



EVALUATION OF THE LEGAL AID REFORMS

Legal Aid Providers Survey (baseline) October – November 2011– Summary of findings

April 2012

The Ministry of Justice surveyed legal aid lawyers in October - November 2011 about the reforms to the legal aid system, progress towards the intended impacts of the reforms, and how the changes are impacting on providers of legal aid. Overall, the results reflect high levels of disagreement with the reforms and dissatisfaction with the way the changes have been implemented.

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Legal aid lawyers were surveyed about the legal aid reforms in 2011

The Ministry of Justice is evaluating the implementation and impact of the reforms to the legal aid system that have been progressively implemented since 2009. The evaluation has been designed to better understand and provide regular feedback about the implementation of the changes to the legal aid system, as well as monitoring the achievement of the intended outcomes of the reforms.

In October – November 2011 the Ministry undertook its first baseline survey of legal aid lawyers. The online survey was emailed to 2,652 lawyers publicly listed as providers of legal aid in New Zealand. The total number of survey responses received was 1,010, which gave a response rate of 38%.

Overall, respondents disagreed with the reforms and how the changes are being implemented

The survey sought the views of lawyers about the reforms to the legal aid system, progress towards the intended impacts of the reforms, and how the changes are impacting on providers of legal aid.

Overall, the responses from lawyers reflect high levels of disagreement with the reforms and dissatisfaction with the way the changes have been implemented. A recurring finding was the significantly higher likelihood of dissatisfaction of lawyers who worked mainly in the criminal jurisdiction, relied on legal aid for a majority of their income and/or who reported lower workloads since the legal aid changes. These results may reflect the fact that many of the legal aid changes being implemented or consulted on at the time of this survey impacted particularly on the criminal jurisdiction.

The level of disagreement amongst lawyers varied for the different changes proposed or being implemented

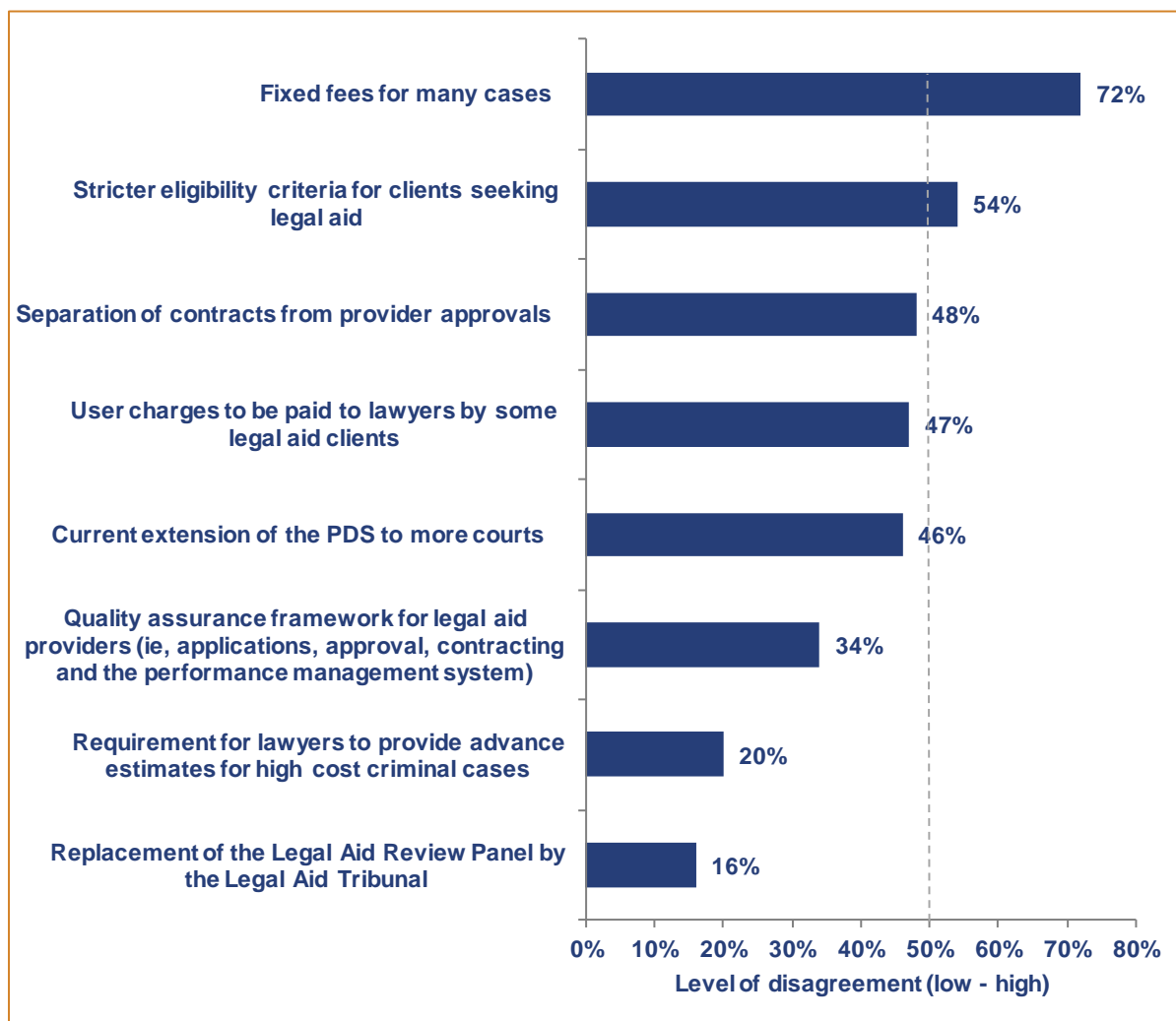
The legal aid reforms are the biggest changes to the legal aid system in New Zealand in over twenty years. The Government is reforming the legal aid system with the aims of raising quality

