

Access to justice for children and young people in Aotearoa New Zealand

Part One - Analysis of interview and survey data

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Introduction

Rationale for research

In recent years there has been an increased focus on access to justice in New Zealand including comments from the judiciary,¹ work by the New Zealand Bar Association,² and the Otago Legal Issues Centre (now Civil Justice Centre),³ as well as recent consultations by the Rules Committee,⁴ the New Zealand Law Society,⁵ and the Wayfinding for Civil Justice Working Group supported by the Ministry of Justice.⁶ Internationally there is also an increasing focus on access to justice reflected in the UN Sustainable Development Agenda, particularly Sustainable Development Goal (SDG) 16, “access to justice for all”. As a recent OECD report explains, access to justice is an important part of the well-being of individuals and societies and “[u]nmet justice needs can lead to social, physical and mental health problems, lost productivity, and reduced access to economic opportunity, education, and employment”.⁷

Internationally there is recognition that unmet legal needs tend to affect some groups more than others, and that children and youth are one of the groups in greater need. For example, a 2018 report by the Law Council of Australia reviewed existing literature and undertook extensive consultation about different groups’ access to justice in Australia before concluding:⁸

Children and young people often experience age-related legal problems but are reluctant to take action in response to a legal problem due to limited financial resources, poor knowledge of their legal rights, uncertainty about available avenues to address legal problems and possible legal remedies, and a perception that the legal system is intimidating, complicated, expensive

¹ For example Winkelman, Chief Justice H. (2019). [Speech of The Rt Hon Dame Helen Winkelmann at her swearing in as Chief Justice of New Zealand](#). Courts of New Zealand; and Goddard, L. (2021). [A fair go at access to justice](#). Royal Society Te Apārangi.

² New Zealand Bar Association Working Group on Access to Justice. (2018). [Access to Justice Āhei ki te Ture](#). New Zealand Bar Association.

³ See Toy-Cronin, B. (2016). [New Business Models for Legal Services \(Working Paper\). Paper prepared for the New Zealand Bar Association Access to Justice Working Group](#). University of Otago Legal Issues Centre; Stewart, K., & Toy-Cronin, B. (2018). [The New Zealand Legal Services Mapping Project: Finding Free and Low-Cost Legal Services Pilot Report \(Civil Justice Insight Series\)](#). University of Otago Legal Issues Centre; Stewart, K., Toy-Cronin, B. & Choe, L. (2020). [New Zealand lawyers, pro bono, and access to justice](#). University of Otago Legal Issues Centre; Toy-Cronin, B., & Stewart, K. (2022). [Expressed legal need in Aotearoa: From Problems to Solutions](#). Civil Justice Centre, University of Otago.

⁴ Rules Committee. (2022). [Improving Access to Civil Justice](#). Rules Committee Te Komiti Mō Ngā Tikanga Kooti. For information about the earlier stages of this consultation see: Ngā Kōti o Aotearoa Courts of New Zealand. (n.d.). [Improving Access to Civil Justice](#). <https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/access-to-civil-justice-consultation/>

⁵ New Zealand Law Society. (2020). [Access to Justice: Stocktake of initiatives](#); Kantar Public. (2021). [Access to Justice Research 2021](#). New Zealand Law Society.

⁶ See & Ministry of Justice (n.d.). [Wayfinding for Civil Justice - Imagining a better way of working together to improve access to civil justice in Aotearoa New Zealand](#). <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/wayfinding-for-civil-justice/> and Toy-Cronin, B., Asher, R., Mita W.P., O'Brien, G. & Waapu, A. (2022). [Wayfinding for Civil Justice: Draft National Strategy](#). Ministry of Justice.

⁷ OECD (2019). [Equal Access to Justice for Inclusive Growth: Putting People at the Centre](#). OECD Publishing at 15.

⁸ Law Council of Australia. (2018). [The Justice Project: Final Report Part 1 Children and Young People](#). at 4. For other international research see Emerson, L., Lloyd, K., Lundy, L., Orr, K., & Weaver, E. (2014). [The legal needs of children and young people in Northern Ireland: the views of young people and adult stakeholders](#). Queens University Belfast; Kilkelly, U. (2010). [Listening To Children About Justice: Report Of The Council Of Europe Consultation With Children On Child-Friendly Justice](#). Council of Europe, Directorate General of Human Rights and Legal Affairs; Davidson, J., Foussard, C., Goudie, A., Hope, K., & Shields, S. (2022). [Justice for Children: Agenda for Change](#). University of Strathclyde.

and biased against them. These children and young people, such as those who are experiencing homelessness, economic disadvantage, family violence and/or are Aboriginal and Torres Strait Islander, have heightened vulnerability to legal problems and often have complex needs due to a background of trauma and disadvantage.

Despite this recognition overseas, children and young people's access to justice needs have received little attention in the legal and policy work on access to justice in Aotearoa New Zealand described above. My initial research prior to commencing this study also failed to identify any other studies focussing on children and young people's access to justice in this country.⁹ However, the Kids Rights Foundation ranked New Zealand 171 out of 185 countries in their 2022 global ranking of how countries worldwide are adhering to children's rights.¹⁰ New Zealand's lowest ranking (181-185) was in relation to the extent to which countries had operationalized the general principles of the UN Convention on the Rights of the Child (non-discrimination, best interests of the child, the right to survival and development, and respect for the views of the child).¹¹ New Zealand was also ranked 35th out of 41 EU and OECD countries in UNICEF Innocenti's league table of child well-being outcomes,¹² raising serious questions about just how away far New Zealand is from being the best place in the world for children and young people.¹³

More recently, in February 2023 the United Nations Committee on the Rights of the Child released its Concluding Observations on Aotearoa New Zealand's compliance with the UN Convention on the Rights of the Child which raised concerns that a "significant proportion of children live in poverty and experience food insecurity and severe housing deprivation...resulting in poorer health and education outcomes, disproportionately affecting Māori and Pasifika children."¹⁴ The Committee also raised concerns about the persistently high rates of abuse, neglect and violence against children and the limited access to "child-friendly reporting channels, physical and psychological rehabilitation and health services, including mental health services, available to children who have suffered violence, trauma or abuse."¹⁵

These studies suggest that children and young people in Aotearoa New Zealand experience many justice related challenges, and that some groups of children and young people are affected more than others. However, we need to better understand these challenges and the

⁹ There are a number research studies in relation to specific issues in the youth justice, child protection and Family Court systems but an absence of research in relation to children and young people's justice needs in other areas of the law or interrelated issues in multiple areas of the law.

¹⁰ Kids Rights Foundation. (2022). *KidsRights Index* <https://www.kidsrights.org/research/kidsrights-index/>

¹¹ Kids Rights Foundation. (2022). *KidsRights Index Methodology* <https://www.kidsrights.org/research/kidsrights-index/methodology/> These scores are based on the 2016 Concluding Observations of the UN Committee on the Rights of the Child. See Kids Rights Foundation, *KidsRights Index Methodology*. At the time the Kid Rights Index was prepared the most recent Concluding Observation were those from 2016. The UN Committee on the Rights of the Child have since released their Concluding Observations in relation to the sixth reporting round: United Nations Committee on the Rights of the Child. (2023). [Concluding observations on the sixth periodic report of New Zealand](#). The Office of the High Commissioner for Human Rights. However, the KidsRights analysis for 2023 is unlikely to be available until later in 2023.

¹² UNICEF Innocenti. (2020). ['Worlds of Influence: Understanding what shapes child well-being in rich countries'](#), *Innocenti Report Card 16*. UNICEF Office of Research at 11. The most recent Innocenti Report Card focussed on the environment and does not update the information used in this assessment.

¹³ This is the overall aim of the Child and Youth Wellbeing Strategy see: The Department of the Prime Minister and Cabinet. (2019). *Our aspirations*. <https://www.childyouthwellbeing.govt.nz/our-aspirations>

¹⁴ United Nations Committee on the Rights of the Child, [Concluding observations on the sixth periodic report of New Zealand](#) at 11.

¹⁵ United Nations Committee on the Rights of the Child, [Concluding observations on the sixth periodic report of New Zealand](#) at 6.

barriers to accessing justice experienced by children and young people in order to be able to identify what needs to be done to close the justice gap, and ensure that Aotearoa New Zealand is a fair and just society for all children and young people.

Summary of research study

The overall aim of this research project was to explore the extent to which children and young people are able to access to justice in Aotearoa New Zealand. It considered all areas of the law with a focus on identifying the barriers children and young people experience in accessing justice, including those faced by particular groups of children and young people. The study involved key informant interviews with adults with expertise on the justice system and/or working with particular groups of children and young people who are likely to experience additional barriers in accessing justice, and an online survey with children and young people aged between 14 and 24.

This study also involved reviewing the research and literature from Aotearoa New Zealand and overseas in relation to access to justice for children and young people as well as that relating to access to justice for particular groups. As the research and literature on access to justice for children and young people in this country is fairly limited, I also reviewed research relating to children and young people more generally, and in relation to access to justice for adults and groups of adults facing additional barriers. I also undertook a document review including reviewing information obtained under the Official Information Act 1982 and publicly available data.

I was able to do this study thanks to a Justice Fellowship from the Michael and Suzanne Borrin Foundation: <https://www.borrinfoundation.nz/>

Report structure

The findings of my research study are presented in three parts:

Part One contains my analysis of data from key informant interviews with adults with expertise in the justice system and/or working with particular groups of children and young people, as well as from a survey of children and young people aged 14 to 24.

Part Two discusses the meaning of access to justice and other related concepts such as legal empowerment as well as the specific meaning of access to justice for children and child-friendly justice. It then discusses the justice problems experienced by children and young people generally, as well as common barriers to accessing justice. The analysis in this report is based on my review of the research and literature in New Zealand and overseas together with information obtained from the government and Crown entities.

This report is supported by a series of ten working papers discussing the justice problems and barriers to accessing justice experienced by particular groups of children and young people identified as likely to experience differing justice problems or barriers to access. These working papers are:

1. Children and young people in care or with care experience;
2. Disabled and neurodiverse children and young people;
3. Tamariki and rangatahi Māori;
4. Pacific children and young people;
5. Rainbow and takatāpui children and young people;
6. Girls and young women;
7. Boys and young men;

8. Children and young people in poverty or socio-economic disadvantage;
9. Children and young people who have experienced trauma; and
10. Intersectionally disadvantaged children and young people.

Part Three explores possible solutions or ways to close the justice gap for children and young people in Aotearoa New Zealand. This part of the study is also supported by a series of working papers in relation to possible solutions. At the time of writing these working papers consider the following topics with additional working papers likely to follow:

11. Strategic litigation;
12. Legal service delivery, non-lawyer services, and integrated services;
13. Data, evidence and measuring change;
14. Technology;
15. Training for professionals;
16. Legal education and continuing professional development for lawyers and judges; and
17. Law-related education for children and young people.

The reports and working papers are available at: <https://www.cypacesstojusticenz.com/>.

Executive Summary

Summary of findings from key informant interviews

My analysis of the key informant interviews identified seven key themes. First, key informant interview participants explained that children and young people's legal or justice needs do not arise in isolation – legal and non-legal needs are often closely inter-related with non-legal problems leading to legal problems and vice versa. The line between a legal problem and a non-legal problem can also be blurred. However, these interrelationships are not reflected in the way services and systems operate with siloed ways of working continuing to dominate. Participants considered that this needs to change and services should instead be working holistically including being aware of what else is out there, working together to design solutions for change, and offering a 'one-stop shop' where children and young people are able to get support for their multiple and interrelated needs.

Second, participants talked about the importance of relationships and the human dimension. This included the recognition that children and young people are most likely to seek information or help from people they already have a relationship with and who they trust. This means that a child or young person's ability to get the help or support they need can depend on who is in their social world and the capacity of those people to assist. Participants also talked about the need for professionals to work in relationship with children and young people, including developing rapport and building a connection with a child or young person rather than just expecting them to be trusting from the outset. Participants explained that it was also important to be the right person for the job including having the ability to form connections with children and young people, whether that is through a shared identity or by virtue of their personality and skills. Some also recognised that not every professional will be the right person to do this and if so, youth workers could act as a bridge between professionals and young people.

Third, it is not the same for everyone, children and young people's experiences of justice problems and barriers to access differs from adults. Different groups of children and young people also have different needs. Participants explained various ways that children and young people's needs and experiences differ from adults with children and young people's needs also changing as they mature. Participants also described the differing justice needs and barriers to access experienced by different groups of children and young people. These differences meant that services and responses should also differ accordingly.

The fourth theme I identified was that there is a lack of consistency between different professionals and services as well across different systems and contexts. Participants also identified a lack of consistency between what the law or policy may say, and what actually happens in practice. A particularly concerning aspect of the lack of consistency was variations in the quality of services provided by professionals, including lawyers, although as one participant noted, this is a reality for many helping professions.

The next theme was that a lot of things can make it harder for children and young people to access justice beginning with challenges identifying that a problem is a legal one. It also includes difficulties understanding legal information and what is happening in justice system processes. A lack of knowledge about the law and legal systems was also seen as a barrier although participants were also clear that just having knowledge about the law is not enough as children and young people often lack the confidence or ability to act. Participants also described how concerns about what might happen could act as a barrier including where those concerns stem from previous negative experiences, either their own or those of others they know. Some participants also talked about how it is an adults' world where children and young people simply aren't seen as having rights and where systems are designed for the needs of adults, not those

of children and young people. A lack of information and support from both families and professionals could also be a significant barrier for some children and young people.

The lack of effective pathways to seek redress was also seen as a key challenge by many participants with concerns being raised about the lack of any real way to access justice in the education system. Concerns were also raised about the Human Rights Review Tribunal delays and the ineffectiveness of complaints systems including the Oranga Tamariki complaints system, the Office of the Ombudsman, and the system for making complaints about lawyers for the child.

Finally, participants talked about how the system could be improved starting with involving those with lived experience in any change processes. Participants also raised the need to look at the big picture and consider the root causes of problems when seeking to develop solutions. This included the need for cultural change to a society and systems that are focussed on support, restoration, and taking a therapeutic approach. Participants also identified the importance of training on a wide range of topics including child development and behaviour, oral language competence, how to work with intellectually disabled people, the impact of trauma and how to work in a trauma informed way, recognising bias, and the impact of poverty. However, participants were also very careful to emphasise that just attending a training session was not enough to improve practice on its own with ongoing mentoring and support needed to embed changes to practice. Participants also emphasised the importance of tailoring to the child or young person and their situation or context. The best solution for different groups of children and young people and individual children and young people within the same group could also differ.

Summary of findings from interview and online survey with children and young people

The responses to questions in relation to access to information about rights and the law made it very clear that most children and young people would go to their parents and friends to get information in the first instance. Websites were also a popular place for children and young people to get information with over 80% saying that they would seek information online. Community groups such as the CAB and community law centres were the next most common source of information.

Responses to the open question about what information children and young people would want to know suggested that different people wanted different information although respondents were consistent in wanting information to be easy to understand and specific to what they wanted to know. Some participants also said that they wanted more than information about the law, they also wanted to know what they should do about their situation. One participant also made it clear that just having the information wasn't necessarily enough either, a fear of what would happen or other psychological barriers could prevent someone taking action.

Survey participants' responses to questions in relation whether they got any help or support from someone outside their family or friends if they had a legal problem were mixed with half getting other support. A range of people had provided support including advocates, social workers, lawyers, the Children's Commissioner, foster parents, police, Victim Support, and an employer with only half of respondents saying that the assistance was helpful. However, the number of responses was quite low. Responses in relation to what would have been helpful emphasised the importance of simply being told what was happening, being listened to and believed, and getting support for both legal and non-legal needs. A participant explained how not being listened to meant that they acted out to be heard and another described wanting to have someone who believed what they told them rather than labelling them as attention seeking.

Another talked about the impact on them of the delay in getting counselling support and said an accessible counsellor would have been helpful.

Participants' responses to whether they would tell someone if they were unhappy with how they were being treated at home, in school or in some other place were fairly evenly mixed with half saying they weren't sure, one saying that they wouldn't and the rest saying that they would. The most common person they would tell was a friend (over 80%), followed by parents or carers (over 50%), then a counsellor or psychologist (over 40%). Participants were then asked if they would not tell anyone, why not. The most common response was that it wouldn't make any difference followed by no one would listen to me and that they had asked for help before and it didn't work out well. Participants' responses to the open questions emphasised the importance of being able to trust the person that they were seeking help from which included knowing that what they told someone would be confidential. Several participants also described how their previous negative experiences operated as a barrier to disclosing harm and seeking help again in the future. Just knowing about bad experiences other people had gone through could also be a barrier for example, the understanding that the justice system does not treat victims well.

Participants' reported mixed experiences when a decision had been made about them in the past with the majority of participants (64%) reporting that they were asked what they thought about the decision and that they understood what was going on. However, the same percentage answered no to whether there was someone there to support them, the setting felt comfortable and safe, and whether they were treated fairly and 73% answered no to whether their views were taken seriously. The two main themes identified in responses to the open questions reflected what they didn't get that they needed: firstly, the lack of understanding and support and second, the lack of focus on them and their needs. Of significant concern, several participants reported that the thing they would change about what happened when a decision was made about them was that they would not have told anyone.

Participants were fairly consistent in saying that they thought it was harder for children and young people generally and for some groups of children and young people in particular. These groups were also fairly consistent and included Māori, Pasifika, disabled, refugees and immigrants, queer and gender diverse youth, and those in the care system. Participants also explained how the prior experiences of some of these groups made it harder for them to access justice for example, those who had been through the system so didn't trust it and those who had experienced sexual assault because the lack of support made it shameful to admit.

There was also a common consensus that things needed to change for all children and young people to be able to access justice with all respondents who answered the question whether they thought the justice system is fair for all children and young people selecting no. Responses to the open question included that the way the system works now causes harm. Participants also described the need for substantive change including culture change and changing how people are treated. Some participants also talked about the need for more information, education and training.

Key informant interviews with adult stakeholders

Summary of research method

In order to get an overall picture of the current status of access to justice for children and young people in Aotearoa New Zealand I conducted key informant interviews with stakeholders with direct relevant experience. Potential participants were identified by first developing a matrix setting out the key contexts in which children and young people would be likely to seek justice, or have justice related needs, and the different groups of children and young people that I anticipated would experience additional barriers to accessing justice based on overseas research and my own professional experience. I then identified potential participants with expertise in each of these contexts and in working with each group of children and young people through a combination of my own awareness of those individuals or organisations with relevant expertise together with recommendations from others working in these sectors.

A total of seventeen participants with wide ranging specialist expertise took part in key informant interviews five of whom chose to remain anonymous. A summary of the anonymous participants and short biographies of the twelve participants who chose not to be anonymous are set out in **Appendix One: Profiles of participants in key informant interviews.**

More detailed information in relation to the key informant interviews including the design of the interview schedule, recruitment, interview procedure and data analysis is provided in **Appendix Two: Methodology.**

Findings

This section sets out an analysis of the data collected from key informant interviews with adult stakeholders. It addresses six key themes: lack of consistency, the interrelationships between legal needs and non-legal needs, the human dimension, the importance of understanding and responding to difference, a lot of things can make it harder to get justice, and how do we make it better. The views expressed in this section of the report are those of the adult stakeholders interviewed for this research and do not represent the views of all those working in the various sectors or professions they are part of. They are used to draw out common themes or issues across the different areas of the law and justice that affect children and young people in Aotearoa New Zealand rather than to explore any of those areas in detail or to make findings in relation to particular areas of the law, or groups of children and young people.

Legal issues don't appear in isolation

Interconnection between legal needs and social needs

Many of the participants described how children and young people often had a combination of legal and non-legal issues or problems:

[A] lot of the people that we get, they will call us as well with a legal issue but there are other issues. So whether that's...because people don't end up in these legal situations usually out of nowhere. So there's usually some underlying causes and there's not enough help with that a lot of the time and connecting that with the legal side.

Some also noted that problems can be seen in different ways and the line between legal and non-legal issues isn't always clear: "whether the problem happens to fall into being a legal type problem or just an emotional problem or a psychological problem or a health problem I mean, or often it's blurred".

Participants also explained that when the 'problem' was just a legal one, people could still need other forms of support to deal with it:

[T]here's several layers to support that young people can receive, one is the actual legal support, which, in my experience very much focuses on the letter of the law. That's not necessarily what young people need, they need some stuff that sits underneath that as well which is principle based support around is this ethical, is this right? Where does this fit with the young person's rights?

This support could be specific to the needs of particular groups of children and young people. For example, a Māori participant explained:

Cultural health as well, I'm thinking about Māori people having a kaumātua or somebody there to, like a spiritual type of support, somebody there who understands what their cultural needs are and what they might want going through a scary or difficult process and the best way to broach that. They can also often help work with the wider whānau if there is a plan that's needed that the young person, for example, can do themselves, like if you've got a Board of Trustees hearing, and they've got conditions to meet having somebody there who understands different culture, who can bridge that gap between the whānau and the school and communicate that and someone whose respected would be an example of something that could be helpful.

Operating in silos

Many participants talked about how the young person's needs may be interconnected, but services are not:

[T]here's lots of lawyers, there's lots of people that want to help, but it's disconnected for the young person, but also for all the services that we all kind of, especially in the NGO space when people are competing for funding. So they don't want to work together necessarily, or they're kind of a bit like scared about doing that.

Participants described how this failure to work together and the number of services that could be involved was problematic for the young people:

[T]here are now so many, social workers, advocate, Youth Advocates, Lawyers for Child, youth, youth work organizations, you've now got transition support workers, you've got the social workers, you've got....It's that whole ten cars up the driveway thing. And to be honest, for young people it's a hell of a lot of relationships to navigate, for one situation.

Need to bridge the gap and work holistically

Participants identified a need to bridge these gaps between different services. One suggested a possible solution was services that could provide both legal advice and any other advice or support young people may need:

[P]eople who have first contact should be able to give legal advice, as well as social support advice, counselling advice, the whole works, because you know you might, they might think they've got a legal problem and you find out they've got five other problems. So, the person who is dealing with it needs to be able to, you know one stop shop.

Any such service would need to have a fairly wide brief including: “education issues, disability issues, health issues, access to support issues, and so on.” Another participant suggested creating a coordination or connection role:

[F]or one person to be given the role of you are the core person for that young person and your job is to build relationship and trust with that young person, begin to coordinate and then sort of, the communication amongst all the other professionals so that we're working on the same song sheet.

Some participants also talked about the importance of knowing what is out there. For example, one participant said:

[I]t will be good as well, if we had like an idea of across the board, what's out there. So I don't know if there is such a database or such a thing. I think some places hold, you know, information about official stuff. But yeah, when it kinda needs to connect all the dots and bring people together and figure out where the gaps are and plug those.

Another participant pointed out that developing any potential solutions should also involve everyone rather than working in isolation: “we need to think about all the people, all the different players in the in the situation and what they bring, what their experience is, and work with everybody to design the solution.”

Importance of relationships – the human dimension

Children and young people go to the people they trust

Participants consistently said that children and young people would go to people they know and trust for information, advice and assistance. For example, one participant explained: “I would say the first place they're going to go to is whānau and friends, people that they trust”. Another said:

[T]he most likely places that rangatahi are going to talk to somebody about if they're having some kind of challenge in accessing justice in any of the wide range of areas they face is a trusted peer or adult. So somebody they have a relationship with.

Participants also explained that children and young people are unlikely to directly access support services including legal services:

[T]he reality of a young person who gets into difficulties with the school or with the law generally, is unlikely to have the knowledge or confidence to be able to go off and get a lawyer for themselves. Even if they're contacting a Community Law Centre, like YouthLaw, often their parent will be helping them to do that.

One participant suggested this was because: “it's pretty hard to go somewhere that you don't think the person knows you or cares about you, you know, so I do think that key is the trusted relationship”. Challenges can then arise when children and young people either don't have someone they trust, or they don't think they do: “not all rangatahi feel, feel that even if it's their reality, and for heaps of young people, it's not their reality”.

Many participants talked about how this means that children and young people's experiences of seeking information and assistance are dependent on who they know: “that adult can be key for them to then access the support or services that they need”. As one participant explained:

[A]nd it all depends on sort of what, you know, Bronfenbrenner's social ecological model where, you know, they have their micro system then the macro system, so it all depends on who's in that micro system with them. The adults that they can turn to, to ask for advice and what do we do about that, you know, are they able to talk to them about what's going on?

Unfortunately some young people do not have access to anyone that has the knowledge needed to assist them as one participant explained: “some young people just, they're just completely disconnected from anybody who has knowledge that could tell them something”. Another said:

[W]e can end up seeing people down the track who have been through all these people who should have been giving them all this information, but haven't known, you know, what to tell them so, so there's a lack of knowledge among the young people and the people that young people talk to.

One participant commented that their experience was those who may need help the most don't know where to go to get help:

[M]ost kids, most parents, particularly the ones who are most needy, don't know where to go, they don't know about YouthLaw, they don't know about being able to get help and assistance.

When the person a young person goes to for support is another young person this can also create challenges as other young people are unlikely to have the knowledge required to be able to assist as a participant with a background in youth development and working with rainbow young people explained:

[I]t's also why I think peer support isn't necessarily associated with a better outcome because if young people themselves aren't educated as a group, to know what, what to do, they just tell each other stuff that isn't accurate. So I think they're getting, they're getting information, they're getting it from their peers, and often that information isn't correct.

However, in some cases the other young person may be able to assess other support such as a supportive parent. For example, a participant from the sexual violence sector explained:

Peers aren't resourced to tell them what [inaudible], if they [are] really lucky they'll have a friend who has a really good relationship with their mother and so sometimes that friend will tell their mother and their mother will come into the picture to support that young person.

Participants offered a number of suggestions to address this lack of knowledge and information. One suggested:

[T]here ought to be an advocacy service for at least, certainly in the school environment, which can be accessed directly by young people. You know, it should, it shouldn't depend on them happening to have a parent who's onto it enough to know who to contact.

