



WAYFINDING FOR CIVIL JUSTICE

Strategy consultation document

“Wayfinders go beyond the known, and journey on voyages of discovery to new horizons. Central to the wayfinding approach is seeing what is really going on—discerning the detail and seeing the whole. The wayfinder has a deep understanding of themselves, their crew, their waka and the environment.”¹

Chellie Spiller, Hoturoa Barclay-Kerr, John Panoho

¹ Chellie Spiller, Hoturoa Barclay-Kerr and John Panoho *Wayfinding Leadership: Groundbreaking Wisdom for Developing Leaders* (Huia, Wellington, 2015).

PREFACE

In March 2020, the Chief Justice and Secretary for Justice invited a range of people whose work is connected to civil access to justice, to attend a workshop in Wellington (“the Workshop”). I was asked, with Andrew Butler, to lead the Workshop. Part of the focus of the Workshop was gathering ideas and testing whether a strategic plan for civil access to justice would be helpful for Aotearoa New Zealand. Canada introduced a strategic plan of this nature over a decade ago and is now a world-leader in access to justice. While Canada continues to face many of the same problems Aotearoa New Zealand faces, the Canadians have made large and innovative strides in delivering better access to justice to their people. Part of that success is attributable to their strategic plan, a document that has helped to guide and track improvement over the subsequent decade.

One of the major issues we confront in civil access to justice work in Aotearoa New Zealand, is a lack of coordination and awareness of each other’s work. There is no shortage of innovative and exciting work happening in the access to justice space, but everyone would benefit if we knew what each other was doing. This was a clear finding of the Workshop. Better coordination could lead to more collaboration, less duplication, easier identification of gaps, and the opportunity to learn from each other’s successes and failures. This would ensure that the limited resources we all have to work with could be used most efficiently.

After the Workshop, the Access to Justice Advisory Group was appointed to implement work coming out of the Workshop. That included a decision to proceed with drafting a strategic plan, and I was appointed to chair the Working Group tasked with drafting that plan. The Working Group have developed a draft, which we’ve named *Wayfinding for Civil Justice*. As you will appreciate, developing a national strategy for such a complex topic is no easy matter and we now need your help to advance the draft.

To develop the draft, the Working Group has used overseas models (including Canada) and the Workshop notes (those made by participants and the records of the conversations at the Workshop). Your time is valuable so we wanted to do as much as we could to produce a draft and provide something concrete for you to provide feedback on. It does, however, now need broader input. There are some big questions about the draft: does it reflect the priorities that you see in the communities you work with? Does it feel relevant to your work? If not, how can it be improved?

In addition, there are two issues the Working Group has found particularly difficult to wrestle with and that we ask for feedback on:

1. When we asked for ideas about the principles that should guide a national strategy, the principle most widely supported at the Workshop was “Te Tiriti o Waitangi”. After much discussion, we decided to weave Te Tiriti into the whole document rather than listing as one of the principles. We seek feedback on this decision. Do you agree? Are there places it could be weaved in more strongly? Should it be listed with the other principles? What does Te Tiriti mean in the context of this document?
2. We think that for *Wayfinding* to work in practice, it needs a form of national structure to coordinate reporting and sharing of information. This structure could also provide recommendations on where work is needed, share and celebrate success, and collate research that could guide further work. We need your feedback on whether you also think there is a need for a structure, and if so, what form you see it taking.

We are very keen to have the input of everyone whose work or experience is connected to improving access to justice, whether or not they attended the Workshop. We very much want to get your

perspective so please contribute in whatever form best works for you: through our online questionnaire, at in person hui, or by a conversation with a member of the Working Group.



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EXECUTIVE SUMMARY

This is a consultation draft of the proposed national strategy on civil access to justice, *Wayfinding for Civil Justice*. It is the next step in work that started in March 2020 at a stakeholder workshop on civil justice.

We have used feedback from that workshop to draft this strategy, which we have named *Wayfinding for Civil Justice*. This name reflects the fundamental goal of this strategy, which is to provide a framework to guide the journey towards improved access to justice.

We now seek stakeholder feedback on whether this draft strategy reflects the stakeholder community's needs and priorities and can be successfully implemented in practice.

The first half of the document contains the substance of the *Wayfinding* strategy—how it is proposed to work, the principles and the goals (pages 7-13). The second half of the document introduces the purpose and background to the draft strategy for those interested in more context (pages 13-18).

