the preventative measure of having a written agreement for any tenancy or house sharing arrangement. There are “flat sharing” agreements online but people who own a home and are letting out a room are unlikely to think of themselves as “flatmates”. The common usage, including by government websites and banks, is that if you own a home and rent out a room it is a “boarding” arrangement.<sup>15</sup> Homeowners and boarders are therefore unlikely to see a flat sharing agreement as relevant to them. It would be useful to update the legal information to reflect the language that people use when talking about these arrangements. The Tenancy Services sample agreement (which CAB links to) and Aratohu Tenant Advocacy’s agreement, refers to the “head tenant” and the “flatmates” and therefore does not obviously encompass situations where the agreement is between the owner and boarders (colloquially speaking). The govt.nz website talks about “getting a flatmate in your own house” and having a “flat-sharing agreement”. Given people are unlikely to think of their own home as a “flat”, this wording is unnecessarily confusing. Using everyday language in legal information would help ameliorate this problem.

This is a difficult area because of the many different types of arrangements that might be in place, including an agreement between:<sup>16</sup>

- A landlord and a tenant or tenants to lease a house;
- A landlord and tenant to lease a room in a house (a room-by-room tenancy);
- An employer and employee where accommodation is included in the agreement;
- A landlord and a boarder for a boarding house tenancy (pursuant to the RTA);

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<sup>15</sup> See for example, Inland Revenue Department uses the term “boarders” for situations where a homeowner rents out a room in a house (<https://www.ird.govt.nz/property/renting-out-residential-property/residential-rental-income-and-paying-tax-on-it/rules-for-working-out-rental-income-and-expenses/standard-cost-method-for-boarders-and-home-stay-students>) and in an ANZ home loan application there is a requirement for “evidence of additional income” which includes “boarder income” (<https://www.anz.co.nz/banking-with-anz/financial-hardship/how-to-apply/>).

<sup>16</sup> There is a helpful overview of different types of arrangements on the Aratohu Tenant Advocacy website: <https://tenant.aratohu.nz/types-of-tenancies/overview-of-types-of-tenancies/>.

- A tenant and their flatmates (where the flatmates have no contract with the landlord); and
- A homeowner and a boarder or boarders.

We suggest Tenancy Services (or if they are unable to, another agency) develops a tool for helping people to select the correct agreement, available for download.

### ***Regulatory change***

The lack of agreements (even when it was clearly a flatting arrangement) meant people had questions about their rights and obligations: access to the facilities (e.g., a boarder saying the homeowner was locking the toilet at night), how to end a house sharing arrangement, and whether a bond can be held. The arrangements are governed only by private agreement (with dispute resolution falling in the jurisdiction of the Disputes Tribunal); there are no statutory obligations that are imposed if the arrangement falls outside the RTA. Given the importance to people's lives of safe and secure accommodation, this needs to be addressed through regulatory change. CAB has also raised this issue and advocated for regulatory change (Citizens Advice Bureau, 2022). We support this call.

### ***14-day notice – education and interactive tools***

Another area that would be useful to strengthen is information and tools for 14-day notices. Enquiries suggested the need for more education about the 14-day notice procedure (for both tenants and landlords) and assistance to help tenants to produce these notices. There is some information and sample notices available on the Aratohu Tenancy Advocacy website and the Tenancy Services website. These could be improved by applying techniques of interactive guidance discussed at pages 35-38. Clear process information on how to serve a notice and what to do if the landlord retaliates or threatens to retaliate is needed. Many tenants will need to be supported to carry out this process though such as reassurance and advice on record keeping, which will also help to protect against illegal retaliatory action.

### ***One-to-one advice***

For some people, there is a need for individualised advice and support that goes beyond basic legal information. This includes the need for advice from someone with sufficient expertise to be able to recognise and respond to the complexities of problems (which include other areas of law), and to advise on strategy. This points towards ensuring there is sufficient free legal advice for these situations (tenants are highly unlikely to be able to pay for a private lawyer). Others need advocacy (such as support in serving a 14-day notice). This support could be provided by tenant advocacy services or social workers if they were sufficiently resourced.

### ***Regulator enforcement***

While this report concentrates on how to deliver services to individuals to help with their problems, it should not be forgotten that one of the ways to address people's legal problems is for regulators to enforce rights, rather than having people carry the burden of doing this. The Tenancy Compliance and Investigations Team is already doing this to some extent: "Where ongoing breaches are identified, the team uses a number of interventions and enforcement activities to make sure landlords comply with their obligations under the Act" (Tenancy Services, 2022). Their ability to carry out this work is restricted by resourcing, but they are a more effective way of ensuring landlord compliance with the RTA than expecting tenants to issue 14-day notices to remedy, given the power imbalance between landlord and tenant. Increasing the Team's resourcing, therefore, could be more cost effective and create more compliance than expecting tenants to bear the burden of enforcing the RTA.

### ***Funding for community education during significant law change***

We also noted in Chapter 2 of this report that around five percent of enquiries in this category were seeking advice on the changes to the RTA that were made during this period. The fact that this law change created so many enquiries demonstrates the need for supporting community education and advice whenever a major law change occurs in an area of high legal need.



# Interactive assistance

- Interactive tools and guidance can help people translate legal information into action.
- Creating interactive tools is a key strategy to improve online legal information, assisting both the person with the problem, and their assistant or adviser.

Research has found that people struggle to translate online information into action (Denvir, 2016). Providing templates and other tools to help users to create documents and send them to others (as well as directing them to one-to-one assistance to help them carry out these tasks) can help translate rights into action. Failure to do so can be detrimental. As we observed in a previous report (Turner & Toy-Cronin, 2020):

Denvir found that among youth, using the internet to gain knowledge of rights can actually discourage self-help and reduce confidence to tackle a civil legal situation (Denvir, 2016). This may have been either because the study participants realised they knew less than they thought, or that “the content they read online encouraged them to seek professional assistance and in doing so ‘disempowered’ the respondents” ... .

Interactive tools can help people take action (e.g., produce a letter) or can help them understand the process and choices available to them. Both aspects are important. As a report from Australian organisation Justice Connect found, people “did not want to be educated about legal rights, rules, or processes in general. They wanted specific guidance on their individual situation, the options available to them, and the possible implications of taking particular actions” (Szczepanska & Blomkamp, 2020, p. 53).

On the following pages we provide examples of the types of tools that have been developed in various contexts as ideas about what is possible. We have only recommended the development of interactive tools where this might be beneficial. Not all issues are suitable for this kind of intervention but there are some that are, particularly generating letters, other documents, or filling out forms. We have recommended that interactive assistance could be helpful in a number of situations including:

- Template letters and process guidance for addressing consumer and employment disputes;
- Generating 14-day notices to repair for tenants;
- Selecting the correct agreement for house-sharing and creating the agreement;
- A neighbourhood problem portal, similar to the Solutions Explorer illustrated below;
- Generating Trespass Notices and Fencing Notices for neighbourhood disputes and providing process guidance;
- Guiding people through the key elements of intestacy.

# Interactive assistance CONT.

- In Aotearoa, the Office of the Privacy Commissioner has an interactive tool, the Priv-o-matic, to enable businesses to generate customised privacy statements.
- Users are asked a series of questions and prompted to fill in the blanks as relevant to their business.

## Collection

We get this personal information by:

- Asking people directly
- Using public sources of information
- Asking third parties (a credit agency for instance)
- Other

Rather than starting from scratch, users select from a series of populated lists.

## Sharing

Besides our staff, we share this information with a 3rd party in order to take actions connected to a purpose for collection.

we have another reason for sharing

Don't share any of the information you collect? That's fine, move along to the next step.

There are prompts to help the user fill in the missing text. If a user requires further explanation of a concept, they can click on a box that provides further information (allowing the user control of the level of detail).

Is that a problem?

You need to have a valid reason to share information with outside parties, related to your purpose for collecting it. This doesn't apply if you gathered the information from a public source, or you have asked the user's permission.

When you're dealing with cloud providers who are just storing or processing information on your behalf, you don't strictly have to include them. We say err on the side of transparency and tell people. For advice on this, we recommend engaging a privacy consultant or lawyer.

See [Privacy Principle 10](#), and [Privacy Principle 11](#) for more about sharing information.

More about privacy

Congratulations! Here's a privacy statement for you to use. You should show this to people when you get personal information from them:

We collect personal information from you, including information about your:

- name

We collect your personal information in order to:

- do something that directly relates to our business

You have the right to ask for a copy of any personal information we hold about you, and to ask for it to be corrected if you think it is wrong. If you'd like to ask for a copy of your information, or to have it corrected, please contact us at .

You can make your statement better by:

- Reassuring people that their data is kept securely
- Informing people about data lifetimes and disposal

A draft statement is generated, and suggestions are provided as to how to improve it.

# Interactive assistance CONT.

- JustFix (U.S. based) provides tenants with a series of interactive tools to exercise their rights, for example a generator for a notice to repair.
- Users are asked a series of relevant questions and a customised letter to the landlord is generated (users are directed to assistance if they require help to use the tool).

**FREE** **NO PRINTING**

### Notice to Repair

● 15 mins

Write your landlord a letter to formally document your request for repairs.  
California residents only

**START LETTER**

What information will I need? ▾

The user is given information to begin including the fact that it does not cost, who it applies to, and how long it will take. Users then select from commonly occurring issues that are organised under subject sub-headings.

**Notice to Repair**

Thursday, September 22, 2022

**To**  
Name  
Address  
...

**From**  
Name  
Address  
...

Dear

NOTICE IS HEREBY GIVEN that the conditions listed below may be dangerous to my family and me. We did not cause the conditions. Please repair the conditions as soon as possible.

**REPAIRS REQUIRED**

1. **No hot water**  
• Bathroom

**AVAILABLE ACCESS DATES**

Below are dates that I am available to be at my home to let in a repair worker. Please contact me (using the information provided at the top of this letter) in order to make arrangements.

Be advised that you are required by law to provide a **24-hour written notice of intent** to enter the unit to make repairs pursuant California Civil Code 1954. Anyone coming to perform a repair inspection and/or repairs should arrive on the date and time mutually agreed upon.

• Friday, November 4, 2022

You have 10 business days from the date of this letter to address the repairs outlined. If you do not respond within a reasonable time, as you are required to do under Civil Code Sections 1941 and 1941.1, I will report it to the Los Angeles Housing and Community Investment Department (LAHD), the Los Angeles Department of Public Health(LADPH) and the Department of Building and Safety (LADBS).

Build your Letter: Step 2 of 6

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## Select the repairs you need in your home

Start with the general area of repairs. You can follow up with your landlord or property manager in more detail once they receive your letter.

**HEALTH**

- Mold ▾
- Peeling paint ▾
- Rodent infestation (mice, rats, ...) ▾
- Bug infestation (roaches, bedbugs, ...) ▾
- Smoke or carbon monoxide detector ▾
- Trash cans ▾

**UTILITIES**

Users can download the PDF to send to their landlord themselves or can choose to have it mailed directly to the landlord for free. This allows the user to move from knowing rights to action. The notice uses formal language that signals to the landlord that the tenant can meet the demands of the legal system and should be taken seriously.

### Your Letter Is Ready To Send!

JustFix will send this letter via USPS Certified Mail® to your landlord:

Landlord name  
Address

After this step, you cannot go back to make changes. But don't worry, we'll explain what to do next.

**Confirm**



# Interactive assistance CONT.

- The Civil Resolution Tribunal (CRT) (Canada based) is a sophisticated form of interactive assistance. Users select a subject area and are then guided through the "Solutions Explorer". The Solutions Explorer provides legal information and resources to action the information such as explanations on negotiation and template letters. Users who decide, after using the Solutions Explorer, to proceed with a claim to the CRT are guided to the application form relevant to their case and given plain language prompts to fill it out.

