

Report from New Zealand

2023 International Forum on Legal Aid

Information about your country (region or state)*				
Country	Population (by the end of 2022)	GDP (by the end of 2022)	Poverty line & population living in poverty	Total no. of practicing lawyers
New Zealand	5.223 million Statistics New Zealand as at 30 June 2023	\$NZ385 billion Statistics New Zealand as at March 2023	<p>There is no official poverty line measure in New Zealand, however the Child Poverty Reduction Act 2018 requires reporting on levels of child poverty. This is partially measured through 10 different income measures. No overall indicator is derived. Instead, each of the measures is tracked from year to year to validate whether child poverty is increasing or decreasing. By way of example, in the year ended June 2022:</p> <ul style="list-style-type: none"> • 12 percent of children lived in households with less than 50 percent of the median equivalised disposable household income before housing costs are deducted • 15.4 percent of children lived in households with less than 50 percent of the median equivalised disposable household income after housing costs are deducted • 10.3 percent of children lived in a household experiencing material hardship, which indicates that they are missing out on more than a handful of things that could be expected in a typical household. <p>Statistics New Zealand reported in March 2023</p>	<p>15,596 lawyers based in New Zealand</p> <p>Further information available via New Zealand Law Society 2022 Snapshot of the Profession</p>
<p>* In addition to the country information given above, for countries with federal systems where the legal aid organization described below is not a national organization, please provide data for the state/province/area where the legal aid organization operates.</p>				

Information about the legal aid organization				
Name of legal aid organization	Date of establishment	Total no. of applications received in 2022	Total no. of applications approved in 2022	Total no. of applications rejected in 2022
<p>Ministry of Justice.</p> <p>A government department.</p> <p>Granting decisions are made by a statutory officer who is employed by the Ministry of Justice but makes granting decisions independently of government. The Legal Aid Services unit and the Public Defence Service are separate groups within the Ministry.</p>	<p>On 1 July 2011, the Ministry of Justice became responsible for the strategic leadership and administration of the legal aid system.</p> <p>Prior to this, the responsible agency was the Legal Services Agency (a separate Crown entity), which was disestablished as of 30 June 2011 by Part 4 section 117 of the Legal Services Act 2011.</p>	75,876 applications for legal aid made in the 2022	70,306 grants of legal aid made in 2022	5,528 rejections
Total no. of employees	Total no. of Legal Aid Lawyers	Government funding for the legal aid organization in 2022	Total legal aid expenses in 2022	Proportion of government funding to the total legal aid expenses
<p>Over 4,300 at Ministry of justice:</p> <ul style="list-style-type: none"> Over 80 in the Legal Aid Services unit, and Over 150 criminal defence lawyers in the Public Defence Service 	<p>2435 Legal aid lawyers in private practice as of 22 August 2023.</p> <p>Approximately 150 lawyers providing criminal legal aid and initial advice services in the Public Defence Service</p>	<p>For the Legal Aid appropriation in 2021/22, refer to page 170-171 of the Ministry of Justice Annual Report 2021/22</p> <p>For the Public Defence Service appropriation, refer to page 80 of the Ministry of Justice Annual Report 2021/22</p> <p>Previous years annual reports are published on the Ministry of Justice website.</p>	<p>For the Legal Aid appropriation in 2021/22, refer to page 170-171 of the Ministry of Justice Annual Report 2021/22</p> <p>For the Public Defence Service appropriation, refer to page 80 of the Ministry of Justice Annual Report 2021/22</p> <p>Previous annual reports are published on the Ministry of Justice website.</p>	<p>Refer to Financial Statements of the Government of New Zealand for the Year Ended 30 June 2022.</p>

Legal aid in New Zealand

The Ministry of Justice is the Government department responsible for the strategic leadership and administration of the legal aid system in New Zealand.

The legal aid scheme promotes access to justice by providing legal services to people with insufficient means. Individuals can apply for legal aid to help resolve legal problems that may go to a court or tribunal, which ensures people are not denied justice because they can't afford a lawyer. Grants of legal aid are available for criminal, civil, and family matters and claims in the Waitangi Tribunal¹.

