

NLAP Review Submission

Family Law Practitioners' Association of Western Australia

26 October 2023

The Family Law Practitioners' Association of Western Australia writes this submission as the primary representative body of family lawyers in Western Australia. Our membership constitutes:

1. Current lawyers;
2. Law graduates;
3. Former judicial officers; and
4. Other relevant parties as identified in our constitution.

Many of our members perform work on either a pro-bono basis (directly or via Community Legal Centres), or on grants of legal aid.

Primary concerns

Currently, we understand that the funding position is that Legal Aid WA will have a deficit of approximately \$1.15million this financial year and \$1.38million in the 2023/24 financial year. This is not only unsustainable, but has been created by the shortfall between Commonwealth funding (which almost entirely funds the family law services) and the modest recent increase in the hourly rate paid to practitioners. For reasons outlined below, the hourly rate (and therefore funding) has to drastically increase to cover a further hourly rate increase in an effort to attract private lawyers to Legal Aid panels and do the work, particularly given the Federal Government's stated priority to address family violence and vulnerability in the family law space. Adequate and wide-ranging assistance cannot be provided to vulnerable litigants unless private lawyers are prepared to take on the work.

While outside the scope of the NLAP review, FLPA's position is that the bodies tasked with administering the law (the Family Court of Western Australia, in our case) must be properly resourced to ensure matters can be dealt with within a reasonable amount of time. The current wait time to trial in our jurisdiction is 3.5 to 4 years. This significant wait time translates to ICLs and private panel lawyers having to appear at more hearings over time, costing more money to both Courts and Legal Aid, and reducing the overall cost-effectiveness and efficiency of the system. As a result of the systemic delay caused by decades of under resourcing, costs increase across the board. It has also created a perfect tool for perpetrators of family and domestic violence and abuse to continue to entangle their former partners and spouses, as they are caught up in an adversarial system for years without resolution.

Survey results

Recently, we issued a survey to members, most of whom are private family lawyers, seeking feedback about the barriers they face with respect to taking on legally aided matters. A copy of the raw results is attached at the conclusion of these submissions. The response rate was approximately 30%.

From our perspective, the most important takeaways from the results are:

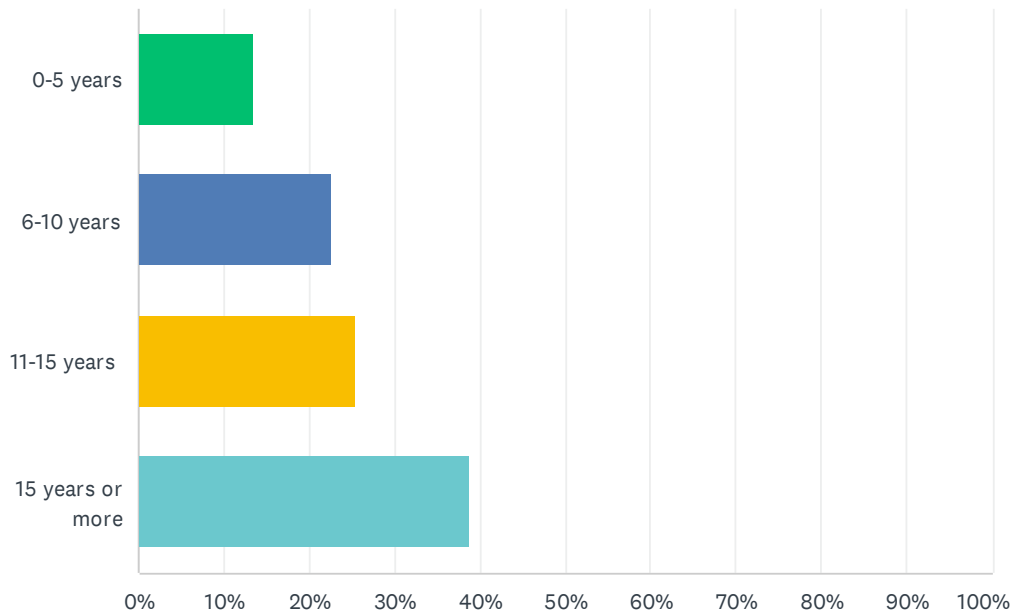
1. Most of the respondents are senior lawyers;
2. Most have private hourly rates of \$450 per hour or higher;
3. Only half are on panels to accept Legal Aid work, and of that half, only 22.67% are listed as being available to take on work across all panels on which they are registered;
4. The most common reasons for not taking on more work in the area are the hourly rate (only recently increased to \$167 per hour) is too low, coupled with the hours allocated under the grant being inadequate to perform the work required.