In summary, *Wayfinding* is guided by the following principles:

- A. People centred
- B. Design for diversity
- C. Mahi tahi - work together
- D. Innovate
- E. Use evidence, evaluate

There are seven goals divided into four areas of focus:

1. Community knowledge and understanding
 - 1.1 Increase communities' knowledge to support dispute prevention and early resolution.
 - 1.2 Increase community access to legal information and self-help tools.
2. Legal assistance
 - 2.1 Increase the availability of affordable legal services to help people solve their civil justice problems.
 - 2.2 Increase legal service providers' knowledge and understanding of communities and their needs.
3. Dispute resolution
 - 3.1 Increase the availability of information about the range of dispute resolution mechanisms available in Aotearoa New Zealand.
 - 3.2 Ensure equitable access to the courts.
4. System knowledge
 - 4.1 Increase knowledge of how the system is currently operating and evaluate and monitor innovation and change.

The way we envisage *Wayfinding* operating is illustrated below and explained further on pages 7-8 of this document.



CONSULTATION QUESTIONS

- Q1. How necessary do you think a national structure is to ensure the success of *Wayfinding for Civil Justice*?
- Q2. If you consider a national structure is necessary, what form and scale do you think it should take?
- Q3. If a national structure extended the work of an existing organisation or body, which organisation or body do you think would be most appropriate?
- Q4. How should Te Tiriti o Waitangi be reflected in *Wayfinding for Civil Justice*? Do you agree with the approach suggested of embedding Te Tiriti o Waitangi into the foundation of *Wayfinding for Civil Justice*, rather than having it as a separate principle?
- Q5. To what extent do you identify with the principles that we have stated to guide the approach to the goals? Do you think they are relevant to your work?
- Q6. To what extent do you identify with the goals stated? What other goals do you think should be added?
- Q7. Do you feel the current suggested actions in each goal provide your organisation with sufficient guidance?
- Q8. Which suggested actions do you think will be particularly relevant to your work?

These questions can be answered online using the online consultation form or by email to Wayfinding@justice.govt.nz. See <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/wayfinding-for-civil-justice/> for details.

HOW DO WE ENVISAGE WAYFINDING WILL OPERATE?

Context for *Wayfinding*

We envisage that *Wayfinding* will be in place for a period of five years. There will be annual reporting against the progress towards the agreed goals.

To be successful, *Wayfinding* needs to operate at two levels:

- a national level to ensure the coordination aims are realised
- stakeholder level (either single stakeholders, or stakeholders collaborating) who are carrying out the mahi.

We address these two levels in turn.

National level

Wayfinding will be successful if everyone is aware of each other's efforts and all the efforts are contributing to meeting the goals. For funders of access to justice work, *Wayfinding* will be successful if it provides guidance on where work is most needed. For these aims to be achieved, there needs to be a structure for sharing information. There are different ways this could be achieved and we suggest the following possibilities:

- Establishing² or strengthening an existing body to coordinate reporting of initiatives and sharing information. This would likely involve funding one staff member with responsibility for carrying out tasks such as:
 - overseeing a national database for stakeholders to submit to and informing the sector of planned and current work matched against the goals in *Wayfinding*
 - compiling an annual report celebrating the successes of mahi completed and progress on goals, including completion or work towards any of the suggested actions, and reporting on any problems encountered that others can learn from
 - running a clearinghouse that provides a central repository of data and evaluative material.³
- An annual forum celebrating the successes of mahi completed, supporting connection between organisations, and monitoring progress against the goals.

Q1. How necessary do you think a national structure is to ensure the success of *Wayfinding for Civil Justice*?

Q2. If you consider a national structure is necessary, what form and scale do you think it should take?

Q3. If a national structure extended the work of an existing organisation or body, which organisation or body do you think would be most appropriate?

Stakeholder level

We envisage that *Wayfinding* will work at an individual organisational level in the following way:

- When planning work or re-evaluating work in progress:
 - examine how that work could be aligned with the goals in *Wayfinding*

² In Canada, there is a National Forum on Civil Justice hosted by a university.

³ For example, the New Zealand Family Violence Clearinghouse <<https://nzfvc.org.nz/>> is the national centre for family and whānau violence research and information.

- question whether the way that work is being carried out aligns with the *Wayfinding* principles. We have provided suggested guiding questions for applying the principles to work in Appendix 2.
- Make others aware of how the organisation’s mahi is supporting the goals and how it relates to the emerging mahi of others.
- Identify potential partners, allies, and communities of practice the organisation can cooperate with to further work towards the goals.

PRINCIPLES TO GUIDE THE APPROACH TO THE GOALS

One of the activities at the March 2020 workshop was to generate agreed principles to guide the development of the national strategy. A number of starting ideas were posted on the walls along with blank sheets for new principles to be suggested. Participants had the opportunity to write comments about what the various principles meant to them and were given stickers to vote for the five principles they considered most important in guiding change in the civil justice sector. We have used this feedback in creating the principles to guide the approach to achieving the goals.

We note that one of the principles strongly supported by the March 2020 Workshop participants was Te Tiriti o Waitangi. We have chosen to embed Te Tiriti into the foundation of *Wayfinding*, rather than as a separate principle, so that it infuses the work and reduces the risk of it becoming a ‘tick-box’ exercise. We welcome feedback on this choice.