¹ The Waitangi Tribunal was established in 1975 by the Treaty of Waitangi Act 1975. The Tribunal is a permanent commission of inquiry charged with making findings and recommendations on Treaty claims brought by Māori relating to actions or omissions of the Crown. Unlike other Commissions of Inquiry which may be set up, legal aid is available for claimants appearing before the Waitangi Tribunal.

The legal aid system operates in accordance with the Legal Services Act 2011 (the Act) and Legal Services Regulations 2011 (the Regulations) and is administered by the Ministry of Justice under the control of two statutory officers: the Secretary for Justice and the Legal Services Commissioner.

The Secretary for Justice is responsible for purchasing and managing of high quality legal services, and the contracting of legal aid providers. The Legal Services Commissioner, a statutorily independent role established within the Ministry, makes decisions in granting legal aid to individuals. Staff within the Legal Aid Services unit in the Ministry of Justice have the commissioner's delegated authority to decide grants, factoring in circumstances such as the applicant's income, dependents, and specific information about their case.

Criminal legal aid may be available to a natural person charged with or convicted of an offence, for appeals and for parole matters. It is not available for offences where the maximum penalty is a term of imprisonment of less than six months unless the interests of justice require it. Current legal aid contracting arrangements in New Zealand for criminal legal aid involve a mixture of publicly provided services through the Public Defence Service (a criminal law practice that operates independently within the Ministry of Justice) and by contracting individually with private lawyers (also referred to as legal aid providers). For a majority of criminal legal aid cases, Legal Aid Services will allocate the case to a lawyer (either in the PDS or a private provider), however for the more serious criminal cases, the client has the option to choose their lawyer.

Legal aid may be granted to a natural person in respect of civil (including family) proceedings in a court and in certain administrative tribunals or judicial authorities. Civil legal aid is provided solely by contracted private lawyers. When applying for legal aid for a civil/family case, the applicant must find a legal aid lawyer to take their case in order to apply.

To qualify for a grant of legal aid (criminal and civil), applicants must meet eligibility criteria set out in the Act and Regulations. Eligibility for civil legal aid is largely based on a consideration of an applicant's maximum income and their disposable capital (including any assets they have), offset by the number of dependents they have. The financial thresholds for civil legal aid are prescribed in the regulations. An individual's case will also be looked at when determining their civil legal aid eligibility. A range of tests will apply, including an examination of the merits of an applicant's case, whether an applicant has reasonable grounds for taking the case, and whether an applicant owes a previous legal aid debt. For legal aid to be granted in criminal cases, it must appear that an applicant does not have sufficient means to enable them to obtain legal assistance.

Unlike a civil grant there are no fixed income or capital thresholds for determining this, but an applicant must still submit information about their income to support this. Eligibility for criminal legal aid is also based on an assessment of whether the interests of justice require that an applicant be granted legal aid.

Criminal legal aid cases make up approximately three quarters of all legal aid grants made. In 2022/23, approximately 54,500 criminal legal aid grants were made, and 20,200 for civil (including family) legal aid.

Legal Aid also delivers 'specified service', including the Duty Lawyer and Police Detention Legal Assistance (PDLA) schemes. Duty Lawyers are lawyers rostered to at courts with the purpose of assisting unrepresented defendants who are charged with criminal offences, while the PDLA service ensures that people detained by Police have access free initial legal advice at any time of day.

There is also the Family Legal Advice Service which was established to enable the provision of initial advice and information for eligible parties in dispute over arrangements involving the care of their children.

In addition to legal aid, New Zealanders can access free legal services and law-related education through Community Law Centres (CLC). CLCs provide assistance through websites, over the phone and at walk-in centres. They also undertake community engagement and deliver specialised legal services. The Ministry of Justice contracts 24 CLCs to provide community legal services. The services include casework services (advice, assistance, and representation), legal information, law-related education, and community engagement. CLCs improve New Zealanders' access to justice by focusing on early resolution and

preventing legal problems from requiring litigation. In 2021/22, CLCs helped 35,3574 clients with legal advice.

The service delivery model of Legal Aid in New Zealand

Current legal aid contracting arrangements in New Zealand involve a mixture of publicly provided services through the Public Defence Service (PDS) and contracting individually with private lawyers (legal aid providers).

