



WAYFINDING FOR
CIVIL JUSTICE

National Strategy

“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

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

FOREWORD



In early March 2020 we had the privilege of hosting a workshop in Wellington focusing on civil access to justice.

The workshop was attended by a broad group of passionate and knowledgeable advocates for access to civil justice. They came from NGOs, the legal profession, academia, the judiciary, and the public service. Together they inspired the creation of a national strategic framework to guide how we work together to improve access to civil justice in New Zealand.

This strategy, *Wayfinding for Civil Justice*, is a result of discussions at the workshop. It is, deliberately, not a government strategy. Rather, it is a stakeholder-led framework that has been created to encourage a cohesive, coordinated approach by both government and non-government players.

As with so many good ideas in the early 2020s, COVID-19 slowed progress on developing and publishing *Wayfinding*. That is by no means a reflection on the working group who developed *Wayfinding*. We owe a debt of gratitude for the work and perseverance of Hon Raynor Asher KC, Wi Pere Mita, Gabrielle O'Brien and Anne Waapu, ably led by Dr Bridgette Toy-Cronin. Together with you they developed this strategy, *Wayfinding for Civil Justice*.

We see great value in *Wayfinding* and look forward to using it, and seeing how you use it, to improve planning of civil justice initiatives. We are pleased to commend it to you now.

The Rt Hon Dame Helen Winkelmann
Chief Justice

Andrew Kibblewhite
Secretary for Justice

PREFACE



Between 40 and 63 percent of people in Aotearoa New Zealand will likely experience a legal problem within a two-year period.² These problems can cause a range of negative consequences such as stress, anxiety, loss of confidence, fear, financial loss, and health problems. Providing all people with equal access to civil justice to solve these problems is a key component of the commitment to rule of law and to honour the obligations of Te Tiriti.

Wayfinding for Civil Justice is a stakeholder-led national strategy, to coordinate and strengthen the efforts to deliver access to civil justice for all. The Working Group benefited from strong engagement from stakeholders who are directly or indirectly involved in efforts to improve access to civil justice. The engagement was through the March 2020 workshop which began this work, virtual hui, online feedback, and written submissions. The Working Group is very grateful to all those who have taken the time to engage with the project.

This document is the cumulation of those efforts and it is intended it will be in place for five years, with regular reviews, to strengthen and coordinate the sector's efforts in working towards improved access to civil justice for all.

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² 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).

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WAYFINDING – IN SUMMARY



The vision is for Aotearoa New Zealand to be a place where people are equipped and enabled to solve civil justice problems. *Wayfinding* is designed to provide a framework to encourage a unified and coordinated approach of the efforts—by both government and non-government—to make that vision a reality.

Stakeholders will select their own work programmes that move Aotearoa New Zealand towards the four waypoints (goals):

1. Legal assistance is accessible, appropriate, and integrated
2. Providers of legal assistance understand and serve the needs of their communities
3. Dispute resolution—from initiation to enforcement—is accessible and equitable
4. There is knowledge about the system to ensure we can monitor, evaluate, and improve

There are suggested actions listed under each waypoint that stakeholders can select or build from to work towards these waypoints.

In conducting this work stakeholders will follow the guiding lights (principles) of:

1. Tātou-Tātou
2. Begin with the people
3. Be open to possibilities
4. Use evidence, evaluate

Wayfinding has a five-year time horizon with an annual refresh to stay responsive and to focus efforts on high priorities. A hui to begin this five-year journey is planned for mid-2024.

A National Civil Justice Observatory will be established (subject to funding) to coordinate reporting of stakeholder initiatives, share information between stakeholders, and maintain momentum for the work.

PURPOSE



The vision is for Aotearoa New Zealand to be a place where people are equipped and enabled to solve civil justice problems. *Wayfinding* is designed to provide a framework to encourage a unified and coordinated approach of the efforts—by both government and non-government—to reach that vision.

In *Wayfinding*, civil justice problems are broadly defined as legal issues that fall outside the criminal law. This is a deliberately broad definition to encompass the wide range of disputes and issues that occur as part of people's everyday lives which are not criminal in nature. Civil justice issues are a common occurrence and being able to prevent disputes, and effectively address them when they do arise, is a key component of maintaining a peaceful and just society. The judiciary, government, organisations, and researchers have spent a significant amount of energy defining and describing the issues with access to civil justice and searching for solutions. *Wayfinding* is founded on that work and moves the conversation forward into coordinated action.³

It recognises that the civil justice system is complex and multi-faceted. It acknowledges that different people and organisations are experts in different parts of the system and are already doing important and useful work. 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 civil justice.⁴

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

Wayfinding does not prescribe an approach for each stakeholder. It envisages that through collaborating to develop common goals for our civil justice system, work being carried out can be aligned. Each organisation can select goals that are most relevant to them and work towards them in the way they consider most effective.