Others talked about the importance of education and training saying we need: “more education of friends, whānau, other people, not just people whose formal job it is to advocate”. One participant explained that really everyone needed to have more information and knowledge as we don't know who a young person may go to for help:

[T]he people that they talk to about things need to be resourced so, you know, for most of these kids and young people up to say 16, that is in their schools. So their schools need to know, so the social workers in schools, the teachers in schools, the school counsellors, you know, they need to know, and there's various networks that exist within schools. So there's also routes into the school through the peer networks, which could be being used more. Um the...sorry...and it's a general public thing, because the general public doesn't know and you know, what this topic, matter the general public generally doesn't want to know. It's over there because it's too hard to deal with. And so that thing that we need to be able to get more information to the general public, because you just, you actually don't know who a child will disclose to.

Another participant whose role included legal education also talked about how knowledge needs to be shared more widely saying they:

[U]nashamedly tell people like, right you people in our group, we are a small service and we're trying to reach across all of Aotearoa with just two people. So now you have this information, you need to kind of do the octopus tentacles thing and spread it, spread out and share that information to other people because it's important that they all have the same good, reliable, accurate information to share.

Participants also talked about how being a support person could be really hard for a young person:

I think a lot of friends get isolated with that, because they, you know, they then suddenly have this burden as well and they don't always know what to do with that. And so I'm quite passionate about supporting friends of rangatahi who are in some form of pain, with here's some trusted options for you.

It can also be hard for adults and other members of a young person's family so making sure that these essential support people for a child or young person are also supported is also important: "with children and young people their families are critical because if they're kind of blowing in the wind because of the impacts of this on them they can't provide the stability that the child or young person needs". Many participants also talked about the need to support the people surrounding children and young people for example, saying that we "have more people reaching out to those friends and whānau, in all different spaces, then that's going to help as well". Another participant from a youth advocacy organisation described how they saw their role as supporting the people that support young people because it is the young person's community of support who will do the bulk of the work advocating for them: "it's that community, whether that be one person, be that half a dozen, who will advocate on that child's behalf, then we're in there in support".

The importance of relational practice

Participants consistently talked about the importance of relational practice when working with children and young people including being able to develop rapport and build connection in a range of contexts. As one participant explained:

I think the whole, you know, whole sense of whakawhānaungatanga of the sense of building a bridge first is key, I mean, relationship's everything. So if I'm going to communicate, I've got to build a bridge first and sometimes it's really quick. And sometimes that takes a while.

Participants described a range of reasons that it was necessary to build connection with children and young people. These included because young people need to know that they can trust someone before they will feel comfortable sharing what was going on for them. Another participant explained that young people were more likely to take information on board and then to take action if the information came from someone they know and feel they can trust: “people often respond, adults as well, better when the information is from a trusted person, rather than just something that they’re reading”. She went on to explain:

[I]f you're able to build that rapport with them, then when you do share that information with them about 'hey, did you know you can complain to the IPCA' and this is the process and then when you go further than that, and you give them actual concrete examples of where it's worked, then they feel empowered and like actually, maybe the law could help me and now because I have [redacted], I know [redacted], I know YouthLaw or I know a place that I can go to help me, then they feel like it's actually maybe something that's within grasp rather than, like, we had a young person tell us 'don't sell us dreams'.

Trust was also seen as important for young people to be able to say when they didn't understand something:

[I]t's the building of trust so that when we are in residence, or when decisions are being made, and these things being talked about, can be relatively complex, then we're constantly able just to stop and check, and we'll do that, we'll just say to whoever's facilitating, 'can you just stop right now please because I just need to check in?'. And for that young person to actually feel okay about saying, 'I don't know what's going on'.

A participant who worked with care-experienced children and young people explained that building trust is particularly important for this group of children and young people:

[I]f you were to talk about young people who are in care, the first thing we're going to talk about is relationship, the first thing we're going to talk about is how we build trust, because we can't advocate or represent young people unless we ask them to, they can trust us to talk to us about what's really going on for them, and then we're informed.

Another participant explained the working in relationship was also important because it enabled you to see below the surface, to what the real issues may be for a young person and to then respond appropriately:

[S]ometimes what happens when adults are trying to share with rangatahi about their rights, they see the surface of the behaviour that is causing concern and I don't just mean in justice yeah, they see that mum and dad have split up and da, da, da, dah, or you've got this employment problem and it's seen here, and I'm, you can't see this, but I'm showing a surface thing but that the iceberg is everything underneath. And that's what the first four principles of Mana Taiohi are. Which is why relationship is so important because if you respond to the surface, you get super judgy, like you really do, and that's not going to help a rangatahi, that just going to isolate them. So you need to understand the whole thing. But also, if you only respond to the surface, you're actually not really understanding to address the core needs yeah. So you're literally yeah, and you can make a young person feel shit, basically.

Being the right people for the job

One aspect of being the right person for the job was seen as the ability to connect with children and young people as discussed above. A participant in a management role explained how he decided whether someone was going to be able to work well with children and young people:

I want to know who they are. And, you know, are their values going to be a match in order to be able to sort of get in relationship with young people, build their trust. Because advocacy is not overly complicated, there are some pretty fundamental rules to it. You don't need a degree in psychology to be able to do it, you just need to have a strong foundation of core values, beliefs, emotional intelligence, social skills, and also a relative degree of self-awareness. The ability to reflect, the openness to learning and ongoing curiosity. If you can, there's not much more to it, that would lead you to become an excellent child and youth care practitioner in relationship with kids be you a lawyer or a doctor. And we know this in every profession. We know that people who can work with kids and we know the people who can't. It's got nothing to do with their training, nothing to do with their knowledge, it's got everything to do with them.

Participants also raised concerns that some of those people in key roles were not the right people to be in those positions including a concern that some people were doing the work for the income stream rather than because it was something that they were passionate about.

Some participants also expressed concerns in relation to specific contexts. For example, one participant raised concerns that the composition of Boards of Trustees meant that students were unlikely to feel comfortable going to them:

I think it's kind of no secret that Boards of Trustees are, you know, elected by parents, they're not elected by young people. They're often quite conservative, or they hold kind of high status positions, by dint of being in relatively conservative jobs, like accountants and things like that. So they're not really the kind of people that you necessarily want to go to with some of these issues, or you want to escalate above.

Another participant queried whether it was realistic to expect all professionals working with young people to be good at engaging with them and suggested that where this was the case, youth workers could be a translator of sorts:

[I]f we expect every great lawyer to also be great with young people, we're probably stretching people beyond their skill level. I think the ones that would naturally be good with young people should be encouraged in that direction and supported and they should be paid in a way that recognizes that what they're doing is, is of value as other ages and other spaces. So I'm not, but, but I do think there's a place for people, youth workers, to be the...to be a bit of a translator. Yeah. So if it's a great lawyer, who actually just can't quite get away from some of the, you know, words that are three times as long as they need to be there for a rangatahi to have somebody go with them to the lawyer to be able to translate it for them afterwards, to help the lawyer understand the things that have been missed. Um that's also not a bad option. I'd love it for the two to be merged but, I think, how do we work together? That maybe the skills, they're not always complimentary, and not always coexisting in one person.

Some participants also discussed whether it was important for professionals to share the same identity as the young people they were working with. For example, a Samoan participant described asking a Samoan young person participating in her own research project whether it mattered that his social worker or his youth aid officer was also Samoan and he responded, “nah, as long as they're not a dick”. She went on to explain that while what mattered to the young person was whether the worker was a ‘dick’, what sat beneath was probably a combination of cultural awareness and personal traits or the ability:

[T]o kind of read things without having to have it spelt out if you know I mean. It's like us kiwis when we go overseas, you know, it's like you pick up on things, it's a kiwi thing you know, yeah, it's like that. [Yeah, just a bit easier.] Yeah, there is some kind of unspoken stuff that, that you can only really get because you've lived in that environment you know, and so you can say something and not have to finish it because the other person is also aware of the context in which you're talking.

...at the end of the day, it really is about how they make you feel, you know, so for him, she or he doesn't make him feel like a dick. Why they don't and how they get to that place that they, you know, that's not something he's going to be thinking about. It's not something he needs to think about you know.

A Māori lawyer participant made similar comments about the value of being able to being able to speak to someone with a shared identity who “just gets it”:

I think that sometimes Māori want to work with Māori specifically and it's good to have that option there where you can go and someone just gets it. Because I've had experiences where I've gone, oh, my gosh, now I have to explain and break down what this means and why, and then it just adds an extra time but effort and so yeah, having that there can be a definite help to understanding.

They went on to explain that the value of a shared cultural identity as Māori was not just in relation to the ability to connect, but it was also helpful when it comes to dealing with a client’s legal issues through having an understanding of both tikanga and the law:

[T]hey get tikanga type things intertwined with their legal issues and so having people that actually understand that without them having to break that down, it's just, it makes it easier for them, but also when the lawyer or the kaihapai, or whoever it is, is advocating for them in the different forums, they know how to incorporate that into the legal side as well. Yeah, so it's not just in how you treat people and how it breaks down barriers, but in how you help them later.

A rainbow participant who also worked with rainbow young people also talked about the how a shared identity could be relevant to both the ability to connect, and the legal issues a young person may experience:

I think they should have access to rainbow, rainbow teachers in schools, they should have access to a rainbow kind of liaison, someone who is clearly on their side, that they don't have to explain aspects of their identity and existence to, who also gets this stuff, knows about things that or knows about when they can say, you know, knows about the policies around gender markers on school, on school documentation, around access to single gender schooling, or mixed gender schooling, all of those kinds of issues that that they need.

Participants also talked about the value of developing cultural knowledge and understanding where you do not share the same identity then incorporating that understanding into how you work. For example:

I've come across a lot of Pacific Island children who are very collective in the nature and their whānau environment is not your typical nuclear family, they've got extended whānau and so when you're working with them, for example with a Board of Trustees meeting, you're not just working with this, this one group, it's everybody, and that can be difficult but also really helpful. There's a lot have different people there who care and love the young person, care for the young person, love them. So knowing those sorts of things.

Importance of understanding & responding to differences

It's not the same for everyone

Many of the participants spoke about how adults and children do not have the same needs. For example, a participant from the sexual violence sector explained how children's needs, and therefore their services for them, were different:

Whereas children and young people, the offense pattern is different, usually, where...their needs are different, because children yes, they need informed consent as far as possible, but they also need protective adults in that system who are advocating for them in a completely different way than you advocate for an adult, you know, for an adult, we might be advocating for them in the interview, say at police interview, and we notice that they're getting upset, so we'll intervene with police and say ... needs a break, you know, we have a break da, da, da, we'll go get some food, do you want to go outside for a smoke, like that's the kind of advocacy. For children that advocacy needs to be much more high level, formal, and, you know, have power in the system to advocate for the child.

She went on to explain that children's needs also differ across different age groups: "we think about young people in different cohorts, because it's, you know, quite different. So that kind of 12 to 14 year old age group is different, and then the 14 to kind of 16s, and then the 17s and on, you know quite different." This participant also described how a lack of understanding of the ways children and young people's behaviour can differ from adults can result in misinterpretations: "kids in trouble, don't look people in the eye and, you know, they don't stand up for themselves. They don't tell adults they're wrong when adults tell them that this is what happened." Issues can also arise when children's language and behaviour changes as they age such as where there is a delay between an evidential interview and trial:

So they can still be a year and coming, and in some parts of the country they'll be longer than that which is very difficult with children, because then when they're interviewed, or cross examined in the court, their whole language might be different to what it was in the evidential interview, because developmentally they're talking about this differently now. And so, you know, for juries, just subconsciously, that makes them think the child's lying because they don't talk about in the same way.

Other participants also discussed how different children and young people mature at different rates which needs to be taken into account when working with them:

[T]here's individual variation, and kids mature at really different rates. So I mean, you'd always be tailoring to the specific needs of the specific person you're seeing but I think if we designed our systems to take into account those kinds of different age cohorts, then...then an individual might move across to a different one, but you've still got your general you know, you cater to that group.

Many of the participants also spoke about the variations between different groups of young people and individual young people. For example, one participant pointed out: “we make that assumption, that it's a very homogenous group, when it's actually not the case, the variability is huge”. Participants talked about how some groups of children and young people face additional barriers:

[Y]ou've got people who are already at the front and others at the back and there's so many more layers of things that they have to do to catch up, to start at the same point. And then when you're running on a track, it's supposed to even out but I imagine it, like if you're thinking of equity versus equality, if they're running a straight line, and that you know, you bring them up to here, they have to be here to start at the same place to have a fair shot at the race. But they're still all the way like only here with all the steps of help that they've got.

Several participants identified particular groups that they felt faced additional barriers or in some cases, simply did not have their needs met. Those groups were largely consistent across different participants and sectors as shown by the quotes from four different participants below:

[A]s you get below the surface of evidence, you can see the unfair, patterns of unfairness, the same patterns. Pākehā middle class do best. Māori working class do worst. Beneficiaries are down the bottom, women are down the bottom.

[Y]ou know obviously Māori, Pasifika, disabled, gay and lesbian and trans, are in more vulnerable positions.

[O]ne of the things that came out in my research, was that there was five groups that were, I called them the forgotten five, that really just don't, don't have their needs met, whatsoever. And that was that was obviously indigenous children of New Zealand and minority cultures, disabled children so lawyer for child has no training whatsoever in dealing with disabled children...

[T]hree groups that the education system disadvantages really and that's Māori, Pacifica and, and disabled students and I would add poor students.

Participants also spoke about the risk of assumptions about how a child or young person should behave in a particular situation which could lead to misunderstandings about the behaviour of different groups of children and young people:

[W]e subconsciously make meaning of the behaviour of people, when we don't know the science of it, if you like, and that subconscious meaning making um... can send us in the wrong direction. You know, like, we used to have this a lot with the police, for example, would make judgments about the credibility of a witness based on their behaviour.

Another described working with a young person with learning difficulties and challenges around language where he was concerned that the young person's behaviour would be misinterpreted:

I can remember working in one case where the young man I was supporting had this kind of response, that he would grin when he was uncomfortable or didn't understand and I'd watched it over, in several settings. And we were having an FGC and a number of victims are coming and so I spoke to the coordinator and I said, 'I'm really concerned that he won't, he'll be miss-read and I understand why'.

Participants also explained how cross cultural assumptions about behaviour can also lead to misinterpretations. One participant talked about how these assumptions and stereotypes could affect how an Asian victim is viewed:

[R]acism operates everywhere and it may not even be that they're consciously thinking because it's an Asian child I think she's lying. Just even those things that, you know, like with, say, Asian kids, some of them may be less emotionally expressive in their faces. So they look at the way the child responds to the question, they go, well, not that's not affecting her, she's not upset by that. So, so I mean, that kind of racism, I don't mean the, you know, the overt high level stuff, but just those embedded assumptions, that it's really hard for, even harder to get justice if the jury doesn't understand that way that child expresses themselves.

Another participant described how a lack of cultural understanding could result in a Māori or Pacific young person's expression of humility being misinterpreted as disrespect:

[W]hen a, a young person is looking down, it doesn't mean they're being disrespectful. But some places like, I don't know if this still happens, but some police or other places like that could take that differently, and they might be treated differently because of their lack of understanding.

Participants also described how disadvantages can compound and the need to take an intersectional approach:

[T]here's no question that for children, Māori children youth with disabilities, you know, it's, you know there's hugely compounding impact of...yeah, so, yeah, real life means that, you know, there will be Māori youth living in poverty, with a disability, who have no social capital, financial or otherwise, to access justice so it just compounds.

Participants also talked about how the lack of support for young people has a disproportionate impact on those who are already disadvantaged. For example: "the lack of free legal representation will really impact on the people who already most disadvantaged, Māori, Pacifica, people from lower socio economic backgrounds, people perhaps who are not, whose families are not as well educated." As a result, it actually increases inequality:

[T]here seems to be a view in, in some in government, that if you bring lawyers into things that will make it more and more expensive, more uneven or more unfair, or, you know, in that it's better not to have lawyers and just have the lay people doing it themselves. But in my view that's around the wrong way. The reality is that if you if you don't provide the legal assistance, you, you're actually increasing the inequality because it's only the well-educated parents and kids, students and children who would be able to, would have the

wherewithal to represent themselves competently and it's in fact those most disadvantaged families that really need the legal assistance.

Disabled and neurodiverse children and young people

Many participants described the higher rates of justice problems experienced by disabled and neurodiverse children including being more likely to experience issues in the education system, more likely to be involved in the justice system, and the increased risk of victimisation. For example, one participant described a recent case they were involved in of “a kid being asked to not attend an alternative education provider because of their learning disabilities, so super common”. Another talked about the over-representation of disabled children in school exclusions:

Exclusion, exclusions are really interesting because they are often, often related to violence, and of course, violent kids often also have significant disability issues, ADHD or autism, and they really need the education. So the ones who are excluded are the ones who need the most

Participants also described the prevalence of disabilities in the youth justice population: “many of those who then end up in the youth justice system also have significant ADHD and autism and so on and so forth”.

Participants also talked about how some disabled children and young people are both more vulnerable to abuse and less able to access justice when they experience abuse due to the nature of their disability:

[D]isabled kids in terms of those kids who can't communicate and who are subject to, or are often in the hands of non-familial caregivers. So transport, people who transport kids to day programs. You know, for those kids to get any chance of justice is very, very hard. Our system depends on credible witnesses who can communicate

Disabled children and young people could also be made more vulnerable through being isolated and being subject to less protection:

[T]hey're actually exposed, you know, their children are in quite isolated and segregated settings where we know, abuse, there's a high likelihood of abuse and also we know that students in special schools, for example, are 73 times more likely to experience restraint than, than students in the mainstream

[H]uge decisions made by educators, for example, signing off going to a residential special school, the Secretary of Education has to sign that off but for any other child entering into an out of home care arrangement, whether it's a site of educational delivery or not, there's legal protections put in place, counsel for child or regular review of, of circumstances

Participants also explained that some disabled children and young people are more vulnerable than others and experience additional barriers. One explained:

Well, I think, you know, if it's, if it's a young person with fetal alcohol syndrome, it's, it's going to be just the challenges that are really inherent in their disability that FASD is....the inability or the challenges around things like theory of mind, about looking at myself and my actions. And again, same with autistic spectrum, that sense of can I put myself outside of myself and look at myself, my behaviour from other people's point of view, or not, and usually not, I can't

process consequence. The whole with fetal alcohol, often the involvement of frontal cortex stuff around just not being able to scenario plan, never mind the issues of you know, the neuroplasticity that goes on in males till 25 so, you know, it's usually shut down anyway for renovation, but that whole sense of, to, to even have the frame of mind, to be able to think about accessing information, raising a grievance, self-advocating, looking at my options, is, is just a minefield if you're FASD never mind if it was just, if it's just an oral language problems but if you've got cognitive issues, you got issues around self-regulation, that's a grenade into the mix.

Another identified children who are nonverbal as being particularly vulnerable. A third described the 'double whammy' for intellectually disabled children and young people:

I think, you know, for people with learning difficulties, with disabilities, particularly that manifest in behavioural issues, you know, are really have a bit of a double whammy, because the their behaviour caused by the disability is going to get, likely to get them in trouble. But also, often because of their disability, they're not very good at explaining or putting forward their case, or their reasons why they, you know, they should be given a second chance and so on.

Many participants talked about how professional's attitudes to disabled children and young people could operate as a barrier. For example, one participant talked about how "there's this whole kind of...separatist thinking around disabled children and young people that well, it's okay to have a more relaxed kind of attitude you know, that's just the way things are". Another described how prejudicial attitudes about disabled children and young people could affect assessments of their credibility:

[T]he same with adults or kids with disability, it's always issues, people degrade them, people judge them as not sexually attractive, so they're probably lying, because why would anyone have wanted to sexually abuse them

A participant also described how disabled children and young people were sometimes treated differently in assessments of risk:

I've been involved in several cases where, you know, really bad decisions were made around out of home placement. And when things were going wrong for one of the kids, you know, the disabled kid was left there. Yeah, yeah, so if you remember that famous case in Christchurch when a young boy with autism was murdered and yet the siblings were taken away and so that different, you know lens that you see disabled through can leave them so.... Yeah so social work practice...yeah...there's that kind of what we call diagnostic overshadowing where, you know, because the child's got a disability that kind of overshadows, you know, the other issues like care and protection or health or access to school or justice or whatever.

Rainbow children and young people

Some participants talked about the specific legal issues experienced by trans children and young people such as:

[A] situation that can happen quite often is when a young person wants to have, become transgender or some kind of sexual transformation and the

parents disagree with it. There seems to be quite a lot of difficulties there for example.

Another participant explained:

[W]ith the trans and non-binary young people, there's all of the, the justice around their access to health care, kind of aspect, that that is different to sexuality diverse and people who, who don't have that.

A lawyer participant talked about how discrimination and a lack of knowledge or understanding could operate as a barrier:

The rainbow community face a lot of discrimination. People don't understand who they are, what they are, how to treat them, that can put them off engaging with different services if people don't respect them, treat them in the way that they deserve to be treated, understand them. A lot of people don't necessarily understand the law and the rights of children and young people who LGBTQIA plus.

Participants described other attitudinal barriers to help-seeking experienced by rainbow children and young people:

[F]or rainbow young people to stand up and report a breach takes a lot of courage, in light of the fact that they've grown up in a society that has minimized their identities invisibilised them, told them that they're wrong, at times criminalized them. So whenever they are seeking redress, it means that this is an issue that has become so serious that they need to see something happen. Analogies would be women reporting sexual violence to the police, it's only ever done when it's either by someone who's incredibly strong in their identity, or when it's absolutely so heinous that someone can't let this slide given that they know that it's going to be a really shitty process. And that's what I would want people in the justice industry to kind of understand that there's a higher bar for rainbow young people to report, I suspect to be a higher bar for them to report something to the police.

This participant explained that these additional barriers could also be present in other contexts such as school:

I think it's probably most likely going to be around the, the greater proportion of them who are less confident to share their identity with, with adults who could be in a position to produce change, i.e., they may be they may have a really good teacher that they, they respect but unlike a cis heterosexual young person, they may, who might feel totally comfortable going to that teacher and saying, you know, I just experienced sexism or this, you know, image based sexual violence or whatever. I think that could be difficult for that young person to kind of do.

Another barrier to accessing justice for rainbow children and young people can be a lack of family support whether this was because they were not 'out' to their parents, their parents do not accept their identity, or simply because their parents do not share, and therefore understand, this aspect of their identity.

I think out of all of the, the groups of young people, the Youth '19 stats would say that rainbow young people are less likely to have parents who would advocate for them, than other groups of young people. That said, the majority

would still have a parent who would advocate for them but, but there's a substantial minority who don't have a positive relationship with their parent.

I suspect that means that their parents would be, even those who do have a positive relationship with their parent, I think we would often see that their parents may be embarrassed by their rainbow identity, and may not be willing to challenge harassment and exclusion on the basis of their gender or sexuality. In a different way to parents that share an ethnic identity with a child or parents who have a child with a disability, I feel like those, for those groups, there's, there's more likelihood that parents aren't going to be embarrassed or ashamed about those minority experiences compared to the rainbow young students, rainbow young people.

This participant went on to explain how the experience of rainbow children and young people differs from other minority groups including children of ethnic minority parents and disabled children because they generally do not share the same identities nor have they had the same shared learning journey if the child grew up with a disability:

Also, unlike children of ethnic minority parents, rainbow kids who have heterosexual cisgender parents, of course not all of them do, but those that do, will be very mindful that those parents haven't shared their identity and so they don't have access to a lot of the lived experience that, for instance, minority, ethnic minority parents would have of their child's identity. So they might have a little bit more in common with disabled if you use person first language, young people, you know, in that regard, even then, often those disabilities have been around for a long time, and parents have been part of the learning journey alongside that. So it feels like this is something where the, where those rainbow students are really much, much more out on their own. Then intersectionally queer and trans kind of kids are balancing two whole additional worlds of knowledge and opportunities for, for their rights to be breached in different ways.

...I suspect there are also more parents of rainbow young people that aren't connected to other parents of rainbow young people, because they don't want to be out about being the parent of a rainbow child. And I suspect that's different to some of the other minority groups where they may have place of worship communities that bring them together, they may have cultural communities that bring them together, they may have disability interest groups that bring them together, where they can, the parents can upskill about what, what the kids are entitled to, and what to do when things go wrong. Like I've got friends who have got, who have got children who have who are neuro atypical, some have autism diagnoses, they're in big groups supporting each other about that stuff. If you're a parent who's ashamed of your child's rainbow identity, but they're out to you, you're less likely to be part of a rainbow group if that makes sense.

Tamariki and rangatahi Māori

Several participants described the specific legal issues or problems experienced by tamariki and rangatahi Māori as well as the increased incidence of common legal problems:¹⁶

¹⁶ These four quotes are from four different participants.

[C]olonisation is a big thing, te Tiriti o Waitangi, language loss, racism. Those are all barriers that are very real for all Māori people but particularly children and young people.

[A]bout half the issues, half the issues that kids get involved in, relate to Māori youth and a lot of the worst problems, not all of them, but a lot of the worst problems affect Māori youth for whole variety of reasons. Because the system's unfair and unjust, because they tend to be poorer, because they, their family needs are greater and so on, because they are more likely to have parents in prison, you know that has long term effects and so on.

[N]o justice for Māori either. I mean, all the research that has ever been done shows that Māori are more likely to be stopped, they're more likely to be questioned, they're more likely to be charged, they're more likely to be convicted, they're more likely to be imprisoned than Pākehā people you know, so. So unfortunately this is, the justice system isn't fair.

[Y]oung Māori people are excluded and suspended from schools in significantly higher rates than white students

Participants also described the additional barriers experienced by tamariki and rangatahi Māori including services being culturally inaccessible:¹⁷

[S]ome of the services needed to be better at working with Māori in terms of that cultural understanding, having Māori service Māori

Māori young people, some, some of them because technically Māori is an official language in New Zealand or te reo, they could start off their education in te reo without English, but most legal things that are available are in English. I think there's very few things in te reo. So, with that there's obviously a barrier because they don't even understand what's available and the information.

I know that they have counsellors at the school but like this young boy I'm talking about is Māori, and I think, you know, they might do well with white middle class kids, but I think they still don't do well enough for those minority groups, school counsellors.

Participants also described how previous negative experiences, both their own experiences and those of others they knew, could operate as a barrier for tamariki and rangatahi Māori:

I think being Māori is kind of the worst because they've had it for so long, like for 200 years generationally they have been disadvantaged. So, and, you know, terrible things have happened to them so I think that it's pretty deep in the psyche of Māori kids that the system is unfair, and it's all hopeless, and I'm going to, I'm just going to be a rebel because nothing can ever change.