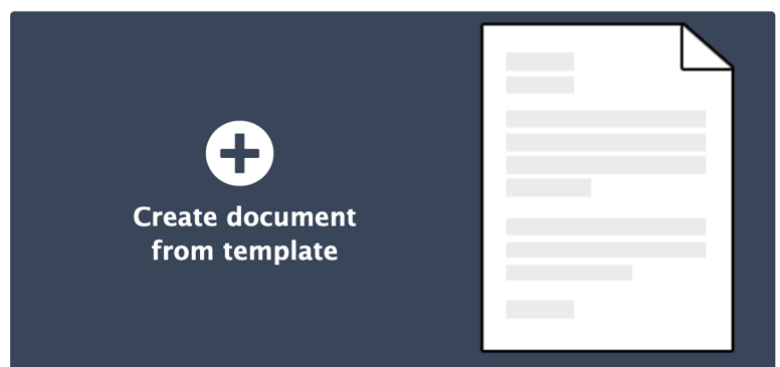
## Suggested Resource


### Property Damage

Here's a template you can fill in and use for any kind of communication like an email, mailed letter, or a script for a phone call.

Click "Create document from template" and enter your details for each field. You can print, email, or download the finished template.

Keep a copy for your records. The template is NOT part of your CRT claim or application form, and we can't retrieve a copy of it for you.



 Civil Resolution Tribunal

## Dispute Application

Dispute Type: Insurance Dispute

Apply      Negotiate      Facilitate      CRT decision

**What you need to do**

You are responsible for providing complete and accurate information. You will need to clearly explain what you're asking for, and why you're asking for it. Later in the CRT process, you will be expected to provide evidence to support your claims. You will also be expected to participate in settlement discussions facilitated by a CRT case manager.

**What the CRT will do**

The CRT will process your application and explain your next steps. If you need help during the application process, click "Help" at the top right.

**What you need to know before you start**

- It takes 15 - 30 minutes to apply. If you need more time to apply, you have 30 days to finish and submit.
- The application fee is up to \$150.00, based on your types of claims. If you can't pay the fee, ask for a fee waiver on the payment page at the end of this application.
- You must have an email address to create your CRT Account and apply for a dispute. If you don't have an email address, please [contact us](#).

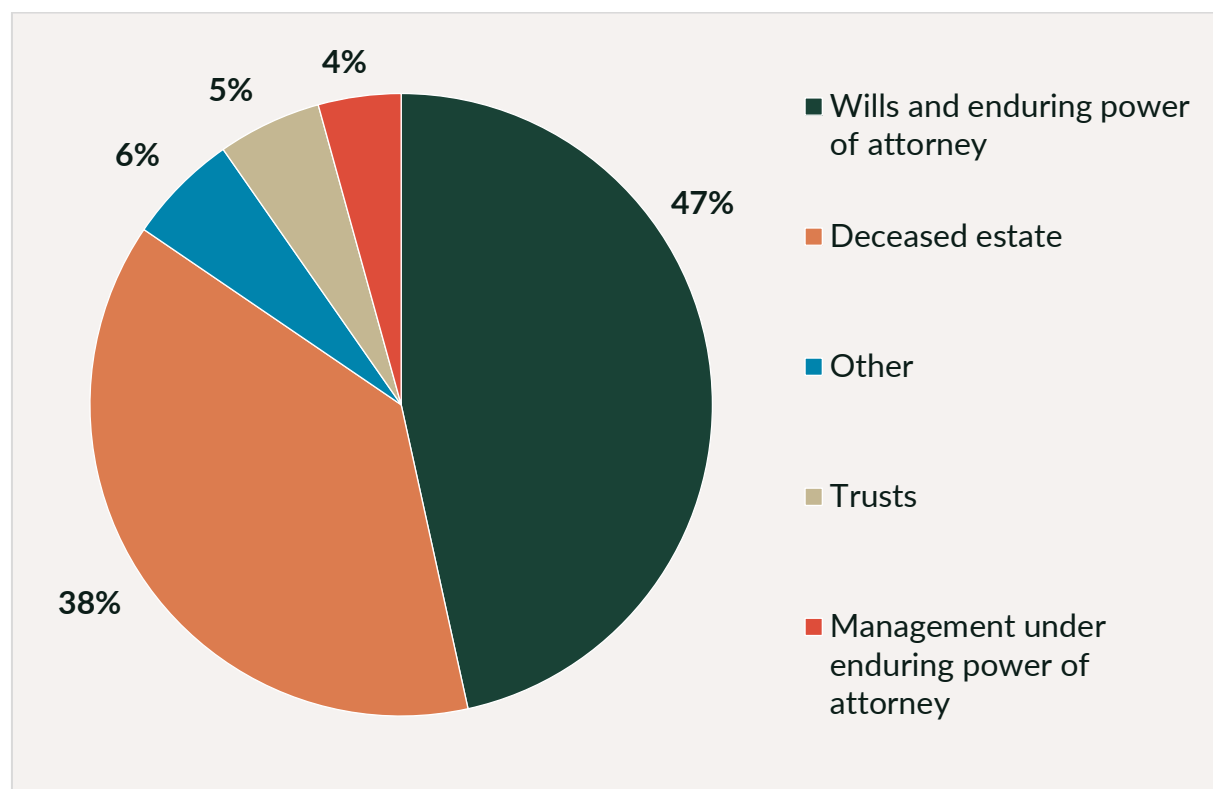
## Wills, trusts, estates, and care arrangements

The different types of problems concerning wills, trusts, estates, and care arrangements ( $n = 466$ ) are shown in Figure 4.

### *Frequently occurring issues*

Nearly half (46.6%,  $n = 217$ ) of these problems concerned wills and enduring powers of attorney. Over a third (38.0%,  $n = 177$ ) concerned a deceased estate. The remaining problems were split almost evenly between 'other' problems (5.8%,  $n = 27$ ), trusts (5.4%,  $n = 25$ ), and management under an enduring power of attorney (4.3%,  $n = 20$ ).

Figure 4 Problem types within the wills, trusts, estate, and care arrangements category



### *Making a will or EPA*

The most common need in this category was assistance in making a will or an enduring power of attorney (EPA) or both. This need accounted for more than 40% of the enquiries in this category.

Making a good quality will is also a very important preventative measure to avoid the problems that arise from a death intestacy or from poorly drafted wills. Many of the enquiries about a deceased estate related to a person who had died intestate,

emphasising the legal issues that can arise if there is no will. Survivors needed help to understand the intestacy process and to carry it out. Many of the enquirers about wills and EPAs were concerned about the cost of having these documents completed, as they did not have the money to pay for a lawyer, as in the following example:

A client rang with multiple problems. His wife died four years ago. He does not have a will and has a terminal illness. He wants to make a will but has no money. All he has is 98 cents in the bank. There is someone on his street trying to buy his house and his grandson says they are going to take the house away so now he is scared that will happen. He has a mortgage and is paying it and does owe about \$1000.00 for rates but is paying it back bit-by-bit. His main concern is making a will.

Making EPAs is a very important measure to avoid having to appoint a welfare guardian after the person has lost capacity and the stress of not having anyone ready to make decisions. A number of enquiries showed the problems that families were running into as there was no EPA in place and the person had lost capacity:

My father has been placed in hospital. It appears he has Alzheimer's, and the hospital is putting him on medications. It appears quite advanced. He never got an EPA.

Client's father-in-law ... is 75 years old. [He] ... would like to set up an Enduring Power of Attorney for both welfare and property and wanted as much information as possible before going to see a lawyer. The father's doctor has suggested that he may be past being able to sign an EPA as he is becoming very forgetful.

The latter enquiry also illustrates a recurring issue in the data: understanding the requirement that the person making the will or EPA must have capacity, and how that is assessed.

### ***Deceased estates, disputes***

Alongside enquiries about intestacy, the other enquiries concerning a deceased estate related to contemplated or ongoing estate disputes. The estates were often not high in value, but these disputes nevertheless had high salience for the people involved, sometimes concerning the right to remain in the family home where one or more beneficiaries wanted to sell, and other beneficiaries wanted to remain in occupancy. For example:

Client's mother recently died. The deceased was estranged from her partner [the client's father] who has [returned to his home country] .... [The deceased's] will states that [the deceased's] share of the property is to be divided between [the client and the client's sister]. [The client's] sister wants to sell the house and buy a home of her own. [The client] has lived with his mother in the house all his life and doesn't want to move. His mother's lawyer suggested he negotiate with his father. Client has tried to do this but his father is quite manipulative and has told him that if client does what he says, he will allow him to stay in the house. Client hasn't got anyone to talk to about this as he always talked to his mother about any concerns he had.



Other disputes included inaction on the part of the executors, distribution of assets (often of high sentimental rather than financial value), and possession of the deceased's remains.

## **Recommendations for wills, trusts, estates, and care arrangements issues**

### *Public funding of wills*

There are a wide variety of paths a person can take to have a will drawn up and that variety is likely to be a barrier in itself. People have to select among the options and understand the differences in what they are purchasing. There are even websites summarising the options, indicating the multiplicity of services on offer.<sup>17</sup> The main barrier as indicated in this study, however, is financial. Some people wanted to avoid the cost by using a DIY option. Even in this category there are multiple possibilities: a free will template on Google Documents which can be altered (made by a lawyer); online websites by law firms or by overseas companies offering Aotearoa wills (the latter appeared to us to have language likely to cause confusion and may open the will up for challenge); and paper-based kits available from Whitcoulls and Paper Plus. While DIY may suit some people, it has obvious risks. Other people may not be confident filling out the DIY kit and want them checked by a knowledgeable adviser:

Client seeking advice regarding the writing up of his own Will on a do-it-yourself kit from Paper Plus. Client has no property or any significant assets and is unwilling to incur lawyer or Public Trust fees—hence a do-it-yourself will. He was seeking our help to complete the document prior to having it signed off by a JP.

There is currently no free, accessible service of this nature offered in Aotearoa so the client was unable to find the help sought.

A solution to the cost barriers and problems that arise from dying intestate or with an unclear will, is to have a free professional service. This is a highly specialised area with many potential pitfalls. A funded service would need careful quality control. There are overseas examples of funded will services. In New South Wales, NSW Trustee and Guardian draws up free wills for people receiving the pension. There is a page on the government website which includes a booking form for an appointment to make a will and the prices for doing so (and exemptions). An equivalent service in Aotearoa would allow any adviser or helper for someone needing a will, to direct them to some concrete assistance with full price transparency. With sufficient funding, this does not seem difficult to achieve. The Public Trust in Aotearoa already has an online and in-person service for making a will. Their online will charges are \$69 (basic) to \$189 (comprehensive) and an in-person will (needed for many older and low-income people) is \$385. Allowing waiver of that fee would enable many more people to access to a will

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<sup>17</sup> <https://www.moneyhub.co.nz/wills.html>

and therefore prevent costly disputes—costly for the state in terms of court resources and loss of productivity, and for the deceased’s whānau. This would need to be paired with oversight to ensure a quality service was being delivered.

### ***Funded and/or subsidised EPAs***

Similarly, there are several pathways for drawing up an EPA, although with the added difficulty that they must be signed by a lawyer or other authorised person (including someone from a trustee company). Understanding this difference and the difference between an EPA, a power of attorney, and appointing executors under a will, can create confusion for people. There is some excellent information available, for example Money Hub<sup>18</sup> keeps an up-to-date overview, but the enquiries indicate more is required to help people.

A service for free or very low-cost EPAs would assist in getting these in place for more people. There are EPA forms that can be downloaded and filled out, but they have to be witnessed by a lawyer, legal executive (specifically qualified), or trustee corporation. They generally charge fees. Currently the cheapest option we can find is the Public Trust which offers each EPA at \$130 (including a \$30 discount for Gold Card holders), which are completed online and then signed in-person with a trustee corporation. This service is only accessible to people with high digital and legal competency, so a more accessible and affordable (including free) service is needed. We therefore repeat the recommendation that a free or low-cost service, with regulatory oversight, is established so people can access EPAs.

### ***Information about intestacy***

Intestacy is a highly specialised area—so much so that a law firm has recently been established that works exclusively in this area (Adlam, 2022). Thought needs to be given to amending the process to make it more accessible (we note the Law Commission is currently reviewing aspects of succession law, including the intestacy regime (Law Commission, 2021)). Short of this, there is a need for very clear information for the bereaved about how to manage an intestate estate, the obligations of executors, and how to access copies of a will. Much of this information does currently exist but its accessibility could be improved by applying techniques of interactive guidance as discussed at pages 35-38.