The PDS is a criminal law practice that operates independently within the Ministry of Justice and is the largest criminal law practice in New Zealand². PDS lawyers receive a salary and provide criminal legal aid services. The PDS have a target of accepting 15,000-16,000 criminal legal aid grants each year.

Contracted private lawyers provide criminal, family, and civil legal aid services, and dependent on the type of case are paid either on a system of fixed fees and/or hourly rates. Private contracted lawyers take approximately 61,000-67,000 grants across these jurisdictions each year. In fixed fee legal aid cases, private lawyers are paid fixed amounts for completing specific activities as set out in the fixed fee schedule relevant to the case. There is flexibility in the fixed fee framework that allows for situations where a fixed fee may be inadequate to complete a specific activity. In such situations, lawyers can apply to Legal Aid Services (LAS) to have the applicable fixed fee replaced by a fixed amount of hours at the provider's hourly rate instead. The legal aid fixed fee schedules can be found on the New Zealand Ministry of Justice website: justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/proceeding-steps-and-fixed-fee-schedules/.

The most complex and serious criminal legal aid cases, some family cases, and majority of civil (non-family) legal aid cases are paid on an hourly rate basis. The hourly rate is based on the type of proceedings, and the qualification and experience level of the lawyer. The current standard hourly rates range from \$103-\$178 per hour. The current legal aid hourly rates can be found on the New Zealand Ministry of Justice website: justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/provider-rates-and-special-rates/

Private lawyers can only provide legal aid services if they have a New Zealand Law Society practicing certificate, are approved by the Ministry and have a valid contract with the Ministry. To be approved, lawyers need to show that you have the relevant skills, experience, and business systems to effectively represent clients.

There are separate approval standards for the following areas of law; criminal, family, civil, mental health, refugee and protected persons, Māori Land Court and Māori Appellate Court, Waitangi Tribunal, Court of Appeal and Supreme Court, employment advocate (non-lawyers who are members of the Employment Law Institute of New Zealand can apply). The approval standards and experience a lawyer needs to have to be approved to provide legal aid in each of these area of law are set in the Legal Service (Quality Assurance) Regulations 2011.

All applications from lawyers to be approved as a lead provider of legal aid will be referred to an area Selection Committee for their consideration and recommendation to the Ministry. A Selection Committee is a committee of local lawyers that is chaired by a representative of the Ministry.

Eligibility for the legal aid scheme

Eligibility for the legal aid scheme is determined by the Legal Services Act 2011 and, under current policy and legislation, where an applicant is eligible, legal aid must be granted. The Ministry is legally obligated to fund these grants.

² The PDS is located in 10 cities across New Zealand, and operate in 15 District Courts (Auckland, North Shore, Waitakere, Manukau, Pukekohe, Papakura, Tauranga, Napier, Hastings, Hamilton, Wellington, Porirua, Hutt Valley, Christchurch, Dunedin) their related High Courts, the Court of Appeal and the Supreme Court.

Information on the budget and expenditure within the appropriations³ below can be found in the Vote Justice – Justice Sector – Estimates of Appropriations for 2023/24. These Estimates outline, for the current financial year, the expenses and capital expenditure the Government plans to incur on specified areas within Vote Justice, and capital injections it plans to make. Relevant appropriations relating to legal aid within this vote include:

- Administration of Legal Services⁴
- Public Defence Service⁵
- Legal Aid⁶

Performance information for these appropriations is reported by the Ministry of Justice in its Annual Reports.

The Legal Services Act 2011 envisages that legal aid is a loan that will be repaid by the applicant unless it would cause a person significant hardship to do so. How much an applicant must repay is dependent on how much they earn, what property they own, and whether they are awarded any money or property from their case. There are also specified cases that are except from repayment (eg; legal aid for applying for protection order, proceedings under the Mental Health (Compulsory Assessment and Treatment) Act 1992, etc.).

The Legal Services Commissioner and their staff use information supplied on the legal aid application form to calculate whether any amount is to be repaid. They take into consideration the seriousness of the charges, any dependent children the applicant has, and the amount of debt or any other exceptional circumstances.

The amount repayable is calculated according to the applicant's ability to pay. Repayment amounts are calculated for each person based on income thresholds. Prescribed repayment rates are set out in Legal Services Regulations 2011. Less than a third of applicants granted aid are required to repay any amount. The Act also provides for the Legal Services Commissioner to decide whether to recover debt or to write off amounts payable. An individual can also apply to the Commissioner to have their legal aid debt written off.