Another participant used the example of the experience of a group of young people she had worked with to explain how negative experiences could affect young people and their view of authority figures going forward:

So yeah, one of them was playing the guitar, and there was singing and stuff, and some of them were asleep in the back. And they got pulled over by like a bunch of police cars, at the front, at the back, who had weapons and stuff. It

¹⁷ These quotes are from three different participants.

was the Armed Defenders Squad because somebody had called and said that they had weapons, because they saw the guitar and they, for some reason, thought that that was a gun. So yeah, those young people had that experience, and they'd done nothing wrong. And those kind of experiences are commonplace for children and young people who are Māori, to be stereotyped, to be discriminated against. The police were obviously like 'oh, sorry'. But if your first interaction with the police is not a nice one, and you feel, you can't help but feel as a Māori person that, was that because I was Māori? And other people don't have to ask that question.

Pacific and migrant youth

Lack of understanding could operate as a barrier in two ways, the child or young person and their family may not have a good understanding of the law or legal processes in Aotearoa New Zealand as a participant explained:

[I]n terms of migrant communities, we come across a lot of language barriers, but also their understanding of the law is quite different. They might have been born in New Zealand, but still kind of very much raised under their parents' house and the parents rules are what the law is. Or if they've come over, come over when they're a little bit older or not born in New Zealand and they're not aware of the laws in New Zealand. And so for example, you know, they don't know the laws around marriage, or sometimes the intersection between that and religion is a bit tricky for them to navigate when they want to move out of home. That's really tricky for them, because we can tell them the law and what that says but the reality of that in the community is very, very difficult.

Another described how language barriers could limit understanding:

I mean, particularly cases, kids from where the parents don't have English as a first language, it's pretty tough, because they don't have parents that really understand what's going on if they don't speak English. So whether it's Pacifica, or whether it might be refugee kids from all around the world, you know, or just first generation Kiwis. I think the, I think those groups definitely face a tougher time when it comes to dealing with any kind of court process

Lack of understanding can also operate as a barrier the other way – where a young person's cultural norms differ from those in western, pākēha society and their behaviour is misinterpreted because of that lack of understanding:

But a lot of the Pacific community, I've noticed with my clients anyway, there's language barriers, but there's also cultural understanding as well and awareness that a lot of systems and people and processes don't take into account or respect and understand. So that can be a barrier for them as well. And yeah, cultural understanding, for example, you know, when a, a young person is looking down, it doesn't mean they're being disrespectful. But some places like, I don't know if this still happens, but some police or other places like that could take that differently, and they might be treated differently because of their lack of understanding.

Participants described how cultural norms could operate as a barrier to help seeking:

[T]here is a reticence because of the, what we would describe as a culture of respect, that you do need to be measured in the way in which you behave,

even as a young person that gets taught to you quite young. And so, you know, you are careful about making complaints. So it isn't any surprise that very few Pacific people, I would say, and particularly the Tongan and Samoans, make complaints to any complaint authority. But that would be, the numbers are the same for Māori proportionately speaking. The culture of making formal complaints is very much a culture of, sort of mainstream New Zealand

I guess, in how I guess it's not just, just how I guess people are taught to do certain things. So, I think in, maybe some ethnicities it's, you're taught that it's okay to ask for help, whereas others it might, you might be told it's not okay to ask for help, or even if you ask for help it's gonna be useless anyway, you're not gonna, it's not going to help you.

Care-experienced

Participants with experience in working with care-experienced children and young people described the additional barriers they have:

[W]e always talk about choice, and we always talk about making good decisions, but then all the sort of enormous barriers that are in place for young people in terms of making those decisions, particularly the sort of environment, ecological factors

Participants explained how children in the care system have “a real strong sense of injustice and unfairness”.... “Respect is a right, trust is earned. I think lots of professionals need to be able to sort of understand that. When it comes to working with young people, particularly for those who have come from really traumatic backgrounds based on the actions of others.”

One significant barrier is the power imbalance and lack of resources to redress that imbalance:

The complete and utter inadequacy of the system to, for young people to enable appropriate legal supports, particularly from that sort of natural justice perspective, and the enormous power that effectively is imposed against them, particularly when you know they come from backgrounds which are extremely traumatizing and the impact of that trauma is probably going to be lifelong lasting. So that's where the disempowerment starts.

Another is the lack of access to resources which could both lead to children and young people getting involved in the criminal justice system and operate as a barrier when seeking help as several participants explained:

So when it comes to, you know, and then getting into trouble, whether it be alcohol and drugs, or sort of resorting to offending, and a lot of, some of, the young people that we work with, genuinely, you know, resort to offending in order to eat and then consequently get involved and in trouble with the law.

[J]ust in terms of young people who are in care, I would say they're one of those groups that potentially have the least access because they have the least resources, particularly once they transition out of care, yeah, into what's called independence which I find an interesting term.

[W]e've got lots of situations where young people could have really benefited from having a lawyer, but they're no longer entitled, because it isn't a custody issue. It may be related to age, it may be related to their transition. So, access

to things like legal advice is a massive issue for us because, yeah, particularly in terms of some of the, what we perceive as being quite clear breaches of rights, particularly from a legal perspective slash ethical perspective within those principles of natural justice.

Poverty and socio-economic disadvantage

Several participants also described how poverty or lack of resources could affect help-seeking behaviour. One said:

You know kids at decile, low decile, well, no even poor kids at high decile schools, so I'll change it to poor kids, I think they don't go anywhere. Maybe, maybe to their parents, but I don't think there's anywhere that's obvious for them to go to.

Another participant explained the practical and psychological difficulties experienced by children and young people living in poverty:

Well anyone who is economically deprived basically is the first group I would say. Kids who are economically deprived, live in households dependent on benefits or the minimum wage. They won't have credit on their phones, they won't have uninterrupted access to the internet, and just much less ability, much less wherewithal.

Participants also described how knowledge and resources could be interrelated, particularly the resources that come from a good education. For example, one participant talked about the need to have a good education to be able to support a young person, and if you don't have that, you need a lawyer:

Well I think if you don't have a good knowledge of how to fill in really difficult forms, you don't have like really high educational levels, that even if you have a totally supportive family, you're not gonna be able to support that kid in a legal process when it comes to changing their gender, or even challenging a board decision. I think it requires either having like a quite high educational level, or having money to pay for a lawyer.

However, as another participant explained, often lawyers only end up working for families who have higher levels of education and knowledge with disadvantaged kids being less likely to know that they can get help or how to obtain it:

[T]here will be clients from reasonably well off middle class wealthy homes, who can afford, whose parents have the knowledge and the money and the wherewithal to realize that they, that they can get legal assistance. It's, it's probably, if a student from that kind of relatively privileged background gets suspended from school, they're more likely to actually see a lawyer. ... kids, students from more disadvantaged backgrounds, won't be aware that they can get legal help from, when they face the school discipline issues. And even if they become aware of it, they might not know how to go about getting it

Another participant described how privilege can also have a psychological impact and the difference between being a middle class person who expects to get their own way, and a poor person who doesn't:

But um, yeah, so, so just that sort of procedural knowledge and where does that knowledge come from? It comes from law, it also comes from being

middle class and, and expecting to get your own way. And so if you're a poor person, you don't generally, in New Zealand expect to get your way.

Professionals' lack of understanding of barriers and challenges experienced by people in poverty or socio-economic disadvantage could also be a barrier in its own right:

I guess that comes back to the whole socioeconomic thing, because I think that does underpin everything. People making, you know, a middle class lawyer making assumptions, like, I've just seen this so often. "Oh, they never called me back, they weren't interested" and I say "have you ever thought of the fact that they might not have credit on their phone?". ... They haven't turned up for an interview because they can't afford the bus fare, or their child is sick today and there's no other childcare

Lack of data

Some participants also pointed to the lack of data about the experiences of some children and young people. This included a participant who raised the lack of data about children's experiences of victimisation:

We've got six percent reporting and less than one percent accountability. How low is appropriate? I suspect it's even lower for kids. But nobody, we don't have a way of collecting that data because we don't have the equivalent of the Crime and Safety Survey for children so we don't yeah

Another participant who works with care-experienced children and young people described his understanding of some challenges in the care sector before commenting on the lack of research and clear evidence: "of course all this is anecdotal because no one's ever done any in depth research to find out because we're not curious enough".

Lack of consistency

A common theme was the lack of consistency including a lack of consistency between different systems and contexts, between different professionals and decision-makers, regional inconsistencies, and inconsistencies between what the law or policy may say and what actually happens in practice. Each of these is discussed below.

Inconsistencies between different systems and contexts

Participants identified a series of inconsistencies including between different areas of the law, different courts in the same area of the law, as well as in relation to the support available in different contexts and for different groups. For example, a number of participants compared the young person focussed approach used in the Youth Court to the challenges faced by students during school disciplinary processes:

[T]he Youth Court is, has been a pretty successful model, the approach to youth criminal justice with family group conferences, with the training of specialized police who, you know, who get special training and how to deal with young people, and very focused on diverting the young person away from the criminal justice system if possible, I think that, I think that that's actually been pretty successful in New Zealand. But unfortunately, I think in the, in the school space, in the space of education, we've got a long way to go, I think that the, the power imbalances just is so great that schools, it's, you know, students do struggle to have access to justice in the context of decisions made by schools against them.

One area of difference identified by participants was the support and advocacy available in the youth justice system as compared with the lack of advocacy for students involved in disputes in the education system:

[T]he criminal justice system, it works, because in the Youth Court there are youth advocates who are funded by the state, and so that that works but in the in the administrative area, such as in education there isn't currently that kind of... and there should be.

Another participant pointed to a lack of focus on the best interests of the child in the education system in contrast to other legislation affecting children and young people:

[A]ll of our other legislation that relates to children and young people is very much focused on best interests of the child and you must focus, and the court is directed to do that. It's actually an anomaly that the, this area of discipline in education doesn't, doesn't do that.

Another inconsistency raised by participants related to youth participation both in different aspects of the Family Justice system, and more broadly across the different systems that have an impact on children and young's peoples' lives. For example a participant raised the amendments to section 11(2) of the Oranga Tamariki Act which expanded the obligations relating to children's participation noting that the legislation relating to private family law disputes is much more limited. Similarly, a participant contrasted the groundswell of support for the school strike for climate movement with the lack of attention to youth voice within the education system itself despite its obvious impact on children and young people:

Wasn't it was fantastic to see the groundswell of support amongst school students around climate change, you know 1000s of young people across New Zealand, taking to the streets and yet every day in schools there is not a tradition of youth participation or youth voice, let alone disabled youth voice. And, yeah, I find that kind of weird and also within all the kind of working groups that are happening around curriculum and a whole bunch of stuff, there's no representation of young people in those things.

Participants also pointed to inconsistencies between different courts in the criminal jurisdiction, most commonly the differences between the Youth Court and the District Court. One participant explained: "the disparity is quite big between the two courts and the support that you get at those courts and also I guess, how you are judged and how the case is put through essentially is very different." Participants also contrasted the support youth advocates give their clients in the Youth Court with that legal aid lawyers are able to give in the District Court.

[W]e have a client at the moment who, so they started at the Youth Court and they had a youth advocate, and then because they turned 18 they got moved to the adult court and they found quite a disparity between the support they got from the youth advocate, so a lawyer trained in the Youth Court, compared to a legal aid lawyer who I think gave a lot less guidance to them through the adult courts.

Another participant commented on the difference in approach in other specialist courts such as the drug and alcohol court noting its benefits were limited to that particular cohort and context:

I think the specialist courts are doing great the [inaudible] court, the drug & alcohol court. But again, it's how do I say it, it's that sense of that's going to help particular groups in a particular setting in a particular court.

The level of support available in different contexts and for different groups was also raised repeatedly. This included the lack of support for victims in the criminal justice system with a participant who worked at a community law centre commenting:

We often get as well victims of crimes contact us and they want to know their legal rights and what they can do. There's obviously services for victims but they don't, you know, get a lawyer or someone like that dedicated for them through processes, so they're often contacting us and we can give them advice, but we can't actually physically always be there with them, or we don't you know, have that in depth knowledge about their case like somebody who would be dedicated to them, and someone who's continuous to go through the whole system with them.

A participant who works in the sexual violence sector also raised the discrepancies in support for child and adult victims:¹⁸

[W]e have a court support service, which interestingly is funded for adults and not funded for children. You kind of go, you know, how is even the logic of that...who will have the most trouble in court? Let's just think about that for a minute.

She explained “there’s a separation within government for children and adults in the social services sphere and so when we get progress on one area, it doesn't necessarily translate to the other, even though with something like that you would expect that to be applied to children first”.

Participants also discussed how the level of information available about different areas of the law also differed:

[T]he tenancy website and the employment website has improved quite a lot in the last few years. So there is quite a lot of information I think available in New Zealand for some types of law. For others there isn't, like Oranga Tamariki for example, there's not too much about what happens there, what happens if Oranga Tamariki gets involved in the family, for example, there's not much information on that. I'm not sure there's much information about the Youth Court either.

Variations in practice

Almost all participants talked about variations and inconsistencies in practice by different professionals and decision makers. Many participants described the variation in the quality and practices of lawyers. For example, one said “we've got some amazing youth advocates. But we've also got some that don't really understand the kind of issues that I've been talking about”. Another commented: “[m]y experience of what assistance is put in place for them, particularly Lawyers for Child, I think, is very variable, and very inconsistent”. A lawyer for the child participant explained:

[T]he practice of practitioners varies dramatically. And I guess that sort of ties into the reason that varies dramatically is one of those barriers that children

¹⁸ The 2023 budget includes provision of funding for court support for tamariki and rangatahi witnesses in sexual violence proceedings which may address this discrepancy: Te Puna Aonui. (2023). *Budget 2023*. https://tepunaaonui.govt.nz/assets/Resources/Budget/2023/Budget-2023-Budget-on-a-Page-FINAL_20230512_WEB.pdf

are facing, which is people's attitudes to children and their level of competence, and ability to understand information basically.

She went on to explain that part of the problem is the lack of monitoring and oversight of lawyers.

Participants also described variations in practice at family group conferences (FGCs). A participant who worked as a communication assistant explained:

I think the way processes happen in FGCs, is very, is very patchy. Some great examples, but sadly, not a lot. And sadly, sometimes even with people that I know I've worked with to try and help them as a coordinator. It's still a journey.

Another participant noted that these variation in practice occurs across all professionals:

[W]hen it comes to accessing Lawyers for Child or lawyers when they're involved in youth justice, when it comes to being allocated social workers, when it comes to being allocated other professionals, there is so much variability in the quality, the work ethic, the understanding, the ability to connect in relationship, the ability to really understand the processes themselves, and to deal with that sort of high degree of complexity that for all young people, it's a lottery.

Participants also pointed to the variations in practice and competence of Boards of Trustees. As one participant put it:

[T]hen when you move to the school board level, you have a group of parents who've been elected to the board, they are generally well meaning people who are you know, who are giving their time for free to do this work. And so I, that's fantastic. But they...there's some of them are good, and some of them are not very good in dealing with these kinds of decisions.

Participants described a series of ways that Board of Trustees' practice varied included the policies they have in place, whether those policies are accessible, whether they will seek feedback from other professionals within the school before making a disciplinary decision, whether they use restorative approaches, how those that do interpret or apply restorative principles, and their overall level of competence.

Some participants also raised variations in practice between judges. This included whether they had judicial meetings with children that were the subject of Care of Children Act proceedings, the extent to which they explained their decisions to children, and the sort of evidence applicants are required to produce:

[I]t's real hit or miss on the judge whether or not they'll be like, oh do you need more information, which legally speaking they don't. Like, totally enough to fulfil the criteria of the law if you look at any of the cases, I know it's Family Court and the cases are not binding but I just think it's enough information. Yeah, and then like another Judge, when it goes to the next judge, they'll be like, yeah, no, that's fine.

However, as another participant recognised, "it's a reality for any helping profession, to be honest, you get a variety of standards in it."

Regional inconsistencies

A number of regional inconsistencies were raised by participants. These included inconsistencies in relation to how different sexual violence stakeholder organisations worked

together, the availability of sexual violence support services, the way community law centres deliver their services in different regions, and whether or not lawyer for the child will be appointed. A participant working in the sexual violence sector explained:

In Central Auckland we have OT, the police and medical in the same building and we come in and out to support but.. so there's a team kind of, held approach. The rest of the country doesn't. Most, most of the rest of the country doesn't get that kind of team.

A lawyer for the child reported: “then you have cases where lawyer for child may not be appointed and that's, it seems to be a practice that varies by district as to whether or not you'll get lawyer for child appointed.”

Inconsistencies between law, policy and practice

As one participant put it, “we've got a lot of high level policy kind of great words, but, you know, there's a real yawning gap between what's been experienced on the ground”. These gaps included children's participation in family law proceedings with a participant who worked as a family lawyer explaining:

[W]e plonk in this legislation and go oh look, you know, look at us, haven't we done a good job, giving the child all of these participation opportunities but we just really haven't thought about the practicalities of it. So yeah, I think we shouldn't put those things into place unless we have mechanisms that enable the child to actually follow that pathway.

She also noted: “often really good philosophy is started up here and then by the time it's filtered down to here are really different practice is occurring”.

A participant who works with disabled children and their families raised the right to attend school commenting “having a legal right alone doesn't, doesn't necessarily mean that the situation is going to change”. She noted that legal rights are only part of the equation:

[Y]ou can't have inclusion without the ability to...if you don't have within your policy and resourcing framework, an understanding and application of the rights to reasonable accommodation.

Another participant raised the inconsistency between the legal provisions in relation to the Ministry of Education's ability to direct enrolments and the common practice of schools refusing to do so:

[I]f someone gets excluded from school the Ministry of Education can order another school to take them. The other school says, oh we can't take this person, you know, we don't have the resources, we can't do it, and so on. And they shouldn't, you know, they don't have the right to refuse, but they still do refuse.

Participants also talked about disconnects between theory and practice. For example, “the FGC process in theory is great. My experience in practice is it's very patchy in terms of effectiveness”. Participants identified a number of possible reasons for the disconnect including the variations in competence and practice as discussed above, as well as the FGC process being developed without an understanding of the needs of the cohort of young people going through the justice system:

I don't think it was created at the time and understandably with a knowledge of what are some of the other complexities that are mixing around in the lives and the hearts and the minds of these young people that need to be addressed, so it's becoming more responsive to them.

As one participant noted: “you can create a system that's fair, but sometimes what happens reality is different”.

A lot of things can make it hard to get justice

Participants described a range of barriers at an individual and systemic level. I will discuss the individual barriers first, then those relating to systems and processes.

Do they even know they have a legal problem?

The first step to getting help is identifying that they had a legal problem but many children and young people are not able to connect their problem with the law. As one participant explained:

[M]ost people don't know that they have a legal issue. I mean, they, they know they have an issue. They know they have a problem. And in most people's mind, whether the problem happens to fall into being a legal type problem or just an emotional problem or a psychological problem or a health problem I mean, or often it's blurred.

Participants also said that when a child or young person is a victim often they just want the behaviour to stop: “thinking of a legal solution is not their first thought in these things, they want to be safe, they want to stop it. That's, that's what they're thinking”. In some cases, children or young people may not even know something is ‘wrong’:

Would they know that it isn't actually acceptable, or that isn't...because if they've been exposed to that, or they've seen other people that are exposed to it, and no one ever intervenes, would you even know that a breach has occurred and you have it in your rights to kind of achieve that? So what are those kinds of social, what...are the, are the social norms in place to, to even produce you wanting to seek redress kind of around it too is the wondering I have.

Lack of accessible information

Participants pointed to a lack of information about the law and legal issues affecting children and young people presented in a way that is accessible to them. For example: “there is still a real lack of good, accessible information for children and young people and in formats that are easily understood, say, plain language, easy read, pictorial, that sort of thing.” Another participant explained:

[P]olice have information on the website, the Ministry of Justice has information on their website, but it's geared to adults, doesn't take young people and children into account in its languaging, in the way its portrayed, it's skewed to adults.

Another described how they information could present additional challenges for people with difficulties around literacy or communication:

[L]ike the Ministry of Justice information, they've tried to summarize and make it short which is cool, but there's too many big words in there. Or even aside

from that, a lot of people have communication challenges, and it's not very visual. It's a lot of words to read. A lot of people have literacy issues in general so yeah adding extra barriers to people getting that information.

Participants also questioned whether children and young people would actually seek information that could help them: “I do wonder whether, you know, young people, particularly for the young people that we work with, whether they're, actually whether they would know to go and seek information, or they just passively wait to receive what's occurring to them.” As one participant explained:

[F]or children and young people obviously it's just 20 times worse, someone under 25 to think that they would have the know how to go to the Ombudsman's Office website? I don't think so. Or the Human Rights Commission website? I don't think so.

Participants also commented on how a lot of important information is not publicly available because it is “locked behind paywalls for lawyers” or only held by those with specialist expertise. This includes both information about what the law is, but also key information about legal processes that could have an impact on whether people take action at all. For example, a participant explained how the Family Court process for changing gender markers on a birth certificate could be adapted to allow applicants privacy but this was not widely known:¹⁹

[T]his is a good thing the court does, they do let it be on the papers in most cases. So if you're a lawyer you know to write the letter saying I want this to be on the papers. But that is something that if you don't know about, deters a lot of people. Just that they'd have to go talk to an old white guy judge and be interrogated about their genitals. Court is pretty, and like lots of people don't even know that Court is closed, or that the Court would make accommodations to be seen early before everyone else, or late after everyone else which they say they will do. Like none of that is really accessible information.

Difficulty understanding legal information and justice system processes

Participants described how a lack of knowledge and understanding can operate as a barrier in key decision-making contexts affecting children and young people's lives. This included:

- Board of Trustees' meetings:

[L]ike what happens when a young person has to go to a Board of Trustees meeting and representation. In particular where it's, not even whānau really understand what's going on, what the process is....you know, Board of Trustees meetings, and just like, so obviously, the young person doesn't understand and family don't.

- Family group conferences:

[M]y experiences, for example, accompanying them to family group conferences, where I might be giving a report on their education in residence,

¹⁹ Legislation was passed in late 2021 to change the process for altering gender markers on birth certificates. See [Births, Deaths, Marriages, and Relationships Registration Act 2021](#) and Te Tari Taiwhenua | Department of Internal Affairs. (2022). *Recognising gender on birth certificates and exploring a gender registration process for people born overseas*. <https://www.dia.govt.nz/bdmreview---recognising-gender-on-birth-certificates> for a summary of the changes.

and realizing the way things were happening and what was happening, they really, the number of times I got asked afterwards, 'What was it all about? What happened?'

- In the Youth Court:

[T]hey had all these really high rates of youth offenders breaching their bail conditions and supervision conditions and then they realized it's, because someone thought about it and realised it's because they don't understand. And because we're all standing in court talking about all these things, and then we do the adult thing where we go 'do you understand' and they go 'okay, sure' because then you will stop talking.

Participants generally gave a number of reasons that young people did not understand, the first being the nature and form of communication in the justice system. For example, a participant who worked as a communication assistant raised the complexity of the language and concepts we expect children and young people to understand:

I know the number of times I would say you have the right to remain silent. What does that mean, just be quiet? Then you'd go what's a right? I mean, linguistically, it's really tricky, even for an adult what is a right? So, you know, even thinking about that question, the importance of that, in terms of representation, and a sense of fairness in the justice system.

Another participant gave an example of how lawyers become so used to legal jargon that they forget or don't realise that it is not easily understood by everyone:

One of my friends was telling a story the other day and he said, he asked somebody on the stand in a murder trial about someone's demeanour and he said he realized as soon as he said it, that the guy didn't understand the word. And then he said 'tell me about his manner' and the man thought, he said mana and yelled out 'this man has no mana' and jumped out of the witness stand and tried to attack the defendant. And it was just one of those conversations that we were having as lawyers saying, we use big words and we get so used to using these words in the system that we forget, or some of us don't know, how to break it down and it's so applicable for children.

Participants also raised lawyers' use of complex sentence structures and tagged questions. For example, a participant who worked as a communication assistant explained:

[A] classic is in legal terms putting the proposition which is often loaded with preamble. Obviously it's often quite long, sometimes contains two or three embedded clauses, and might just finish off with a tag ending so isn't it, wasn't he, weren't you. And so what we're saying is that's, you can't ask this person a question like that because they won't know how to answer it because it's too linguistically complex.

You know, I even just do it with a tag, I'll say in an assessment "I came in my black car today, didn't I?" And the number times they go, "Yes". "Well, hang on do you know that?" "Oh, no". "So why did you say yes?". I know why they said yes, because it was a tag, and I had raised my eyebrows, and I went up at the end, and they want to please me, and they want to agree with me. Well, what happens in a courtroom? Well of course that gets used all the time, it's part of the toolkit, I get that. But is it fair and just to have justice on the basis

of I managed to get him to agree to a question that he didn't understand so I could win my side, you know, bottom line, that's what's happening.

There are also the unwritten rules that lawyers or other regular users of the system learn through experience which one participant described acting in a 'lawyerly manner':

[W]henever you go into a system like that you have to act in a lawyerly manner and most people aren't trained for that. Even, even the most intelligent people, even the brightest of people don't know how to proceed.

Another participant commented on how a child or young person's response to the power imbalance in the room could be to shut down and not really listen or understand what is going on:

It's one of the things that we notice it doesn't matter who it's with, if there's any power in the room, lawyers, judges, social workers, teachers, kids just shut down. Let's just get through it, and they're not necessarily listening and comprehending to what's actually occurring around then.

Participants also pointed to a second set of reasons which related more to the specific needs of a young person themselves such as a language processing disorder or some form of disability. For example, a participant described how not understanding what is happening was sometimes because the child or young person had significant problems:

I think of somebody I worked with who was heading to a major indictable, trial on a major indictable offense as a young person but he had so many cognitive challenges that when I asked him, 'Do you know what's going to happen next?', 'I'm going to court', 'When are you going to court?', 'I don't know', 'When you go to court, how long will it be?', 'Oh, for a morning' when he was down for a two week High Court trial. And I don't doubt his lawyer told him that so it's one thing to have access to it, but it's again, does it, is it meaningful?