### ***One-to-one advice for estates disputes***

Disputes about deceased estates did sometimes need legal advice as they involved the application of law to specific fact situations. These were often for estates with values

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<sup>18</sup> <https://www.moneyhub.co.nz/enduring-power-of-attorney.html>

that would be unlikely to bear the cost of a privately instructed lawyer (including for those worth less than \$15,000) but had high salience for the people involved. Disputes that involved the right to remain in the deceased person's property also had large impacts for ongoing housing security. Free legal assistance for this type of problem—provided by lawyers with sufficient expert knowledge—can help the person resolve the problem and prevent cascading additional problems. For a discussion of who can provide this advice, see page 23 and for further discussion on expert advice, see Chapter 5.

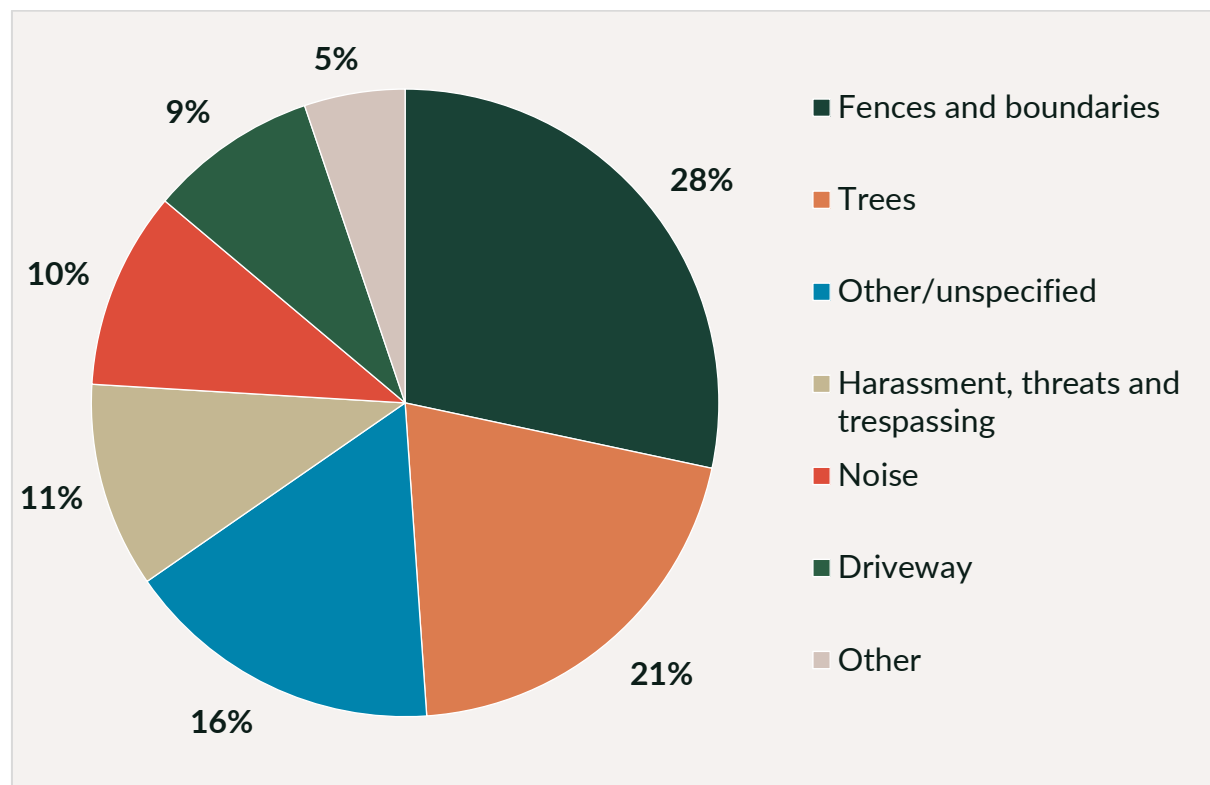
## Neighbours

Neighbourhood problems made up 8.2% ( $n = 462$ ) of all enquiries, making them the fifth most frequently occurring problem.

### *Frequently occurring issues*

Fences and boundary issues were the most frequently occurring issue, accounting for 28.4% ( $n = 131$ ) of the neighbour problems (see Figure 5 below). Tree issues made up a fifth (20.6%,  $n = 95$ ) of the neighbour problems. This was followed by 'other' problems (16.5%,  $n = 76$ ), harassment, threats and trespassing (10.6%,  $n = 49$ ), noise (10.2%,  $n = 47$ ), driveways (8.7%,  $n = 40$ ) and drainage, flooding, and sewerage (5.2%,  $n = 24$ ).

Figure 5 Problem types within the neighbours category



## **Fences**

The fencing enquiries related to rights, responsibilities, and process for erecting or replacing a boundary fence. These were mostly simple requests for information about process, including how to issue a fencing notice or dispute a fencing notice. For example, many enquiries took this form:

Client wanted to know what steps to take to have a boundary fence replaced/repaired. Who shares in the cost?

Some enquiries were more complex, including complaints about sub-standard repairs after damage to the fence, who carries liability for the damage, or removal of a fence containing asbestos. For example:

The client who owns his own home has a development taking place next door. The boundary fence was damaged in the process then an attempt made to fix it. The client is unhappy with the job done; nails poke out and he feels it is unsafe. The development is nearly finished. He has tried speaking to the workers but they ignore him. Neither has he been able to get the Project Manager's phone number. He wants to know what he should do to make sure the boundary fence is fixed to his satisfaction before they finish.

For the majority of fencing enquiries, however, information about rights and responsibilities, the process for reaching agreement, and the process for resolving disputes, along with practical tools for taking the next step would be sufficient to advance the issues.

## **Trees**

Tree enquiries focused on two main issues:

1. Trees that caused damage to drains or driveways or some other part of the neighbour's property or might do so over time, for example;

Client rang to ask about his rights regarding the overhanging huge branch of the neighbour. He wants to know who will have to pay to carry out the work of trimming or cutting it down as it is a huge job. He estimates that it would cost around 5K to 6K. Apparently, the height of the branch is about 30m and would pose a danger if suddenly it were to fall on their driveway.

2. Trees that blocked sunlight or views, or were anticipated to do so over time, for example:

Neighbour's tree blocking sunlight in winter at client's house. [Client] hasn't spoken with neighbour yet because she wanted to know rights and options first. It is a very large palm tree so no option of trimming branches. Neighbour has been a little difficult to deal with in the past.

These problems tended to be repetitive in nature and therefore rarely needed individualised, expert, fact-specific advice. If the person or their adviser had access to plain language explanations of the law, it could be understood and applied. Very clear information is particularly important for this problem type as the law runs contrary to what lay people may think the law is. For example:



1. Fruit growing from a neighbour's tree that overhangs or drops onto the person's property remains the property of the neighbour and may not be lawfully picked or collected, even though the neighbour could not pick it up without accessing the person's property;
2. A property owner may trim the branches of a neighbour's tree that overhang their property (probably well understood) and may then throw those branches back onto the neighbour's property (less likely to be well understood);
3. If a property owner wants to trim branches hanging from a neighbour's tree that have grown over the boundary, the property owner can do so. If the overhanging branches are not causing damage or blocking light, the property owner and not the neighbour who owns the tree must pay (Twist, n.d.).

This latter example irritated one enquirer, who would not accept this is the law:

Currently the neighbour has a fence against hers with large trees overhanging her property and she is concerned about the legal issues surrounding payment for this. She has been told she can cut the overhanging branches on her land, but she has to pay for it which has irked her. She has researched the Fencing Act, been to the Police, [Council], Community Law and her MP but she can't get a legal definition that says she is required to pay when she believes the owner of the property should do so.

This illustrates a problematic feature of this area of law from an access to justice standpoint. The law is not contained in readily accessible statutory form but is part of the common law tort of nuisance, with the right to cut the branches a right to abate a nuisance.<sup>19</sup> This makes it more difficult to produce convincing legal information as there is a lot of complexity.

### ***Buildings and other activities encroaching***

Some of the encroachment reported was short term, often from building contractors working on neighbouring properties. These could be addressed reasonably simply, for example, by way of a trespass notice where polite negotiation had failed. Other encroachment was more permanent and therefore more complex:

Client wanted to know about boundary issues. Their neighbour has built a large deck more than 1.5m off the ground and attached it to the boundary fence. They are concerned this has made the land unstable.

There were also enquiries involving building apartments over the boundary and damage to drainage. These enquiries were often complex in that they involve determination of liability (council, contractor, owner) and would usually need to involve council. Referral

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<sup>19</sup> Explanations with references to supporting cases can be found in texts such as *Hinde, McMorland and Sim Land Law in New Zealand*, but these resources are not readily accessible to the public (published online by LexisNexis).

for further advice and review of documents was therefore necessary to advance the issue.

### ***Identifying the property owner***

An underlying barrier to moving problems towards resolution was often a problem identifying the owner. For example:

Client wants to know who owns a property next door. Property is vacant, and trees on property are causing client issues. Council referred him to CAB.

This issue occurred across a range of neighbourhood problems where the property was either vacant or tenanted. Practical assistance to locate and contact owners was therefore needed.

## **Recommendations for neighbourhood issues**

### ***Neighbourhood legal information portal***

From a user-perspective, improvements could be made to better integrate existing information and make it easier to navigate. There is some good quality information already available on the CAB website as well as the CLC and Consumer NZ websites. Other websites purporting to offer assistance are less helpful, offering only brief information that would be unlikely to help solve a problem. We suggest a neighbour dispute portal, similar to what Consumer Protection offers for consumer problems. This would need to be developed and user tested. We refer readers to page 50 for other notes on the design of legal information. A neighbourhood portal would minimise the fragmentation of information which was particularly evident in this area of law.

The legal information could be improved by increasing its accessibility via interactive tools such as illustrations, videos, branching logic questions (rather than requiring the user to browse through long form information). This is particularly important for issues relating to trees where the law is complex and not readily accessible. Due to this complexity, a higher quality of legal information is required to ensure the public can understand it, be convinced of its accuracy, and implement it.

We suggest that a number of specific pieces of information should feature in the portal, drawn from frequently occurring queries:

- Warnings to check with local council about allowable fence heights and to identify protected trees;
- Information on how to find out who owns the neighbouring property;
- Tools to produce a fencing notice and instructions on how to serve a fencing notice, resolving disputes and what to do if you cannot afford to pay the amount specified (see discussion below on Fencing Notices);

- Comprehensive information about noise that is acceptable and unacceptable and how to source assistance;
- Tools to produce a trespass notice and instructions on how to serve a trespass notice; and
- What matters the Police should respond to.

### ***Interactive tool for Fencing Notices***

A practical improvement to address a large number of the fencing enquiries would be to provide a tool for generating a Fencing Notice pursuant to the Fencing Act 1978 and strong step-by-step guidance about how to serve and dispute Fencing Notices, and how to resolve disagreements.

A Fencing Notice is the formal request that a neighbour needs to use to initiate the obligation to pay for boundary fence work. At present there is a template for a Fencing Notice in the Schedule to the Fencing Act 1978 and it is linked by a number of information providers (e.g., Community Law Manual has a copy of it and CAB and Consumer NZ link to it). A copy of this form is reproduced below as Figure 6.

As will be apparent to the reader, the form is not in plain language, and it is easy to imagine many users finding it intimidating and difficult to complete. As is noted in the Schedule, “Use of this form is not obligatory, but it is given as a guide to the type of information that should be included in a fencing notice”. Given there is no obligation to continue to use this version of the notice, an improved process could:

1. Produce a plain language Fencing Notice and cross-notice (for making a counter proposal); and
2. develop a tool to complete and print out the form (using a guided document assembly interface—see pages 35-38 for further discussion). The tool would allow either the person with the problem or their assistant to easily produce a notice, rather than simply referring them to it or giving them a copy of the printed template.
3. Step-by-step guidance on issues that might arise including what to do if you cannot pay the amount specified in the notice.

## Figure 6 Template for a Fencing Notice as per Schedule to the Fencing Act 1978

Form 1

Fencing notice

(Use of this form is not obligatory but it is given as a guide to the type of information that should be included in a fencing notice.)

**To** [owner, or occupier by virtue of a tenancy for not less than 10 years certain, of [address], Dunedin, or Broadacres Farm, Taradale.]

Please take notice that I desire that a/the fence be erected (or repaired) between your said property and my adjoining property at [number, street] (or Greenmeadows Farm) in accordance with the following particulars:

1 Further description of boundary to be fenced.

2 Type of fence. [If desired specify one of the specimen fences in Schedule 2 of the Fencing Act 1978, or specify any other type desired.]