An important stakeholder is the government, but *Wayfinding* is not a government strategy. *Wayfinding* 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.

³ For a statement of the problem, including references to previous work on the issue, see page 14 of this document.

⁴ 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).

GUIDING LIGHTS – NAVIGATING BY THE STAR PATH



“When the navigators leave the world of the known (visible islands, travelled waters), the star path become crucial guides. A star path is a succession of rising or setting guiding stars that the navigator uses to steer by”.⁵

Chellie Spiller, Hoturoa Barclay-Kerr, John Panoho

Wayfinding lays out the agreed waypoints (goals) that all stakeholders in the civil justice system are working to reach. To ensure this work does not go off course, there are four guiding lights (principles) by which to navigate.

A. Tātou-Tātou

Wayfinding seeks to provide a framework for the efforts of all those involved in civil justice improvement and reform. All these workers and leaders are the collective ‘we’ in this document—the tātou. We include government and non-government, lawyers, academics, community leaders—anyone interested in improving civil justice. Different stakeholders in this collective will choose how they will contribute to the effort; they are best placed to know how to respond to their communities’ needs, and to do so with their aims and purpose in mind.

Tātou-tātou remind us all that our efforts will be more effective working as a collective, rather than working in isolation. As a small country, we have a unique opportunity to form close connections with each other, and to work collaboratively and cooperatively for the benefit of the people. We need to be aware of the work that is planned, ongoing, or completed so that others can plan work to complement, and/or collaborate with, those efforts. This reduces wasted time and resources, failures to learn from others’ successes and mistakes, and duplication of effort.

These are the questions that we will ask ourselves when working towards the waypoints:

- 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?

B. Begin with the people

Our starting point for all work is to think about who the people are and what they need. “People” are not simply individuals. They are members of whānau and wider communities. Their well-being depends on the strength of Te Whare Tapa Whā: their spiritual, family, mental, and physical health. People interacting with civil justice may be represented or assisted by others. They may be using the civil justice system because they have a role in another entity such as a trust or a company. In whatever way people are interacting with the civil justice system, this guiding light reminds us to focus on the outcomes people need from the system, and work backwards to ensure the initiative serves their needs.

People are diverse. There are many factors that can make it easier or harder for someone to access civil justice, including ethnic group, language, disability, neuro-diversity, imprisonment, gender, geographic location, income, education, addiction, and more. Solutions need to be designed with the diversity of needs in mind and with the people, to ensure their needs are understood and met.

⁵ Chellie Spiller and others, above n 1.

Not every initiative can meet every need, but we need to be explicit in thinking about who any initiative does serve. It is only through being explicit about this that we can reach the goals in *Wayfinding* that focus on equity. More effort and resource will need to be targeted at some parts of the population than others if the outcomes are to be equitable. It is therefore vital to think clearly about what initiative helps what groups.

These are the questions that we will ask ourselves when working towards the waypoints:

- Who will benefit from the implementation of this work?
- Who might be excluded? Can anything be done to ensure we include those groups?
- Have we thought about our audience as a member of a collective, or only as an individual?
- How have we, or can we, test whether the work meets the needs of its audience?
- 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)?

C. Be open to possibilities

We cannot expect to improve access to civil justice without making changes. 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. We can look to new solutions and to old ones. The important point is to be open to possibilities.

- Have we looked around for ways to do this mahi that draws on other knowledge not previously used in this space? Or knowledge previously used but abandoned?
- Have we thought about using a different way to approach this mahi?

D. Use evidence, evaluate

Civil justice reform needs to be based on evidence of what works and what does not work. We can build this evidence base, making sure it is relevant and up-to date, by gathering evidence and evaluating what we are doing. The research can draw on different research methodologies, including Kaupapa Māori, and can use different methods (including both quantitative and qualitative).

- 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?
- Is there evidence about whether our proposed project will be effective?
- What mechanisms are built into this mahi to evaluate its successes and weaknesses?
- How will this evaluation be shared?



“Every journey needs some kind of map of waypoints, and these are important signifiers that we are on track to reach the goal ...”⁶

Chellie Spiller, Hoturoa Barclay-Kerr, John Panoho

The destination is a place where people are equipped and enabled to solve civil justice problems. There are four waypoints (goals) on the way to this destination:

1. Legal assistance is accessible, appropriate, and integrated
2. Providers of legal assistance understand and serve the needs of their communities
3. Dispute resolution—from initiation to enforcement—is accessible and equitable
4. There is knowledge about the system to ensure we can monitor, evaluate, and improve

1. Legal assistance is accessible, appropriate, and integrated

By legal assistance we mean the full range of possibilities including: signposting to information, information, advice, strategy, and representation, or any combinations of these. This may be given through various channels including text, digital media, one-to-one, or a combination of these.