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and ensuring that legal aid is sustainable into the future. The reforms affect who is eligible for legal aid, and how legal aid services are funded and managed.

Lawyers were asked whether they agreed with the different changes to the legal aid system being proposed or implemented. Figure 1 below illustrates there were varying levels of disagreement with the different changes.

Figure 1: Levels of disagreement with changes to legal aid system



NOTES: Survey question Q8b, Q8c, Q8d, Q8a, Q8g, Q8f, Q8e, and Q8h. n = (in descending order) 911, 919, 910, 912, 918, 919, 916, and 916. This and the next figure summarise the percentage of respondents who 'disagreed' or 'disagreed strongly'.

Respondents disagreed most with the introduction of fixed fees (72% disagreement), and stricter eligibility criteria for legal aid clients (54% disagreement).

Only a minority of respondents to the survey disagreed with the replacement of the Legal Aid Review Panel (16% disagreement), and the requirement to provide estimates in advance for high-cost criminal cases (20% disagreement).

A majority appeared comfortable with the *principle* of a quality assurance framework for legal aid lawyers (34% disagreement). However, respondents were strongly dissatisfied with how the approvals part of the framework was being *implemented* (79% dissatisfaction, see Figure 4

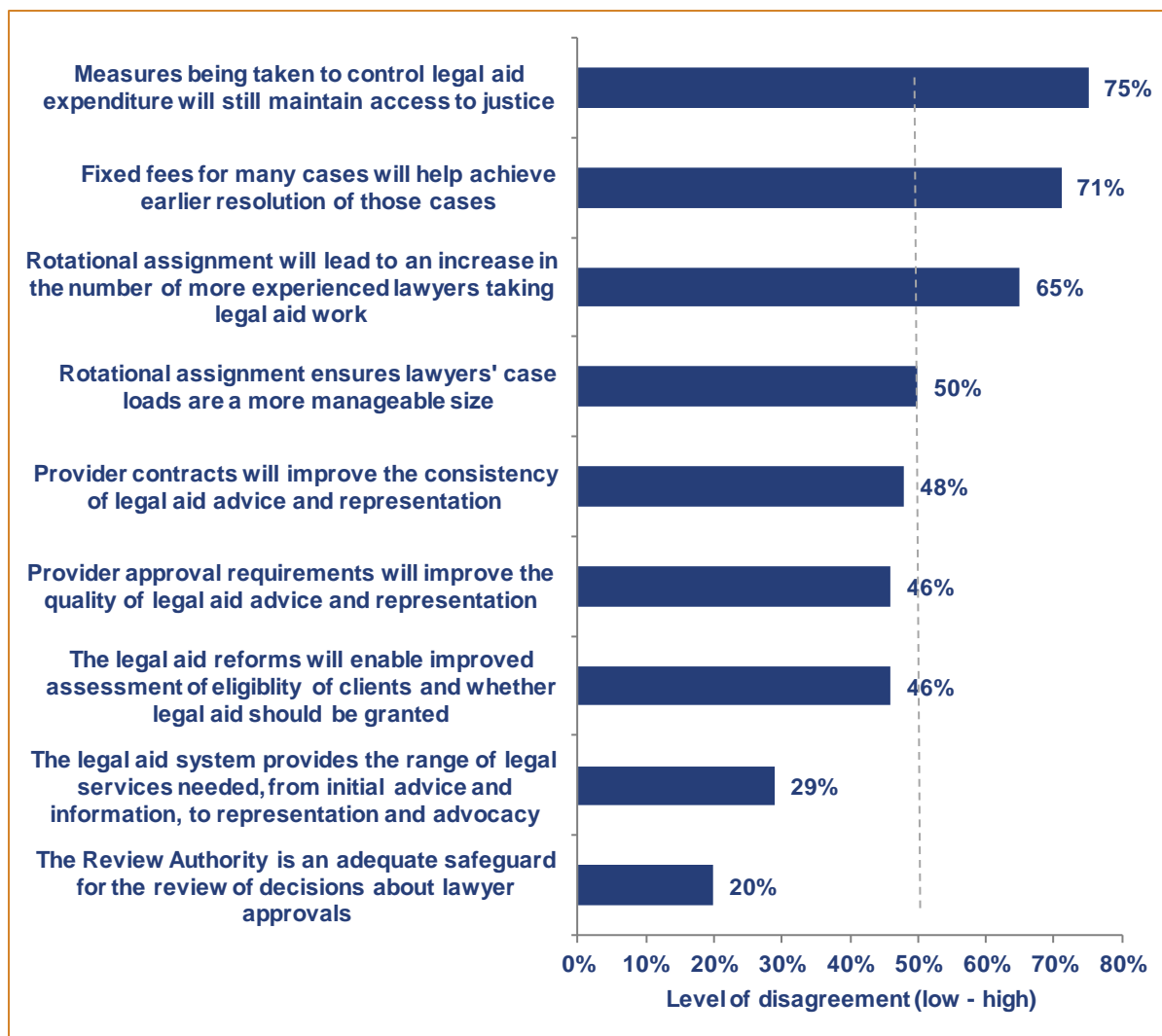
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below). At the time of the survey lawyers had received the new application and approval material, but very few had submitted their applications.

There were high levels of disagreement with the rationale behind some of the changes

The survey asked respondents whether they agreed or disagreed with statements about the intended impacts of the legal aid changes.

Figure 2: Levels of disagreement with intended impacts of legal aid changes



NOTES: Survey questions Q11i, Q11h, Q11g, Q11f, Q11d, Q11c, Q11a, Q11b, and Q11e. n = (in descending order) 922, 923, 922, 921, 924, 922, 923, 917, and 924.

As illustrated in Figure 2 above, there were differing levels of disagreement with the statements. Lawyers disagreed most with the expectation that changes to control expenditure would still maintain access to justice (75% disagreement). Illustrative quotes in the full report note some reasons for this disagreement, and concerns about some unintended impacts of the legal aid changes.