3 Method of construction. (Eg, by a contractor, or by one neighbour, or by both neighbours.)

4 Estimated total cost. (To be shared half each [or, if different shares are proposed, specify those shares].)

5 How materials to be purchased or supplied and how paid for.

6 Date for commencement of work.

Within 21 days after the date of the receipt of this notice you may object to any of the above particulars and make your counter-proposals.

Within the same time, if you claim you are not liable to pay for fencing, you may notify me accordingly and supply the name and address of the person who is liable for fencing in connection with your property.

If no objection is received I will proceed with the fencing in accordance with this notice, and you will be deemed to have agreed to the proposals set out in this notice, and will be liable to share the cost accordingly.

This notice is given under the Fencing Act 1978.

Date:

Signature:

### ***One-to-one advice***

Some enquiries needed one-to-one advice because they engaged local regulations and by-laws. These should theoretically be answered by the local council, but we noticed a pattern of councils referring enquirers to CAB, including for the regulation of swarms of bees, pigs in urban areas, and the management of protected trees. These could be addressed by councils taking greater responsibility for providing information and answering enquiries specific to their area.

Funded one-to-one advice is needed for claims under the Property Law Act 2007 that need to be argued in the District Court. While the more accessible Disputes Tribunal can hear cases involving damage such as roots growing into drains, if there is a need for



an order to trim or remove the tree, or that the tree is interfering with the view or sunlight, then it must be heard in the District Court.<sup>20</sup> This is problematic because of the difficulty accessing the District Court (including the complexity of process and the cost) (The Rules Committee, 2021). As the Consumer NZ website warns regarding accessing the District Court for claims involving trees: “Claims through the District Court will almost certainly require the help of a lawyer and can be expensive” (Consumer NZ, n.d.). A lawyer is required because it falls in the reserved area of work (see page 23 for a discussion of who can and should provide advice). The tree owner may therefore not be willing to follow the law, knowing that enforcement is unlikely.

Furthermore, even if an action is brought and an order made, the neighbour who owns the tree may not follow the order. If that occurs, the neighbour would need to apply for enforcement, another court application and process. These difficulties make threats of court action less than convincing and can leave neighbours deadlocked. The solution is either to fund representation so the neighbours can use the court process (or have a credible threat to do so and therefore assist in negotiating) or change the process to make it more accessible (e.g., revisit which forum has jurisdiction or simply the process to make it accessible without representation).

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<sup>20</sup> Property Law Act 2007, ss 333, 362.

# User-testing to meet users' needs

- User-testing is a key aspect of developing online legal information.
- Different users have different needs and only through testing will these be identified and met.

Designing effective legal information and interactive tools depends on understanding the needs of the users, rather than the person making the resources guessing what users need. User-testing and the process of legal design, provides a set of tools for ensuring that the resource meets people's needs. As we have previously observed, this includes understanding:

... their preferences, workflows and mental models (Hagan, 2016). For example, some might enjoy engaging with the finer points and figuring out what to do, others might want to just be told what to do step-by-step, or to skip the reading and talk to someone. Some people might achieve better understanding through short lists and others might prefer a narrative or conversational style. Design techniques enable developers to structure their information and tools in a way that fits these mental models, for example through the use of fictional 'personas' that embody user characteristics of particular groups (Hagan, 2016). The key point is that there is no standard format that fits all users. The best way to ensure that online legal information is presented in an effective way is through user engagement. (Turner & Toy-Cronin, 2020, p. 21)

While user-engagement is the key to developing effective resources, we can also draw on other studies to understand emerging best practice in the presentation of legal information. Hagan (2016), the leader in the field, has suggested that users want:

- Clarity (with easy navigation and search functionality to quickly find the right information).
- Open access (so they do not have to pay or see advertisements in order to use the service).
- Authority (giving them confidence that they know the information is reliable and expert).
- Comprehensiveness (so that they can find all relevant information in one place and go from understanding to action).
- Modern design (visual layouts and interactive features that demonstrate the site is up-to-date and trustworthy and that give rich tools for customisation and filtering of information).
- Conversation (question-and-answer format with personal narratives and anecdotes to illustrate scenarios).







## Observations from other categories

In addition to the observations we have made about the most frequently occurring categories of legal problems, we offer two general observations about improvements that could be made that would cut across all areas of legal need: decoding legal jargon and better guidance to find a lawyer when one is needed.

### *Legal jargon*

It is no secret that for the everyday person, legal terms can be confusing and hard to decipher. This can affect the ability of people to access legal information and therefore their ability to resolve their legal problems and enforce their rights. As Wright argued in the 1980s,

...many legal documents are a lexical steeplechase, in which intrepid readers surmount the hurdles of archaic terms only to stumble at the lengthy waterjumps of qualifying clauses packed end to end against each other. Such language inevitably restricts people's access to information. (Wright, 1981, p. 121)

While it might be convenient to think that we have moved on from the 1980s, it was apparent from the enquiries that the use of legal jargon continues to make information inaccessible, for example:

Client helping her father to be appointed as the welfare guardian of her grandfather. She had gone to the MOJ website and had all the information about the process and had tried filling in the forms. She wanted help to clarify some legal jargon and then decide on whether they should hire a lawyer.

In another enquiry, the client had been to the District Court and sought assistance to explain “legal jargons” used during the hearing.

## Recommendations for addressing legal jargon

The ideal is to move the system towards plain language. This may become the default for government produced information when the Plain Language Bill takes effect—“The bill is intended to make it easier for the public to engage and interact with the public service and Crown entities by reducing jargon and making all relevant documents clearer and easier to understand” (New Zealand Parliament, 2022).

In the meantime, it would be helpful to have a plain language glossary of legal terms. This would be useful for people seeking information for their legal problems but would also equip helpers. The Ministry of Justice already operates an online legal glossary so this could be improved to make it more accessible using plain language techniques. A model could be the Victoria Law Foundation plain language glossary of more than 450



common legal terms.<sup>21</sup> It uses plainer language and has more explanation than the existing Ministry of Justice glossary. For example, in the Ministry of Justice glossary the term “appeal” is explained as:

An application to a senior court to change a decision of a lower court or tribunal.

The use of “senior court” is itself jargon, as is “application”. The Victoria Law Foundation version says:

The review of the decision of a lower court by a higher court. If an appeal is successful, the higher court can change the lower court’s decision.

This avoids jargon and briefly talks about the consequence of an appeal, likely to be of relevance to a member of the public seeking to understand what an appeal is.

### ***Finding a lawyer***

There were instances when enquirers sought a recommendation for a lawyer. For example:

Client's sister has an interim parenting order that she filed and has been granted. She is waiting for the judge’s order. The father of the children lives in [location] and the parenting order was filed as the client’s sister does not believe it is safe for the children to be with the father. The client’s sister believes the father will file to oppose the order and she went to the Family Legal Advice Clinic and was advised to get a lawyer to file a memorandum. Client wanted a recommendation for a lawyer.

Seeking a recommendation for a lawyer is common and understandable: “for those who lack direct personal experience in the field, asking a trustworthy and knowledgeable person to name a suitable firm is a natural and flexible way to seek help” (Semple, 2019, p. 186). Most providers of help, such as court registry staff or CAB, will not recommend particular lawyers and will refer people to the New Zealand Law Society website or, for family or property law enquiries, the websites for those specialist sections.<sup>22</sup>

These websites allow users to search and filter registered lawyers by practice area, location, lawyer type (barrister or barrister and solicitor), and language spoken. In the Family Law Section register and Property Law Section registers, users can search for lawyers who deal with sub-specialist areas: in family law sub-specialities such as adoption, guardian, and child support; in property law sub-specialities Māori Land or Local Government. Once the user has defined their search parameters, they are given a list of relevant lawyers in random order. In the Property Law Section, a star symbol is

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<sup>21</sup> Victoria Law Foundation, <https://victorialawfoundation.org.au/news/what-our-new-plain-language-legal-glossary-can-do-for-you>.

<sup>22</sup> New Zealand Law Society, <https://www.lawsociety.org.nz/for-the-public/get-legal-help/>; Family Law Section, New Zealand Law Society, <https://www.familylaw.org.nz/public/find-a-lawyer>; Property Law Section, New Zealand Law Society, <https://www.propertylawyers.org.nz/public/find-a-lawyer>.

used to denote when the lawyer is an “Accredited Specialist”, and a link is provided for users to find out “what it means to be an Accredited Specialist”. Clicking on this link however simply redirects the user back to the Property Law Section homepage. The information on the Accredited Specialist scheme is only able to be viewed by Property Law Section members.<sup>23</sup>

There are other databases as well:

- Auckland District Law Society operates a database and website function similar to that of the Law Society, but this is Auckland-specific;
- New Zealand Bar Association has a “Find a Barrister” function on its website albeit the website is likely to appear targeted towards members of the association, rather than members of the public.
- Thomson Reuters, a for-profit company, also maintains a free searchable database of lawyers in Aotearoa on its website and has a corresponding freephone 0800 number. For a lawyer or firm to be searchable on this database, they must have registered with the company. Lawyers and firms are also able to pay to be featured at the top of the list of lawyers generated after the user has entered their search.
- Ministry of Justice database allowing users to search for legal aid providers by location, law type, and subcategory of legal problem. A relevant list of lawyers is generated along with the types of legal aid they are approved for and contact phone numbers. For any other contact details such as a web address or email, users are referred to the New Zealand Law Society website.<sup>24</sup>

This all amounts to a confusing web of resources for those searching for a lawyer. Even those who manage to navigate it will only be at the first stage of their search. The user then has to bear the search costs of trying to find a lawyer who is “willing to *be* retained on that matter” (emphasis original) (Semple, 2019, p. 185) and then selecting from those willing to be retained, a suitable lawyer (which will depend on price, personal fit, area of expertise).

The first problem—that of trying to find a lawyer willing to be retained—may be particularly difficult for those seeking the services of a legal aid provider. In 2020 for example, there were 883 approved legal aid providers, but only 14.3% were active providers of legal aid services (defined as those providers who had been assigned two or more cases in that particular year), 6.8% were semi-active (defined as those providers

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<sup>23</sup> <https://www.lawsociety.org.nz/branches-sections-and-groups/property-law-section/pls-membership/pls-accredited-specialist-scheme/>

<sup>24</sup> None of the above databases allow the user to filter by legal aid providers except for the Family Law Section, and confusingly, this lists legal aid in among the sub-specialties, rather than as a clear filter option.

who had been assigned one case in that year) and 79.0% were inactive, taking no cases (data provided by the Ministry of Justice and obtained under an Official Information Act request). This means a person looking for legal services is likely going to need to make contact with many providers. This will be difficult “given that the events giving rise to personal plight legal needs are often traumatic and/or embarrassing” so “relating them to multiple strangers in succession is unlikely to be pleasant or easy” (Semple, 2019, p. 189). Furthermore, these issues often have a sense of urgency and having to contact multiple providers may result in delay (Semple, 2019). This of course speaks to wider issues about the availability of legal aid services which are documented elsewhere (Stewart et al., 2020; Stewart & Toy-Cronin, 2018) but it is important to emphasise the burden this puts on people searching for help.

The second problem—trying to find a suitable lawyer—is difficult because it is very hard to compare price and expertise of different lawyers. “One shot” litigants (those “who have only occasional recourse to the courts” (Galanter, 1974, p. 97)) are going to have difficulty judging the quality of the providers and services on offer in order to make meaningful comparisons. Price comparisons are also very difficult because of low price transparency in the sector: “New Zealand legal services providers do not behave in a manner that promotes price information availability” (Choe, 2021, p. 504).

### **Recommendations for finding a lawyer**

- We echo Choe’s (2021) calls for improved price transparency as a starting point on this issue. This could be achieved through the regulator requiring greater disclosure of pricing and integrating this into the register;
- The Ministry of Justice legal aid provider database including an indicator of how many cases each practitioner accepts per year (e.g., less than three, four to 10, 10 or more) to give prospective clients an indication of whether it is worth spending time contacting that lawyer;
- Making significant improvements to the NZLS register to improve its functionality and filtering and integrating the Ministry of Justice legal aid information. Improvements would hopefully render the databases of the specialist sections and other associations redundant, thereby reducing confusion for users. Consideration could also be given to “building out regulators’ [in our case, the New Zealand Law Society’s] online directories into full-featured comparison sites” (Semple, 2019, p. 201 citing CBA Legal Futures Initiative, 2013; Susskind, 2012).