Problematically, one participant noted that many young people were not aware of their lack of understanding and without that awareness, they were unlikely to seek help. He explained:

[I]f you think about that thing of, from conscious incompetent to unconscious incompetent. Yeah, most of the people that I would work with would be unconsciously incompetent, they don't know that they don't know stuff. Some I work with who are consciously incompetent, they know there's some stuff they find tricky. You'd have to be at that level before you'd have any sense of being able to put your hand up and say, hang on a minute.

Whatever the reason that young people could not understand information they were given or what is going on in a court proceeding, similar issues of fairness and justice arise. As one participant asked:

[H]ow is it just if when a young person finds themselves involved with the law that they're penalised because of difficulties they have actually understanding, not just the process, but even something way more basic than that. Concepts that they need to understand in order to be able to negotiate that process, concepts like time, days of the week, reading a clock, you know, any number of basic life issues, and language and comprehension and difficulty expressing yourself issues that that make negotiating anything mildly complex a challenge, let alone the legal system.

Several participants also spoke about the importance of checking whether a child or young person understood information they had been given and/or what was happening with many emphasising that this did not mean just asking a direct question. As one participant explained:

[I]f you say to them 'do you understand what I've told you?' it's very likely a child will just say yes, you know, depending on the personality of the child. I know because I when I was a child, my dad used to explain really complex things to me. I remember sitting there my mother saying she doesn't understand it's too complex and in my head thinking, if I just say I understand it, it'll be over. So I remember him explaining something to me. It was about how the tide came in and out and he started talking about moon cycles and things and I remember my dad saying 'you understand, don't you?' and I said yes because I just want this to end.

Some participants noted that some groups of children and young people often become quite adept at hiding when they do not understand. For example, a participant who worked with young people in the Oranga Tamariki system explained:

What we've found is particularly as young people who've grown up in care, they learn to adjust, and they learn to adapt, they are incredibly skilful and resilient and they just find ways of communicating to adults that they understand, when in actual fact they haven't got a clue what's going on because they just find it really difficult to comprehend. But it's much easier for them just to communicate they understand rather than to, I guess humiliate themselves in a way by asking again or saying I don't understand, you, can you explain it to me again.

Another participant explained that the best way to make sure that a young person actually understands what you have told them is to ask them to repeat it back in their own words:

[O]kay, so you've got that? And then I'll say, so can you tell me in your words, what I just told you, sometimes I'm not real good at explaining it. And then you find out that..., 'Okay cool, my bad, let's try again'.

This participant added that it was also important to take responsibility as the adult or the person explaining something to help avoid the young person feel like there is something wrong with them if they did not understand.

Just knowing the law is not enough

While many participants talked about the difficulties created by a lack of knowledge and understanding, several were also adamant that just knowing what the law is was not enough. Participants also explained that taking action required more than knowing you have a legal problem and what the law is, the child or young person also needed to know what to do and how to do it. As one person put it:

[T]hey have to, yeah, like I was saying before, know that there's an issue and then they need to know the law and then they need to know how to draft things or how to apply for things and there's just this, a number of extra layers that you're adding to it. So even if they can, whether they can is another story.

Participants also stressed that even if they had all of this knowledge, it didn't mean that the child or young person would be able to exercise their rights independently:

[I]f I go back to, you know, YouthLaw coming in and talking about the rights you have with the police, that's great, you've got to have that knowledge, but then you've also got to go as an individual, that young person then has to have another degree of, of something in order to be able to exercise those rights. 'Hey, no, I haven't understood' or 'No, you can't do that', you know.

As another participant explained:

[T]here's a difference between understanding your rights and being able to advocate for yourself on your rights. So yeah, you can understand that I had the right to speak to a lawyer in private and without delay before deciding whether to answer any questions, but will you? Or will you just be like, it's 1:30 in the morning and this, it'll be much easier if I just answer these questions.

Another participant suggested that the problem is that many young people do not have the confidence that comes with age and life experience:

[T]he reality is that more younger people are going to not have the confidence that comes with age, you know, but some of the young people have not had their confidence knocked out of them so it can go both ways. But I do think the lack of confidence you have as a, as a young person, which comes from age, maturity, knowledge, life experience, some of those kinds of things, does create an additional barrier. So lack of awareness, and then lack of confidence.

Participants explained that these challenges meant that children and young people need more than information or just being told what they need to do. As one participant explained:

I think young people particularly need, you know people who know them, who will stick with them through the process, and who are on the ground, you know, they actually need...it's not like older people, who you can say, well ring up MSD and go for a review, say you want to review, just write a letter saying I want a review, that's what I often say to people, then come back to me if you still haven't got what you want, you know, so you can empower people, but young people, I think, are more likely to need hands on support, you know, like doing the letter for them, or seeing the letter or checking it. You know, just being more involved than older people needing help.

Other participants talked about how some young people just did not have the necessary skills to advocate for themselves. For example: "with some of the clients we see for example, their language skills just aren't at the place where they can advocate for themselves in a way that would be, that would essentially help them win a case so that's possibly going to be an issue as well". However, even confident and articulate children and young people need something more:

Yeah, IPCA, definitely a lot of young people not gonna do that by themselves even if they believe in it, or that you know, they're not going to do that by themselves, they need someone to help them whether that's a social worker or lawyer is another story, but that's an example of something they're not going to do themselves. Yeah, I think young people, even if they can make an application, they want help to draft things generally, like, even if you tell them that they have rights, they want someone to draft it or to look over something to make sure they're on the right track. And then after that, they might want to come back to you and be like this is the strategy I'm taking to approach this meeting, or this hearing, or this whatever. Can you talk to me about how that

might work? Or they're just seeking somebody like a soundboard, sounding board and a second set of eyes. Yeah, so I think that even if you have a young person who is really articulate, who knows the law, and who feels kind of confident, they still want somebody there to help them. That's been my experience anyway.

Another participant explained, "it's not just information, its support, emotional support around what the information says".

Participants also explained that taking action isn't just difficult for children and young people themselves, those supporting them such as parents can also face their own barriers and need help themselves. A participant who worked with disabled children and their families explained:

[F]amilies are so, so busy, you know, just in the general kind of scheme of things, that access to information...it's not so much is it there or not as have I got the time to exhale and absorb it and you know can it be useful immediately. And this is why you know people are so keen on having government support for funded advocacy because they just want someone to do it, you know, to have someone help them get through that information maze or, as some would say, begging maze, begging to get what you should have by right.

Lack of support

Not having supportive adults in your life

Several participants talked about the challenges children and young people experience when they don't have supportive adults in their lives. One explained:

[T]here are lots of kids that that, whose parents don't turn up to meetings with principal, the principal or meetings with the Board of Trustees or in the criminal context, you know, won't turn up to Family Group Conferences or, you know, dealings with the police, you know, so unfortunately, the groups, a group of children, that is, whose parents are not fully supportive and engaged with them. And sadly, that's, that's, that's the toughest isn't it.

Lack of family support was a particular issue in some contexts and for some groups of children and young people. A participant working in the sexual violence sector explained the specific challenges she saw in her work:

[T]here's probably an assumption that families are the best people to assist people, you know, kids through a justice process and often in our work, they're not because the offender is a family member and so families are often incredibly split about where their loyalties go.

Another participant who works with LGBTQI+ young people explained that this group of young people were definitely less likely to have supportive parents and commented on the challenges this created:

I think out of all of the, the groups of young people, the Youth '19 stats would say that rainbow young people are less likely to have parents who would advocate for them, than other groups of young people. That said, the majority would still have a parent who would advocate for them but, but there's a substantial minority who don't have a positive relationship with their parent.

There isn't enough legal support

Participants also talked about the lack of legal support for children and young people and the hurdles that someone would need to jump to access a lawyer. In the case of legal aid this starts with “persuad[ing] the legal services people that your, that your claim is worth it.” If legal aid is granted, then you need to find a lawyer but as one participant commented, “very few people would do a legal aid judicial review on your behalf”. There is also the issue of expertise as one participant noted: “general lawyers don't have a lot of experience in children's rights anyway”. Another commented that there were “hardly any lawyers who represent the young people instead of the school, there's just YouthLaw.”

Participants also raised concerns that even where there are agencies or entities that assist children and young people, those agencies do not have sufficient resources to provide the level of support that is actually needed. For example, one participant described the limitations faced by YouthLaw Aotearoa, a community law centre for children and young people:

So organizations like YouthLaw, as a Community Law Centre, is not really funded to itself take on major litigation. It can certainly support as has been done with me, it can support a barrister or another lawyer who is willing to take a case that might be on a pro bono basis. But YouthLaw is too busy just dealing with providing legal education and providing legal advice and so on, and they don't have really have the funding and resources. ... YouthLaw does some advocacy, but you know, it, they just, unfortunately, don't have the resources to do a lot of advocacy, generally, they will refer it out to other lawyers.

A number of participants also referred to the Office of Human Rights Proceedings as a possible source of assistance but as one participant explained, they also have limited resources and therefore capacity to assist:

[T]he Director, has a budget and limited staff, and receives many applications for representation. And so the Director has to decide whether, which cases to take on they can't take them all on. And so they would weigh up the strength of the case. So whether they think that there is a good case to take to the Human Rights Tribunal and they'd also look at the public interest in the case and so on to decide whether to take the case. So yeah, there's certainly no guarantee that a case would be taken further.

Another participant summed up the position, “even though there is support in some places, it's actually not really available”.

Another barrier participants identified was children's lack of legal capacity which means that they need to find someone else to act on their behalf. A participant working in the family justice system explained:

[I]f an application going to be made on behalf of a minor, it's finding somebody who's, who's willing to do that and expose themselves to those all of the cost contribution orders, and the legal, legal aid costs.

Some participants described how community groups and peer support networks have been created to try and fill the some of the gaps:

[A]ll of the major kind of family membership groups like Parent2Parent and Carers New Zealand, CCS, IHC and now all the new, kind of proliferation of social media groupings....everyone does their darnedest to try and support

each other through the provision of information, emotional support and, where necessary, advocacy because....and that's a good thing because there's hardly anywhere else to go.

Concerns about what will happen

Many participants spoke about how fears or concerns in relation to what might happen if they reported something that had happened to them. This included fears about a lack of confidentiality or that the person they tell will tell others. As one participant explained,

[K]ids tend to trust the nurse more than the counsellor, which is really interesting. And, you know, I mean, I, I don't know why that is but I wonder if it's about that um, counsellors do in the school environment need to talk about the well-being of students with other people whereas the nurse, everybody respects that medical matters are private, more than they respect that well-being is a private matter.

Participants also noted that young people in youth justice residences can have particular concerns around other people finding out about their complaint:

[Y]ou've got to get over all the other reasons that might be barriers to making a grievance known. 'What if the staff find out it was me?', 'What if they have it in for me?', 'What if other kids find out that I've been complaining about this or that?'

Confidentiality was also seen as a particular barrier for LGBTQI+ students who may not be 'out' in their identity. Some participants also spoke about fear of how people will respond including not being taken seriously or not accepted for who they are being a barrier particularly for young people in the rainbow community:

[T]hat concern that they, that their issues won't be taken seriously because of that invisibilising thing I've kind of talked about that means that rainbow identities are often seen as a novelty, passing phase, not really important...And that's huge at the moment, we have all of the, you know, the, it's the choice discourses still, it's growing in intensity, especially around trans identities, and the idea that young people to simply choose a gender to occupy. And that's all very different to I think what other groups of young people face. Religion isn't normally seen as a choice so much anymore. Visibility is not framed as a choice, ethnic identity isn't framed as a choice, but this bit is so that makes it hard.

Another participant commented:

[P]articularly for intersex people but also for a lot of trans young people, there's not only the non-acceptance of society, but often the professionals themselves add to the harm.

Participants also described how a fear of being blamed could act as a barrier in cases of sexual offending:

[D]iscourses of sin, it's your fault, you brought it on yourself. If there's any kind of hint of a religious component, some young people are going to have a lot of baggage around wanting to reach out for support if they think that someone is going to blame them for what they've experienced.

Some participants also raised the personal stress and pressure that going to court could have on the child or young person and their families and how this could create a barrier. As a lawyer participant explained:

That's a big, big deal to take a school to court. And even if, even if, the, the court gives name suppression, which they usually will for the young person, the reality is everyone on the school community will know about the claim. And sometimes it will divide the school community, some people will take the side of the student who's been bringing the claim and others will bring take the side of the school. And it can be very, very stressful for the young person. And being in the High Court, it often generates media coverage, and publicity, which, you know, again, may be very stressful for, for the young person.

These issues were seen as particularly acute in cases of sexual violence. A participant who works in the sexual violence sector explained that the issues in relation to how survivors of sexual violence are treated in court were not only known to those involved in the system and that this created a barrier to reporting:

[T]here's a general population understanding, I think of how difficult that process is for people who have been sexually assaulted or abused. So all of those same things as adults, you know, not wanting to be exposed, not wanting to have to tell the story, not wanting to have to face the offender. Um, yeah. Not wanting to be cross-examined.

A lawyer participant asked: "I mean, would you actually advise a 14 year old, who got drunk and got raped to go through the justice system? You know what happens in the justice system. You know, I don't think I would."

Prior experience as a barrier

The young person's previous experiences or those of others they know could also create a barrier: "they don't necessarily see the law as the answer or being helpful. That might be through their own first-hand experiences of what they've heard or what they perceive outwardly about what the legal system is, or does". Participants talked about this being a barrier in some contexts and for some groups of children and young people including those with care-experience, tamariki and rangatahi Māori, and rainbow children and young people.

A participant who worked with young people in the Oranga Tamariki system commented: "I think care experienced young people, I think, have enormous barriers to accessing justice based on some of the injustices that have occurred for them." Another participant who delivered legal education in youth justice residences explained:

[A] lot of times in the youth justice setting, for example, they've had really terrible examples of experiences with the police. And then if we tell them about the IPCA, a lot of them are very sceptical at first, and they're like, yeah right. We don't, you know, we don't like the police, we don't trust systems, they've had bad experiences with systems in general.

A participant working in the sexual violence sector described how children often 'test the water' when beginning to tell someone about their abuse with their experience when they do so determining what they do next:

[K]ids never disclose the whole thing to start with, you know, they test the world. So they'll tell us a little bit and see if the adults can handle it. Usually they can't so they don't say anymore, but so if they go through a process and

it goes bad, they just shut up. They just go silent. They just tolerate the abuse, or try and kill themselves.

A participant who works with children and young people in the care system explained the psychological impact prior negative experiences could have:

[T]hese young people have just had power constantly asserted against them, feeling very disempowered, and have just gone for the ride and for a lot of them, just become really traumatized as a result. As a result, being mistreated would just be another notch on the belt of unfair treatment that I'll continue, which will reinforce my, my angst and anger against the authorities and against the police.

Another participant described the impact of past experiences, both individual and collective, on tamariki and rangatahi Māori:

[T]errible things have happened to them so I think that it's pretty deep in the psyche of Māori kids that the system is unfair, and it's all hopeless, and I'm going to, I'm just going to be a rebel because nothing can ever change.

The historical criminalisation of rainbow identities could also have an impact on rainbow and takatāpui children and young people:

[T]he justice system isn't seen as something that would be, isn't seen as a safe place for many kind of rainbow men to go to. And that reflects, obviously the role that the justice system has played in criminalizing the identities of, of queer people.

It's an adult world

Participants raised a number of concerns in relation to how children are viewed in our society generally and when decisions are made affecting their rights. As one participant put it: "children are always at the bottom of the pile for who we're going to get to". Another participant who acted as a lawyer for the child said:

[T]here's still that overriding paternalistic attitude or protectionary attitude that we'll hold the information and we'll just, we will decide as adults what to give to children, and when because we know what's best. It's sort of still a really strong prevailing attitude.

She went on to describe how some lawyers still hold these attitudes despite acting as a lawyer for the child representing children:

[L]awyer for child acts as a gatekeeper for that and you get a lawyer for child with outdated attitudes about children and lack of understanding about children's capacity, and then you get ones like I had who said, I don't think these children.... she, she, that practitioner actually rang me up one day concerned because the judge's decision aligned with the children's views and she thought that that was going to lead to empowerment of the child, so I explained to her that we want children to be empowered. That's actually what, a goal for children, to empower them.

Another participant described how Boards of Trustees are often more interested in hearing from the parents than the child as they see the parents' role as keeping the child in line:

I mean, in theory, if I'm thinking of Board of Trustees hearing a child could go, but probably that wouldn't go down well, and then probably, you know, if the young person has done something wrong, they're not going to want to just talk to them. The Board wants to talk to their parents, and their whānau to see if they're on board, and they agree, and know that the young person is going to be kept on track.

A participant who works with children in care also described decision makers not feeling that they needed to justify themselves to children:

[T]hose who are making decisions don't have, not feeling they have to justify that to the young person, it is just what is.

Another participant pointed to the differences in attitudes in relation to the rights of adults and those of children:

[W]hat are children's rights - human rights. You know, they're just called children's rights. They're actually just human rights, aren't they? So we don't think it's okay to breach an adult's human rights, why do we think it's okay to breach a child's human rights?

Several participants talked about various different contexts where children were not seen as having the same rights as adults. This included:

- The use of restraint in the education system:

[I]n the adult prison population, you know, the IMM monitoring is saying you know we've got a goal of reduction and elimination of the use of restraint for adults and yet we're still working out the guidelines, the legislative guidelines or policies, the, what are they called, regulations around the right for adults to physically restrain small children.

- The ability to appeal against the decision to exclude a child from school:

[I]n every other area of life involving adults, there are, there's at least one right of appeal, usually two and, you know, that these decisions, you know, I mean, what's wrong with there being a second point of appeal would be my immediate response to that. I mean, these are really, really important decisions in the lives of young people. They're far more important than my, my view is a lot of these are far more important than, than a lot of minor criminal stuff that adults deal with, you know, minor where, but you know, even the most minor criminal matter in the adult court, you've got a right of appeal.

- The refusal to provide counselling for children prior to an evidential interview:

[T]here's also these beliefs that the children shouldn't get any kind of counselling help before the evidential interview is done, which is just ridiculous. It's just ridiculous. We don't require that of adults, why would we require children to not get any help until they've done the evidential interview?

Many participants talked about how justice systems and processes were simply not designed for children. For example, a participant working in the sexual violence sector talked about how the criminal justice system is “set up for, to deal with allegations that adults make about other adults so the whole system is adult centric.” She went on to explain that all the decisions are also made by adults rather than the child who had actually experiences the abuse who often has very different views:

[W]hether or not something goes to the Criminal Court, the child is not the decision maker on that. There are all sorts of other adults who will make that decision based on their own things. So it might be the social worker that makes a decision, that might be the police that makes a decision. Often it's the parents that make the decision....when we talk to children about the outcomes they want, they're often very different than what the adults want. The children want the abuse to stop, but they still want their Dad you know, fundamentally, and that's not what the adults in the system want and it's not what our system is geared up to, to get for children.

Participants also talked about how aspects of the system hard for adults to deal with and even worse for children: "it doesn't work for adults, but it certainly doesn't work for children. Like it so outrageously doesn't work for children". As another participant put it:

I think at least 50% of the New Zealand population can't access justice basically. They cannot get a lawyer to resolve a legal issue that they've got because of many reasons, you know, the high cost of legal fees being big, big one, and the lack of means of people. So, yeah, I think for children and young people obviously it's just 20 times worse.

A participant also made a similar point in relation to seeking to assert your rights when being questioned by the police:

I'm a reasonably educated guy and I know what it was like to be at 1:30 in the morning to be going oh, yeah, probably would just be easier aye. If I'm like that, how feasible is it, how, for people who don't really understand, I knew I could have a lawyer, I knew, I knew all that stuff and I still didn't do... what if I didn't know?

Participants also raised the related issue of the inherent power imbalance between a child or young person and both adults in general and those in positions of authority in particular. "[o]ne is we have system think or we have adult think. So the adults who hold the power, the child has to go along for the ride with them." This issue came up in a variety of contexts including:

- The education system:

[T]he massive power imbalance between the schools on the one hand who have all of the knowledge and experience in relation to these issues and the student and their parents who don't and how disciplinary processes, normal processes around suspensions, you know are loaded up with adults, and it's a very, very disempowering process I think for the young people concerned.

- Making complaints:

[U]sually when you're making a complaint, you're making a complaint against someone in authority or someone with some sort of power maybe over you. So that could be quite difficult for a young person.

- Legal action generally:

[T]here's always someone on the other side who probably has more authority, and money, and power, which might mean that they probably would have more access to legal support than the young person would. So it seems like it might be an uphill battle for a young person going forward with any legal matter.

- Litigation against the government (in this case relating to abuse in care):

I've acted for seven men who were boys. We just spent our whole time fighting, fighting, they got, there were 3 QCs against us actually. They just threw everything at the book, in the procedural book, in the book at us and so legal aid got incredibly antsy because we were just defending this, defending that, we won everything, but it took its toll. So then in the end you're once again, you're in a broken position to settle, and you have to settle for far less than you should.

Cost and delay

Participants raised financial or cost barriers starting from the basic ability to communicate to seek assistance: “young people who probably need the most help don't have credit on their phones or anything like that.” Participants frequently raised the cost of instructing a lawyer as a barrier for children and their families or those supporting them. For example:

[T]here are a number of barriers. One is the, the financial cost. So I've done a number of these cases either pro bono on a sort of what you might call a semi pro bono basis, where, you know, if we went and get some costs, and I'll get some money, but, so because it to bring a case in the High Court that goes all the way through to the judicial review. I mean, it would be, it's gonna be in the tens of thousands of dollars, probably. So you're doing maybe looking at 20 or \$30,000, which is a lot of money for most people. And there, so one barrier is the cost of actually paying the lawyers....A second barrier is that the risk that if you lose, you could you could get a costs award against you.

One participant made the point that costs aren't just a barrier for those in poverty: “even middle class families like teachers and even social workers, the families will try and deal with it themselves because they can't afford lawyers on a middle-class income”. Costs were also a barrier where a young person is independent or does not have the financial support of their parents: “young people don't tend to have access to money, so you can't go down the...you can't, they're unlikely to want to go straight to a lawyer.” Participants also explained that costs can still be a barrier when someone was granted legal aid:

[T]he other thing with legal aid that people don't know about is that you actually have to pay some of it back a lot of the times depending on I guess the assessment from the legal aid office. It's not actually free. Some are free, like protection orders I think most are free but for other ones they might not be so yeah, so at the end of it you do come out of it with a debt.

Another participant who acted as lawyer for child commented on how costs are an effective barrier to children exercising their ability to apply to vary a parenting order:

I mean one of the things is removing that cost barrier. And another option is, I mean, so Legal Aid could be ... legal aid could look at that and say, you know, if you were applying for, making an application on behalf of a minor, then perhaps they could waive the cost contributions, sorry, the charges for legal aid, there is also the cost contribution orders in the Family Court. So technically, if a child, so a child can make an application to discharge a parenting order or vary a parenting order but then they could be subject to a cost contribution order if lawyer for child was appointed and a psychologist. So again, that's another cost. The cost barrier.

Delay can also be a barrier both to children and young people taking action: “in a lot of situations, easier to just not do anything than to do something, to follow the legal processes because usually firstly it takes too long” as well as to achieving justice: “we're gonna be six months, eight months of nothing happening at all and so for those teenagers, this has taken far too long, it's well outside, you know, their, their timeframes when decisions should be getting made.”

Lack of Effective Pathways

Several participants spoke about the lack of effective pathways through which children and young people could seek justice.

Education system

Participants' concerns about the lack of effective pathways for accessing justice in the education system started with going to a school Board of Trustees. Participants also spoke about the lack of any realistic way to challenge decisions made by school Boards of Trustees:

[S]tudents who are suspended from school, they have to deal with the internal school process, the suspension meeting at the board. And if they don't like the outcome of that they don't have any appeal right. They only have an ability to go to the High Court on judicial review or to perhaps complain to the Ombudsman.

... If it was a case where they with a student believed that they had been discriminated against, they could make a complaint to the Human Rights Commission. And so it wouldn't be so much a direct attack on the suspension decision or the exclusion decision, it would be a claim that the school had discriminated against them by treating them differently because of their race or gender or something, or in the case of a student with disabilities, perhaps failed to provide reasonable accommodation for their disability.

Several participants also mentioned the disputes panels provided for under the Education and Training Act 2020 but are yet to be established:

[T]hey've created a new panel, well in the law they've created a new panel for the Board of Trustees' hearing but for example what we've heard is that it hasn't...nothing started to, for the creation of this panel, apparently because there's no funding for it. So, yeah, so there's also barriers like that, where there is stuff maybe that's made by the law but these things need planning and money to facilitate which is sort of what it all comes down to, money. And because there is no money it's not being made even though these mechanisms are meant to be put in place.

A number of participants raised concerns about the disputes panel model and its effectiveness to address some of the problems experienced by children and young people in schools. For example, a participant raised concerns that the disputes panels would only consider disputes between students, their families and schools, not disputes with the Ministry of Education:

[I]t doesn't involve the Ministry who set the policy and the constraints and impose those terrible constraints on kids and schools. So, so it's about kind of... pushing the problem out there and creating opportunities for people to embed conflict because the conflict can't be sorted because of the...the people who made it aren't in the room.

Another participant raised concerns that the process was non-binding and therefore would not bring an end to the dispute as well as the prohibition on legal representation:

One very strange thing about the new disputes panels is that they don't allow legal representation, as I understand it, which is particularly strange when you are allowed legal representation at the prior suspension meeting stage. So you're allowed to have a lawyer helping you when you're at the board meeting but then if you just if you appeal it to a disputes panel, you're not allowed to have legal representation. And I think that is terribly unfair because of the massive power imbalance between the schools on the one hand who have all of the knowledge and experience in relation to these issues and the student and their parents who don't.

A participant also raised concerns in relation to who a person is expected to go to in relation to complaints systems in a University context:

It's clear to me that the way that policy has been written is not in any way, constructed in a way that's going to be actionable for the vast majority of students that are expected to take an issue about either staff or student harassment to someone they don't know, including someone in a massive position of power, to often disclose to them things that are very personal and private. And it's, it's clear to me that, that is that students seeking justice in this situation, I wouldn't advocate going through the university process, because I suspect they'll put themselves at greater risk than they would get the benefit from.