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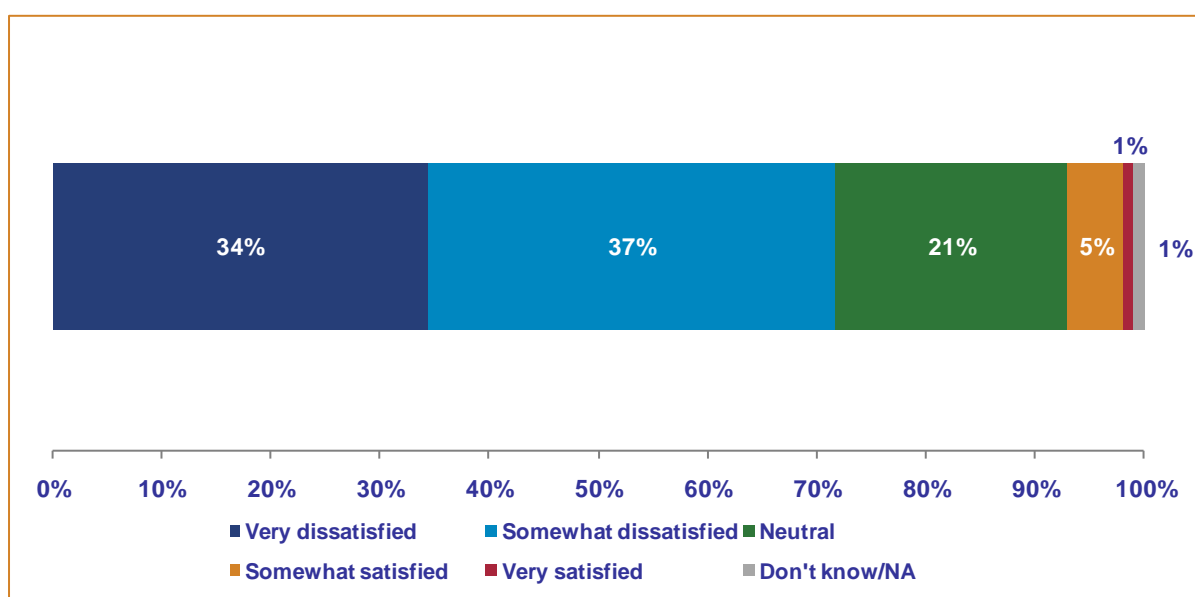
A majority similarly disagreed that fixed fees would achieve an earlier resolution of cases (71% disagreement); or that rotational assignment of less serious criminal cases would increase the number of experienced lawyers providing legal aid in those cases (65%).

Respondents were less likely to disagree that the legal aid system provides the range of legal services needed (29% disagreement), and that the Review Authority was an adequate safeguard for the review of decisions about lawyer approvals (20% disagreement).

A majority were dissatisfied with how the legal aid changes are being implemented

Respondents were asked how satisfied or dissatisfied they were with how the legal aid changes were being implemented.

Figure 3: Level of overall satisfaction with the way the legal aid changes are being implemented



NOTES: Survey question Q23a, n = 929.

Figure 3 above shows that, overall, 71% were dissatisfied with the way legal aid changes were being implemented.