## Chapter 5: The bigger picture

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The recommendations in the previous chapter were directed at how resources could be improved to assist with the most frequently occurring legal problems. This is not to say that other, less frequently occurring problems are not worthy of help, but we are providing evidence-based suggestions to help a large group of people. In undertaking this analysis, however, we also noted some larger structural issues that need addressing to effectively deliver justice to more people. In this chapter, we set out three recommendations that we regard as equally important, but that require coordination across the sector:

1. Improvements to online services will be helpful but they are not a substitute for one-to-one services. Online and one-to-one services go hand-in-hand;
2. Online and one-to-one services need better integration and strengthened capacity to identify problems that need referral to other services;
3. There must be a service or services to meet the “middle ground” problems that are too complex for information services but that do not justify instructing a lawyer or other paid advocate.

### Online and one-to-one services

It will not have gone unnoticed that many of the recommendations we made in the preceding chapter referred to improvements in online services. Many readers will balk at these suggestions. There is a significant—and we would agree—well-founded fear, that if resource is put into online resources, those resources will be regarded as complete solutions. There are significant incentives for governments to regard online resources in this way, particularly the cost savings. While there are costs in developing and maintaining such systems, there is a reduced need for staff and physical infrastructure. This can lead to a desire to pursue policies of “digital by default”, strongly encouraging people to use online options, making paper-based options less accessible, and withdrawing support for one-to-one services. Coupled with the fear that advocating for online resources will mean less one-to-one services, is a fear that those who cannot use the information and self-help tools will be stigmatised, “deemed unable to cope with life and with the law” (Laster & Kornhauser, 2017, p. 132).

These are legitimate fears, and we must guard against them being realised. We therefore need to be very clear: we are advocating for online *and* one-to-one services. The reasons for this we will explain but in summary they are:

1. Services need to reach everyone and not everyone can meet the demands of the justice system unassisted. Assistance must therefore be provided to ensure equality of access;

2. People most commonly seek help from non-experts when faced with legal problems. Online information and tools can help the helpers (who will often be better positioned to meet the demands of the system);
3. One-to-one services are important in unpacking the problems behind the problem the person presents with in a way online tools cannot;
4. Online-only services may be dehumanising and alienating, creating disengagement when engagement is the aim. Easy access to one-to-one services allows the humanising element to remain present for those who want that support.

We explain each of these points in turn.

### ***Equality of access***

As we discussed in Chapter 1, it is important to recognise that disadvantage means not everyone is equally positioned to meet the demands of resolving legal problems. For example, where people need a letter drafted, some people would be able to use a technology assisted solution to achieve this without any further assistance. They would have the access to technology, literacy, and the confidence to produce and send a letter. Other people would need someone to sit by them while they generated the letter and others still would need a person to do it for them.

The data we analysed for this project cannot tell us anything about how many people would need each type of assistance. When coding the data for the type of legal problem, we did however note where the enquiry included some comment on factors that might make it likely that support was needed. There were a wide variety of different personal circumstances, but the following factors were common, indicating a likelihood of need for support:

1. **Health conditions, disabilities, cognitive.** For example, a client was deaf and trying to resolve a legal problem involving the IRD and company shareholder obligations. As he was deaf, he needed the volunteer to phone the IRD on his behalf.
2. **Literacy challenges.** Literacy has obvious implications for the ability to use legal information and self-help solutions. For example: “Client has lost his licence and needs to apply for a limited licence. He has literacy difficulties, so will need help to fill in the application forms”.
3. **Family violence.** Barriers to help-seeking for family violence have been documented elsewhere (Fanslow & Robinson, 2010; Lysova et al., 2022; Overstreet & Quinn, 2013; Wilson et al., 2019) and include coercive control over a victim, a mistrust of services and systems (often stemming from previous negative experiences), fear of how a victim might be perceived (due to stigma and victim blame), and systemic entrapment. In the following example, the client’s

ability to access or action assistance may be compromised if her partner returns to her home:

Oranga Tamariki have advised client they will remove children if her former partner does not leave because of his violence - client has persuaded him to leave but she is concerned (as is her wider family) that he will come back...She has been to the police, and they have advised her to get a Protection Order. She wants to know how to do this.

4. **Difficulty communicating in English.** This can create the need for additional support including help to understand a legal problem, understand legal information in response to the problem, and to understand legal processes. It also means that translation may be required to progress resolution of the problem, such as in the following example:

Client bought a house from a seller (developer/builder) in June last year but found defects in the property during inspection. Agent said she will contact the builder and these defects will be repaired. The settlement can be done in advance. However, until now nothing has been fixed or repaired. The quote of total repair cost is NZ\$15,000. Client wants to make a claim to the Disputes Tribunal. He is not good in English and asked us to help him with filling out the form and to translate the supporting documents into English for him.

5. **Being in prison.** Previous research has identified that people in prison experience “a unique range of barriers in meeting their legal needs because of the nature of the prison environment” (Grunseit et al., 2008, p. 1). These include restrictions on communication such as a lack of access to face-to-face contact with advisors, digital exclusion, lack of access to telephones (due to cost and time restrictions), and restricted mail services. Prisoners’ legal problems may be connected to the reason for their incarceration, or to other legal problems such as housing, family, or from their experiences in custody. For example, a client sought assistance for stopping child support and for compensation following loss of property that occurred within the prison. Another person in prison sought assistance regarding the use of Māori land:

Advised the client we can't make contact on his behalf with anyone outside the prison. Suggested he could write to them. He said staff at the prison appear to be withholding his mail...He then asked for the contact details for PARS so he could ask them to do it for him. I gave client the 0800 number for PARS [location].

6. **Digital exclusion.** This is a well-recognised problem (see Citizens Advice Bureaux New Zealand, 2020). Evidence of digital exclusion was frequently evident in the data. Indicators of digital exclusion might include a lack of access to an internet capable device or internet itself (often driven by insufficient funds), computer/internet literacy challenges, general literacy challenges, and limited or no printing access. The following enquiry illustrates how digital exclusion, in this instance being unable to access a computer, can impede the resolution of a tenancy problem:



The client had been referred to us by Tenancy Services to get a paper copy of the form she needs to fill in to access their mediation services (a dispute over the refund of her bond). The client does not have access to a computer. She has been in frequent contact with them (by phone) since last April when she moved out of [the] flat.

It was common for people to have more than one factor indicating a need for additional support. For example, one person was neurodiverse and had a health condition, another had a language barrier and was experiencing digital exclusion. Even those without particular challenges may want more support. As Genn (1999, p. 100) observed many years ago when considering legal need:

For many ... the provision of information and guidance about how to take a problem forward did not meet perceived needs. What was wanted was someone to take over and deal with the problem - to make difficult phone calls or to write difficult letters. Moreover, some respondents were so emotionally drained by the worry about the problem that even if they would normally feel competent and confident, at that particular time and in those particular circumstances they were not able to manage dealing with the problem.

It is important, therefore, to acknowledge that legal information and self-help tools are not the answer for everyone and not the whole answer for many. Why bother with making them then? The first part of the answer is that they are useful to some people and may be sufficient to equip them to solve their problem. The second part of the answer is that even if they are not used by the person with the legal problem themselves, they can be deployed by the helper assisting the person who has the legal problem.

### ***People commonly seek help from non-experts when faced with a problem***

Online legal information and tools are important to equip the helpers—the people or services that those with the legal problem turn to. These are most commonly non-lawyers i.e., they are family members, doctors, well-connected or educated friends, a church leader. Legal needs surveys in Aotearoa have estimated that between 34% (Ignite Research, 2006) and 57% (Colmar Brunton, 2018b) of people turn to whānau/family or friends for help solving a legal problem. People may also turn to a range of other sources who have experience or expertise in another field, but not legal expertise such as health professionals (19%) and government agencies (15%). Even people turning to advice services—about 11% (Colmar Brunton, 2018b)—can benefit from such resources as it is a resource for the adviser to draw on.

Indeed, it is not necessarily the person with the problem who is seeking help, it is often an assistant (a family member or friend) seeking further help on behalf of the person with the problem. Information and tools need to respond to their needs too. In this study, a person enquired on behalf of another person for 8.0% ( $n = 450$ ) of the legal problems

reported. This number was not distributed evenly among the legal problem types. In the top five legal problem categories, only 1.5% ( $n = 7$ ) of legal problems concerning neighbours were made on someone else's behalf; this was 2.2% ( $n = 22$ ) for consumer issues; and 4.4% ( $n = 31$ ) for rented housing. However, for employment problems, enquiries for nearly one-in-ten (9.7%,  $n = 69$ ) problems were made on someone else's behalf and this increased to nearly one-in-four (23.4%,  $n = 109$ ) for problems involving wills, trusts, estates, and care arrangements.<sup>25</sup>

Online legal information is therefore important to help the assistants: it can allow them to assist in the community (without referral to a one-to-one service) and enable them to direct the person to a one-to-one service. Online legal information is also vital support for the one-to-one service itself. For example, CAB volunteers are trained to always look up answers to legal problems in CABNET, the online database that CAB runs.<sup>26</sup> The quality of the information and the tools that an adviser can deploy are therefore very important components of assistance services. The better that information and the more practical the tools that are available, the less the assistant or adviser needs to send people on to specialist advisers.

### ***Unpacking legal needs***

A further reason that one-to-one services are needed alongside online services, is that a discussion with someone seeking legal assistance can unpack extra needs. A client may present with one problem, but a discussion will reveal other issues that need to be addressed (both legal and non-legal). This example, which began as a tenancy issue, demonstrates the benefit of the one-to-one discussion:

Client called to ask if there was any way she could break the terms of her tenancy agreement. After some discussion around ways this could be possible, the conversation progressed onto why she wanted to. Partner (who is not on the tenancy agreement) is abusive, drinking, and left their underage children home alone to go to the pokies and client has had enough. She wants him to leave and has tried to throw him out previously but he has nowhere else to go, comes back, and eventually she relents. She has had the Police involved on at least one occasion.

Online legal assistance misses the opportunity to identify the other underlying legal issues. This is, therefore, a further reason that online services cannot be seen as a substitute for one-to-one services, but merely as an important supplement.

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<sup>25</sup> For a complete breakdown of the enquiries made on behalf for all legal problem types, see Figure 7 (Appendix B).

<sup>26</sup> Author's observation of CAB offices, November 2021.

## ***The humanising element of one-to-one services***

Online services can be effective at delivering legal help, but they cannot substitute for the human element that some people will value. Online only services can be alienating and anonymising, particularly at a time when the person is under stress because of the legal problem. This relational aspect of advice giving cannot be carried out online (Burton, 2020). The reassurance provided by having human contact should not be under-estimated. Reassurance by itself is not helpful; it needs to be paired with actionable information and resources, but it is an important element for some seeking legal help.

## **Ensuring integration and effective entry points**

Another general observation we made when analysing the data for this project, was the fragmented nature of government services on offer. The government is a major provider of assistance, in the form of both online information and topic-specific helplines. The topic-specific helplines have the advantage of having specialist information (although only information, not advice), but specialist services also have a drawback, as Pleasence et al. (2014) have observed:

[Specialised services can] result in the failure to detect and address all of the legal problems faced by an individual, which can result in the need for extra contacts with legal services or, worse, in people giving up on obtaining advice (Pascoe Pleasence et al., 2014, p. 32).

The information helplines are not the only example of fragmentation; the online government resources have a similar problem. They are usually well-written but often duplicate information provided in other government websites, or are linked to other government websites in partial ways. Take for example a person with a consumer complaint against a company that is now insolvent. A Google search might initially land the person on the general [govt.nz](http://govt.nz) website (run by the Department of Internal Affairs) which provides very basic information. It links to the Consumer Protection website (run by MBIE). If the consumer complaint is against a company which is now insolvent, the Consumer Protection website says they should “contact the receiver, liquidator or administrator”, “get in touch with them to register your claim quickly” (Ministry of Business Innovation and Employment, 2022b). It does not say *how* to do this however or provide any explanation of what receivership, liquidation, or administration is. This information does exist, on the website [insolvency.govt.nz](http://insolvency.govt.nz) (also run by MBIE), but it is not linked or integrated with the Consumer Protection website.<sup>27</sup> This issue is observable for many legal problems.