Unsuccessful legally aided parties in civil/family proceedings are not subject to an order to pay the other parties' costs unless there are exceptional circumstances. However, the Court may make an order to benefit the successful opponent of a legally aided party that specifies the amount that would have been payable if the legally aided party's liability was not limited. The successful party may then apply to the Legal Services Commissioner for payment of that amount.

Management of quality assurance for legal aid provision and services

The Ministry of Justice has a quality assurance framework for legal aid that provides assurance that services are being delivered consistently and to the standards expected, and in accordance with legislative, contractual, and professional obligations. An annual programme of audits of legal aid lawyers' forms part of this framework

The audit programme enables the Ministry to review the quality and value of the service provided to legally aided clients. There are two types of legal aid audits; limited audits on lawyers carried out by internal Ministry auditors, and full or special audits carried out by external auditors.

Limited Audits were recently introduced in February 2023 and have expanded the audit programme. Limited audits are used to identify any opportunities for improvement, such as better record keeping and file

³ An appropriation is a legislative provision that permits amounts of expenses or capital expenditure to be incurred for activities that fall within the defined scope of the provision

⁴ This appropriation is limited to the administration of community, legal and related services; and the management and collection of related debt

⁵ This appropriation is limited to the provision of legal services by the Public Defence Service

⁶ This appropriation is limited to the payments of legal aid to approved providers

maintenance. In addition, these audits are used to help ensure lawyers are claiming fees correctly and can be used to highlight lawyers that would be good candidates for a full audit. These audits are undertaken by Ministry officials and are a high-volume assurance check. It is anticipated that every legal aid lawyer will receive one of these audits at least once every five years.

Full audits are undertaken on legal aid lawyers identified as being higher risk due to several factors which include high case assignment levels, high expenditure on cases, and other quality assurance findings such as previous audit scores and complaints that have been regarding the lawyer. These audits are undertaken by appointed external auditors who are experienced senior lawyers.

Special audits are only undertaken where a significant issue has been identified which needs further specific investigation. These are also undertaken by appointed external auditors. The number of lawyers to be audited is determined yearly. Lawyers are selected for limited or full audit based on their risk profile or may also be selected randomly. The Ministry aims to conduct up to 50 full audits and 450 limited audits of private legal aid lawyers each year.

The Legal Aid Audit Policy and audit methodology can be found on the Ministry's external website: justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/quality-assurance-framework/audits-and-checks/ Information on the wider quality assurance framework for legal aid can be found at: justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/quality-assurance-framework/

What are the major strategies for the overall development of Legal Aid in New Zealand?

In 2015 Cabinet directed the Ministry report to the Minister of Justice every three years on the policy settings for legal aid to allow any changes to legal aid policy settings and their associated costs to be considered as part of the Budget process (known as the Triennial Review). The first review was conducted in 2018, which included consultation with the legal profession. The review highlighted several barriers to accessing legal aid, including eligibility and repayment thresholds.

In May 2022 the Government announced a \$148m (\$87.151m USD) investment into New Zealand's legal aid scheme, to strengthen the scheme and increase access to justice. The investment supported legislative changes which increased eligibility for the legal aid scheme, as well as reducing repayment requirements for people who receive aid. These changes included:

- Increasing the civil legal aid eligibility thresholds by 15%,
- Increasing the legal aid income repayment thresholds by 16.5%,
- Removing the \$50 up-front user charge which is applied to some legal aid grants,
- Removing the interest charged on outstanding legal aid debts.

These changes may make an additional 93,000 people eligible for aid, as well as reducing the cost of aid to recipients.

The investment also funded an increase to the hourly rates paid to legal aid lawyers by 12%. However, many lawyers do not consider that this increase is enough. There has not been an increase in the hourly rate paid to lawyers for many years and this has put many lawyers off providing this service. The increase also does not take into consideration inflation.