Q4. How should Te Tiriti o Waitangi be reflected in *Wayfinding for Civil Justice*? Do you agree with the approach suggested of embedding Te Tiriti o Waitangi into the foundation of *Wayfinding for Civil Justice*, rather than having it as a separate principle?

A. People centred

The civil justice system and its reform must start with the people who use the system, not with the needs of representatives and institutions. People must also be seen not just as individuals, but as members of whānau and wider communities. Only through maintaining this people-centred focus can we develop a civil justice system that is accessible and meets people’s needs.

B. Design for diversity

When thinking about access to justice in Aotearoa New Zealand, we need to maintain a focus on the diversity of our society so that our mahi will meet the needs of all our people. Not every initiative can meet every need, but we need to be mindful of inclusion and ensuring we do not leave people behind. There are many factors that can make it easier or harder for someone to access justice, including ethnic group, language, disability, gender, geographic location, income, education, and more. Solutions need to be designed with the diversity of needs in mind.

C. Mahi tahi - work together

We are a small nation working towards common aims. It is important we are aware of the work that is planned, ongoing, or completed so that others in the sector can plan work to complement, and/or collaborate with, those efforts.

D. Innovate

We cannot expect to improve access to justice by using the same tools and approaches we have always used. If we want things to be different, we need to do things differently. We can look for frameworks

and responses to improve access to civil justice from other sources, including: Te Ao Māori, other cultures' dispute resolution practices, other countries' responses, and academic disciplines outside of law.

E. Use evidence, evaluate

Civil justice reform needs to be based on evidence of what works and what does not work—not on well-intentioned guesswork or stakeholder intuition. We can build on this knowledge by engaging in research that draws on different research methodologies, including Kaupapa Māori.

Q5. To what extent do you identify with the principles that we have stated to guide the approach to the goals? Do you think they are relevant to your work?

GOALS

There are seven goals divided into four areas of focus:

1. Community knowledge and understanding
 - 1.1 Increase communities' knowledge to support dispute prevention and early resolution.
 - 1.2 Increase community access to legal information and self-help tools.

2. Legal assistance
 - 2.1 Increase the availability of affordable legal services to help people solve their civil justice problems.
 - 2.2 Increase legal service providers' knowledge and understanding of communities and their needs.

3. Dispute resolution
 - 3.1 Increase the availability of information about the range of dispute resolution mechanisms available in Aotearoa New Zealand.
 - 3.2 Ensure equitable access to the courts.

4. System knowledge
 - 4.1 Increase knowledge of how the system is currently operating and evaluate and monitor innovation and change.

1 Goals relating to knowledge and understanding

1.1 Increase communities' knowledge to support dispute prevention and early resolution.

People in a dispute should be empowered to solve the problem early using the tools that best suit the parties and issues involved in the dispute. For people to be able to do this, the appropriate information and tools need to be accessible. Some of this knowledge can be achieved via community education.

Suggested actions

- Strengthen civics education both in schools and in the wider community so that people understand the fundamental components of how our legal system works.

- Provide basic education on commonly encountered legal needs (for example, tenancy, consumer) with an emphasis on information-seeking strategies so that information can be accessed when needed.
- Strengthen community capability to engage in negotiation, mediation, and other forms of dispute resolution.

1.2 Increase community access to legal information and self-help tools.

We cannot reasonably expect the wider community to be fully educated about all the detail about all our laws and all the ways to solve a dispute. This information does, however, need to be readily accessible when people need it. Access to high quality and practical legal information and self-help tools is a vital component of access to justice. Legal information allows people to understand their rights and self-help tools empower people to act on their rights, and resolve disputes.

Suggested actions

- Strengthen the provision of legal information by, for example, developing an Aotearoa New Zealand portal website that incorporates guided pathways, action-focused tools, and connections to in-person assistance.⁴
- Further develop ‘smart tools’ to help with navigating information and undertaking tasks to solve legal problems.
- Develop materials in formats to reach different communities, including by presenting materials in Te Reo Māori and other languages.

2 Goals relating to legal assistance

2.1 Increase the availability of affordable legal services to help people solve their civil justice problems.

People will always need help with some problems. This help should be provided at the skill level required; it might not always need to be lawyer-provided. Cost is a barrier to legal assistance and there are other barriers as well (for example, geography, not recognising it as a legal problem, fear, discomfort). Aotearoa New Zealand needs to provide the accessible legal services that New Zealanders need.

Suggested actions

- Evaluate current non-lawyer provided services and build evidence-informed solutions to improve and/or extend these services.
- Encourage innovation in service provision (for example, through the development of regulatory ‘sandboxes’⁵ to trial programmes of new classes of legal actors such as navigators and limited licences).
- Increase legal aid funding and make the funding process more accessible to the public and lawyers.
- Provide encouragement and incentives to experienced lawyers providing legal services for free or at greatly reduced rates.