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<sup>27</sup> There is a link to [insolvency.govt.nz](http://insolvency.govt.nz) for another topic further down the page, but not for this topic.



Each department seemingly develops its own resources in isolation from other departments. This is unsurprising when government departments have particular areas of concern and are therefore providing information in those areas accordingly. For the user however, it is very confusing and can mean that instead of being user-focused, the solutions are problem-focused. As Pleasence et al. (2014, p. 32) have observed, this fragmentation of services “can be a particular challenge for the especially needy who have multiple legal problems and, thus, may need to identify a separate legal service provider for each problem and navigate the disparate eligibility criteria attached to each provider”. A user may also become lost and confused, or accidentally navigate to a non-New Zealand website offering information that is not applicable here. Integrating the government websites to give a more seamless user experience would avoid wasteful spending on duplicating information and avoid confusing users.

There are of course non-government websites as well which offer a range of information. Most link to other sources, which is helpful in that it directs the person out to additional information. It does also expose them to the risk of being stuck in the cycle of partial pieces of information that we discussed can happen in government websites. Having observed these problems with online legal information, we have previously made recommendations on how to create a successful eco-system for online legal information and self-help (Turner & Toy-Cronin, 2020). The recommendation was that high-level cooperation is needed between government departments and with the major non-government providers of legal information to develop:

- a. A portal website for Aotearoa, incorporating guided pathways, action focused tools, and connections to assistance, including strong connections with the main legal assistance and dispute resolutions systems of the justice system; and/or
- b. A joint funding model together with objectives and criteria, for example targeted at collaborative, user-centred projects, which are focused on areas of identified need, either replicable or adoptive of tested products; or which provide open infrastructure (Turner & Toy-Cronin, 2020, p. 39).

Integration is also needed in the area of one-to-one services, the helplines and in-person services offered by government and non-government. An effect of the network of information providers is that people are sometimes caught in a referral loop, where they are passed from one source to another, without being able to get a clear answer to their issue. Both the government and non-government websites usually have contact points for further information. The CAB, CLC, and government websites frequently direct people to each other i.e., a government website will suggest people seek more information from CLC or CAB, and the CLC website directs people to its own organisation but also to government sources, and sometimes to CAB.

While CAB were the first port of call for many people seeking assistance, there were instances when a person had been referred or signposted to CAB by a different advisor and in some instances, they had been referred on multiple times. For example:

Client has been made redundant and believes the process has been unfair. His main issue however, is money owed to him, which he is keen to reclaim. He does not see any point in pursuing the unfair dismissal. He has been to Community Law and contacted MBIE but feels that he is talking to machines/people who just pass the buck. Community Law for example, just gave him a list of three lawyers who he could contact. Having just been made redundant, he is reluctant to pay for a lawyer.

Another example was a homeowner whose property bordered a new subdivision, and he was concerned about the boundary fence between his property and the subdivision:

He talked to the estate agent selling the new properties, who wasn't interested and put him onto the Council, who then sent him to CAB. He also asked about possibly putting a caveat on the fence. He could possibly go to the Disputes Tribunal to recover half the fence cost, but he didn't seem very interested in that, and said it would be too lengthy. If he is thinking of a caveat, he should get legal advice, so gave him times for CAB and CLC [legal clinics]. Cabinet did not seem to have an answer for this particular situation. Directed him to CAB website to read about fencing, and also to look at the link to the Fencing Act. He seemed reluctant to do this, as he said it would muddle his thinking, but I said the CAB information was very easy to read.

In other instances, the referral loop is caused by the differences in what services are provided at a particular location, for example:

Client has an existing limited (work) licence so that he can travel to work and back. He has recently changed employer and is now working [at location]. He wants to amend his licence to reflect his new employer's details. He contacted [location] District Court who told him he either has to apply for a new licence or apply to change it, and either way he needs a lawyer to draw up the papers. They referred him to Auckland Community Law Centre (AACL) or to us. AACL told him they don't deal with traffic matters and also referred him to us.

This situation is frustrating for the enquirers who—as the person in the first example articulated—can feel like they are “talking to machines” or that the people giving assistance “just pass the buck”. Research indicates that being referred on comes with the risk that a person experiences ‘referral fatigue’ whereby they become less likely to obtain assistance with each subsequent provider they are referred to (Genn et al., 2004). As such, their problem is more likely to remain unresolved and may escalate or result in further problems.

What is needed from policy leadership is therefore to design a system that is focused on the user-perspective, making it as easy as possible for the user to enter the system and get the help they need. While the loop of providers is helpful in providing “no wrong door”, the passing between providers indicates the need for clearer entry points: “Simple, well-signposted entry points are critical to ... avoiding referral fatigue and maximising legal resolution” (Pascoe Pleasence et al., 2014, p. 33).

Entry points, as Pleasence et al. (2014, p. 33) argue, must have several features to be successful. They must:

1. Be highly visible and accessible e.g., a well-recognised brand
2. Able to act as a legal triage being able to complete at least a preliminary legal diagnosis followed by suitable referral for a more complete legal diagnosis
3. Be well connected to a wide range of legal and non-legal services that they can then refer people to
4. Be well resourced in order to fulfil these roles.

While this study demonstrated that some legal problems are more common than others, it also underscored the wide variety of legal problems experienced and for which people sought assistance. This highlights the need for entry point providers to be equipped to deal with both “typical” legal problems—those arising from circumstances routinely experienced—but also less common legal problems. This requires a wide range of resources and information which the entry point providers can draw on when necessary. It also follows that entry point providers need to be aware of legal and non-legal services to enable referrals.

Policymakers need to decide who is best positioned to provide this assistance. As Pleasence et al. (2014, pp. 33–34) suggest, “a key discussion point for policymakers and legal service providers is which agencies are best placed to act as effective gateways”. Once that decision is made, resourcing them sufficiently to perform that function is key.

### **Affordable (including free) expert assistance**

Having a clear entry point is important, but also important is ensuring that if someone needs extra assistance, then that entry point leads to a place they can get that help. This is a core problem of the current system. While we have information and basic advice services, we lack a well-resourced intermediate service for people who need extra help at little or no cost. Without this service, people may be referred back into the loop of information services, without accessing the next level of assistance. An analogy to health care services might be helpful. We have strong primary care (generalist, accessible services) for the legal sector, able to provide help with many everyday problems. While always resource-strapped and with room for improvement in its information resources, there is help available. We also have the equivalent of inpatient treatment (intensive management) in the form of lawyers who can take a case and guide it through the system. This is prohibitively expensive meaning people cannot access it if they do not qualify for legal aid, cannot afford to pay privately, and cannot access pro bono assistance. This is a well-recognised problem. What is less frequently talked about is the weaknesses in our legal equivalent to an out-patient specialist service. This is the ability



to go and consult with a specialist, to seek help and guidance on a particular issue, without becoming an inpatient (having a lawyer take the whole case), at no or little cost.

All of the top five categories had a subset of problems—and for employment this was a large subset—that needed something equivalent to an out-patient specialist service: individualised, expert advice to move them to resolution. They were often people with low income and/or problems that could not bear the cost of private legal assistance and would be unlikely to qualify for legal aid or pro bono assistance. For example, neighbours trying to have a tree removed, an intestacy for an estate of \$300,000, an employment dispute where the person is now unemployed, a consumer dispute over home renovations for a working family's home worth \$80,000. These disputes might all need expert assistance but are very unlikely to qualify for affordable full representation (“in patient treatment”). How can they be helped?

At present, the main provider of this service is the CLCs whose purposes include providing free advice to people needing one-to-one assistance. Some CABs also have volunteer lawyer clinics and there are other limited pockets of assistance, depending on the nature of the person's problem and their location. These services are constrained by resources and regulations, and as the examples of people caught in the referral loop above illustrate, are not large enough to meet the need. A broadly accessible, affordable (including free) service to provide more assistance to people needing more detailed advice is a very significant gap in Aotearoa.

This observation raises an important policy question: who is best positioned to provide one-to-one legal assistance for commonly occurring legal problems? We set out here some of the factors that we suggest should be considered when making this choice, but note we also discuss the regulatory restrictions on the provision of legal advice at page 23.

The advisers who take on the role of assisting disadvantaged clients with everyday legal needs need strong interpersonal skills (for interviewing and guiding clients). It is also important that they have specialist knowledge of the field in which they are working, and where a dispute is involved, and knowledge of the practical remedies and strategy that might be effective. Subject matter and specific forum knowledge (i.e., knowledge of how a particular court or tribunal or process works) is very important, probably more important than broad education (Genn & Genn, 1989; Rebecca L. Sandefur, 2015; Rebecca L Sandefur, 2020). Nevertheless, a broader understanding of law (when coupled with subject area expertise) is helpful to recognise other legal issues in a problem.

Lawyers are not necessarily equipped to immediately fill the gap because, outside the CLC system and other small pockets of community facing lawyers, many lawyers are

inexperienced in working with disadvantaged clients and lack expertise in areas of high legal need, such as consumer and rented housing.<sup>28</sup> This is due to various structural factors:

- it is uneconomic for them to take cases in these areas as their fees will quickly outstrip the amount at stake; and
- lawyers are often excluded from forums where high-needs cases are resolved, such as the Disputes Tribunal and the Tenancy Tribunal.

In other areas such as will making, the law is highly technical and requires specialist knowledge and experience to avoid errors. Lawyers who are not regularly working in this area should not be presumed to possess sufficient knowledge to carry out the work.<sup>29</sup> This does not mean that lawyers cannot develop the expertise, or the interpersonal skills to work with disadvantaged clients, but it is important to acknowledge that increasing the workforce to fulfil this role means upskilling more lawyers to meet this need.

Upskilling more lawyers to meet this need has merit. Aotearoa produces more legal graduates each year than there are legal positions available (MBIE, 2022), at great expense to the taxpayer.<sup>30</sup> These graduates have a broad legal education (often paired with higher education in another subject), and many are passionate about social justice and contributing to closing the justice gap. This issue of underemployment or unemployment of law graduates, paired with a shortage of legal services, has been called the “access to justice paradox” (Kunkel, 2019, p. 367). If career paths are developed for more salaried specialist lawyers (e.g., for more to join CLCs, or for another service), there is no reason to think lawyers could not be developed into an effective workforce to fill this gap. The added benefit is that there is no concern about the lawyer stepping over into the reserved areas of work because they are entitled to work in them.

Alternatively, or in addition, we have other workforces that may be able to be trained to fill specialist gaps. There are advocates working in specific areas (tenancy and consumer, for example) who could be given training and salaried pathways in their existing area of knowledge.<sup>31</sup> These workforces can have particular benefits for those facing legal

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<sup>28</sup> There are of course exceptions. Those working for Community Law Centres or practices focusing on low-income clients will have much more expertise.

<sup>29</sup> A study in England assessed wills made by a range of sources, including solicitors. Wills were assessed as pass or fail (where they were assessed by experts as “either being not legally valid or of poor or very poor overall quality”). The study found that one in five (20%) solicitor-prepared wills failed, the same as for will-writing companies. This was only marginally better than self-completion wills where three in ten wills failed (30%) (Legal Services Consumer Panel, 2011).

<sup>30</sup> While students pay fees, the government heavily subsidises courses. Approximately 33% of universities’ incomes come from the government tuition funding and 18% from domestic fee-paying students (Universities NZ – Te Pōkai Tara, 2022).

<sup>31</sup> None of this is to suggest that there is not an important role for advocacy that can have transformative potential in people’s lives. Advocacy organisations are an important part of civil society and democracy. For example, discussing the United States, Michener (2022) discusses

problems. For example, in a study of fee-charging McKenzie Friends (a non-lawyer litigation assistant) in England, clients reported selecting the McKenzie Friend service for reasons of “affordability, flexibility, shared experience and having a committed ‘ally’ assisting them in their case” (Smith et al., 2017, p. 41). To ensure protection of clients, this workforce would need to be regulated; the current concern about unregulated employment advocates has demonstrated the perils of an unregulated workforce.<sup>32</sup> The inclusion of regulated, non-lawyers in the workforce would be in keeping with United States developments where regulators are overseeing non-lawyers to deliver services, focussing on whether they are delivering good outcomes for consumers, rather than focussing on the qualifications of those who are providing the services (Sandefur & Burnett, in press).