Impacts of the COVID-19 pandemic on democracy, human rights, and the judicial system in New Zealand

New Zealand's strategy for managing COVID-19 has been widely discussed and praised for its effectiveness, especially during the early stages of the pandemic. Unlike some nations that pursued mitigation or suppression, New Zealand aimed for elimination. This doesn't mean permanently eradicating the virus but instead getting to zero or near-zero cases in the community, followed by strong measures to prevent reintroduction. New Zealand implemented one of the world's strictest lockdowns early on when there were only a few cases. This "go hard, go early" approach helped to prevent widespread community transmission.

Prime Minister at the time Jacinda Ardern and Director-General of Health Dr. Ashley Bloomfield held regular press conferences, clearly communicating the government's actions and the reasoning behind them. This helped in keeping the public informed and garnered their trust and cooperation. The government introduced a four-tier alert level system, from Level 1 (least restrictive) to Level 4 (most restrictive). This system clarified the required public health and social measures. Other measures included;

- strict border controls, requiring quarantines for returning residents and citizens and restricting the entry of non-citizens and non-residents. Mandatory quarantine for incoming travelers and isolation facilities for positive cases helped prevent the spread of the virus.
- Robust Testing and Contact Tracing: This was vital in quickly identifying and isolating any outbreaks.
- There was a strong emphasis on engaging with communities, with public health campaigns encouraging behaviors like hand washing, mask-wearing (especially during outbreaks), and using the NZ COVID Tracer app.
- Collaboration with Māori and Pacific Communities: The government collaborated closely with Māori and Pacific health providers and community leaders to ensure that responses were culturally appropriate and addressed specific needs and vulnerabilities.
- Economic Support: Alongside health measures, the government introduced various economic support packages to support businesses, workers, and households impacted by the pandemic and associated restrictions.
- As vaccines became available, New Zealand rolled out a vaccination program, prioritizing frontline workers, at-risk populations, and then the broader public.

Impact on Democracy:

The 2020 General Election was postponed by a month due to the pandemic.

Lockdown measures and restrictions on gatherings impacted public demonstrations and protests. This temporarily limited a key democratic right, though it was done with public health justifications.

Impact on Human Rights:

- Border closures and lockdowns significantly restricted freedom of movement, both internationally and domestically.
- The pandemic exacerbated existing inequalities, impacting vulnerable groups disproportionately, including the elderly, those in poverty, and certain ethnic communities
- The introduction of contact tracing, and apps like the NZ COVID Tracer, raised concerns about privacy and data protection, although the government took steps to ensure that data was used only for public health purposes.
- The pandemic and the resultant economic downturn affected people's rights to work and to an adequate standard of living. The NZ government, in response, initiated various economic support packages.
- Māori, on average, experience worse outcomes than Pākehā (non Māori) in areas like health, education, employment, and the criminal justice system. These disparities are often attributed to

historical injustices, ongoing discrimination, and systemic issues. The pandemic amplified concerns for the well being and outcomes for Māori.

Impact on the Judicial System:

- Lockdowns and restrictions led to a backlog in court cases, delaying trials and other judicial proceedings.
- To adapt to the pandemic, many hearings moved online. While this ensured the continuity of the justice system, it also raised concerns about the right to a fair trial and equal access to justice, especially for those without adequate technological resources.
- Bail and Sentencing: There were concerns about individuals being held in remand for longer periods due to court delays. Some argued for more lenient bail conditions, considering the increased health risks in prisons during the pandemic.
- With COVID-19 posing a particular threat in crowded places, there were concerns about the potential spread of the virus in prisons. Measures were taken to reduce prison populations and ensure the health and safety of inmates.

Beside the impact of the pandemic, have there been other crises endangering democracy and violating human rights in your country in the past five years ?

In the latest Rule of Law Index from the World Justice Project, New Zealand ranked 9th out of 102 countries for its adherence to protection of fundamental human rights. (See the New Zealand statistics on the Rule of Law website.)

Whilst there haven't been any major events since COVID, New Zealand does continue to have issues that impact its citizens. The statistics are grim and cannot be ignored. Māori are disproportionately represented throughout the Justice System in Aotearoa. Tamariki Māori make up only 25% of all children in Aotearoa, however, they represent 68% of the children in state care (Office of the Children's Commissioner, 2020.) Concerns around the systemic racism and structural issues within the social welfare system have long been known. In 1988, the Department of Social Welfare published a report, Pūao-te-Āta-tū: The report of the ministerial advisory committee on a Māori perspective for the Department of Social Welfare. Pūao-te-Āta-tū outlined how the social welfare system had failed Māori. The issues raised in this report remain relevant, and largely unaddressed, today.