They went on to comment on how the reality did not match the rhetoric:

[T]he university gets to say, oh, well, we have a zero tolerance for bullying policy and, you know, on all these kind of things, it's like, sure you do, but you don't. You just, you say you do but in reality, it's not, it's not actually effective.

Human Rights Commission & Human Rights Review Tribunal

Several participants mentioned the possibility of going to the Human Rights Commission but noted that its jurisdiction is limited to cases of discrimination and harassment:

Human Rights Commission only deals with cases of discrimination on prohibited grounds and harassment. So they wouldn't deal with just with a case based on I was unfairly kicked out of school or something, you know, or I was unfairly treated by the police or whatever it might be. There would need to be, you'd have to be, there would have to be an argument that the unfairness was due to race, sex, sexual orientation, disability or something.

One participant spoke about their experience of making a claim to the Human Rights Review Tribunal in relation to education issues which raise serious issues in relation to its utility as a forum in which to seek access to justice:

[T]he long delays in a human rights process designed to right the wrongs or seek redress and seek resolution...the fact that you know there's been a 13 year delay in even getting to a court, that raises huge questions about what's happening not only within the access to justice, but access to processes within the education system that, where children have a sense and an experience of fairness and having their issues heard and understood, but also having

access to an independent reviewer of decisions made by schools, or by the Ministry itself.

Oranga Tamariki

Participants described a slightly different problem for children in care:

I think, in some ways, honestly, there's so many independent monitoring committees over that whole space, that I actually think a young person in care is just like, what the fuck, I don't know where to go, there's too many of you people, you all want to somehow fix it and none of you can do anything.

A number of participants expressed feeling like it was just a box ticking exercise or something put in place to look good without actually making any difference. This starts from the way information is provided to children and young people e.g. “we'll give you know “Your rights, Your voice”, which is a booklet that young people receive, and they're just giving it to them without actually explaining anything, or you know, and just tick the box, and then we'll move on.” It also includes how processes are developed or operate:

I mean so then they have this process, you know, you write something and you put it in the box. Has anyone thought about how hard it is for a kid to write? It's just like so there's a panel there. Looks good....So yeah, the grievance panel is there and they can rock out their statistics and yeah, but practically? If you've got a grievance, I mean, why would you bring three people, complete strangers into a classroom in the middle, middle of a school day? Why not find another mechanism? I wouldn't, you know, if I mean, if I put my head into a 15 year old, would I talk about stuff I was having a real struggle with? No.

Complaints mechanisms

Participants raised concerns about the Office of the Children's Commissioner's ability to assist with complaints: “only couple of times, I took it to the Office of the Children's Commissioner, and it got stymied in bureaucratic kind of So I didn't have a lot of faith”. Concerns were also raised about the effectiveness of the Ombudsman's Office:

We were going to the Ombudsperson, I tried to work on behalf of the family about a really difficult conflict with the Principal, the child was under 10. And it was very hard line Principal who sent the girl home at five years old because she had hit a boy but the boy, she said had hit her first but in their family you hit back, you know, then, and then another problem with the other boy, and it was, you know, I would say the Ombudsman's office it was hopeless, they took ages to respond. It was forever, slow, it was just, you know, they're just not onto it, they're looking at the great, big systemic issues, they're not there for individual children, with individual problems or individual parents at Board of Trustee level. It was far too slow to be of any help whatsoever.

Another participant commented on the ineffectiveness of complaints mechanisms in relation to the Lawyer for the Child:

[I]f you're not happy with what the lawyer for child is doing you have to complain to I think your family court coordinator or the, the manager at the court. Um, I know people that have written complaints and have never heard, even got a response including I know, I know one lawyer for child who won't,

who sometimes doesn't see the children and then nothing happens. What really annoys me is nothing even happens. I mean, that person should be made an example or removed from the file but that requires the judiciary to do that.

Other litigation issues

Lawyer participants also raised some of the technical / legal barriers children and young people can face. Participants also commented on the specific barrier for children under 18:

[T]hey would often need a litigation guardian of some sort to do anything to do with the court under 18 usually, some things you can do above 16, depending on what it is, 17, but otherwise you would need a litigation guardian to do something on your behalf and that can be very difficult for young people who might be trying to fight against their parents.

Participants also explained how the focus of judicial review on procedure rather than the final outcome meant that wasn't always available as an avenue for challenge:

You have to come up with a legal argument as to why the school acted procedurally wrongly, rather than simply that they got the decision wrong. And so, you know, High Court judges are at pains to say, with these kind of judicial reviews that even if they might have had a different view to the school principal or the board, it's not their job to substitute their own view. So, so what that means for a child or, or, or, or and their parent is that if they just think it was just unfair and wrong, that the decision was made against them. The legal advice might be well, I'm sorry, but you've just got no remedy. Because whilst you whilst it feels like it's wrong, if the school has followed all the procedural rules, it can be very difficult.

Another participant with experience in relation to litigation against the government raised the specific challenges faced in this context: "when you're challenging a government law that the, you know there's a huge principle of deference, judges are going to be very deferential on social issues, so that's always a big issue you've got to think of." She also noted that the remedy could also be limited: "you can get a declaration that something's unlawful, but it doesn't...if it's in legislation that's all you can get, and we did get that in the adoption case but it still leaves problem of is the government going to change the law or not."

As one participant who acts as a lawyer for the child in Family Court proceedings concluded: "It feels all just very hit and miss that we put in some policy and we think we've done the right thing, and we're ticking the box, it feels like we are just ticking a box for children's rights, as opposed to thinking it through."

How do we make it better?

Start by taking to people with direct experience

Many of the participants spoke about the importance of listening to those with direct experience, seeking to understand their views, looking at the issues from their perspective, and working together with them to develop solutions. As one participant explained:

We can change the law but if we don't actually ask the people who it affects it's kind of like well how do you know if that's impacting them? You can look at stats and they might say, you know, less people apprehended or whatever,

or less people facing other consequences but that doesn't necessarily mean that it's been a good outcome.

As another explained:

[U]nderstanding goes a long way. When you take time to listen to different groups and hear what their needs or their problems are, and understand the root of it, and you have empathy, then then you can start, only then can you start to work together with them, and value their opinions and their views, and form a solution to that.

This includes talking to children and young people about how they want to receive information and in some cases supporting them to design material themselves. As one participant commented: “if you want young people to really fully engage with the information that's out there, then it's really difficult for adults to do that in a way that rangatahi are going to be able to connect with”.

Another participant talked about the need to talk to children about how they wanted to participate in Family Court proceedings and to be create in developing new methods of participation and communication:

[W]e need to go to children and find out how they want to participate. I mean, they might, some kids might want to write a letter or, you know, draw a picture or you know, that, they might not want to participate through a third party that's not known to them. I just think we need to be more creative, develop new options to participate for those different groups taking into account the different needs and the different groups of people but it has to be informed by children's views.

Look at the big picture

Several participants spoke about the need to look wider than the justice system if we are to create change. For example, one participant commented: “I think the system can improve, but I don't, I'm not looking to the, the justice system to turn, to turn around youth behaviour in New Zealand. All that is all the stuff that here on in. But it's not either/or, it's both/and”. Another commented we need to think about “transforming all those systems, the education system, the Work and Income system, to make them meet the needs of people so people don't go off the rails in the first place.”

Some participants also spoke about the need for a change in culture across society as well as in particular systems or contexts. One participant talked about the need to provide more support to children and their families:

In terms of the bigger problem of just students or children who come from difficult family backgrounds I mean, that's just the, the I mean the big picture is we should be as a society building up those families and providing them more support and resources so that they are able to support their young people.

Another participant talked about the moving from an individualistic approach to a collective one: “the, the collective worldview that comes from indigenous cultures, including Te Ao Māori and um having a system... a justice system that understands.. that comes from that mindset, I think would massively transform what justice, access to justice looks like for everybody, including our rangatahi.”

Another participant spoke about the need to go back and start fresh instead of just adding new bits to an existing system:

[W]hat we do is we tend to, you know we've got our onion. We've got a problem so we put a new layer on the onion. Now the onion has got about 12 layers where nobody thought to actually peel the onion back and just take it back to a bit of a core and then sort of put the layers back on in a way that works better. That's the same for Oranga Tamariki, just adding more roles, and more professionals into the mix is just not going to improve anything for the young person.

Many participants also spoke about the value of taking a more therapeutic approach including changing the focus of school discipline from punishment to a more therapeutic approach:

[T]he approach to removing students from school should change completely to a therapeutic approach where it's about you know, what has happened here with the student? What, what's the problem? You know, why can't the school cope with the student? Is this is this not the right place for the student for whatever reason?

Another participant made a similar suggestion in relation to the treatment of sexual offenders:

I don't know why as a society we start from that idea, instead of starting the other way, and going, well, maybe 80%, or 60% of people will benefit from treatment. So let's start with treatment, and do the other thing if the treatment doesn't work, you know, why? Why not turn it on its head and start there.

Another aspect of culture change relates to how children and young people see themselves and their position in society:

[W]e empower young people...no, I hate the word empower, we support young people to be to be great advocates for each other. We support schools to enable greater student voice in determination and stuff. I think, kind of, it all comes down to agency for young people and seeing getting that experience of agency and realizing that they can do stuff.

Prevention & early intervention

Many participants talked about the need to intervene early in order to change the outcomes for children and young people in contact with the justice system:

[H]ow do we solve the problem with youth crime? Even the work that I do, it is still bottom of the cliff. It's not fence at the top. And so people say what is the fence at the top? I say well, you've got to go back to the beginning. What do you mean? Back to the beginning, back to conception, back to early childhood because, sadly, a lot of the young people that we're dealing with, the trajectory starts in the womb. Yeah. So, so, you know, there's a sense where the bigger picture says, really if you want to make a difference in life outcomes and reduction in young people getting involved in offending, there's a lot of work to do right back at the very beginning. And the fact that you know, then you get generational patterns that get repeated, you know, so, so that has to be, I guess, what I'm saying is, I think for the system to be better that needs to be a part of the picture somehow.

Participants also spoke about the importance of children and young people getting the right help early in the course of a particular problem or dispute. For example:

[T]he sooner we get in to assist young people before things get worse, the better. And sometimes that does require swift action through representation of a lawyer or somebody else there to assist them because if they're not, often I find that young people are, you know, once they go down that path, they're kind of like, well, what's the point anyway, I've already got a conviction or I've already got this or that and they kind of disengage.

Training is important but it isn't enough

Many of the participants talked about the lack of training for professionals in relation to how to work with children and young people involved in the justice system or related processes. For example, a lawyer participant explained:

I think they have things that are requirements, like, you know, the lawyer for the child stuff or stuff on like the changes when it comes to Oranga Tamariki or youth advocate type stuff but those are focused solely on the law. They're not, I haven't seen any that have come across my desk anyway, about working with young people and children. So yes, the law but not in terms of like, the skills that you need to work with children and young people generally.

Participants also commented on the lack of training for other professionals. For example:

[P]rincipals and the Board of Trustees, because at the moment they have very little guidance, they really are making it up as they go along and that's why I hesitate to criticize them too much, because it's very difficult job. I mean, they don't get a lot of training and they don't have a lot of guidance.

Most participants agreed that training would be useful. As one said: "I think a lot of lawyers might probably find it helpful, be helpful, for them to take such a course, because we're not taught to advise or talk to young people or to explain things to them in a way that they understand and that shows". Another commented that:

There's a lot of ignorance on Boards of Trustees, so ignorant about disability. So, when you've got Boards of Trustees making decisions along with the Principal it's really tricky. So I think training for Boards of Trustees on child issues would be very good, like, you know, I mean, you can do a lot with neurological disability to actually become inclusive in a way that helps all children.

Participants talked about a range of potential topics from child development or questioning children to how to work with particular groups of children and young people. These included:

- Child development and behaviour:

[E]veryone in the court system needs to be trained about child development because that sense of when we, when you don't know stuff around it, you know, we subconsciously make meaning of the behaviour of people, when we don't know the science of it, if you like, and that subconscious meaning making um... can send us in the wrong direction.

- Oral language competence:

[W]ouldn't be good if it was actually a part of your youth aid training, there was this block on communication, oral language challenges and difficulties? Because so many young people have them, those that are involved with the police.

- How to engage with people with intellectual disability:

[W]e did some training with police around how they interview people with intellectual disability and, you know, just having them really understand that all people learn, they just learn differently, you know, the issues around how people process information, breaking it down into chunks, providing extra time, all of those things that help people to be present and engaged so that was really valuable work.

- The impact of trauma and how to work in a trauma informed way:

Trauma training is just essential. I think we're on a growing recognition that most people who end up in trouble in any system in any way, there is often trauma that sits behind it, you know, those causing harm and those harmed, you know, with children and young people, those most likely to be abused are those who have already been abused, you know. So, you know, that sense that trauma sits behind so much we need everybody in those systems to be, well we need the systems to be trauma informed, and everybody to be, to know how to act safely, how to do their jobs safely, and how to read what's coming back.

- Recognising bias:

I think the problem of inherent internal bias and racism is a problem throughout the legal system, and definitely schools, and I'm gonna guess that boards hardly ever get training in recognizing a bias or trying to work against it.

- The impact of poverty:

Just training on poverty, and the implications of poverty. They haven't turned up for an interview because they can't afford the bus fare, or their child is sick today and there's no other childcare, just yeah, poverty training. What it really means on the ground, you know, it's not just, we can't pay the rent, but what does it mean in practical circumstances every day i.e. girls don't go to school because they've got, when they've got their periods and kids that don't go to school when it's pouring rain because they haven't got raincoats, just a whole lot of practical things like that, for lawyers to think through. I think that would be very, very helpful as a first.

And then issues around shame, like they may not tell you the truth about how poor they are, or that they don't have lunch ever at school. I know that's changing now with some schools, but it's very hard to for poor children in high decile schools. So, issues around shame to do with poverty and how that plays out in what people say and don't say and all that stuff.

Many participants were also very clear that training was not enough. For example, one explained that people also need to have mentoring and ongoing support to actually change their practice:

[T]he other thing is the, the training and action if you like so it's almost like coaching or mentoring or supervision so that people get a chance to work through implementation of that training. Because you know, when you're working with people, and you've got this thing in your head, and you now think it's this way, and so you say this, but you get this completely other reaction. You know, if you're left to your own devices to interpret why that person reacted that way, when you did this that you thought was the right thing. You know, the consequences of that could be anything you could go, well, they're just a nutcase, or you could go, oh no, what I did was completely wrong, I must have misheard and you shouldn't need to do that. Or to be frank probably if you'd only had two hours training, you go, well there you go bugger that training, I'm going to do it how I used to do it because I didn't get the right response that they said I'd get, you know.

So, so there needs to be those ways of training that are mentoring and ongoing so that person has somewhere to go and say, I did what I thought you told me to do and this is what happened so how do I make sense of that? Why did that happen? How could I have responded to them in a different way, you know, like, actually some kind of mentoring process that's ongoing.

Another participant suggested that it can be more effective to show someone what they needed to do rather than just telling them. He explained his approach as a communication assistant:

I'll say, when I come to assess this person watch or watch how I talk, and I'll deliberately frame questions I'll put, I'll do them complicated, then I'll simplify them and then say, so what was the difference? So that yeah, the front line is, is really the show but what as long as we don't then, oh you're the expert, you can, you do your magic. No, no, no, you can do this too. You can draw crappy little pictures on a poster note too and it'll really help. So and, so show, show them.

The importance of tailoring to the young person

Many of the participants spoke about the importance of tailoring to the child or young person and their context. For example, a Māori lawyer and legal educator described their preparation process before they went in to speak to a group of children and young people:

Thinking about the group, we need to think about obviously, if there's any access needs, if there is a language requirement in terms of whether it's in te reo Māori, or in another language, whether we have the skills to deliver that, whether we need to get other people on board. And then we also think quite carefully about the group and their age and maturity, what information they might... Some schools, you know, for example if we're doing sex and consent, we need to think about what the school context is, and what whānau are okay with as well, I guess, because we're going in, and we're invited in, so we need to respect the space that we're in. And then, what else, we need to... hopefully this is relevant for you... we need to think about the literacy levels, specifically so a lot of the tamariki and rangatahi when we go into care protection or youth justice well everywhere, but particularly those places, we don't want to have too many words.

You know, we don't stand there and go the Crimes Act says this. It's very much catered to the group, what their needs are, we'll also ask as well before

we go in has anything happened around this type of area. Like if we're doing cyber bullying, we've been into different schools, for example, where they'll say actually someone's recently taken their life and so we have to tread very carefully if they still want us to approach that topic in how we do that.

A communication assistant who worked with young people involved in the justice system described a similar process:

[F]rom my side as a CA, what I'm looking for is what is the mechanism that works best? So, I'm looking at things like, can they read? And I don't know, can they read just single words? If so, at what sort of level? Okay, could I maybe just make some brief notes? Or is that too much of a challenge? Okay, let's draw, let's draw. 'So time is always a tricky thing to visualize in your head so let's draw a timeline. Here we are today. Okay, how many sleeps is it till, okay, now then you got to go to court and what has to happen in that time', draw little pictures. So that will be something I will have picked up from meeting with, working with, assessing the young person.

As did a lawyer for the child:

I have to think about that child before I meet them and then when you're meeting them think, you know, take into account their level of understanding of just concepts like that and then you can adjust it accordingly. So for that child, I said to him, I'm going to have a meeting with mum and dad to see if we can make decisions together because sometimes parents just need someone to help them. And hopefully, we can get some decisions about where you're going to live on what days, and then we'll come back, and we'll tell you about, what decisions we made.

And he said to me, he was really into gaming, like wargames. And he said to me 'oh, so it's kind of like when you're in a war, and someone has to get a white flag and call a truce. Is that what you're doing at your meeting?' And I went, yeah, pretty much, you know, so you just have to adapt it to, to the child.

One participant described the overall question as: “[m]anaakitanga...so that idea of what is it that we need to do to manaaki this young person in this situation?”.

This could operate in different ways for different groups of children and young people. For example, one participant suggested by Māori, for Māori services as a way forward for tamariki and rangatahi Māori in addition to mainstream services:

[I]t may be a game of two halves, it may be that we need to have a sort of a proper YouthLaw advocacy organization and a Māori youth advocacy organization as part of probably a wider Māori law and advocacy organisation.

Other participants described how it was necessary for services to be visibly and obviously welcoming and accessible to rainbow and takatāpui children and young people:

So there needs to be proactive, signalling that rainbow communities are welcome, the diversity of rainbow communities and welcome so all parts of that rainbow including particularly the ace community, the asexual community, which I think increasingly is highlighting the issues for them, as well as, of course, intersex and variations in sex characteristics kind of young people. So the, kind of, recognition that, you know, the umbrella extends beyond LGB, to T and then I and A and plus, and then the Pacific, indigenous

identities under the, I'm not sure if you've seen MVPFAFF kind of, written, their little acronym, kind of those, those aspects. So they'll face barriers if they don't see services not being cis heteronormative. And they will be read as being cis heteronormative just by dint of the fact that they grew up in a cis heteronormative society. So that that's an, I think, an additional barrier.

Participants also explained that it was not enough to have a neutral front and expect to be seen as inclusive because “if the places that they're expected to go to aren't explicitly rainbow friendly, the presumption will be that they will not be rainbow friendly.” One participant described a range of simple steps that organisations could take including being clear when toilets are genderless, having visible signs like pride flags and trans flags in the office, having space for pronouns in forms, having volunteers with their pronouns on their badges, being explicit that trans women are welcome at women's sessions, going to community events, and having staff who are community members.

Summary of Findings

My analysis of the key informant interviews identified seven key themes. First, key informant interview participants explained that children and young people's legal or justice needs do not arise in isolation –legal and non-legal needs are often closely inter-related with non-legal problems leading to legal problems and vice versa. The line between a legal problem and a non-legal problem can also be blurred. However, these interrelationships are not reflected in the way services and systems operate with siloed ways of working continuing to dominate. Participants considered that this needs to change and services should instead be working holistically including being aware of what else is out there, working together to design solutions for change, and offering a 'one-stop shop' where children and young people are able to get support for their multiple and interrelated needs.

Second, participants talked about the importance of relationships and the human dimension. This included the recognition that children and young people are most likely to seek information or help from people they already have a relationship with and who they trust. This means that a child or young person's ability to get the help or support they need can depend on who is in their social world and the capacity of those people to assist. Participants also talked about the need for professionals to work in relationship with children and young people, including developing rapport and building a connection with a child or young person rather than just expecting them to be trusting from the outset. Participants explained that it was also important to be the right person for the job including having the ability to form connections with children and young people, whether that is through a shared identity or by virtue of their personality and skills. Some also recognised that not every professional will be the right person to do this and if so, youth workers could act as a bridge between professionals and young people.

Third, it is not the same for everyone, children and young people's experiences of justice problems and barriers to access differs from adults. Different groups of children and young people also have different needs. Participants explained various ways that children and young people's needs and experiences differ from adults with children and young people's needs also changing as they mature. Participants also described the differing justice needs and barriers to access experienced by different groups of children and young people. These differences meant that services and responses should also differ accordingly.

The fourth theme I identified was that there is a lack of consistency between different professionals and services as well across different systems and contexts. Participants also identified a lack of consistency between what the law or policy may say, and what actually happens in practice. A particularly concerning aspect of the lack of consistency was variations

in the quality of services provided by professionals, including lawyers, although as one participant noted, this is a reality for many helping professions.

The next theme was that a lot of things can make it harder for children and young people to access justice beginning with challenges identifying that a problem is a legal one. It also includes difficulties understanding legal information and what is happening in justice system processes. A lack of knowledge about the law and legal systems was also seen as a barrier although participants were also clear that just having knowledge about the law is not enough as children and young people often lack the confidence or ability to act. Participants also described how concerns about what might happen could act as a barrier including where those concerns stem from previous negative experiences, either their own or those of others they know. Some participants also talked about how it is an adults' world where children and young people simply aren't seen as having rights and where systems are designed for the needs of adults, not those of children and young people. A lack of information and support from both families and professionals could also be a significant barrier for some children and young people.

The lack of effective pathways to seek redress was also seen as a key challenge by many participants with concerns being raised about the lack of any real way to access justice in the education system. Concerns were also raised about the Human Rights Review Tribunal delays and the ineffectiveness of complaints systems including the Oranga Tamariki complaints system, the Office of the Ombudsman, and the system for making complaints about lawyers for the child.

Finally, participants talked about how the system could be improved starting with involving those with lived experience in any change processes. Participants also raised the need to look at the big picture and consider the root causes of problems when seeking to develop solutions. This included the need for cultural change to a society and systems that are focussed on support, restoration, and taking a therapeutic approach. Participants also identified the importance of training on a wide range of topics including child development and behaviour, oral language competence, how to work with intellectually disabled people, the impact of trauma and how to work in a trauma informed way, recognising bias, and the impact of poverty. However, participants were also very careful to emphasise that just attending a training session was not enough to improve practice on its own with ongoing mentoring and support needed to embed changes to practice. Participants also emphasised the importance of tailoring to the child or young person and their situation or context. The best solution for different groups of children and young people and individual children and young people within the same group could also differ.

Interview & survey of children and young people

Summary of research method

My original intention had been to carry out interviews with children and young people in order to understand their views and experiences of access to justice. However, as explained in further detail in **Appendix Two: Methodology**, when I was in the process of recruiting participants the country was placed into lockdown. This meant that I was unable to travel to conduct interviews as originally planned. Many of the organisations through which I had hoped to recruit participants also became reluctant to be involved due to the need to prioritise the Covid response as well as concerns regarding exploring potentially difficult experiences when young people were isolated. A number of young people who had initially indicated that they were interested in participating also withdrew, including several who had already signed consent forms and for whom interviews had been scheduled.

As a result, and due to the uncertainty in relation to when we would come out of lockdown, I decided to change my method of engaging with children and young people to an online survey. The survey was developed as a self-administered online questionnaire using Survey Monkey software. The questionnaire began with a series of demographic questions and a question in relation to their experience of having a legal problem. Fourteen questions were closed-ended and required participants to select from a series of predefined responses. Eleven of these also allowed young people to make additional comments, explain their answers, or add another option in response to a prompt e.g. "someone else". These questions covered topics such as getting information about rights or the law generally, getting help or support when you have a legal problem, what you would do if you were unhappy with how you were treated, being in a situation where a decision is made about you, the experiences of different groups of children and young people, and whether the justice system is fair for all children and young people.

There were also four open questions from which qualitative data was obtained. Open questions were generally at the end of each topic and gave participants the opportunity to expand further on their earlier answers and to say what they thought should change in the future. There was also a final question asking participants whether they had anything else they wanted to say.

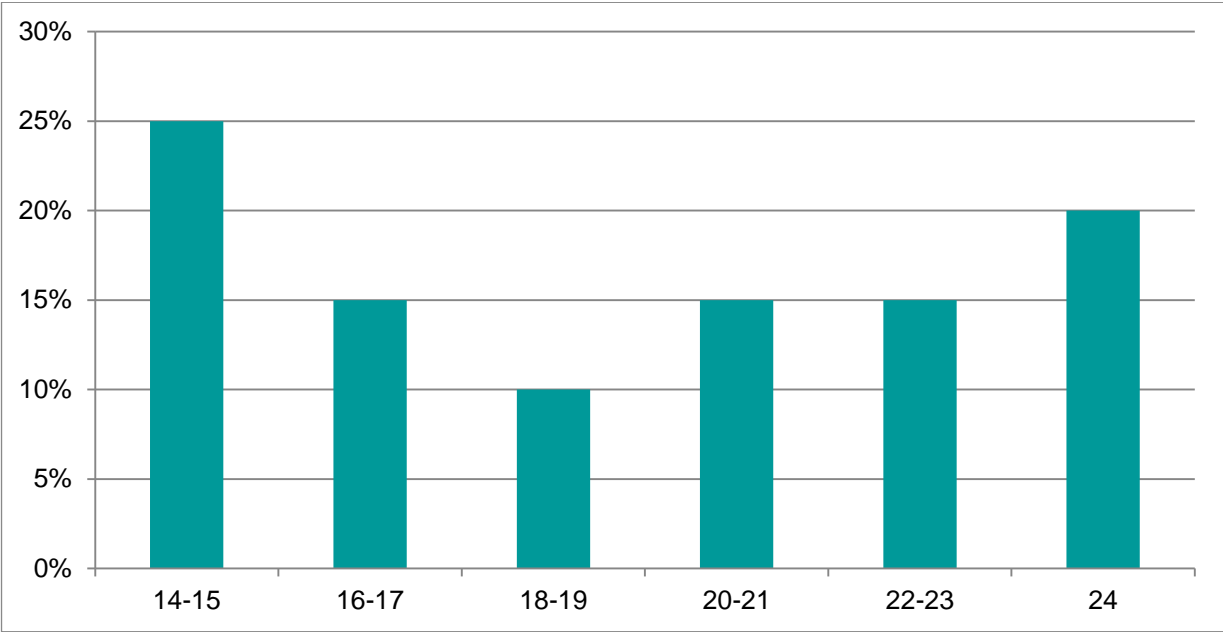
Participants were recruited through organisations rather than directly to both increase the reach of the survey and so that recruitment was through organisations that already helped young people and may be able to do so in the future if the survey brought up anything for participants. Organisations were also asked to explain how to contact them for support when they shared the survey to facilitate the provision of support if needed. More detailed information in relation to the online survey including the survey design, recruitment, data preparation and analysis is set out in **Appendix Two: Methodology**.