### **Funding**

Salaried professionals to respond to the need for free or low-cost legal assistance in areas of high need would, of course, need to be funded. Government funding of such a service is the most obvious possibility. It may create direct savings for legal aid (paying salaried advisers rather than private lawyers) and may create indirect savings through legal problem prevention (i.e., solving problems before they escalate and need court resources), and for other drains on social services (e.g., a tenancy claim for better insulation in a house may prevent hospitalisation of the people living in the house).

Alternative funding models for such services that have been used in the United States include (Burnett & L. Sandefur, 2022):

- A part charge for clients to supplement government and/or grant funding;
- Direct funding for legal interventions that save government costly outcomes (e.g., homelessness, hospitalisation) such as payment of half of the cost saved;
- A pay for success model, where the provider uses “evidence of impact and cost savings to a government or organization to attract impact investors to fund nonprofits to scale-up their services” (Burnett & L. Sandefur, 2022, p. 114).

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the role of tenancy organisations as sites of power building and mobilisation of marginalised communities. These organisations worked within the legal system to help tenants in the short term but “they understood that more liberatory goals would require transforming, imploding, or transcending the civil legal system altogether” (Michener, 2022, p. 1416). By directing attention at who could or should fill the gap in legal advice that currently exists, we are not suggesting that this in anyway supplants the need for other advocacy, particularly advocacy that is independent of government funding. Broader advocacy, that may include some legal assistance, but which is aimed at mobilisation and transformation is also important but is beyond the scope of this report.

<sup>32</sup> Regulation of non-lawyer advocates is part of the Independent Review of the Legal Profession which is in progress. Calls for regulation have come from multiple sources, including the Employment Law Institute of New Zealand, the membership organisation for employment law professionals (including non-lawyers) nationwide (Bell, 2022).



For specific services, such as employment advocacy, other models are available as we have already suggested (see page 27), such as encouraging union membership or developing other models for employees (and possibly employers) bearing the cost of having a service on hand when it is needed.

## Chapter 6: Conclusion

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Improving access to justice in Aotearoa is a complex task, requiring the input and expertise of people from a range of positions in the sector. This project has sought to make one contribution to that complex task: to examine common categories of expressed legal need and make some concrete suggestions about what assistance could help move these enquirers towards solutions.

Most of the solutions we have proposed involve a level of cooperation between various stakeholders. This is to ensure that the help that is available is coherent from a user-standpoint and is designed for user-needs, rather than from the standpoint of the provider. As a country, we have two distinct advantages in being able to achieve this level of cooperation. First, we have government and non-government organisations already committed to delivering accessible and high-quality assistance. This is a strong foundation to build from because what we are recommending for the most part, are improvements to what already exists. Second, we are a small, unitary jurisdiction. Cooperation in this environment should be achieved with relative ease compared to those nations who must contend with large populations and a federal system. The cooperation that is necessary to deliver the suggested solutions is therefore within reach.

The other over-arching requirement of the solutions proposed is policy leadership on the delivery of one-to-one assistance. As we have discussed, one-to-one assistance is vital to helping people move their problems to solutions, even when sophisticated online assistance is available. We have provided a framework for thinking about how this kind of assistance could be delivered, by who, and how it could be funded. It is the task of policymakers to grapple with these questions, make decisions, and put the funding in place to support those decisions.

Everyday legal problems “go to the heart of people’s social, economic, and physical well-being” (World Justice Project, 2019, p. 4). By tending to these problems, we can mitigate the negative impacts of unresolved legal problems on people’s lives, uphold the rule of law, and foster economic and social development. With strong leadership and sector-wide collaboration, there is great potential for making significant strides in improving access to justice in Aotearoa.

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## Appendix A – Method

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Citizens Advice Bureau (CAB) provided administrative data to the authors for the current project. The conditions for the provision of the data included that the authors would meet with CAB staff and undertake site visits to ensure they understood the context of CAB work and the data collection. CAB would be consulted about the coding schema and be able to read and comment on a draft of the report. To maintain the independence and integrity of the research, CAB involvement would not go beyond this scope.

### The data

Administrative records are made of each client enquiry. CAB has a policy of separating enquiries into three sub-types. The standard CAB service is categorised as a 'client interview enquiry'. Client interview enquiries contain a record that includes the date of the enquiry, the method of contact, details of what the client was seeking help with, the suggestions offered by the volunteer, and demographic information about the client. If the client is a migrant, further details may be recorded including visa type, country of origin, and length of time spent in Aotearoa. Volunteers may also record whether the client is experiencing a form of digital exclusion (for example, lack of access to computer/internet, language/literacy challenges, lack of digital confidence/digital skills).

The other two types of enquiries are 'clinic' and 'quick reference'. A clinic enquiry is when the client requires referral to a clinic (such as a Justice of the Peace clinic, legal clinic, or budgeting clinic). The record kept of clinic enquiries includes the date of the enquiry and number of people attending the clinic. A quick reference enquiry is when the client asks for a form, the contact details of another organisation, or to be connected with a language support service. The date of the enquiry and method of contact (e.g., by email or by phone) is recorded.

This study uses administrative data, that is "data which are derived from the operation of administrative systems" (Connelly et al., 2016, p. 3). These data are collected for organisational purposes, typically for managing and monitoring the delivery of services. Utilising administrative data for research purposes has a number of benefits including the availability of large sample sizes relative to surveys, costs savings as the data is pre-existing, and access to populations that may be inaccessible using traditional research methods (Connelly et al., 2016).

In the justice context, administrative data include court and tribunal records and information collected by legal service providers such as demographic information, type of legal issue, and the nature of the assistance provided (H. M. McDonald et al., 2020, p. 14). The use of administrative data for research purposes in this context is still

“embryonic” (H. McDonald, 2021, p. 733), however there is growing recognition of the potential for this data to provide valuable insights into access to justice. In their study exploring the use and utility of administrative data in the Victorian legal assistance sector, McDonald et al., (2020, p. 15) explain:

Appropriate use of quality administrative data in research can have impact. It can make a stronger evidentiary case for policy proposals, highlight and quantify social problems, assist in more targeted allocation of resources and help answer persistent empirical questions in law and social policy.

While there is potential to utilise administrative data to form access to justice insights, there are also limitations both generally and within this specific context. Survey data are “made” and can be tailored with research questions in mind and have the quality controls required for academic rigour. Administrative data are “found” (Connelly et al., 2016, p. 3) and not designed specifically to be used for research purposes. The data may also be of variable quality. In McDonald et al.’s (2020) study of legal assistance providers, administrative data were typically collected for funding reporting purposes, for advocacy work, and for monitoring performance. The quality of the data was impacted by insufficient resources to invest in data capability and unsuitable metrics. There were also limitations as to the extent that administrative data in current forms could be analysed to gain access to justice insights. For example, administrative data capture a ‘point in time’ and as such cannot shed light on long term outcomes. As such, to utilise administrative data, researchers must be aware of these limitations, tailor research questions accordingly, and ensure that data quality is “interrogated, and consistency and accuracy assessed...” (H. M. McDonald et al., 2020, p. 17).

We were mindful of these issues in creating and refining the study method. Both authors met with CAB National Office to gain an understanding of how data are collected. Data are entered primarily by volunteers. Before a volunteer can become accredited as a bureau interviewer, they undergo an extensive training process. Part of this includes training on how to complete a client interview form and the purpose of collecting this information. Volunteers also undertake an ongoing program of learning and development which includes a data collection component.

Volunteers enter data into a comprehensive and purpose-built data management system. CAB have a data quality assurance process where client interview forms are inspected by experienced bureau interviewers who give feedback to volunteers. The CAB National Board also engage an independent company to undertake a mystery client programme whereby each CAB is assessed on a range of metrics, including some focussed on data entry. These practices encourage ongoing improvement in data collection practices. Data can then be extracted from the system in a mix of coded variable categories and text-based natural language fields.



To examine data collection practices and to assess consistency across collection sites, Stewart read a summary of the mystery client programme provided by CAB National Office and visited three CAB offices. During these visits, she spoke with the manager and volunteers at each site and observed the volunteers as they collected and recorded data. The conclusion reached from the mystery client programme and these visits was that, unsurprisingly, the culture and management of individual CABs would be likely to affect record keeping. Some CAB offices put more emphasis on record keeping than others and even within sites there would be variability as some volunteers included greater detail about the enquiry in the records than others.

The project had originally hoped to include analysis using demographic details. The variation in how demographic information was collected meant that this was not ultimately conducted. Some volunteers collected demographic information directly from clients, while other volunteers used observation to collect this information (for example, accent and appearance). Still other volunteers did not complete this information at all. As such, we made the decision to exclude the demographic information from our analysis.

Similarly, CAB had begun to collect a variable called “digital exclusion” in 2019. This was an optional yes-no field for the volunteer to complete for each enquiry with the ability for the volunteer to add further information about the type of digital exclusion experienced if they wished to. The field was not, however, compulsory and in some instances the record of the enquiry itself indicated digital exclusion but the field for digital exclusion was recorded as “no” (for example, an enquiry that said “he has no computer” was not recorded as digital exclusion). We therefore excluded this variable from quantitative analysis but did note when a person was experiencing digital exclusion as a potential complicating factor that may make it more challenging to access or action assistance.

## **Sampling strategy**

We used stratified random sampling on date ranges to analyse the client interview enquiries retained in this dataset. Using date ranges is a technique to constrain the volume of data to be examined (Drisko & Maschi, 2016, p. 39). The client interview enquiry records from 2021 were stratified into eight strata of CAB working days.<sup>33</sup> This was to ensure that the sample was representative by accounting for potential cyclical variation in legal problems. For example, in December and January, the number of legal problems relating to tenancies may be higher as this period is typically when fixed-term tenancies conclude.

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<sup>33</sup> This excluded weekends, public holidays, and the Christmas holiday shutdown period.

Following stratification, using the random number generator function on Microsoft Excel, random sampling was used to select two days of client interview enquiry records from each stratum, and these formed the sample for analysis.

A total of 3,290 enquiries were removed from the sample because they were not legal in nature or were unable to be classified due to insufficient information.

## **Content analysis**

We conducted content analysis of the client interview enquiry records. Content analysis is a research method that facilitates the examination of large amounts of data in a methodical manner to draw inferences on the topics of interest (Weber, 1990). The analysis was conducted in two phases.

In the first stage of analysis, we undertook examination of the following dimensions of legal need:

- the category of legal problem;
- the type of problem;
- factors that might complicate ability to access or action assistance; and
- when a client was contacting CAB on somebody else's behalf.

The second stage was a qualitative analysis, examining a sub-sample of the most commonly encountered legal problems, with a focus on the resources required to move the problem towards resolution.

We (the authors) are both legally trained socio-legal researchers. Dr Bridgette Toy-Cronin is a legal academic with a professional practice background in civil litigation. Her area of academic study is access to civil justice using empirical methods, which includes interacting with and observing people attempting to resolve legal problems. Dr Kayla Stewart has not practiced as a lawyer but holds an LLB(Hons) and a doctorate and is trained in both quantitative and qualitative social science methods. We conducted the first stage coding together, led by Dr Stewart, and Dr Toy-Cronin worked with Rosemary Robertson, a retired general civil litigator with experience as a CAB volunteer, to undertake the second stage analysis.

## **First stage analysis: Problem category, type of problem, and complicating factors**

In stage one, we analysed the client interview records to determine the category (or categories) of legal problem and the type (or types) of problem for each client interview

record. We recorded factors that might complicate the client's ability to access assistance, including when assistance was being sought on behalf of another person.

### ***Category of legal problem and the type of problem***

To generate the coding categories for the category of legal problem and the type of problem, we used the classification system employed by the Law and Justice Foundation of New South Wales in the Australian-wide legal needs survey as a starting point (Coumarelos et al., 2012b). To refine the classification system and adapt it to the Aotearoa context, we randomly selected a day of CAB enquiries (using a random date generator) and each author independently read the enquiries and coded for the category and type of legal problem, noting if the classification system required modification. We met to review the codes and checked for inter-coder consistency by comparing our coding of the data. Through discussion, some codes were retained as is, others were refined, and some were eliminated.