Another recent example is in February 2023, Cyclone Gabrielle caused widespread damage and flooding and resulted in a period of extreme isolation and vulnerability.

The Napier urban area was without power, communications and access, the Awatoto wastewater treatment plant inoperable and associated industrial area completely inundated as the stop banks breached. Some of Napier's residential and commercial areas, along with surrounding rural communities and productive land were decimated. Over 70,000 residents were left without lifelines including health services, power, road connectivity (in every direction), wastewater, drinking water, internet, and cellphone networks. Hawke's Bay has now formally moved from response to recovery. For many, life has returned largely to normal but for others this is still a period of displacement, response and providing ongoing assistance to those affected by the disaster.

Legal aid for strategic litigation or class actions on specific issues

In New Zealand, legal aid is only available to individuals, not groups⁷. New Zealand does not currently have a class actions regime. Claims that might be brought as class actions in other jurisdictions are brought as representative actions under High Court Rule 4.24

The Law Commission completed a review of the law relating to class actions and litigation funding in 2022, and produced the Ko ngā Hunga Take Whaipānga me ngā Pūtea Tautiringa report. Documents relating to the Government response to the report have been proactively released, and are available online: justice.govt.nz/assets/Government-response-to-the-Law-Commissions-report-Class-Actions-and-Litigation-Funding.pdf

Citizen participation in trials in New Zealand

Yes, New Zealand has a system of citizen participation in trials, known as the jury system.

Jury Trials are used mainly in serious criminal cases where the defendant has the right to opt for a trial by jury rather than by a judge alone. Some civil cases can also be tried by jury, but this is less common

Citizens aged 18 to 70 who are registered on the electoral roll can be randomly selected for jury services. Those selected receive a summons that specifies when and where they need to attend. On the day of the trial, potential jurors are called randomly, and both the prosecution and defence can challenge a certain number of jurors without providing a reason. They can also challenge with a reason, but the judge decides on these challenges. The jury's primary role is to determine facts and decide on the guilt or innocence of the defendant based on the evidence presented. The judge provides directions on the law.

After all evidence has been presented and closing statements made, the jury retires to a private room to discuss and reach a verdict. In criminal trials, the verdict must be unanimous. If a unanimous decision can't be reached, the judge may accept a majority verdict where only one juror disagrees. However, this depends on the duration of deliberation and the nature of the case.

What specific measures does legal aid take to protect victims

Legal aid in New Zealand does not take a particular role in protecting victims. However, New Zealand places a strong emphasis on the rights and protection of victims within the justice system. Several specific measures have been introduced to ensure victims are supported, protected, and informed throughout the legal process:

Victims' Rights Act 2002 lays out the basic rights of victims, ensuring that they are informed, treated with respect, and given a say in the judicial process. Including but not limited to

- Right to be kept informed about the progress of the investigation, court proceedings, and the offender's status.
- Right to be consulted on bail conditions that might affect the victim.
- Right to have views considered when decisions on prosecuting are made.
- Right to make a victim impact statement which is taken into account during sentencing.

There are services like Victim Support, a non-government organization, that provide free 24/7 support and information to victims of serious crime and trauma.

⁷ Except for representatives of Māori groups in Waitangi Tribunal cases

Protection in Court: Special measures can be taken to make giving evidence less stressful for victims. These include:

- Use of screens to shield the victim from the accused.
- Allowing evidence to be given via video link.
- Excluding the public from the courtroom during certain types of evidence, particularly in sexual and child abuse cases.
- Use of communication assistants for victims who need support in understanding or giving evidence.

Sexual Violence Legislation: New Zealand has made specific provisions for victims of sexual crimes:

- Name suppression to protect the identity of the victim.
- Prohibitions on evidence that details the victim's sexual history with persons other than the defendant.
- Closed courts during victim testimony.
- Child victims or witnesses are given special attention to ensure they aren't re-traumatized by the judicial process. This includes the option of giving evidence via video recording, having a support person present, and using alternative venues for testimony.