Participant Characteristics

Survey participants were asked a series of demographic questions. The responses to these demographic questions are set out below.

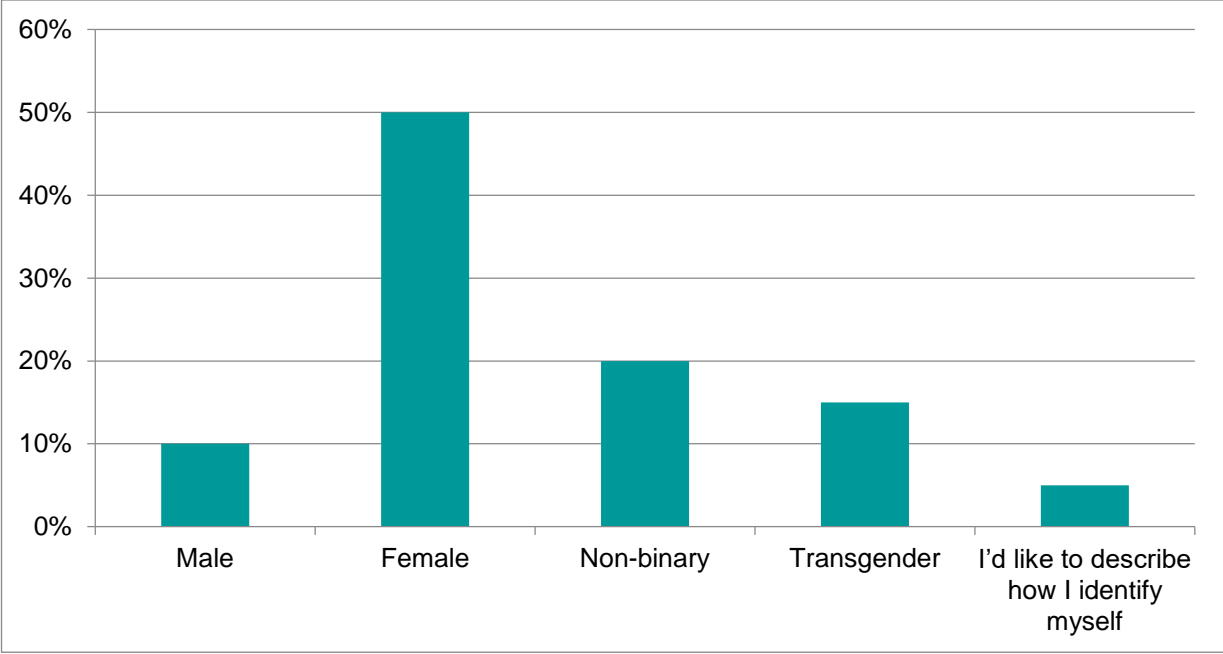
The first question related to the age of participants. The results are depicted in **Figure 1**. Note that ages are depicted in two year brackets other than for age 24 as there was an uneven number of years in the participant age range.

Figure 1 Age of participants



The second question related to gender. The results are depicted in **Figure 2**. The participant who selected “I’d like to describe how I identify myself” filled out the text box “Takataapui”.²⁰

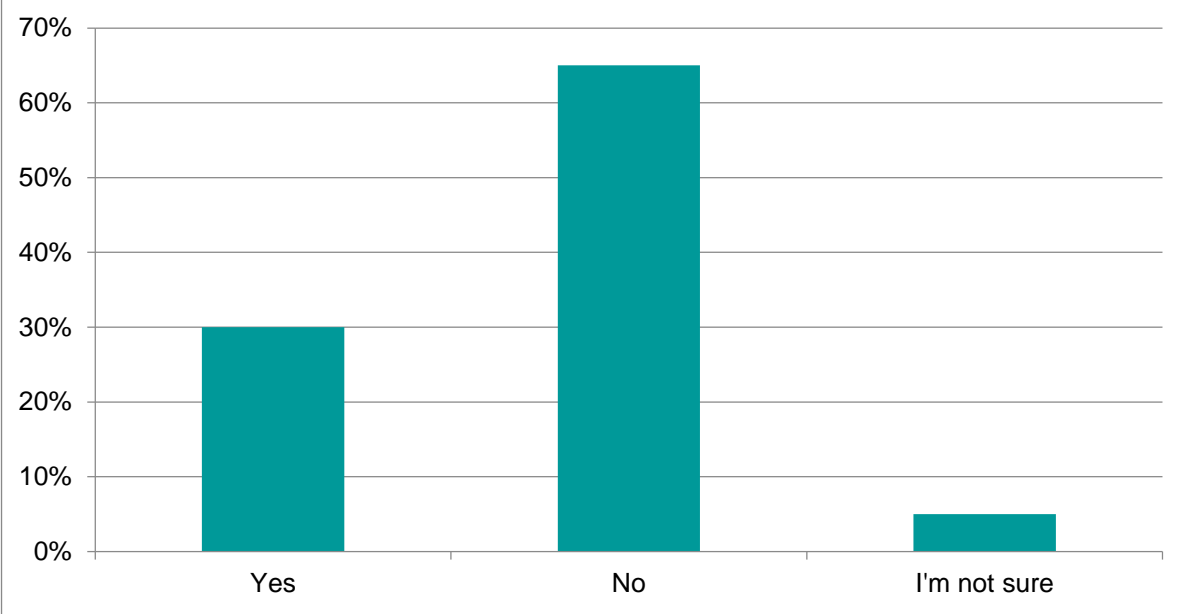
Figure 2 Gender of participants



²⁰ Takatāpui is a traditional Māori term meaning ‘intimate companion of the same sex.’ It has been reclaimed to embrace all Māori who identify with diverse genders, sexualities and sex characteristics: Rainbow Youth Inc & Tīwhanawhana Trust. (2017). *Takatāpui: a resource hub*. <https://takatapui.nz/#home>

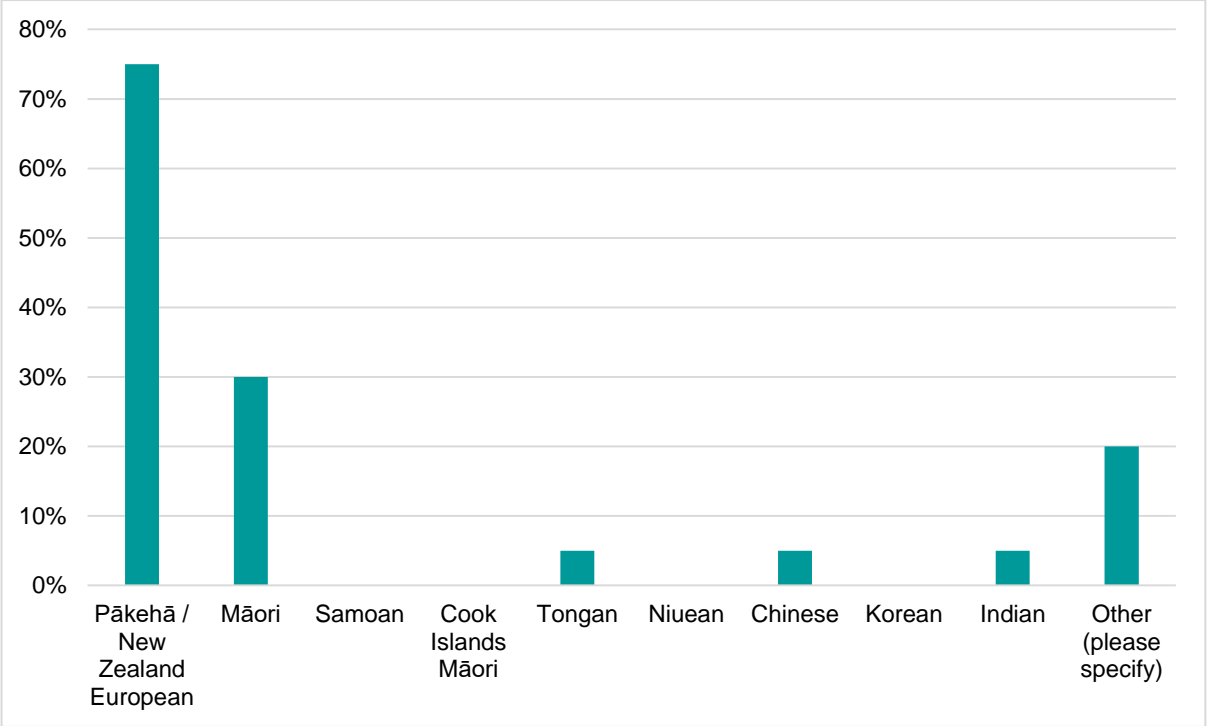
Participants were then asked if they considered themselves to be disabled or to have special needs. The results are depicted in **Figure 3**. Respondents were able to fill out a text box to expand on their answer. The conditions or impairments mentioned in the comments included autism, ADHD, mental health conditions, anxiety, learning disabilities, deaf, visual impairment, and gender dysphoria.

Figure 3 Participants who identified as having a disability or special needs



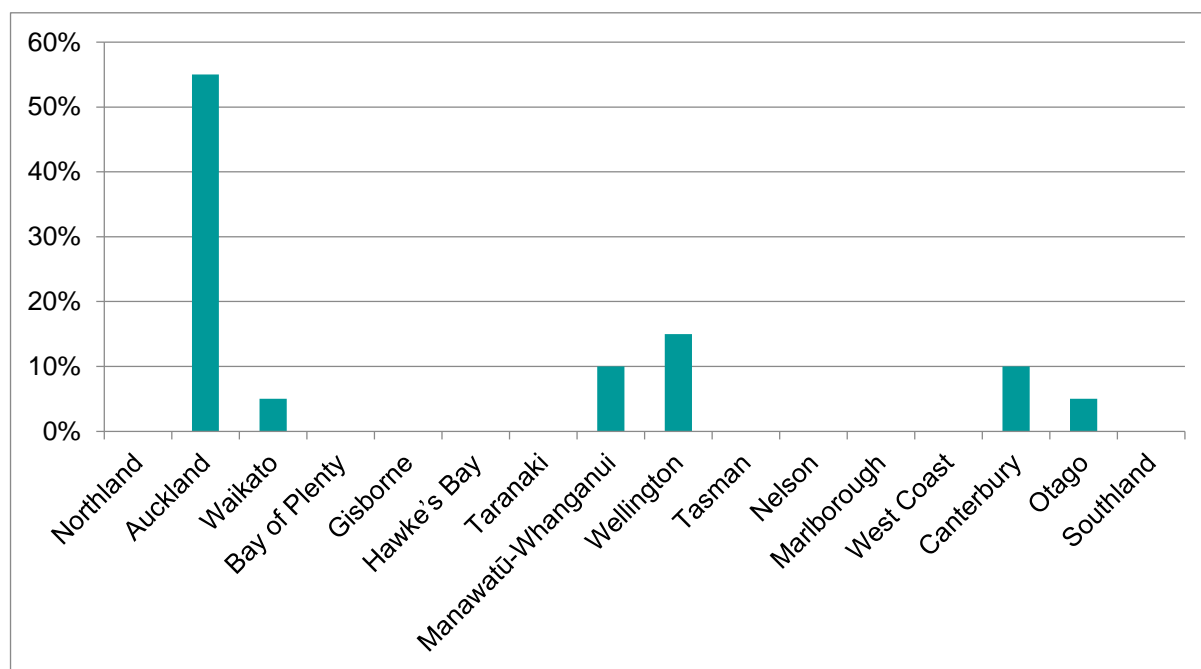
Participants were also asked which ethnic groups they belonged to. Those who selected “[o]ther (please specify)” were able fill out a text box to describe their ethnicity. Responses were Pakistani American, British, European and Fijian. The results are depicted in **Figure 4**.

Figure 4 Participants’ ethnicity



Participants were asked which area they lived in. The results are depicted in **Figure 5**.

Figure 5 Participants' area of residence



Participants were also asked if they had ever had a legal problem. 13 participants answered this question and eight skipped it. The results are depicted in **Table 1**. The two participants who selected “Please explain or add comments” described experiencing tenancy issues, domestic violence, and harassment.

Table 1 Whether participants had experienced a legal problem

Answer Choices	Responses	
Changing your name	23%	3
Problems with your education (e.g. being excluded from school)	15%	2
Problems with your job (e.g. not being paid properly or being fired)	23%	3
Your health / medical treatment (e.g. if you can consent to medical treatment)	31%	4
Who you live with if your parents split up	31%	4
How often you see your parents and/or siblings	23%	3
Punishment for breaking rules – in school	23%	3
Punishment for breaking rules – in custody	8%	1
Coming into Oranga Tamariki care	15%	2
Problems with how you are treated in care (e.g. not having contact with your family)	15%	2

How long you have to be in a care & protection or youth justice residence	0%	0
What should happen to someone who committed a crime against you	46%	6
Whether you committed a crime / what should happen to you afterwards	15%	2
Whether police could stop and search you on the street	8%	1
Whether you can live or stay in New Zealand	0%	0
Something else	15%	2
Please explain or add comments	15%	2
	Answered	13
	Skipped	8

Descriptive Statistical Analysis & Thematic Analysis Findings

I now present my findings from descriptive statistical analysis of the quantitative data followed by my findings from thematic analysis of the qualitative data in relation to each topic. My presentation of findings is structured by topic instead of by the type of data obtained to avoid duplication.

Quantitative data was obtained from questions in relation to getting information about your rights, getting help or support, whether participants would tell someone if they were unhappy with how they were being treated, if a decision had been made about them by others and if so, what happened, whether it was harder for some groups to get justice, and the overall fairness of the justice system for children and young people.

Qualitative data was also obtained from questions in relation to each of the topics mentioned above and analysed using thematic analysis. Anonymised quotes are used to explain each theme without correcting any spelling or grammatical errors in order to maintain the integrity of the voice, except to change capitalisation where the quotation appears in a sentence.

Access to information about your rights or the law

Participants were asked who they would talk to if they wanted to get information about their rights or the law generally. Participants could select multiple options from the list. Five respondents skipped this question. The most popular answers by far were going to parents and friends. The results are depicted in **Figure 6**. Participants who selected “Someone else” were able to fill in a text box describing who else they would speak to. Responses included Citizen’s Advice Bureaux and Community Law Centres. Three participants also described feeling scared or uncomfortable talking about the situation.

Participants were asked where else they would go to get information about their rights or the law. The results are depicted in **Figure 7**. The most popular place participants would go was websites with almost 90% of participants selecting this option. The next most popular was the Citizens Advice Bureaux followed by youth organisations, community law centres or YouthLaw Aotearoa, then social media. Participants who selected “Somewhere else” were able to fill in a text box describing who else they would speak to. Responses included pamphlets and that they were too young to access these sources of information.

Figure 6 Who participants would talk to if they wanted information about their rights or the law generally.

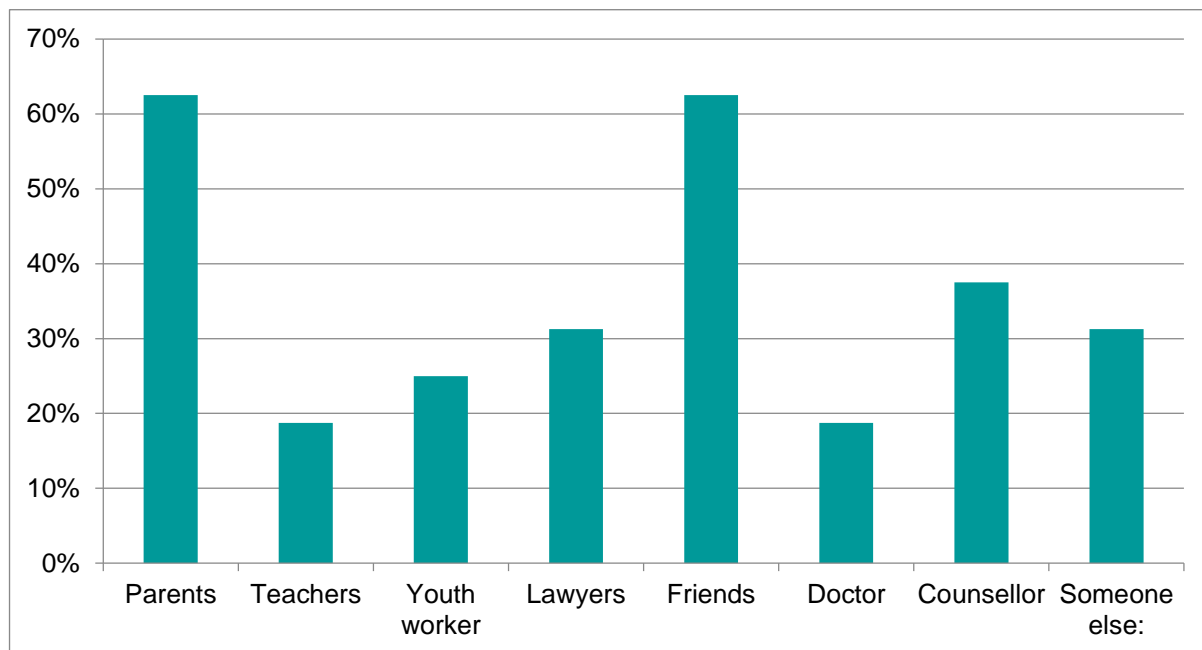
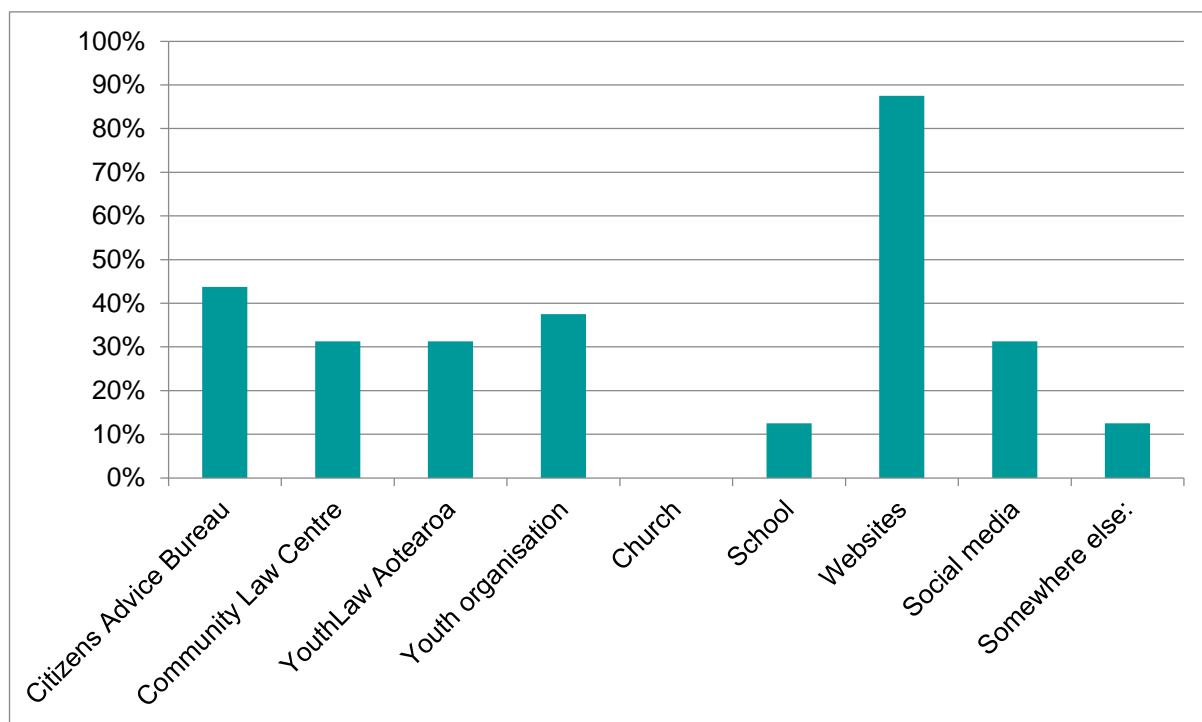


Figure 7 Where participants would go if they wanted information about their rights or the law generally.



Survey respondents were then asked an open question “[w]hat kind of information would you like to get about your rights or the law generally?”. I identified four themes in analysis of the responses: give us it all, specific information, it needs to be easy, just knowing isn’t enough.

Give us it all

Some young people simply responded that they wanted “[a]ll of it” or [a]ny of it”. Others explained that they wanted to know information about their rights and entitlements as a young person.

Specific information

Many young people wanted information in relation to the issues that specifically affected them or that they anticipated needing in the future. For example, one young person wanted information on “rights regarding working as a disabled and LGBT+ person” and another raised “[i]nformation regarding employment once I leave school”.

Others sought information that appeared to relate to a specific situation they were in or had been in in the past. For example, one commented: “[t]he rights I should have after being sexually assaulted as a minor” and another sought information about “[w]hat my rights are if someone hurts me if they are suppose to be the one protecting me like family or careers” *[sic]*.

A number of young people also wanted to know what they could do if their rights were breached and/or they wanted to take action as opposed to simply knowing what their rights were. For example, one asked: “what avenues of recourse I have when those rights are violated” and another asked “how to get a lawyer”. Another participant also wanted to know what they could do if no one believed them or cared, this comment related to the request for information about rights when someone had hurt them.

It needs to be easy

A number of young people commented on how they wanted to receive information with ease and clarity being key. For example, one suggested “[s]tep by step instructions for various legal procedures (in plain English)” and another asked for “[c]learly outlined criteria and information”.

Participants made specific suggestions as to how information should be provided such as “little info cards like the ones in pharmacies for conditions you can treat at home” and “[h]aving a directory to help with different issues in one place”. Another participant said that information needs to be actively given to young people rather than waiting for them to make the approach or seek information.

Another participant raised concerns about information being provided without the ability to interact with it commenting that “static resources like videos and websites often aren't specific enough to be helpful” and instead wanting “anything that involves being able to talk to a real person who has the right knowledge”.

Just knowing isn't enough

One participant also explained that just having the information wasn't necessarily enough to enable them to take action: “[w]as helpful telling me what I could do but still too scared as one are my full time carers and the other thing I have diganosed ptsd from so can't talk about it with anyone.” *[sic]*

Getting help and representation

Participants were asked if they got any help or support from someone outside their family or friends if they had a legal problem. 12 participants answered this question and nine skipped it. Of those who answered the question, 6 or 50% answered yes, 5 or 42% answered no, and one answered that they were not sure.

Participants were then asked who helped them. Again, 12 participants answered this question and nine skipped it. Results are depicted in **Table 2**. Those who answered “Someone else” were able to fill out a text box. Responses included the Children’s Commissioner, foster parents, police, Victim Support, and “my boss”. Two participants answered no one or that there was nothing when they were younger.

Table 2 Identity of helper

Answer Choices	Responses	
Lawyer	22%	2
Social worker	33%	3
Youth worker	11%	1
Teacher	22%	2
Advocate	44%	4
Communication assistant	0%	0
Someone else	44%	4
	Answered	9
	Skipped	12

Participants were then asked if they were helpful. 10 participants answered this question and eleven skipped it. Results are depicted in **Table 3**. Those who selected “Please explain or add comments” were able to fill out a text box. Responses included giving sound advice that resulted in an undesirable outcome e.g. that taking action probably would not be successful and that being told what to do was helpful but the participant was still too scared and was suffering from PTSD. These responses will also be considered in the thematic analysis below.

Table 3 Whether assistance was helpful

Answer Choices	Responses	
Yes	50%	5
No	20%	2
I’m not sure	10%	1
Please explain or add comments	20%	2
	Answered	10
	Skipped	11

Survey respondents were then asked an open question, “[w]hat could have been helpful for you?”. Analysis of the responses to this question and the comments in the text boxes for questions 2 and 3 identified three themes: being told what was happening, the importance of being listened to, believed and understood, and support for non-legal needs.

Being told what was happening

Some participants commented on what had not been helpful for them and/or where they felt those who were supposed to help let them down. One young person explained that “police were also really delayed in updating me on the case and where the male was which caused me to be more scared so getting access to that information early as a 17 year old”. Another participant commented that they would have liked to have been told what to expect and another said they wanted “a better understanding of why that was the case in their opinion, and what alternative options I had aside from ‘giving up’”.

The importance of being listened to, believed and understood

Respondents also spoke about wanting to be listened to, believed and understood. For example, a young person described how a lot of their offending behaviour was in an effort to be heard:

A lot of it was just stuff that, like, I guess I wasn't listened to at the time and as a response, I would try be heard by, through, you know, offending... I think my first stay was about six, seven months. No sentence, just remand. And then I got out and things didn't work out exactly, they weren't listening to what I wanted, and ended up back again, through offending. Because, you know, they weren't listening, Oranga Tamariki wasn't listening, because I was in care at the time. So yeah, I'd just reoffend, and then, you know, I'd rather be at residence than be somewhere I don't want to be, residence was closer to my family.

Another young person said it would have been helpful to have someone who believed them:

Someone who would believe me. Not tell me that I was attention seeking or ungrateful because I was being cared for even though I can't do it myself. And then branding me as attention seeking so no one ever believes me when it happened again.