⁴ This target is taken from the report David Turner and Bridgette Toy-Cronin *Online Legal Information Self-Help in Aotearoa: An agenda for action* (University of Otago, 2020). The portal suggestion is based on models such as Canada’s “Steps to Justice” website: <<https://stepstojustice.ca/>>.

⁵ A regulatory sandbox allows a regulator to experiment with new services to determine how best to regulate them. It amounts to a live experiment in a controlled environment. Utah in the United States has established a regulatory sandbox for legal services: <<https://utahinnovationoffice.org/>>.

2.2 Increase legal service providers' knowledge and understanding of communities and their needs.

We can only target legal assistance to communities if the providers of those services understand their communities' unique needs.⁶

Suggested action

- Maintain an up-to-date and sufficiently detailed understanding of legal need in different communities and how this is changing over time, using internationally recognised and validated means such as legal needs surveys.

Another dimension of this goal is ensuring that legal service providers meet their communities' needs. This requires providers who have diversity of experience, are skilled in their subject area and also have strong communication and advocacy skills, to build understanding of their communities and therefore client needs.

Suggested actions

- Strengthen and, where they do not already exist, introduce law school programmes that create opportunities for students to connect with community legal needs and to educate students about just dispute resolution.
- Ensure law schools admit and educate students from diverse backgrounds.
- Ensure legal education includes tikanga Māori and Te Reo Māori.
- Continue to develop and strengthen diversity and inclusion initiatives for the legal profession and judiciary.
- Ensure regulation of legal service providers balances the need to protect consumers with the need to provide a range of choices and price options.

3 Goals relating to dispute resolution

3.1 Increase the availability of information about the range of dispute resolution mechanisms available in Aotearoa New Zealand.

Dispute resolution in Aotearoa New Zealand encompasses a range of different processes. They include person-to-person negotiation, which can take place without accessing any type of scheme, the many mediation-based schemes, and court proceedings. Even within tribunal or court proceedings there is commonly a mixture of different dispute resolution mechanisms available and encouraged. For example, in court proceedings negotiation normally continues throughout and mediation schemes can be accessed either privately or as part of the process. Dispute resolution can be accessed with or without legal assistance and representation; some forms of dispute resolution even exclude representation.⁷

The large number of options for dispute resolution is a strength, offering a great deal of flexibility and choice. However, lack of information about the various mechanisms, how to access them, and when they might be appropriate, can impede access to justice and needs to be improved.

⁶ Note that legal assistance providers include lawyers, non-lawyer advocates (such as employment advocates, McKenzie Friends, trade union representatives), and non-government organisation advice providers.

⁷ For example, the Disputes Tribunal Act 1988, s 38(7) and Residential Tenancies Act 1986, s 93(7) prohibit representation by a barrister or solicitor.

Suggested actions

- Identify the range of dispute resolution mechanisms and make this information accessible to both consumers and legal service providers.
- Create effective navigation tools for people and their advisers to identify suitable dispute resolution mechanisms.

3.2 Ensure equitable access to the courts.

Resolution through courts is an important aspect of access to justice. While only a small proportion of disputes reach court, a credible and accessible court system is vital to support resolution of disputes ‘in the shadow of the law’⁸ and within the courts when required. There are widely-recognised problems with accessibility in the civil court system, with particular concern about the prohibitive financial cost of accessing the courts.⁹

Suggested actions

- Improve equitable access to the courts, ensuring access is determined by the need for an adjudicative decision, rather than on whether the parties can afford access to the court.
- Undertake measures that enhance the goal to have a just, speedy and inexpensive determination of disputes in court (for example, investigating models to increase judicial supervision in pursuit of these goals). This should include changing court rules, and examining more fundamental ways of court reform, to achieve the goals.
- Ensure process and physical spaces are inclusive and informed by tikanga.
- Create easier and cheaper enforcement procedures, to ensure that the agreements reached by dispute resolution mechanisms are realised.

4 Goals relating to system knowledge

4.1 Increase knowledge of how the system is currently operating and evaluate and monitor innovation and change.

While it is acknowledged that initiatives and reform should be based on empirical evidence and evaluation (as set out in the *Wayfinding* principles), we currently have limited evidence about what works and what does not. This goal therefore focuses on building the evidence base needed to guide reform.

Suggested actions

- Invest in capturing data that can be used to monitor and evaluate dispute resolution schemes and legal assistance delivery, including longitudinal data.
- Share data about successful dispute resolution schemes and how these can be applied in other settings, including online schemes and pilots.
- Create or strengthen institutions that can analyse and share data about dispute resolution schemes to increase system-wide learning and knowledge.
- Develop a register of work to encourage collaboration and reduce duplication.