Those providing legal assistance will include specialist providers, such as lawyers and trained advocates, but may also include non-specialist providers (as permitted by regulation) including (but not limited to) union representatives, iwi leaders, doctors, and community organisations.

There are a variety of barriers to people effectively accessing legal assistance.⁷ An important barrier, particularly for legal assistance from specialist providers, is cost. There are many other barriers to access including but not limited to low literacy, geographic isolation, digital exclusion, fear, and discomfort.

Legal assistance needs to meet people’s legal need and be appropriate and accessible to them as an individual or as a member of a collective. Different types of legal assistance need to be connected so that people do not become lost or give up when trying to solve a civil justice problem. For example online information needs to be connected to one-to-one help so that people, including those who have limited digital access or capability, can access the help they need.

The indicators that we are moving towards Waypoint 1 are increases in:

- a. access to legal information and self-help tools
- b. signposting and integration between different forms of legal assistance
- c. the availability of affordable legal assistance to help people solve their civil justice problems

⁶ Chellie Spiller and other, above n 1.

⁷ For a discussion of barriers see “Statement of Problem” below and sources such as New Zealand Law Society, *Access to Justice: Stocktake of Initiatives* (New Zealand Law Society, Wellington, 2020).

Suggested Actions

- Strengthen the user-focus in the provision of legal information including by better coordination with legal information providers, greater action-focused tools, and strong connections to one-to-one assistance that meets needs.
- Develop more self-help tools to help with navigating information and undertaking tasks to solve legal problems e.g. interactive assistance for document completion, guided navigation through legal information.
- Develop more materials in formats to reach different communities, including by presenting materials in Te Reo Māori and other languages.
- Evaluate current legal assistance services and build evidence-informed options to improve and/or extend these services.
- Encourage innovation in service provision, for example, through the development of regulatory ‘sandboxes’⁸ to trial programmes of new classes of legal assistance providers such as navigators and limited licences.
- Encourage lawyers to participate in activities focused on affordable legal service provision including the provision of free legal services (e.g. through a community provider or Te Ara Ture), running low-cost consultation clinics, and legally aided work.
- Maintain and strengthen funding of legal services for those unable to pay private rates. This may be through a variety of means, including the current civil legal aid model, funding existing or new providers to provide free or low-cost civil legal services, and ensuring regulation can support this flexibility.
- Acknowledge and celebrate lawyers who provide legal services for free or at greatly reduced rates, in order to build a positive culture within the legal profession of contributing to access to civil justice.
- Increase transparency about the cost of legal assistance so consumer can make informed choices.

2. Providers of legal assistance understand and serve the needs of their communities

We can only target legal assistance to communities if the providers of those services understand their communities’ needs.⁹ This includes understanding of the dynamics and barriers created for people who have experienced or are experiencing family violence, sexual violence, trauma, and disability. Providers also need to understand how these experiences can intersect and create further disadvantage. 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.

The indicators that we are moving towards Waypoint 2 are increases in:

- a. information about legal need
- b. diversity in legal assistance providers
- c. education about communities’ needs for legal assistance providers.

⁸ 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/>>.

⁹ 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.

Suggested Actions

- 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.
- Strengthen education of legal assistance providers to improve the knowledge and awareness of the impacts of those experiencing disability and those experiencing family violence, sexual violence, and trauma.
- 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.
- Admit and educate law students from diverse backgrounds.
- Include tikanga Māori, Te Reo Māori and access to civil justice in all levels of legal education.
- Continue to develop and strengthen diversity and inclusion initiatives for the legal profession and judiciary.
- Regulate legal services with a view to improving access to civil justice (including through encouraging a range of choice and price options) while balancing the need to protect consumers.
- Maintain and strengthen mechanisms for further education and/or accountability where legal assistance providers fall short of expectations.

3. Dispute resolution—from initiation to enforcement—is accessible and equitable

Dispute resolution in Aotearoa New Zealand encompasses a range of different processes. It includes formal justice processes through courts and tribunals. It also includes early opportunities for apologies and restorative processes, person-to-person negotiation (informal or supported), the many mediation-based schemes, navigation support, arbitration, and conciliation. 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 exclude representation and other forms are difficult to access without representation.¹⁰ Not all dispute resolution mechanisms are suitable for all disputes or disputants. To give one example, mediation may not be suitable for disputes where one party has significant power over another or there is a clear breach of a legal right. There are different costs (financial and otherwise) to the various options and different benefits. Even when disputants secure an outcome in their favour, enforcing the outcome can prove challenging and may necessitate further dispute resolution.