Another said that someone understanding their fear of the system would have been helpful. A third suggested that someone online who had shared similar experiences could have been helpful, likely because someone who had been through the same thing would be able to better understand their experiences.

Support for non-legal needs

Participants also commented on how having timely access to non-legal forms of support would have been helpful. For example, one participant outlined how they “experienced PTSD straight after the events and to get myself to a counsellor took 7 weeks which has impacted on me pretty majorly so not accessible counsellor would be helpful.”

Getting justice

Participants were asked if they would tell someone if they were unhappy with how they were being treated at home, in school or in some other place. 14 participants answered this question and seven skipped it. Results are depicted in **Table 4**.

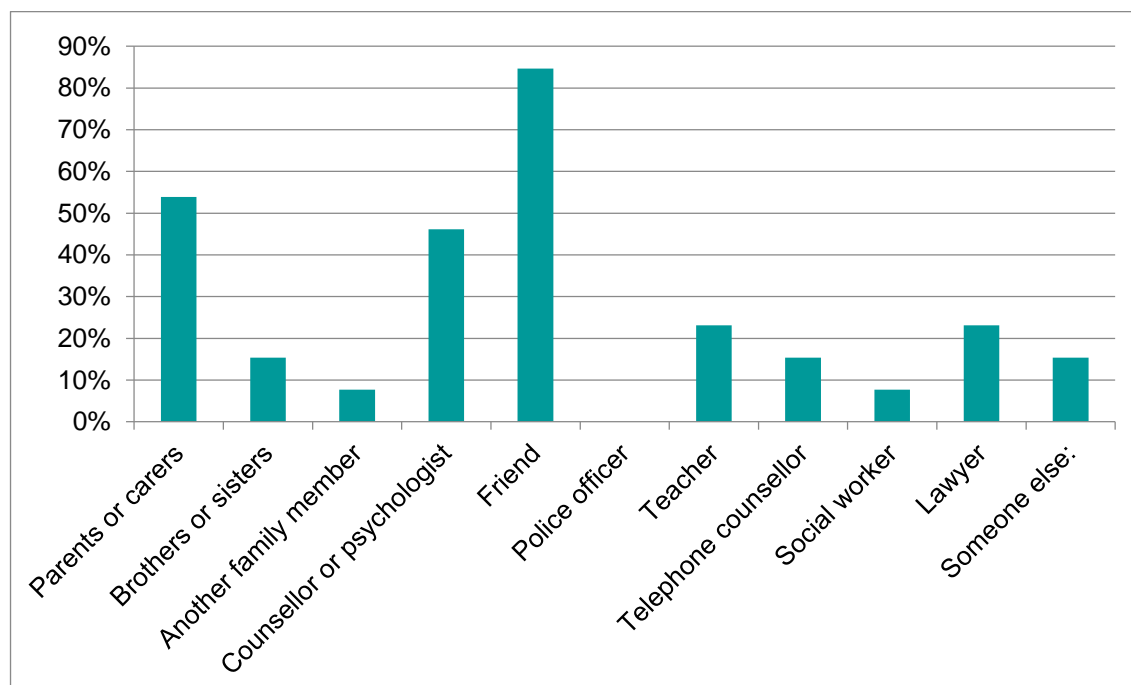
Table 4 Would you tell someone?

Answer Choices	Responses	
Yes	43%	6
No	7%	1
I'm not sure	50%	7
	Answered	14
	Skipped	7

Participants who answered yes were asked who they would tell. Friends was the most popular response with over 80% percent choosing this option. This was followed by parents on just over 50% then a counsellor or psychologist on just over 40%. The results are depicted in **Figure 8**.

Participants who selected “Someone else” were able to fill in a text box describing who else they would speak to. Responses included explaining that as an adult they would feel comfortable telling someone but as a child they would not do so. The other participant who selected “Someone else” responded a close friend they could trust and anyone who is bound by confidentiality and works in their interest (my lawyer / social worker / doctor / counsellor, but not the police, journalists, teachers or lecturers). They further explained that whether they talked to their family or other friends would depend on the situation.

Figure 8 Who would you tell?



Participants were then asked if they would not tell anyone, why not. 11 participants answered this question and ten skipped it. Results are depicted in **Table 5**. The three most common reasons were that they had asked for help before and it didn't turn out well (64%), no one would listen to me (64%), and it wouldn't make a difference (73%).

Participants were also able to give another reason in a comment box. The reasons given included that they would tell a trusted person depending on the situation, but if it was something related to sexual assault they probably wouldn't do so due to how the justice system treats victims. Another participant described previously telling someone and that person telling the perpetrator what she had said which made it worse. They explained that they then retracted their allegation and people accused them of being a liar so they are now too scared to tell anyone else. Another participant explained that they think they can deal with the problem themselves but can't really. These answers will also be included in the thematic analysis below.

Table 5 Children and young people's reasons for non-disclosure

Answer Choices	Responses	
I can deal with the problem myself	27%	3
I have asked for help before and it didn't turn out well	64%	7
I might be punished	27%	3
I would be too scared of what might happen to my family	45%	5
People would say I was a narc	27%	3
No one would believe me	55%	6
No one would listen to me	64%	7
It wouldn't make any difference	73%	8
I'd be embarrassed if other people found out	27%	3
There isn't anyone I can really talk to	36%	4
They would tell others without my permission	45%	5
Another reason (please say):	36%	4
	Answered	11
	Skipped	10

Survey respondents were then asked an open question “[w]ould anything make it more likely that you would tell someone?”. Analysis of responses to this question and the comments in the text boxes for questions 2 and 3 identified three themes: the importance of trust and confidentiality, bad experiences are a barrier, and lack of confidence in the justice system.

Importance of trust and confidentiality

When asked who they would tell if something happened to them, several participants responded they would tell someone they trust although most suggested that whether they would tell anyone would still depend on the situation. For example, one respondent said: “[d]epending on the situation, I would tell a trusted person.”

A few participants also mentioned the importance of confidentiality or knowing that the person they told would be working in their interest. For example, one said:

[A]nyone who is bound by confidentiality and works in my interest (my lawyer / social worker / doctor / counsellor, but not the police, journalists, teachers or lecturers).

Knowing that what they said would not be kept confidential (for example where mandatory reporting laws apply) could also be a barrier. One participant stated:

People not telling the abuser what I said. I'm over 18 so no one can legally tell anyone about it now, I was too scared to tell as I knew they had to tell legally what I said even if I said I was safe enough and that it would make it worse.

Another young person described how what his social worker had done meant that did not trust her: "I just hated her, to be honest, sort of broke that relationship between me and her. Trust is a big thing, if you're in care too."

Bad experiences are a barrier

A number of respondents discussed how previous negative experiences could operate as a barrier to disclosing harm and seeking help. For example, one explained what had happened when they had reported abuse and how this experience had both negatively affected them and meant that they were now scared to tell anyone else what happened:

They went and told the person what I said and she got mad and drunk and scary. I told them no, nothing happened and now everyone thinks I'm a liar and now I'm too scared to tell anyone even my new psychologist who said she would never tell which has happened over and over again.

Being aware of the negative experiences of others could also be a barrier. For example, one respondent explained that "if it was something related to sexual assault, for example, I probably wouldn't tell anyone because the justice system doesn't support victims."

Another young person described how previous negative experiences affected how he saw the Police and Oranga Tamariki and his willingness to engage with them:

I think that in amongst it I had a lot of issues, especially with police. Like it's just, just how they see you. And the image that's already been created, sort of like OT, Oranga Tamariki. You hear the name and like when I was younger, I was like, you know, I just had hate for them and the police, any type of authority.

Lack of confidence in the justice system

The comments made by a number of respondents both explicitly and implicitly demonstrated a lack of confidence in the justice system and the potential outcomes that could be achieved through it. For example, one respondent explicitly stated: "I have 0 trust in police or the legal system for anything other than civil procedures". When asked if anything would make it more likely that they would tell someone another respondent commented "if victims, especially women and children, were listened to and respected more in the justice system". Another respondent said "if there was a strong commitment to....working with me to find a solution that actually helps my situation." [sic]

Decisions made about children and young people

Participants were asked if they had ever been in a situation where someone else made a decision about them and if so, what that decision was about. Ten participants answered this

question and 11 skipped it. The most common responses related to education (including being excluded from school) and what should happen when someone has committed a crime against them followed by health / medical treatment and whether their rights had been breached. Results are depicted in **Table 6**. Participants who answered “Something else” were able to give their answer in a comment box. The participant who selected this answered “My gender”.

Table 6 Decisions made by others about children and young people

Answer Choices	Responses	
My education (including being excluded from school)	60%	6
My job	20%	2
My health / medical treatment	50%	5
My parents splitting up	30%	3
Punishment for breaking rules – in school	20%	2
Punishment for breaking rules – in care or residence	10%	1
What should happen when someone has hurt me in school (e.g. bullying)	30%	3
What should happen to someone who committed a crime against me (including child abuse)	60%	6
Whether I'd committed a crime / what sentence I should get	10%	1
Whether my rights had been ignored	50%	5
Who I live with	30%	3
How often I see my father/mother	30%	3
Adoption	0%	0
Changing my name	0%	0
Coming into care	20%	2
My treatment in care (e.g. contact with my family)	20%	2
How long I have to be in a residence	0%	0
Something else (please say)	10%	1
	Answered	10
	Skipped	11

Participants were asked what their experience was like when someone made a decision about them. Eleven participants answered this question and then skipped it. On the positive side, 64% of participants responded that they were asked what they thought about the decision and that they understood what was going on. However, the same percentage answered no to whether there was someone there to support them, the setting felt comfortable and safe, and whether they were treated fairly. Of most concern, 73% answered no to whether their views were taken seriously. Results are depicted in **Table 7**.

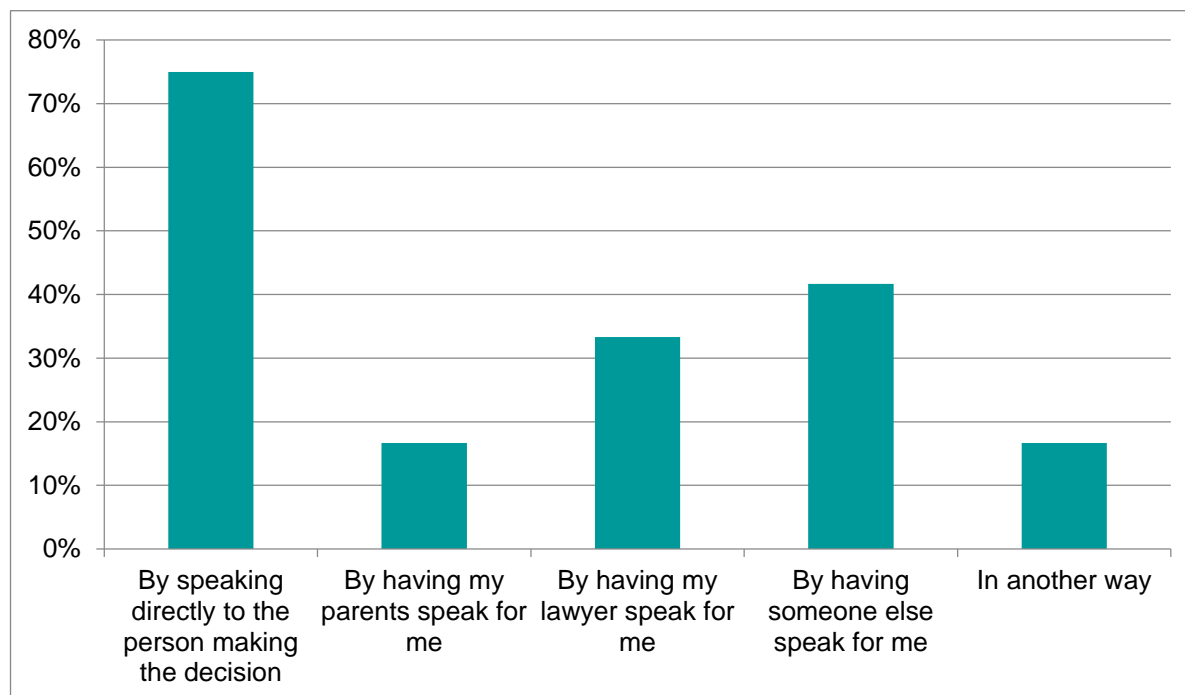
Participants were also able to add comments in a comment box. Three participants did so. Their responses included commenting that they had some support but it was never adequate, that they had no choice in what was happening nor were they told anything, and that there were too many adults making decisions and pretending to have young people’s best interests at heart but really just want to make their jobs easier. These answers will also be included in the thematic analysis below.

Table 7 Children and young people’s experience when a decision was made about them

	Yes		No		Don’t know		Can’t remember		Total
	%	n	%	n	%	n	%	n	
I was there when the decision was made	45%	5	55%	6	0%	0	0%	0	11
Someone explained what was going to happen beforehand	36%	4	45%	5	0%	0	18%	2	11
Someone was there to support me and make sure I knew what was going on	27%	3	64%	7	0%	0	9%	1	11
I understood what was happening	36%	4	45%	5	18%	2	0%	0	11
I was asked what I thought about the decision	64%	7	36%	4	0%	0	0%	0	11
My views were taken seriously	9%	1	73%	8	18%	2	0%	0	11
The setting (building, office, etc) felt comfortable and safe	18%	2	64%	7	9%	1	9%	1	11
I understood the decision that was made about me	64%	7	27%	3	0%	0	9%	1	11
I understood why the decision was made	45%	5	45%	5	0%	0	9%	1	11
I felt like I was treated fairly	10%	1	70%	7	10%	1	10%	1	10
I had the chance to challenge the decision afterwards	9%	1	82%	9	0%	0	9%	1	11
Any other comments									3
Answered									11
Skipped									10

Participants were asked how they would like to be heard when decisions made about them by others in the future. Twelve participants answered this question and nine skipped it. Results are depicted in **Figure 9**. The most popular answer was by speaking directly to the person making the decision however some participants who selected this answer also selected other methods. Participants who answered “In another way” were also able to add comments in a comment box. The comments included through a collaborative / restorative process, by looking back further with trauma understanding, really listening to what they say, and taking parents or other adults out of the room.

Figure 9 How children and young people would like to be heard



Survey respondents were then asked an open question: “[i]f you could go back in time, would you change anything about how the decision was made, and/or the decision itself? Please explain below.” Analysis of responses to this question and the comments in the text boxes for questions 1, 2 and 4 identified three themes: lack of understanding and support, lack of focus on children and their interests, and ‘I wouldn’t have told anyone’.

Lack of understanding and support

Respondents were asked about their experiences when a decision was made about them and what they would change about that experience. Looking back, one respondent explained:

Most of the time I had some support, but in hindsight it was never adequate. Eg I knew the general gist of what was happening, but I remember feeling very scared and confused. The social workers asked for my opinion but it was only taken into consideration much later.

The importance of understanding and support was also raised in response to the question about what they would change. One respondent simply said: “I would get told what was happening”. Another participant emphasised the importance of really listening to what young people have to say and looking past what may be on the surface: “[t]rauma understanding- look back further. LISTEN to what I asked.” To put this another way, the need for understanding goes both ways.

Children and young people need to understand what is going on and those in the system need to make sure that they understand children and young people, what has happened to them, their needs, and their wishes.

Lack of focus on child and their interests

Respondents commented on a lack of focus on them when decisions were made including what they wanted and what would be in their best interests. As one respondent said: "I had no choice in anything happening." Another commented that there were:

Too many adults making decisions and pretending to have young people best interests but really just want to make their jobs and lives easier - and appear good to other adults. Parents and professionals.

One young person described how even processes that were supposed to be focussed on them like family group conferences they were still about what other people wanted: "[e]ven though they have processes, family group conferencing, they'd say one thing and back then it wasn't really focused on you. It was about what others wanted for you".

Their responses to the question about what they would change included taking the parents and other adults out of the room and giving the child an advocate that was focussed on them. As one respondent said: "I would absolutely give little me a person whose sole focus is my success and understanding. To advocate against adults".

I wouldn't have told anyone

The most concerning responses to the question in relation to what respondents would change about their experience when a decision was made about them were those where the young person said that they would not have told anyone, presumably due to their negative experiences when they did so with one being explicit about this connection. I will include all three of these responses given how concerning they are:

Due to the rate of how things are going I probably wouldn't have spoken up about SA just because of the lack of support

I wouldn't have told anyone what happened everytime I told someone anything that happened

I would never had gone to the police at all

Different groups

Participants were asked whether they thought it was harder for particular groups of children and young people to get justice. Twelve participants answered this question, all of whom answered yes. Survey respondents were then asked an open question: "[i]f yes, which groups? How? Why do you think that is?". Analysis of responses to this question identified three themes: it's harder for children and young people generally, it's harder again for some groups of children and young people, and the impact of prior experiences.

It's harder for children and young people generally

A number of the respondents commented on how it was harder for all children and young people to get justice. A range of reasons were given for this ranging from children and young people's lack of understanding about the law, because young people are treated differently, adults having the education and knowledge to use the system in their interests, and children not being comfortable talking about things that have happened to them. For example:

Children in general are less equipped to understand legal proceedings.

Any young person is always treated differently due to age and presumed experience.

Adults have the education and knowledge to bullshit the system.

Most of my legal issues occurred when I was young and I generally did not feel comfortable talking about the situation.

But it is harder again for some groups of children and young people

Participants named a fairly consistent set of groups that would face additional barriers in accessing justice including Māori, Pasifika, disabled, refugees and immigrants, queer and gender diverse youth, and those in the care system. The reasons that it would be harder to access justice respondents gave included no-one listening, systemic biases, colonisation, and a lack of respect or support for certain groups.

For example, one respondent explained that people with disabilities, especially invisible disabilities are “often seen and treated as a nuisance / bludger / waste of resources, have their disability doubted and questioned by everyone, lack of support or respect.” Another talked about how gender diverse people were not taken seriously or treated as a problem that needs to be solved giving examples such as JK Rowling’s comments on sex and gender and the exclusion of trans feminine kids from sports.

One respondent talked about how these additional barriers can also be cumulative:

Being Maaori and Queer, i am faced with a lot more than a cis, paakehaa person. It is institutionalised racism, systemic racism, and a lack of cultural humility.

Another respondent also made the point that sometimes bias and prejudice could operate to the disadvantage of children from the privileged group because less attention would be paid to them:

I think children of well educated people just as much as others. White people. The ones that don't get looked at harder.

Respondents also raised how needing help or assistance could be a barrier: “[d]isabled people when we are deemed not able to speak for ourselves or need help then we aren’t involved in any legal process.” Accessing justice could also be harder if the young person does not have support in the home: “[a]lso LGBT, when we try to access legal support it’s hard to do so if the person is living in a unsupportive home”.

The impact of prior experiences

A number of respondents also commented that those who had prior negative experiences could also find it harder to access justice. As one respondent explained: “children that have been through the system...children who have been mistreated by the system before and don't trust it”.

The nature of the young person’s experience that led them to seeking justice could also make it harder. As one respondent explained: “I think it is hard for groups such as those who have been SA because it is not supported enough to not be shameful to admit”.

Fairness of the justice system and the need for change

The final set of questions asked a series of questions designed to give respondents the opportunity to give an overall assessment and comment on what they thought needed to change. The first asked if respondents thought that the justice system in Aotearoa is fair for all children and young people and gave the option to select yes, no or I'm not sure then to explain their answers. Eleven participants answered this question, all of whom answered no. Respondents were then asked if they could change anything about the justice system, what it would be and were given the opportunity to make any final comments. This section discusses the responses to the text box for the first question and the responses to the next two questions.

The system causes harm

Respondents spoke about how the different aspects of the legal system cause harm to children and young people. This included the child protection system:

My experiences with CYFS (now OT - I refuse to use their Māori name as I do not believe they deserve such a title) has caused my family and I much pain and trauma which I am still working through some 15 years later. I pity any children or families who have to deal with their crap.

It also included the criminal justice system:

I believe our current justice system perpetuates harm through incarceration and punitive action against individuals without taking into account what actions would actually lead to a safer and happier society.

The need for substantive change

A number of respondents argued for significant and meaningful change:

Honestly I think the system needs a complete overhaul and should be rebuilt from scratch...

Abolish it.

We need radical change. I don't think I will trust people or systems again.

These included specific changes across a range of different aspects of the system:

Young people shouldn't be targeted by police on the daily. Spithoods are being used on young people when it is a torture device. It needs to be holistic because punishment like prison doesn't fix poverty, housing issues, lack of support. That's what needs to be fixed.

Abolish Prison's, train youth workers and paramedics to deal with mental health crisis's. Disarm the police.

Change the culture

Many participants sought a change in the culture of the justice system including from one that is punitive and adversarial to being more restorative and victims having a greater say. Another respondent suggested: "[t]ake it into a different setting - make it empowering and uplifting".

Respondents also emphasised the need to include those with lived experience in the change process and for those running the system to be representative of those who engage with it. For

example, one respondent commented: “[e]motional intelligence. Lived experience in decision making over book smart” and another explained:

I also believe that our justice system will struggle to be seen as legitimate or trustworthy by many so long as the people who use it do not see themselves represented in the people who run it.

Change how people are treated

A number of respondents also raised the need to treat people differently. This included recognising that every family and child is unique and ceasing to use ‘one size fits all’ approaches:

If I had to suggest one thing I would say stop applying “one size fits all” solutions - every family and child is unique and each situation should be approached with care and treated with respect. The justice system should aim to protect each individual’s mana and keep their dignity intact throughout the process

Another respondent asked that people look past behaviour and provide ‘actual’ support and resources for young people and whānau:

LOOK PAST BEHAVIOUR!!!! actual support and resources for young people and whānau.

Although there is a risk of misinterpreting meaning when dealing with brief comments like these, the implication of this statement seemed to be that responses are often focussed on behaviour rather than what lies underneath or the reasons that a child or young person may be behaving in a particular way.

Respondents also emphasised the importance of believing children and young people who are victims of offending. One said:

Believe victims. Not making them have to do so much for anyone to believe them. It’s hard to get justice when you don’t feel like people believe you or when the process doesn’t feel worth it

Another participant explained how they felt their life may have been different if they had been believed:

If someone believed me when I was 14 that I was being abused and did something about it, I might not have so bad mental health and deemed high risk by all professionals and deemed unlikely to recover fully or live independently [sic]

Another respondent commented simply: “[t]reat people more seriously”.

Information, education and training

Some respondents also raised the need for more sharing of information and education commenting “[m]ore sharing of information” and “[s]upport and education around the formalities”.

Summary of findings

The responses to questions in relation to access to information about rights and the law made it very clear that most children and young people would go to their parents and friends to get information in the first instance. Websites were also a popular place for children and young people to get information with over 80% saying that they would seek information online. Community groups such as the CAB and community law centres were the next most common source of information.

Responses to the open question about what information children and young people would want to know suggested that different people wanted different information although respondents were consistent in wanting information to be easy to understand and specific to what they wanted to know. Some participants also said that they wanted more than information about the law, they also wanted to know what they should do about their situation. One participant also made it clear that just having the information wasn't necessarily enough either, a fear of what would happen or other psychological barriers could prevent someone taking action.

Survey participants' responses to questions in relation whether they got any help or support from someone outside their family or friends if they had a legal problem were mixed with half getting other support. A range of people had provided support including advocates, social workers, lawyers, the Children's Commissioner, foster parents, police, Victim Support, and an employer with only half of respondents saying that the assistance was helpful. However, the number of responses was quite low. Responses in relation to what would have been helpful emphasised the importance of simply being told what was happening, being listened to and believed, and getting support for both legal and non-legal needs. A participant explained how not being listened to meant that they acted out to be heard and another described wanting to have someone who believed what they told them rather than labelling them as attention seeking. Another talked about the impact on them of the delay in getting counselling support and said an accessible counsellor would have been helpful.

Participants' responses to whether they would tell someone if they were unhappy with how they were being treated at home, in school or in some other place were fairly evenly mixed with half saying they weren't sure, one saying that they wouldn't and the rest saying that they would. The most common person they would tell was a friend (over 80%), followed by parents or carers (over 50%), then a counsellor or psychologist (over 40%). Participants were then asked if they would not tell anyone, why not. The most common response was that it wouldn't make any difference followed by no one would listen to me and that they had asked for help before and it didn't work out well. Participants' responses to the open questions emphasised the importance of being able to trust the person that they were seeking help from which included knowing that what they told someone would be confidential. Several participants also described how their previous negative experiences operated as a barrier to disclosing harm and seeking help again in the future. Just knowing about bad experiences other people had gone through could also be a barrier for example, the understanding that the justice system does not treat victims well.

Participants' reported mixed experiences when a decision had been made about them in the past with the majority of participants (64%) reporting that they were asked what they thought about the decision and that they understood what was going on. However, the same percentage answered no to whether there was someone there to support them, the setting felt comfortable and safe, and whether they were treated fairly and 73% answered no to whether their views were taken seriously. The two main themes identified in responses to the open questions reflected what they didn't get that they needed: firstly, the lack of understanding and support and second, the lack of focus on them and their needs. Of significant concern, several

participants reported that the thing they would change about what happened when a decision was made about them was that they would not have told anyone.

Participants were fairly consistent in saying that they thought it was harder for children and young people generally and for some groups of children and young people in particular. These groups were also fairly consistent and included Māori, Pasifika, disabled, refugees and immigrants, queer and gender diverse youth, and those in the care system. Participants also explained how the prior experiences of some of these groups made it harder for them to access justice for example, those who had been through the system so didn't trust it and those who had experienced sexual assault because the lack of support made it shameful to admit.

There was also a common consensus that things needed to change for all children and young people to be able to access justice with all respondents who answered the question whether they thought the justice system is fair for all children and young people selecting no. Responses to the open question included that the way the system works now causes harm. Participants also described the need for substantive change including culture change and changing how people are treated. Some participants also talked about the need for more information, education and training.