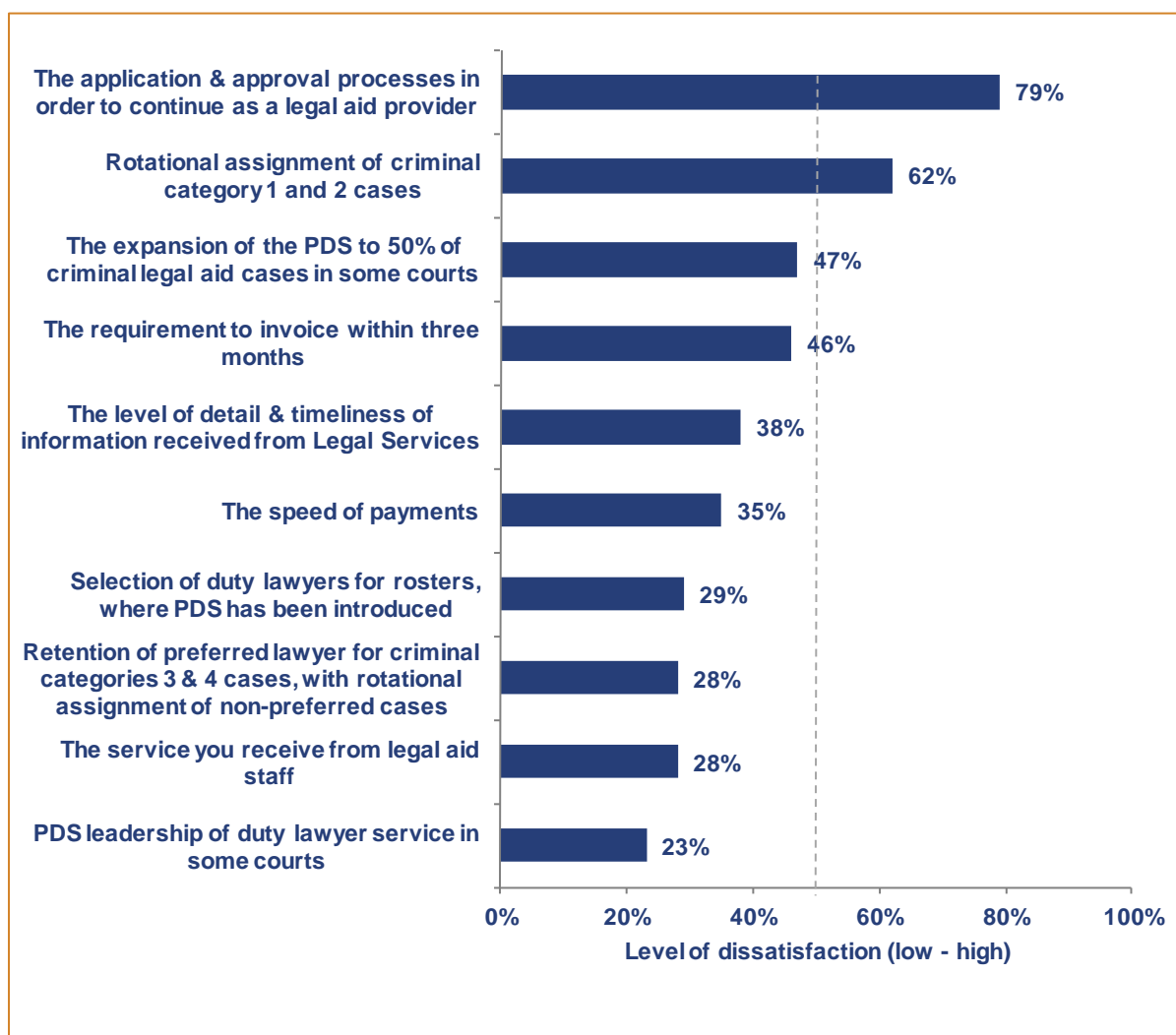
Those significantly more likely to be dissatisfied were lawyers:

- with more than 20 years' legal aid experience
- working mainly in the criminal jurisdiction
- with at least 75% of their income from legal aid cases
- with lower workloads since the legal aid changes.

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Lawyers were asked to indicate their levels of satisfaction with the implementation of specific changes to the legal aid system (if they had experience of those changes).

Figure 4: Levels of dissatisfaction with how the legal aid changes are being implemented



NOTES: Survey questions Q9d, Q3b, Q5b, Q9a, Q21ab, Q9b, Q7b, Q4b, Q9c and Q6b. n = (in descending order) 866, 436, 316, 863, 910 and 907, 861, 312, 203, 856, and 276. This figure summarises the percentage of respondents who reported being 'somewhat dissatisfied' or 'very dissatisfied'.

Lawyers were more likely to be dissatisfied with the implementation of the application and approval process to become a legal aid lawyer (79% dissatisfaction) and the rotational assignment of criminal category 1 and 2 cases (62%). For other changes only a minority expressed dissatisfaction.