⁸ The idea of the “shadow of the law” was coined by Robert Mnookin and Lewis Kornhauser "Bargaining in the Shadow of the Law: The Case of Divorce Dispute Resolution" (1978) 88 Yale Law Journal 950. It refers to the idea that when parties are negotiating privately, they will take into account what occurs in court if the negotiation fails. The law therefore casts a shadow over negotiations, framing the negotiation in its terms.

⁹ New Zealand Law Society, above n 3.

- Q6. To what extent do you identify with the goals stated? What other goals do you think should be added?
- Q7. Do you feel the current suggested actions in each goal provide your organisation with sufficient guidance?
- Q8. Which suggested actions do you think will be particularly relevant to your work?

PURPOSE AND BACKGROUND

The remainder of this consultation draft explains the purpose of *Wayfinding* and provides the background about its development. We also explain who we are seeking to engage in the consultation.

PURPOSE

We envisage Aotearoa New Zealand as a place where people are equipped and enabled to solve civil justice problems. Civil justice problems—legal issues that fall outside the criminal law¹⁰—are a common occurrence in any society. Being able to prevent disputes, and effectively address them when they do arise, is a key component of maintaining a peaceful and just society. To achieve this vision, we are proposing a strategic framework—*Wayfinding for Civil Justice*—to encourage a unified and coordinated approach to improving access to civil justice.

There are limited funds available in Aotearoa New Zealand to address its access to justice problems. A national framework is about using what resources we do have as strategically as possible. It is also about providing clear signals to funders of access to justice mahi (government and non-government) about what work is ongoing, where the gaps are, and where co-ordination can be achieved.

A commitment to honouring the principles of Te Tiriti o Waitangi underpins this strategy and the vision of a country where people are equipped and enabled to solve civil justice problems. The Crown's kāwanatanga (governance) is felt keenly by Māori, as is a lack of recognition and support of their rangatiratanga. Aotearoa New Zealand is growing in its understanding of how to honour Te Tiriti. *Wayfinding* aims to provide a framework that will support and enhance that growth.

It is important we make it clear what *Wayfinding* is NOT about:

- *Wayfinding is not about prescribing an approach to access to justice.* Rather it envisages that through collaborating to develop common goals for our civil justice system, we can align the mahi of organisations across the country. Each organisation can select goals that are most relevant to them and work towards them in the way they consider most effective.
- *Wayfinding is not a government strategy.* This mahi has the support of the government in the form of seed funding, communication support, and enthusiasm, but this is a stakeholder strategy being led by a representative working group.

Instead, *Wayfinding* aims to alleviate some of the burden on those working to improve access to justice—legal services providers (including lawyers, non-lawyer advocates, legal executives, and

¹⁰ We note that Te Ao Māori does not make the distinction between criminal and civil justice. The distinction is also not part of the general public's common understanding of law.

others), community organisations, government departments, innovators, and more—by providing a national strategic direction for this collective effort. It takes the feedback of stakeholders in access to justice, proceeds with full awareness of that detail, and provides a high-level wayfinder to unite our efforts.

The judiciary, government, and many organisations have spent a significant amount of energy defining and describing the issues with access to civil justice and searching for solutions.¹¹ The purpose of *Wayfinding* is to move this conversation forward into coordinated action. It recognises that the civil justice system is complex and multi-faceted and acknowledges that different people and organisations are experts in different parts of the system. For the system to work effectively from a user perspective, there needs to be a degree of coordination and coherence that can only be achieved through an overarching shared strategy to guide our way to improved access to justice.¹²

CIVIL JUSTICE IN AOTEAROA NEW ZEALAND

The civil justice landscape

The civil justice system, and the stakeholders that support it, all operate in an environment of financial constraint. The Covid-19 pandemic has created new pressures and constraints, and systems and processes have had to adapt quickly. Technology is also rapidly evolving—creating new opportunities and ways of working—and our population demographics are changing. It is within this context that we seek to improve access to civil justice.

We are a relatively small unitary jurisdiction but there is complexity to our civil justice sector. At a government level, executive responsibility for dispute resolution lies across two Ministries (te Tāhū o te Ture – the Ministry of Justice and the Ministry of Business, Innovation and Employment (MBIE)) and legal information is provided by many ministries. The Ministry of Justice administers the provision of civil legal aid, a system that has been criticised and reviewed in recent years.¹³

There is also complexity in our legal advice sector. We have a variety of legal assistance providers, including lawyers, non-lawyer advocates (such as employment advocates, McKenzie Friends, trade union representatives), and non-government organisation advice providers. Non-government organisations also provide legal information and self-help tools. In recent years, there has been a growth in online advice and services provided to the public by both lawyers and non-lawyers.