The large number of options for dispute resolution is a strength, offering a great deal of flexibility and choice. The lack of information about the different options, confusion about pathways, suitability of different mechanisms for particular disputants, costs, and availability in a particular place, are all potential barriers.

Resolution of disputes through courts needs particular attention. 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’¹¹ and within the courts when required. This aspect of court-resolved

¹⁰ 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. Litigating in the courts is generally challenging without representation.

¹¹ 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.

disputes is a fundamental aspect of rule of law. There are widely-recognised problems with accessibility in the civil court system, with particular concern about the prohibitive financial cost of accessing the courts.¹² Frequently, there are also power imbalances between parties (stemming from financial and other sources), which can also be present in non-court dispute resolution.¹³

The problems for navigating dispute resolution in all its forms, and the particular issues around equitable access to the courts, need attention and are the focus of Waypoint 3.

The indicators that we identify to enable us to reach Waypoint 3 are increases in:

- a. information about dispute resolution mechanisms (costs, availability, pathways)
- b. equitable access to tribunals and courts

Suggested Actions

- Identify the range of dispute resolution mechanisms and make this information accessible to both consumers and legal assistance providers.
- Create effective navigation tools for people and their advisers to identify suitable dispute resolution mechanisms.
- Explore ways to simplify access to dispute resolution mechanisms (for example, through a streamlined, single entry point).
- Increase price transparency about the cost of various dispute resolution options.
- Improve equitable access to the courts so 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 and other decision-making bodies (for example, investigating models to increase supervision by judges in pursuit of these goals). This should include changing rules, and examining more fundamental reform, to achieve the goals.
- Recognise that physical spaces occupied by courts and other decision-making bodies can potentially limit access to civil justice and take steps towards physical spaces that are inclusive, welcoming, and informed by tikanga.
- Create easier and cheaper enforcement procedures so that agreements reached by dispute resolution mechanisms are realised.
- Implement or improve systems to assist disabled people to participate in dispute resolution.

4. There is knowledge about the system to ensure we can monitor, evaluate, and improve

While it is acknowledged that initiatives and reform should be based on empirical evidence and evaluation (see guiding light D, 'use evidence, evaluate'), we currently have limited evidence about what works and what does not. This waypoint therefore focuses on building the evidence base needed to guide reform. In building the evidence base, careful attention needs to be paid to the methodologies and methods being employed, including an emphasis on Kaupapa Māori and inclusive research methods such as co-design and other participatory models. Weight should be given to qualitative research as well as quantitative research.

The indicators that we identify to enable us to reach Waypoint 4 are increases in:

- a. knowledge of how the system is currently operating, including mechanisms to monitor and provision for evaluation

¹² New Zealand Law Society, above n 7.

¹³ Bridgette Toy-Cronin, "Power in Civil Litigation" (2021) 17(2) Policy Quarterly 29.

b. pathways to share knowledge about the system

Suggested Actions

- Invest in capturing data that can be used to monitor and evaluate dispute resolution schemes and legal assistance delivery, including longitudinal data.
- Invest in research that explores and supports a bijural civil justice system.
- 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 that is continually updated to provide a high-level overview, encourage collaboration, and reduce duplication.
- Develop an economic analysis of the impact of a legal problem on society via productivity and increased use of other services such as health services.



For *Wayfinding*'s aims to be achieved, there needs to be a national structure in place to coordinate reporting of initiatives, share information between stakeholders, and maintain momentum for the work.

A key component of *Wayfinding* is, therefore, the establishment of the National Civil Justice Observatory (the Observatory).¹⁴ This initiative is subject to securing adequate funding.

The purposes of the Observatory are to:

- establish and maintain a website that includes a continually updated database of current and planned civil justice initiatives and of evaluative and evidence-based information for planning future initiatives;
- encourage stakeholders to provide free and frank insights on the challenges and structural issues they observe as part of their work with the civil justice sector;
- channel stakeholders' observations and feedback on civil justice to relevant bodies including but not limited to government bodies;
- produce a public annual report to feedback to stakeholders how progress against the *Wayfinding* goals is tracking, celebrating successes, identifying gaps, and emerging issues, and make recommendations;
- facilitate stakeholder connections, this may be through hosting events and hui.

The Observatory will be hosted in a tertiary institution (this may change locations over time, as the Canadian equivalent has).¹⁵ An academic at the host institution will contribute to its work and supervise the Observatory's staff.