Overall, those significantly more likely to be satisfied were lawyers:

- working for the Public Defence Service (PDS)
- with 'a lot higher' workload since the legal aid changes.

A majority felt well informed about the legal aid changes

Sixty-four percent of respondents felt adequately or well informed about the legal aid changes. In particular they felt adequately or well informed about:

- what they need to do under the 2011 Act to apply and be approved as a legal aid provider (72%)
- changes to invoicing (65%)
- why the legal aid reforms were implemented (64%).

Respondents felt less well informed about the changes around the government's role as both purchaser and provider of legal aid services (26% felt adequately or well informed), and further changes not yet implemented (16%).

The survey took place when the legal aid reforms were at different stages of implementation

The survey took place in October – November 2011. Survey responses were likely to reflect that since 2009 the legal aid reforms have been progressively implemented and consulted upon. At the time of the survey some changes had been fully implemented and others partially or not yet implemented. For example:

- Rotational criminal case assignment had been in effect for less than a year, since November 2010.
- The Public Defence Service (PDS) had been operating in some courts for between six months and seven years. A further five had been announced in April 2011.
- The PDS's increase of work from 33% to 50% of all criminal legal aid cases had been in effect for seven months, since April 2011.
- The intention to introduce fixed fees for family and civil cases had been announced, consultation was occurring on criminal legal aid fixed fees at the time of the survey, and it was five months prior to the introduction of criminal legal aid fixed fees in March 2012.
- The quality assurance framework had been in effect since July 2011, and the application materials had been sent to all legal aid lawyers four months earlier with a deadline of 31 December 2011 (fewer than 300 of the 1900 applications had been received at the time of the survey).

The lawyer respondents reflected a range of professional backgrounds and circumstances

Respondents covered a broad range of experience, backgrounds, locations and types of work. Most were private lawyers and lead providers practising on their own account, with about a third also performing duty lawyer roles. Half worked in law firms and 5% worked on salary for the Public Defence Service (PDS). At least half had more than 10 years' experience, while 30% had up to 5 years' legal aid experience. Since January 2011, 58% had undertaken some family legal aid (58%), and 44% had undertaken criminal category 1 cases. Almost all had undertaken the majority of their legal aid work in the District Courts (including the Family Court).

Forty-two percent of respondents reported their current workload was 'about the same' as before the legal aid changes, while 36% said their workload was less or 'a lot less'. The proportion of lawyers' total income received from legal aid cases ranged fairly evenly, from being less than quarter of their income (30%), to legal aid being more than three-quarters of their income (25%).

How the survey was carried out

The primary focus of this online survey of legal aid lawyers was to collect quantitative information about lawyers' views of the reforms to the legal aid system, with a view to capturing changes in attitudes over time. All the survey questions were closed questions, apart from a question near the end of the survey which invited respondents to provide qualitative feedback on the implementation of the legal aid reforms. Illustrative quotes, taken from responses to this question, are provided in the full report.

The full report analyses lawyers' responses overall and by topic area. It presents graphs and tables of survey question results, and accompanying text identifies which (if any) of six subgroups of respondents were significantly more likely to agree or not.

The full report also compares the views of lawyer and general public respondents regarding a set of general statements about New Zealand's legal aid system. Public perceptions were measured using an online panel survey of the general public in June 2011. The results are published in a separate Ministry report.¹ Future survey responses will also be compared with *other* stakeholder groups using these common questions, and they will be compared against these early benchmark results.

Caution should be exercised in treating the results of the survey as representative, as it is not known how representative the characteristics of, and views expressed by, the 38% of legal aid lawyers who responded to this survey are of all legal aid lawyers in New Zealand. Also, for some survey questions the number of respondents who had experienced a particular change in the legal aid system was small, less than a third of all respondents.

The full report of the legal aid providers survey results is available at www.justice.govt.nz

¹ Ministry of Justice (2012) *Public perceptions of legal aid reforms- (June 2011)*. Available on the Ministry's website www.justice.govt.nz