Our system for dispute resolution is both innovative and complex. We have a hierarchy of courts, with a number of specialist tribunals and schemes sitting alongside or beneath those courts being run by several different ministries.¹⁴ In addition, there are independent schemes that are approved by

¹¹ Rules Committee *Updating Procedure to Improve Access to Civil Justice* (Courts of New Zealand, 16 December 2019) ; New Zealand Bar Association Working Group on Access to Justice *Access to Justice: Āhei ki te Ture* (New Zealand Bar Association, 2018); New Zealand Law Society *Access to Justice: Stocktake of initiatives* (New Zealand Law Society, 2020); Legal Research Foundation Seminar, “Civil Litigation in Crisis – What Crisis?” (Legal Research Foundation 2008).

¹² This need for coordinated action has been recognised in other jurisdictions, including Canada, which introduced its Roadmap for Change almost a decade ago: Action Committee on Access to Justice in Civil and Family Matters *Access to Civil and Family Justice: A Roadmap for Change* (Action Committee on Access to Justice in Civil and Family Matters, October 2013).

¹³ See New Zealand Bar Association Working Group on Access to Justice *Access to Justice: Āhei ki te Ture* (New Zealand Bar Association, 2018).

¹⁴ These include the Waitangi Tribunal, Employment Relations Authority, Disputes Tribunal, Tenancy Tribunal, Motor Vehicles Tribunal, Weathertight Homes Tribunal, and Copyright Tribunal. There are more.

legislation,¹⁵ and privately provided services where legislation enables dispute resolution via private providers.¹⁶ These schemes include tribunals, industry and Parliamentary ombudsmen and commissions, as well as dispute resolution services provided by private companies or individuals. Adding to this complexity is that some schemes are administered by more than one ministry, such as the Tenancy Tribunal where MBIE manages mediation and the Ministry of Justice oversees adjudication.

The government acknowledges this complexity. For example, it founded the Government Centre for Dispute Resolution, which is tasked with providing “leadership and stewardship to support a systems-based, best practice approach to dispute resolution in New Zealand”.¹⁷ It sits within MBIE, rather than having any structural relationship with the Ministry of Justice (the ministry responsible for all courts and most of its tribunals).

Access to civil justice

Aotearoa New Zealand’s access to justice issues are well recognised and frequently noted.¹⁸ Research suggests that between 40 and 63 percent of people in Aotearoa New Zealand will likely experience a legal problem within a two-year period.¹⁹ These problems can cause a range of negative consequences such as stress, anxiety, loss of confidence, fear, financial loss, and health problems.²⁰

People struggle to find help with these problems. The *Global Insights on Access to Justice 2019* study found that less than one-third of participants were able to access help for their legal problems, and of those that could, only 36% sought help from a lawyer or professional help service. There has been a rise in the number of people going through the court process without the help of a lawyer.

Cost is one barrier. Private legal assistance is simply too expensive for most—the average hourly charge-out rate for an employed lawyer in 2016 was \$292.70 while the median weekly income for New Zealanders in the same year was \$621.²¹ Legal aid, while intended to provide “legal services to people of insufficient means” (Legal Services Act 2011, s 3), has strict eligibility criteria leaving most New Zealanders unable to access it (for those few who do qualify for legal aid, there is a well-recognised lack of lawyers offering civil legal aid services).²² This means a large number of people fall into the ‘justice gap’ and their legal needs are unmet. Community-based services have attempted to bridge this

¹⁵ For example, the Banking Ombudsman Scheme, a free and independent scheme approved under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; the Human Rights Commission established by the Human Rights Act 1993.

¹⁶ For example, building disputes, ACC disputes, and family disputes all have legislation enabling dispute resolution to be undertaken by private providers. Branding used by some private providers may mean they appear to the public as if they are government scheme, e.g. the “Building Disputes Tribunal”, a private company using the name “Tribunal”:
<<https://www.buildingdisputestribunal.co.nz/adjudication/>>.

¹⁷ Ministry of Business, Innovation and Employment “Government Centre for Dispute Resolution” <www.mbie.govt.nz/>.

¹⁸ For example New Zealand Bar Association Working Group on Access to Justice *Access to Justice: Āhei ki te Ture* (New Zealand Bar Association, 2018); Legal Services Agency *Report on the 2006 National Survey of Unmet Legal Needs and Access to Services* (Legal Services Agency, 2006); Justice Geoffrey Venning, Chief High Court Judge “Access to Justice – a constant quest” (Address to New Zealand Bar Association Conference, Napier, 7 August 2015); Frances Joychild QC “Continuing the Conversation...the Fading Star of the Rule of Law” (5 February 2015) 1 *Law News* (Auckland District Law Society) 3.

¹⁹ Colmar Brunton *Legal needs among New Zealanders* (Ministry of Justice, 2018); World Justice Project *Global Insights on Access to Justice: Findings from the World Justice Project General Population Poll in 101 Countries* (World Justice Project, 2019).