The Observatory will be overseen by an advisory committee/s to support and guide the Observatory. Members should be volunteers who are representative of the wider sector (both government and non-government).

¹⁴ This is the working title of this group and the advisory committee/s (see below) can revisit the working title.

¹⁵ In Canada, the Canadian Forum on Civil Justice was previously hosted by the University of Alberta and is currently hosted by York University and associated with Osgoode Hall Law School and the York Centre for Public Policy and Law, <https://cfcj-fcjc.org/>.

BACKGROUND INFORMATION



The intention of *Wayfinding* is that it embeds and helps strengthen the rule of law and the pursuit of equal access to civil justice for all and it is deliberately open to imagining new ways to organise our civil justice system.

Placed in its international context, *Wayfinding* plays a role in New Zealand's commitment to Sustainable Development Goal 16.3, "Promote the rule of law at the national and international levels and ensure equal access to justice for all".¹⁶ This commitment, of course, also reflects New Zealand's constitutional obligations to the rule of law.

In its domestic context it recognises that Aotearoa New Zealand is a state rooted in laws and legal institutions derived from our colonial past, created without reference to Tikanga Māori. Efforts are being made to remedy this, as Aotearoa New Zealand grows in its understanding of how to honour Te Tiriti. *Wayfinding* aims to support and create a space for that growth.

Statement of Problem

Aotearoa New Zealand's access to civil justice issues are well recognised and frequently noted.¹⁷ 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.¹⁸ These problems can cause a range of negative consequences such as stress, anxiety, loss of confidence, fear, financial loss, and health problems.¹⁹

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 \$621.²⁰ 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).²¹ 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 gap but are limited in their ability to do so due to resource constraints.²² There are

¹⁶ United Nations, Sustainable Development Goals, Goal 16, <https://www.un.org/ruleoflaw/sdg-16/>.

¹⁷ For example 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, above n 7; 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.

¹⁸ Colmar Brunton, above n 2; World Justice Project, above n 2.

¹⁹ 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).

²⁰ 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) 28(3) *International Journal of the Legal Profession* 335-349.

²¹ 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).

²² *Ibid.*

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 in some cases not 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).²³
- There is inequality in access to civil 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.²⁴

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.²⁵ 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 seeks to provide a framework for a coordinated response to these problems in civil justice, 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.

Those involved developing *Wayfinding*

In March 2020, a 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. One of the outcomes of the workshop was the idea to write a national strategy. The Chief Justice and Secretary for Justice 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. CSPG formed the Advisory Group to take forward the idea of the strategy and other ideas from the March 2020 workshop.

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 (Māori lawyer), Sarah Lynn and Victoria McLaughlin (both Ministry of Justice). The Advisory Group established the *Wayfinding* working group, whose members are: Dr Bridgette Toy-Cronin (Chair) (an academic specialising in access to civil justice), Raynor Asher KC (Barrister and former High Court and Court of Appeal judge), Wi Pere Mita (Māori lawyer and

²³ New Zealand Law Society, above n 7.

²⁴ Colmar Brunton, above n 2.

²⁵ Rebecca Sandefur "Access to What?" (2019) 148(1) *Dædalus*, the Journal of the American Academy of Arts and Sciences 49.

mediator), Gabrielle O'Brien (NGO leader with a background in alternative dispute resolution), and Anne Waapu (Māori justice advocate focused on intergenerationally durable change).

Those involved in the March 2020 workshop were The Arbitrators' and Mediators' Institute of New Zealand; 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.

Those who submitted to the *Wayfinding* consultation in 2022 were: The Arbitrators' and Mediators' Institute of New Zealand; Backbone Collective and The Auckland Coalition for the Safety of Women and Children; Citizens Advice Bureaux New Zealand (Ngā Pou Whakawhirinaki o Aotearoa); Community Law Centres o Aotearoa; Community Law Canterbury (Te Ture Whānui o Waitaha); Cooper Legal; Government Centre for Dispute Resolution; Legal +; National Council of Women of New Zealand (Te Kaunihera Wahine o Aotearoa); Netsafe; New Zealand Bar Association (Ngā Ahorangi Motuhake o te Ture); New Zealand Council for Civil Liberties Incorporated; New Zealand Council of Christian Social Services; New Zealand Law Society (Te Kāhui Ture o Aotearoa); Pacific Lawyers Association; Porirua Kāpiti Community Law Centre; Restorative Practices Aotearoa; Wellington Indian Association; individuals who are users of the justice system (five submitters); individuals who are working to improve the justice system (22 submitters). Many of these individual and institutional submitters also contributed to the second round of submissions to refine the strategy.