Appendix One: Profiles of participants in key informant interviews

Anonymous participants

Five participants chose to remain anonymous. I have deliberately described these participants collectively rather than including specific profiles of each participant to reduce identifiability. They included those with experience in working with the rainbow community, rangatahi Māori, Pasifika youth, young people with speech and language difficulties, and children and young people more generally. Their professional backgrounds included legal expertise in community law, education law and acting as a youth advocate in the Youth Court, speech and language therapy, research, criminology and sociology, monitoring Oranga Tamariki residential care, advocacy for and with children and young people, justice system reform, and academia. Some participants had been involved in more than one relevant context. Three of the anonymous participants are pākēha, one is Māori and one is Samoan. All have considerable professional experience in working with children and young people, and in particular, each has worked with one or more of the groups of young people I have focussed on for this research study.

Dr Deb Inder

Admitted to the Bar in 1998, Dr Deb Inder is a Barrister and Accredited Mediator. She conducts both family dispute resolutions (FDR) and private mediations as well as regularly appearing in the Family Court as Court Appointed Lawyer for the Child and on behalf of Private and Legal Aid clients. Dr Inder has a Post Graduate Diploma in Child Centred Practice (with Distinction) and a PhD in Law, her Thesis topic being: [*Children's Participation Rights within the Context of the New Zealand Family Justice System*](#). Dr Inder has also served as a member of the steering committee of the Children's Rights Alliance Aotearoa New Zealand, an NGO that leads the shadow reporting process in relation to New Zealand's compliance with the UN Convention on the Rights of the Child. <https://www.inderfamilylaw.co.nz/>

Frances Joychild QC

Frances Joychild QC is barrister with over twenty five years of practice before Courts and Tribunals. She works in a range of areas of law including public law, human rights and refugee law, professional negligence, employment, privacy and information, sexual harassment and bullying, abuse and assault, and international human rights advice. Frances has acted in a number of significant human rights cases including [*Child Poverty Action Group v Attorney-General* \[2013\] 3 NZLR 729 \(CA\)](#), [*Ministry of Health v Atkinson* \[2012\] 3 NZLR 456 \(CA\)](#), acting for the Secular Education Network in litigation regarding religious education in schools, representing the interests of victims and survivors of abuse at Lake Alice Child and Adolescent Unit during the [*Royal Commission of Inquiry into Abuse in State Care*](#), and acting for IHC in its [*education complaint*](#) to the Human Rights Review Tribunal. <https://francesjoychildqc.co.nz/>

Jane Zintl

Jane Zintl is the CEO of [*Ara Taiohi*](#), the peak body for youth development in Aotearoa. They are a national membership based organisation with over 1600 personal and organisational members representing a diverse range of groups and practitioners that work with young people. Ara Taiohi has developed a range of resources and tools to enhance practice including [*Mana Taiohi*](#) which is a principle based framework that informs the way people who work with young people work in Aotearoa. Jane has a background as a lawyer including leading the youth service at [*Community Law Canterbury*](#). This role involved providing legal advice and advocacy

to children and young people or those assisting them as well as delivering legal education to children and young people or those working with them.

Dr John Fenaughty

Dr John Fenaughty is a senior lecturer at the University of Auckland. His background in community psychology pivots around youth wellbeing, particularly as it is impacted by victimisation, harassment and/or cis-heteronormativity, including within schooling and education settings. He has worked as the research manager and help-line co-ordinator at NetSafe, the national cybersafety agency and in a research management role at CORE Education, a non-profit that focussed specifically on teacher learning and schooling improvement. He is currently leading or collaborating on a number of research projects including leading [Identify: Diversity Counts](#) which is a research and community partnership to understand the experiences of Takatāpui, MVPFAFF+ LGBTQIA+ and rainbow young people, and their friends and allies, aged 14 to 26 in Aotearoa NZ; working as an associate Investigator for the [Youth '19](#) study with portfolios on educational settings and wellbeing, and sexual and gender minority young people; and as a named investigator for the [Growing up in NZ](#) longitudinal study. <https://unidirectory.auckland.ac.nz/profile/j-fenaughty>

Kathryn McPhillips

Kathryn McPhillips is the Executive Director of [HELP Auckland](#), a specialist provider of sexual abuse support services including call-out service to support people through police interviews and forensic medicals, psycho-education for preschool children and their caregivers, face-to-face therapy on-site for children and their families, young people and adults, and secondary school prevention programmes. She also holds the justice portfolio for [TOAH-NNEST](#) the national network of specialist sexual violence service providers, has contributed several research papers to the Task Force for Action on Sexual Violence, and has developed guidelines for crisis support services and restorative justice with sexual violence.

Dr Liz Gordon

Liz Gordon began her academic career at Massey University, and moved to the University of Canterbury in 1990, where she taught and researched in the field of educational policy. In 1996 she was elected as a Member of Parliament, a position she held for six years. Since 2002 she has managed two research companies, Network Research and [Pūkeko Research Ltd](#). Pūkeko Research specialises in research across the education, justice and social policy spectrum, with a focus on social inequality and disadvantage. Liz has led a range of research projects including research regarding the children of prisoners, the causes of and solutions to intergenerational crime, victims' voices, good practice in restorative justice in schools, and a survey of Christchurch Girls School students' experience of sexual harassment and abuse.

Manawa Pomare

At the time of the interview, Manawa Pomare was a senior lawyer (kaupapa Māori focus) at [YouthLaw Aotearoa](#), a community law centre for children and young people. Manawa had worked at YouthLaw for over ten years including providing legal advice and assistance as well as legal education for children and young people or those assisting them. She was also the co-Chair of the Māori caucus of Community Law Centres o Aotearoa, an incorporated society representing the 24 community law centres in Aotearoa New Zealand. Manawa now works at the Human Rights Commission.

Mark Stephenson

Mark Stephenson is trained as a teacher and a speech and language therapist. He works as a court-appointed communication assistant and trainer for [Talking Trouble](#) and [Moretalk](#) in Aotearoa New Zealand as well as working in Tonga. He previously worked as a teacher at Korowai Manaaki youth justice residence and completed a research Masters through which he developed and initially trialled an oral language assessment tool for young people caught up in the legal system.

Shane Murdoch

Shane Murdoch is the National Practice Lead at [Voyce Whakarongo Mai](#), an independent NGO established to advocate for 6500 young people in the New Zealand care system. He has previously worked in a number of senior management roles in out-of-home care for children and young people and recently completed an MSc in Child and Youth Care at Strathclyde University, Scotland.

Simon Judd

Simon Judd commenced practice as a lawyer in 1994 and as a barrister sole in December 2003. He appears regularly in the High Court and the Court of Appeal and has made and opposed applications for leave to appeal to the Supreme Court. He also appears in the District Court, Human Rights Review Tribunal, the Employment Court, the Family Court, the disciplinary committee of the New Zealand Law Society, and before school Boards of Trustees. Simon has presented a number of seminars and papers in relation to education and human rights law. He chairs the board of [YouthLaw Aotearoa](#), a community law centre which assists children and young people. Simon completed his Masters of Laws with First Class Honours specialising in International Law and was awarded the Fowlds Memorial Prize for most distinguished Masters student for 2013. <https://simonjudd.com/>

Trish Grant

When the interview was completed Trish Grant was the Director of Advocacy at [IHC](#). IHC is a non-governmental organisation that advocates for the rights, inclusion and welfare of all people with intellectual disabilities in New Zealand and supports them to lead to satisfying lives in the community. Her role at IHC involved leading a proceeding taken by the IHC in the Human Rights Review Tribunal which alleges that the government unlawfully discriminated against 84,000-106,000 children in state schools who have disabilities and need accommodations to learn. Prior to working at IHC Trish was Advocacy Manager at the [Office of the Children's Commissioner](#), a secondary school teacher, counsellor and a social worker.

Velda Chan

Velda Chan is the senior lawyer at [YouthLaw Aotearoa](#), a community law centre which provides legal advice, assistance, information, education, and representation (where capacity allows). She worked at YouthLaw for over ten years after volunteering as a law student and currently manages the legal advice line which children and young people around the country can call to get help with a legal problem. Velda has also been heavily involved in the development and updating of YouthLaw's website which provides [legal information for young people](#) about their rights and the law in Aotearoa New Zealand and is a member of the New Zealand Law Society Youth Justice Committee.

Appendix Two: Methodology

Position as researcher

I see myself as a practitioner researcher. Practice research can be viewed as a form of insider research which brings particular ethical and practical challenges.²¹ More specifically, although I am not conducting research in an organisation in which I work, my research relates to sectors in which I have worked for many years, involves organisations and individuals that I either have or am developing professional relationships with, and relates to issues that I am deeply passionate about. In particular, I have had a relationship with YouthLaw Aotearoa, a community law centre for children and young people, for around twenty years including as a staff member and chairing its Board. I have also held a number of governance roles including acting as the Chairperson of the Children's Rights Alliance Aotearoa New Zealand, Auckland Sexual Abuse HELP, Community Law Centres o Aotearoa, and Child Poverty Action Group. My recent professional experience has also included acting as a Counsel assisting the Abuse in Care Royal Commission and being a member of the New Zealand Law Society's youth justice committee. Accordingly, it is important to recognise that my personal and professional experience in relation to access to justice for children and young people and close connections with those in the child, youth and legal sectors will influence my interpretation of the data.

This recognition fits well with my epistemological positioning as a critical realist. Critical realism is a form of realism that recognises the reality of the natural order and the events and discourses of the social world²² but holds that we will only be able to understand the social world if we identify the structures that generate those events and discourses.²³ As Hoddy (2019) explains it, critical realism both "maintains that the world is real in the sense of it existing independently of our perceptions and beliefs, *and* that our understanding of it is socially constructed" [emphasis added].²⁴

Critical realist researchers begin with the experienced results of something, such as a social problem, and then work their way backward to try to explain why that is the case or what must have caused it to happen.²⁵ As a result, critical realist research is necessarily inclusive and can and should usually incorporate both quantitative and qualitative data²⁶ meaning mixed methods are particularly appropriate. Critical realism is also oriented to transformative change,²⁷ and therefore this approach is well aligned with my overall aim in this research of improving access to justice for children and young people in Aotearoa New Zealand.

Research design

My research questions were focussed on exploring the legal needs of children and young people, the barriers they experience in accessing those needs, the extent to which both needs

²¹ Fouché, C. B. (2015). *Practice research partnerships in social work: making a difference*. Bristol, UK; Chicago, IL: Policy Press. <https://doi.org/10.2307/j.ctt1t89457>

²² Bryman, A. (2016). *Social research methods* (5th edition ed.). Oxford; New York: Oxford University Press

²³ Bhaskar, R. (1989). *Reclaiming reality: a critical introduction to contemporary philosophy*. London New York: Verso 1989 at

²⁴ Hoddy, E. T. (2019). Critical realism in empirical research: employing techniques from grounded theory methodology. *International Journal of Social Research Methodology*, 22(1), 111-124 at 113.

²⁵ Hoddy, Critical realism in empirical research: employing techniques from grounded theory methodology.

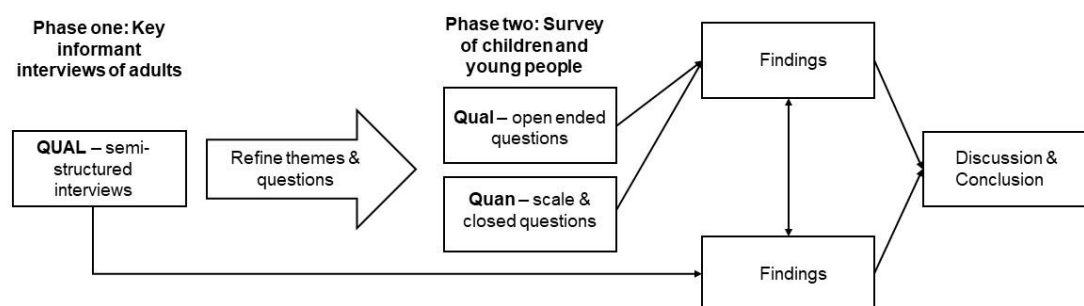
²⁶ Edwards, P. K., Edwards, P. K., O'Mahoney, J., Vincent, S., & Upso. (2014). *Studying organizations using critical realism: A practical guide* (First edition.. ed.). Oxford, United Kingdom: Oxford University Press

²⁷ Edwards et al., *Studying organizations using critical realism: A practical guide*.

and barriers differ both for different groups of children and young people and in different contexts, and looking forward to consider how we might increase access to justice for children and young people in Aotearoa New Zealand. To address these questions I chose to use an exploratory sequential research design in two phases, beginning with semi-structured key informant interviews with adults with expertise in various aspects of the justice system and/or working with particular groups of children and young people followed by semi-structured interviews with children and young people themselves.

My intention had been to undertake a similar number of interviews of children and young people as those with adults. However, just as I was beginning my interviews in August 2021 Aotearoa New Zealand went into lockdown. I was able to complete one interview but government restrictions meant that it was not possible to undertake face to face interviews and the organisations I approached to assist with participant recruitment were reluctant to assist during the lockdown due to the pressure it placed on the young people they worked with. As a result, I decided to change my method for seeking data from children and young people from semi-structured interviews to an online survey. This is discussed further below. The survey of children and young people contained a combination of qualitative and quantitative questions meaning my research design also changed to become an exploratory sequential mixed methods design (see **Figure 9**).

Figure 9 Overview of research methodology



Qualitative data collection through the semi-structured interviews and the open ended questions in the survey was the main data collection approach due to its utility in answering the research questions. For example, qualitative research is well suited to consider questions relating to participants’ direct experiences such as my questions in relation to how to provide information to children and young people, the extent to which professionals can work together or to explore participant’s views in relation to the changes that should be made to the justice system to increase access to justice. These data were analysed using thematic analysis.

Ethical issues

Prior to commencing my research, I sought and obtained approval from the New Zealand Ethics Committee Te Roopu Rapu i te Tika. The letter of approval is attached as [Attachment 1](#). Details

of the ethical issues I identified together with how these issues were managed are discussed as relevant below.

After I decided to amend my method for seeking data from children and young people I sought and obtained approval for this amendment from the New Zealand Ethics Committee Te Roopu Rapu i te Tika. The letter of approval is attached as [Attachment 2](#).

Thematic analysis

As set out above, I used thematic analysis in this research. My approach to thematic analysis followed the six phase process described by Braun and Clarke.²⁸ I chose this approach to data analysis because it allowed me to be a storyteller, actively engaged in interpreting data through the lens of my own knowledge and identity,²⁹ and was therefore consistent with my positioning as a critical realist. Data were coded working abductively from the data. Consistently with a critical realist approach, I used abductive reasoning because the goal of the research was to begin to explore the experience of youth participation in Aotearoa New Zealand from the perspective of those involved in it and I wished to be led by the data rather than the predominantly overseas literature.

Key informant interviews

Choice of Method

I chose semi-structured interviews for the key informant interviews due to their openness and flexibility as this allowed me to explore the participants' own perspectives and experiences in depth as well as to gain insight into what they see as relevant and important. I also wished to be able to explore adult and youth participants on the same issues or themes and using semi-structured rather than structured interviews made it easy to develop schedules addressing the same topics but with the specific questions tailored to each group.

Design of interview schedules

I developed indicative schedules for the interviews drawing from the issues identified in my review of the literature and having regard to my research questions and objective for this research. For example, lack of knowledge about the law and difficulty understanding legal processes were identified as barriers to accessing justice in the literature and my intention from this research was to be able to make recommendations to address any barriers young people might experience. As a result, the interview schedule included questions about how children and young people accessed information about the law or their rights, the extent to which children and young people understood what was happening, and whether participants were aware of any good practices in both providing information and assessing children and young people's understanding.

The interview schedule consisted of indicative questions grouped into topics before concluding with a final wrap up question asking if the participant had anything else to say. The topics included access to information, legal capacity, getting help and representation, rules and procedures, the experiences of specific groups of children and young people, training, protection and safety, and an overall assessment of the extent to which children and young people can access justice in Aotearoa New Zealand. Minor amendments were made to the interview schedule after the first few interviews to simplify some of the questions and reduce duplication. In some cases I added specific questions to the schedule such as when there were

²⁸ Braun, V. & Clarke, V. (2021) *Thematic analysis: A practical guide*. SAGE Publications Ltd.

²⁹ Braun et al., 2019

particular aspects of the participants' work I wished to explore. The key informant interview schedule is attached as [Attachment 3](#).

Recruitment

Potential participants were identified by first developing a matrix setting out the key contexts in which children and young people would be likely to seek justice / have legal needs and the different groups of children and young people that I anticipated would experience additional barriers to accessing justice. The lists of different groups were developed based on overseas research and my own professional experience. I identified individual potential participants with expertise in each of these contexts and in working with each group of children and young people through a combination of my own awareness of those individuals or organisations with relevant expertise together with recommendations from others working in these sectors including interview participants. An invitation to participate to was sent to potential participants and/or key contact people at organisations from which I wished to recruit a participant, then when potential participants indicated their interest they were sent the adult participant information sheet (PIS) and consent form.

Procedure

I arranged suitable times for the key informant interviews directly with each participant. Four of the interviews took place at the organisation's offices, one at a venue chosen by the participant, and twelve took place via videoconference. A number of those that took place by teleconference had been intended to take place face to face but were moved online due to Covid-19 restrictions in place at the time of the interviews. Each interview began with an informal discussion with the adult participant in relation to matters of common interest in order to begin to develop rapport before commencing the formal interview starting with reviewing the context for the research and confirming key aspects of the research ethics. The interviews lasted between 45 minutes and one hour and 55 minutes with an average length of one hour and 19 minutes. At the conclusion of the interviews, I thanked the participants and if in person, I gave them a card and a *koha* [gift] as a small token of appreciation. For those interviews conducted via videoconference, I sent the *koha* [gift] by mail together with a thank you card. One participant declined the *koha* [gift] as it was not consistent with their organisational policies and others indicated that they would pass the *koha* [gift] on to a young person they worked with.

Participant Characteristics

I did not record data in relation to the demographic characteristics of the individual participants because I felt that doing so would be inappropriately intrusive in the context of the interview and I did not want to further complicate the consent form by including additional questions.

Participants were given the option to participate on a confidential or a non-confidential basis. Short biographies of all those who chose to participate on a non-confidential basis are provided in **Appendix One: Profiles of participants in key informant interviews**. Five participants chose to remain anonymous. They included people with experience in working with the rainbow community, rangatahi Māori, Pasifika youth, young people with speech and language difficulties, and children and young people more generally. Their professional backgrounds included legal expertise in community law, education law and acting as a youth advocate in the Youth Court, speech and language therapy, research, criminology and sociology, monitoring Oranga Tamariki residential care, advocacy for and with children and young people, justice system reform, and academia. I have deliberately described the participants who wished to remain anonymous collectively rather than including specific profiles of each participant to reduce identifiability as some participants had been involved in more than one relevant context.

Data preparation

I personally transcribed the audio-recorded interviews verbatim then I sent the draft interview transcripts to those adult participants who had chosen to review the transcript. One made changes to the transcript and identified certain parts of the transcript that they did not want to be specifically referenced or quoted in any outputs from the research. These sections of the transcript were highlighted and were not included in the data analysed.

Data analysis

All data were analysed using thematic analysis as described above.

Interview with young person

Choice of Method

My original intention had been to carry out interviews with children and young people using an interview schedule based on the questions asked of adults so that data could be obtained in relation to both adults and young people's perspectives on the same issues with some amendments given that the interviews would be for a shorter period of time and to ensure the questions could be easily understood by the participants taking into account their age and experience. The interview schedule drew heavily from other research in relation to access to justice for children and young people most notably, from Ursula Kilkelly's research for the Council of Europe.³⁰ The schedule attached as [Attachment 4](#).

Recruitment process and change in method

I sent the organisational information sheet and consent form to the contact person for potential participant organisations. Once organisational consent was obtained, a representative of the organisations sent an invite to participate to potential participants, then when potential participants indicated their interest they were given the participant information sheet (PIS) and consent form. Three versions were prepared, one for those 16 or over, a second for parents and guardians of those under 16, and then a PIS and assent form for children and young people under 16.

Two organisations formally consented to participate and a number of other organisations indicated interest. However, as participant organisations were in the process of sharing the invitation to participant with potential participants, the New Zealand government reintroduced Covid-19 restrictions and the country went into lockdown. It was initially anticipated these restrictions would be in place for two to four weeks but this was extended to almost four months where I reside in Auckland. At the start of the lockdown a number of potential participants had already expressed interest in participating and two had returned consent forms. However, after we went into lockdown only one remained interested in participating in an interview and the others either did not respond to further messages or advised that they did not want to participate until the lockdown was over.

I discussed the suitability of continuing to seek participants for interviews online with some potential participant organisations but it was agreed that this would not be appropriate for a range of reasons including the difficulty in developing rapport, potential participants' lack of access to internet capable devices and/or a suitable place to do the interview, and concerns in relation to the organisations' ability to support participants if the interview caused distress given

³⁰ Kilkelly, U. (2010). [Listening To Children About Justice: Report Of The Council Of Europe Consultation With Children On Child-Friendly Justice](#). Council of Europe, Directorate General of Human Rights and Legal Affairs.

the nature of topics to be discussed. A number of potential participants also advised that they felt that the young people they worked with were already having a difficult time so they did not want to assist with recruitment until restrictions were lifted.

Due to the disruption caused by the Covid lockdown and uncertainty in relation to when the lockdown would be lifted and whether it would be appropriate to undertake interviews at that time, I decided to change my method of engaging with children and young people to an online survey.

Procedure

I arranged a suitable time for the interview directly with the youth participant who had indicated an interest in participating. The interview took place via videoconference and began with an informal discussion in order to begin to develop rapport before commencing the formal interview starting with reviewing the context for the research and confirming key aspects of the research ethics. At the conclusion of the interview, I thanked the participant and sent them a *koha* [gift] by mail together with a thank you card.

Data preparation and analysis

I personally transcribed the audio-recorded interview verbatim and sent the transcript to the participant for editing. No amendments were received. All data were analysed using thematic analysis as described above. Given that only one interview was completed the data from this interview was analysed and presented with the data obtained from the online survey.

Online survey of children and young people

Survey Design

The survey was developed as a self-administered online questionnaire using Survey Monkey software ([Attachment 5](#)). The questions for the questionnaire were based on the indicative topics in the interview schedule for children and young people with amendments to simplify them given that the questionnaire would be self-administered and I would not be able to assess understanding or re-word questions if appropriate. I also changed the focus of some questions to make them more open and less directive³¹ and removed the questions about training to reduce the length of the survey. Following preliminary comments from the New Zealand Ethics Committee, I made further amendments to the questionnaire to simplify it and further reduce the number of questions. This included using the Survey Monkey Genius to identify, and then re-word, more complex questions. I also sought feedback from a young person with experience in engaging with, and seeking input from, other young people.

The questionnaire began with a series of demographic questions and a question in relation to their experience of having a legal problem. Fourteen questions were closed-ended and required participants to select from a series of predefined responses. Eleven of these also allowed young people to make additional comments, explain their answers, or add another option in response to a prompt e.g. “someone else”. These questions covered topics such as getting information about their rights or the law generally, getting help or support when you have a legal problem, what they would do if they were unhappy with how they were treated, being in a situation where a decision is made about you, the experiences of different groups of children and young people, and whether the justice system is fair for all children and young people.

³¹ For example, the questions in relation to protection and safety were changed to questions about the children and young people’s experiences when a decision was made about them.

There were also four open questions from which qualitative data was obtained. These open questions were generally at the end of each topic and gave participants the opportunity to expand further on their earlier answers and/or say what they thought should change in the future. There was also a final question whether participants had anything else they wanted to say.

The questionnaire was hosted on a simple website <https://www.cypaccesstojusticenz.com/> which linked to the survey on the Survey Monkey website. The website contained the following pages: 'Home'; 'About the researcher', 'Information Sheet for Children and Young People'; and 'Contact'. Screenshots of each page are available here as [Attachment 6](#). After the survey closed the website continued to be used as a platform for the research project including any research outputs for ease of access by survey participants and others interested in this research.

Recruitment

Participants were recruited through organisations rather than directly to both increase the reach of the survey and so that recruitment was through organisations that already helped young people and may be able to do so in the future if the survey brought up anything for participants. Organisations were also asked to explain how to contact them for support when they shared the survey.

I identified organisations through whom participants would be recruited using the matrix setting of different groups of children and young people that I anticipated would experience additional barriers to accessing justice and the key contexts in which children and young people would be likely to seek justice / have legal needs discussed above. I contacted 24 organisations using a template invitation to participate and then provided the organisational information sheet and consent form to those organisations who indicated an interest in participating. Nine organisations agreed to participate and sent back the signed consent form. One other organisation indicated an interest in participating but did not send back the consent form. Two organisations responded to say that they were too busy to participate due to other commitments including responding to the Covid-19 pandemic. The other twelve organisations did not respond after three approaches.

I provided participant organisations with template text for sharing the survey via email and on social media. Some participant organisations also shared the posts of other organisations where these were posted on publicly available pages. Non-participants also shared the publically available posts about the survey on social media.

Data Preparation

The data was extracted from Survey Monkey and stored in an excel spreadsheet with the data obtained in relation to each question on a separate page. Where participants gave open text answers, these were automatically numbered depending on the number of participants that responded to the question.

The survey was anonymous but participants had the opportunity to enter a draw to receive one of ten \$50 prezzy cards and to indicate whether they were interested in receiving the findings from this research. If participants provided their email address to either enter the draw, or indicate their interest in receiving further information, their address was extracted and stored separately from their responses to the survey questions.

Data Analysis

Data analysis included descriptive statistical analysis of quantitative data obtained in response to the closed-ended questions reporting on the frequency and distribution of each variable.

As set out above, eleven questions gave the option to provide additional comments. The answers to these questions were a combination of specific answers and qualitative data. For example, question 8 asked: "Who would you talk to if you wanted to get information about your rights or the law generally?" and set out a list of people as well as giving the option to identify "someone else". Two participants identified specific people or places they would go and three gave more open answers such as: "[n]o one for reporting what happened to me, too scared". The first type of answer was included in the descriptive statistical analysis and the second type of answer was analysed using thematic analysis.

There were also four open-ended questions. Most of the responses to the open-ended questions were one to two sentences or phrases although some were around a paragraph in length. I analysed the data obtained in response to these questions using the approach to thematic analysis described above. Respondents frequently mentioned more than one theme within their answers and where this occurred each theme was coded.

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