²⁰ Legal Services Agency *Report on the 2006 National Survey of Unmet Legal Needs and Access to Services* (Legal Services Agency, 2006) ; Christine Coumarelos and others *Legal Australia-Wide Survey: Legal Need in Australia* (Law and Justice Foundation of New South Wales, August 2012).

²¹ Bridgette Toy-Cronin, Louisa Choe and Kayla Stewart “‘A lot of people are paying like \$5 a week for 20 years’: New Zealand lawyers, discounts, and payment plans” (2021) *International Journal of the Legal Profession*.

²² Kayla Stewart and Bridgette Toy-Cronin *The New Zealand Legal Services Mapping Project: Finding Free and Low-Cost Legal Services Pilot Report* (University of Otago Legal Issues Centre, 2018)

gap but are limited in their ability to do so due to resource constraints.²³ There are also indirect or non-financial costs, including the time and energy that goes into being involved in a proceeding, travel, and being unavailable for other responsibilities and opportunities.

Cost is not the only or even the main barrier in getting access to civil justice. The New Zealand Law Society has summarised a number of other barriers:

- geographic barriers, including being unable to reach in-person services or remote areas lacking access to infrastructure to support online access;
- cultural and social barriers, including service users encountering institutional racism and cultural incompetence, and users experiencing social constraints that inhibit the pursuit of legal remedies or lacking the required knowledge to access them;
- service delivery constraints, including problems with the legal aid system, lack of providers in some areas, bars of representation in some forums and inadequate procedures to support self-representation in other forums;
- information barriers, including patchy availability of substantive and procedural information, misinformation, and increasing use of ‘digital by default’ (excluding those who are not able, or not comfortable, to access information in that form).²⁴
- There is inequality in access to justice in Aotearoa New Zealand. Some groups of people are much more likely than average to experience a legal problem that affects their everyday life. These groups include Māori and Pasifika peoples, single parents, those with frequent housing movements, people with a long-term health problem or disability, and those receiving a government benefit.²⁵

Not all legal problems can or should be solved through courts or tribunals, although these are important institutions and equitable access must be enabled and protected. There are, however, many possible responses to the unresolved justice problems in our communities across Aotearoa New Zealand.²⁶ Resolution needs to be consistent with the rights and duties set out in law. If a resolution process is needed, then fair procedure must be followed, including both sides of a dispute being heard, opportunities to present evidence, and (where relevant) impartiality of decisionmakers.

WAYFINDING’S RELATIONSHIP WITH OTHER INITIATIVES

There are a number of important access to justice initiatives taking place at the same time we are seeking your feedback on *Wayfinding*. *Wayfinding* does not conflict with or duplicate the important contribution they are making. Instead, *Wayfinding*’s purpose is to provide an overall strategy for how such efforts can be communicated and built from in the future.

It is important to mention, however, the Rules Committee consultation on ‘Improving Access to Civil Justice’.²⁷ Their work has been discussed as a “once in a generation” reform to improve access to justice²⁸ and it is therefore important to consider how it relates to *Wayfinding*. That consultation process and the consequent amendments will be important in the efforts to improve access to justice. However, the Rules Committee has a limited jurisdiction, which reaches only into court system

²³ Kayla Stewart and Bridgette Toy-Cronin, above, n 14.

²⁴ *Access to Justice: Stocktake of initiatives Wellington* (New Zealand Law Society, ('*Access to Justice: Stocktake of initiatives*')).

²⁵ Colmar Brunton, above n 11.

²⁶ Rebecca Sandefur "Access to What?" (2019) 148(1) *Dædalus*, the Journal of the American Academy of Arts and Sciences 49.

²⁷ Rules Committee *Improving Access to Civil Justice: Further Consultation with the Legal Profession and Wider Community* (Rules Committee, 14 May 2021) at [29].

²⁸ New Zealand Law Society, "Law Society welcomes proposed reforms to improve access to civil justice" 15 July 2021 NZLS News.

procedures. The Rules Committee itself recognises this limitation in its most recent consultation paper, noting that addressing the access to justice concerns raised by submitters to its consultation requires “co-ordinated responses from a range of actors”.²⁹

Wayfinding seeks to provide a framework for this coordinated response, while maintaining the space for all stakeholders to pursue their mahi and initiatives in the way they believe best meets the needs of their communities.