From this, we created a refined coding rubric and Stewart used this rubric to analyse the client enquiry records included in the sample (while also being open to unique instances that did not fit within the coding rubric and amending the rubric accordingly following discussion with Toy-Cronin, Drisko & Maschi, 2016).

We used Microsoft Excel to create categorical nominal variables for the category and type of legal problems. If an enquiry concerned multiple legal problems or types of legal problem, these were separated and coded as separate problems and a "multiple problems" code was used to note when this had occurred. Frequencies for each variable were calculated (see Table 1).

### ***Factors that may complicate assessing or actioning assistance***

As discussed, not everyone can meet the demands placed on them to solve legal problems informally or through the formal justice system. The methods to assess where extra support is needed are still developing and the lack of a robust measure "hampers the investigation" (2019, p. 145). This study does not purport to identify this dimension of where additional support is needed and where people can access and initiate solutions unassisted. Even if the methods to explore this issue were fully developed, this dataset would not be suitable for such analysis. Some consideration of the issue is obviously important, however. Therefore, where client enquiries are sufficiently detailed, we undertook qualitative analysis of the enquiry with a focus on identifying factors that indicated they might need additional support. We used the above-mentioned randomly selected day of CAB enquiries to identify said factors that occurred frequently throughout the data. These were: health conditions, disabilities, cognitive; literacy challenges; family violence; difficulty communicating in English; being in prison; and



digital exclusion. Stewart recorded the presence of any of these factors in the client enquiry records included in the sample.

### **Contact on behalf**

We recorded when the CAB volunteer had included in the enquiry narrative that the client was contacting CAB on somebody else's behalf.

### **Second stage analysis: Assistance/resources needed**

The second stage of analysis was to determine the type of assistance people would need to progress their problem towards resolution. We ranked the top five categories of most frequently occurring legal problems. These were consumer, employment, rented housing, neighbours, and wills, trusts, estates, and care arrangements. We then created a random sample of at least 15% of the enquiries in each of these categories (a minimum of 100 enquiries). The first author, Toy-Cronin, worked with Robertson to undertake this analysis.

We drew on two forms of analysis. First, we used the initial coding of problem category. In addition, we also coded for problem type/subcategory of problem. For example, enquiries categorised as 'central government' were also sub-categorised as relating to benefits/payments/entitlements, fines, tax assessment/debts, or other. The results of this analysis are presented in Appendix C for all categories.

The second type of analysis we present here is qualitative analysis of a sample of the top five categories of most frequently occurring legal problems. We created a random sample of at least 15% of the enquiries in each of these categories. Two coders—both with experience in general civil law—independently coded the enquiries. The process was to write a summary of the query noting what was needed to advance this problem to resolution. Each coder then created their own classifications to try and find commonalities in the type of assistance required. For example, in the 'wills, trusts, estates, and care arrangements' category, both coders created a group for people who were wanting to make a will and another group for on how to deal with an intestacy. Each coder writing a memorandum describing the type of assistance that people commonly needed.

It should be noted that the second stage coding was similar to, and had some overlap with, the sub-categorisation in the first stage of analysis but did differ in important ways. First, it was inductive, creating categories from observations about the enquiries, rather than adding each query to pre-determined categories. Second, it was focused less on the type of issue and more on the type of response required. That sometimes overlapped with the initial coding for example, making a will and enquiries about wills were very

similar. They did not completely overlap, however, and were sometimes quite different. For example, some of the enquiries about wills (and coded to the sub-category wills) were about how to assess someone's capacity to make a will, rather than how to make a will. For the purposes of the second stage of coding, they therefore formed part of the analysis about what could be done to support people understanding how to have capacity assessed.

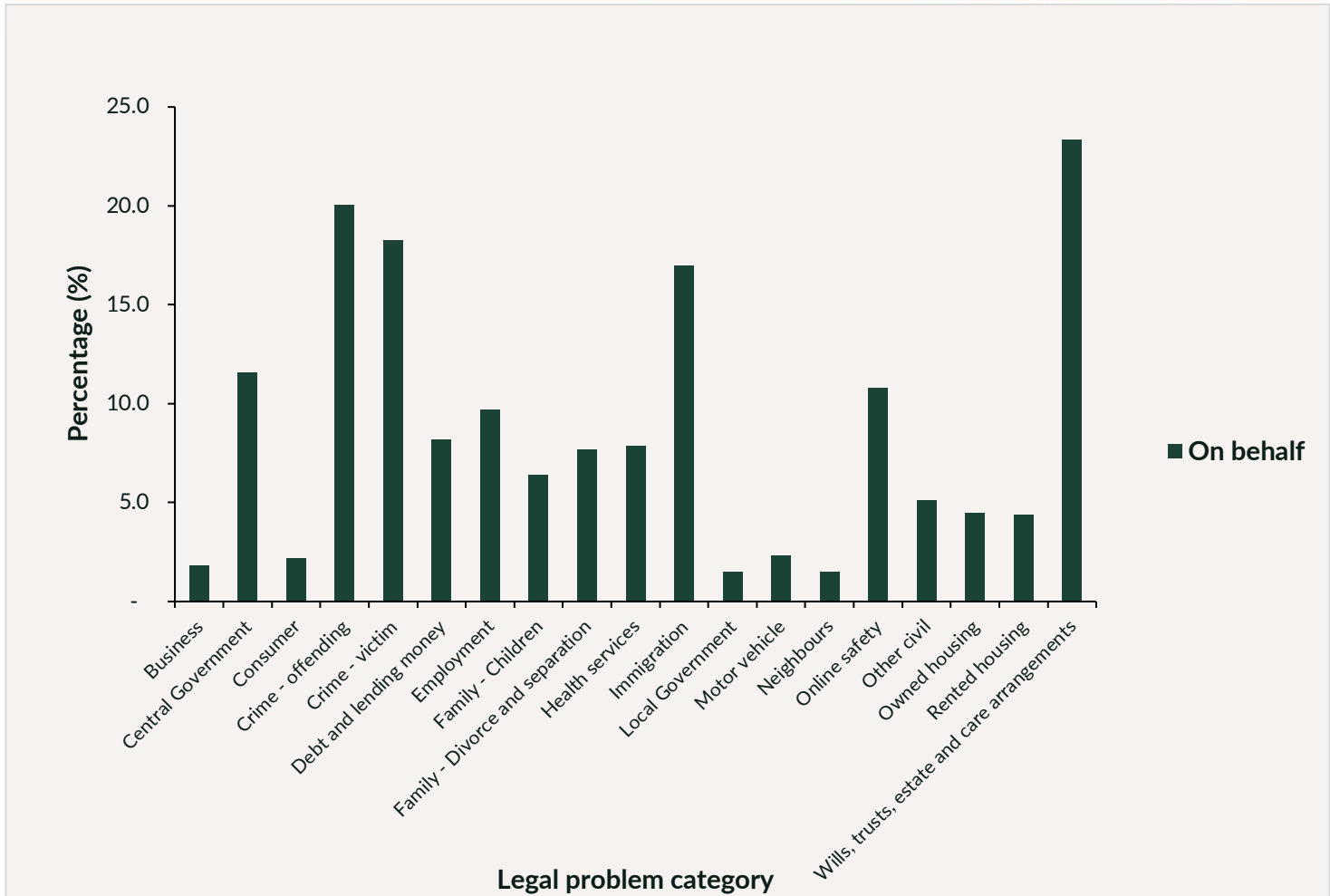
The second author, Stewart, conducted web sweeps looking for currently available resources in Aotearoa and also comparative examples from abroad. We used all this information to make suggestions about where resources could be most usefully directed to help the most people.

## **Ethical considerations**

This project was approved by the University of Otago Human Ethics Committee in October 2021 (reference D21/325). The data CAB provided to us was deidentified. We did not have access to the names of any enquirers or the volunteers. Where we have quoted enquiries in the report and they contained any information which might be recognisable—for example mentioning a location—we have omitted or changed that material. We also edited records of enquiry for grammar and clarity where necessary, as long as we were confident this did not alter the meaning.

## Appendix B – Enquiries on behalf of others

Figure 7 Assistance sought on behalf of another person by legal problem category





## Appendix C – Types of legal problems

Legal problem type	Category % (n)
<b>Business</b>	
	Payments 30.4 (17)
	Other 69.6 (39)
<b>Central Government</b>	
	Benefits/payments/entitlements 57.6 (189)
	Fines 2.7 (9)
	Tax assessment/debt 9.5 (31)
	Other 30.2 (99)
<b>Consumer</b>	
	Goods 49.3 (483)
	Services 50.7 (497)
<b>Crimes - offending</b>	
	Allegation made or questioned by police 10.6 (19)
	Appeal 2.8 (5)
	Car impounded 3.4 (6)
	Conditions of sentence 24.6 (44)
	Court summons or charged with offence 33.5 (60)
	Criminal record and clean slate scheme 8.4 (15)
	FV order restraining order 8.4 (15)
	Infringement notice issued 2.8 (5)
	Other 5.6 (10)
<b>Crime - victim</b>	
	Abuse in care 2.3 (3)
	Assault victim 17.6 (23)
	Concern for safety or threatened 18.3 (24)
	Family violence order 31.3 (41)
	Property stolen 12.2 (16)
	Suspected fraud 10.7 (14)
	Other 7.6 (10)
<b>Debt or lending money</b>	
	Actual/possible bankruptcy 10.0 (11)
	Credit rating or refusal 7.3 (8)
	Creditor's threats or actions 17.3 (19)
	Guarantor or paying a loan (not mortgage) 17.3 (19)
	Repayment of money owed to you 20.0 (22)
	Other 28.2 (31)

<b>Employment</b>		
	Employment conditions	54.7 (390)
	Harassment/victimisation/discrimination	9.0 (64)
	Sacked or redundant	14 (100)
	Other	14.6 (104)
<b>Family - children</b>		
	Care protection/Oranga Tamariki	17.7 (69)
	Child support payments	7.9 (31)
	Day-to-day care/contact	46.9 (183)
	Foster/adoption/guardianship	7.2 (28)
	Grandchild – custody/contact/support/care	4.4 (17)
	Parentage	2.8 (11)
	Other	13.1 (51)
<b>Family - separation</b>		
	Relationship property	53.6 (133)
	Other issue	46.4 (115)
<b>Health services</b>		
	ACC	47.4 (36)
	Clinical negligence	22.4 (17)
	Other health services	30.3 (23)
<b>Immigration</b>		
	Immigration	100.0 (159)
<b>Local Government</b>		
	Building works	9.2 (6)
	Fines	18.5 (12)
	Services/amenities/works	15.4 (10)
	Other	56.9 (37)
<b>Motor vehicle</b>		
	Accident	83.2 (109)
	Payments or debt	16.8 (22)
<b>Neighbours</b>		
	Drainage and flooding	5.2 (24)
	Driveway	8.7 (40)
	Fence	28.4 (131)
	Harassment, threats and trespassing	10.6 (49)
	Noise	10.2 (47)
	Trees	20.6 (95)
	Other	16.5 (76)

<b>Online safety</b>		
	Bullying and abuse	32.4 (12)
	Scam	67.6 (25)
<b>Other civil</b>		
	Court process/cost	11.9 (35)
	Intellectual property	2.4 (7)
	Privacy/confidentiality	13.7 (40)
	Trespass	15.4 (45)
	Unfair treatment by police	6.5 (19)
	Other	50.2 (147)
<b>Owned housing</b>		
	Land ownership/use	73.0 (65)
	Other	27.0 (24)
<b>Rented housing</b>		
	Boarding	2.3 (16)
	Bond	6.5 (46)
	Condition of property	19.0 (134)
	Inspection and other property attendance	5.2 (37)
	House sharing issue	22.3 (157)
	Rent and other costs	6.7 (47)
	Termination	21.7 (153)
	Other	16.3 (115)
<b>Wills, trusts, estate and care arrangements</b>		
	Deceased estate	38.0 (177)
	Management under enduring power of attorney	4.3 (20)
	Trusts	5.4 (25)
	Wills and enduring power of attorney	46.6 (217)
	Other	5.8 (27)
<b>Total (N)</b>		<b>100 (5618)</b>

Table 2 Types of legal problem by category from CAB client interview records