WHO WE ARE

The members of the Working Group are:

Raynor Asher QC, Barrister and former High Court and Court of Appeal judge

Wi Pere Mita, a Māori lawyer and mediator

Gabrielle O’Brien, an NGO leader with a background in alternative dispute resolution

Dr Bridgette Toy-Cronin (Chair), an academic specialising in access to civil justice

Anne Waapu, Māori justice advocate focused on intergenerationally durable change

We were asked to lead and implement this project by the Access to Justice Advisory Group.³⁰ The Advisory Group was convened in August 2020 to implement workstreams arising from a workshop held in March 2020. The March 2020 workshop was convened by Chief Justice Dame Helen Winkelmann and Secretary for Justice Andrew Kibblewhite, bringing together a diverse group of stakeholders in the civil justice system (a list of attendees appears in Appendix 1). They chair the Courts Strategic Partnership Group (CSPG), the formal interface between Te Tāhū o te Ture – the Ministry of Justice and the senior judiciary. It is responsible for driving the development and implementation of an access to justice programme focused on civil justice. It is the CSPG who formed the Advisory Group.

We have prepared this consultation draft with the intention that it provides a starting structure, drawing on the mahi of the March 2020 workshop, as well as research generated by various organisations across Aotearoa New Zealand.

WHO ARE WE SEEKING TO ENGAGE?

We seek the opinions of those who work in organisations and in roles where they see the need to improve access to justice. What goals do you think Aotearoa New Zealand needs to focus on? What principles should guide reaching those goals? How can we better work together to achieve common aims?

This audience includes:

- institutions and organisations that work in the area of civil justice (including the judiciary, legal professional organisations, government departments, and academics);

²⁹ Rules Committee *Improving Access to Civil Justice: Further Consultation with the Legal Profession and Wider Community* (Rules Committee, 14 May 2021) at [29].

³⁰ The Advisory Group is co-chaired by Justice Susan Thomas (Chief High Court Judge), and the Ministry of Justice *Access to Justice Pou*, Sam Kunowski. The other members of the Advisory Group are Chief Employment Court Judge Christina Inglis, Dr Bridgette Toy-Cronin (University of Otago), Horiana Irwin-Easthope (lawyer) and Sarah Lynn and Victoria McLaughlin (both Ministry of Justice).

- community groups and people supporting those who see or experience barriers to accessing justice (including NGOs, Māori communities, Pacific communities, Asian communities, rural communities, disability communities);
- providers of advice, information, and advocacy, including lawyers and non-lawyer service providers (for example, advocates and McKenzie friends);
- individuals and organisations who are trying to disrupt and/or innovate civil justice;
- funders of work to improve access to justice.

While it is primarily aimed at individuals and organisations whose mahi is about (either directly or indirectly) improving access to justice, the experiences of those who have been directly affected by a struggle to access justice can also inform the shape of this document. We welcome submissions from people with direct experience of the justice system who would like to share their feedback on this draft *Wayfinding* strategy document.

**APPENDIX 1 – LIST OF GROUPS AND ORGANISATIONS REPRESENTED AT THE MARCH 2020
WORKSHOP**

AMINZ
Borrin Foundation
Chen Palmer
Citizens Advice Bureau
Community for Law Centres o Aotearoa
Crown Law
Deborah Manning Barrister
Disability Rights Commissioner
Employment Relationship Authority
Equal Justice Project (University of Auckland)
Government Centre for Dispute Resolution
Immigration Protection Tribunal
Resolution Institute (previously known as LEADR)
Legal Services Commissioner
Members of the New Zealand Judiciary
Ministry of Justice
Minter Ellison
New Zealand Bar Association
New Zealand Law Commission
New Zealand Law Society
Pacific Law Society
Parliamentary Counsel
Principal Disputes Referee
Tamatekapua Law
Te Hunga Rōia Māori o New Zealand
University of Auckland
University of Otago

APPENDIX 2 – WORKING WITH THE PRINCIPLES AND GOALS

This is a list of guiding questions for stakeholders who have reviewed their work to ensure alignment with the goals and who then need to check alignment with the principles. These are questions that the work planners and funders can ask of the planned work to check for alignment.

People centred

Who will benefit from the implementation of this work?

How have we, or can we test whether the work meets their needs? Can we test while the work is being developed and before it is launched?

How will people access our initiative? Are we meeting them where they are or expecting them to come to us?

What are the best contact points (for example, public hui)?

Have we thought about the barriers people experience and possible solutions?

Design for diversity

Will the results of this mahi be available to everyone? Who might be excluded? Can anything be done to ensure we include those groups?

Mahi Tahī

Are we aware of who else is working on similar or complementary initiatives?

Does our work complement or duplicate those efforts?

Is there someone else we could usefully partner with or share our insights with?

Innovate

Have we looked around for ways to do this mahi that draws on other knowledge not previously used in this space?

Have we thought about using a different way to approach this mahi?

Use evidence, evaluate

Have we searched for similar work that might have already been completed, either in Aotearoa New Zealand or overseas? Is there evaluation of that work available?

What mechanisms are built into this mahi to evaluate its successes and weaknesses?

How will this evaluation be shared?