The answers to the final question have not been provided verbatim. However, we can indicate that some of the responses were very passionate. While some of the comments related to the administrative processes of Legal Aid WA, the balance may be summarized as follows:

1. Hourly rate coupled with the inadequacy of the grant allocation makes it virtually impossible to run a matter economically;
2. The hours included in the grant are unrealistic when considering the requirements of lawyers to discharge their professional obligations, leading to an unacceptable increase in risk to the practitioner;
3. The role of Independent Children's Lawyer (ICL) demands much more of that lawyer than normal panel work, and the compensation is insufficient when coupled with complex parties, Court expectations and increasing complexity of risk issues, including drug use, and family and domestic abuse. As a result, many senior ICLs have come off the panels in the last 5 years, increasing the risk to vulnerable children and their primary carers;
4. Legally aided matters are often complex and demanding, and require resources to deal with the issues effectively; and
5. A general increase in burnout amongst the profession has limited the appetite of practitioners to take on the work, particularly when there is little financial incentive to do so.

Q1 How many years have you been admitted to practice?

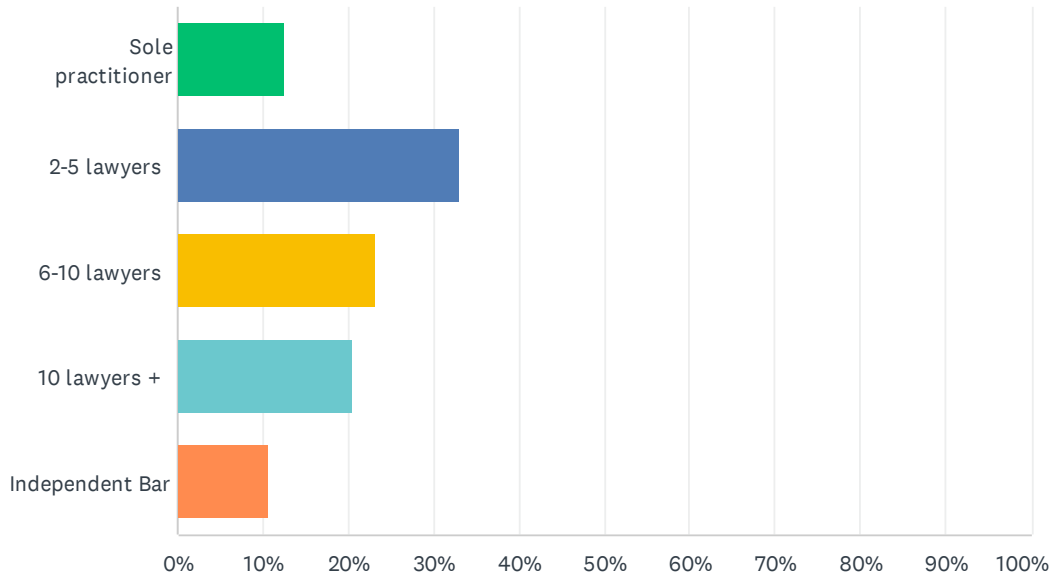
Answered: 142 Skipped: 0



ANSWER CHOICES	RESPONSES	
0-5 years	13.38%	19
6-10 years	22.54%	32
11-15 years	25.35%	36
15 years or more	38.73%	55
TOTAL		142

Q2 Which answer best describes your practice?

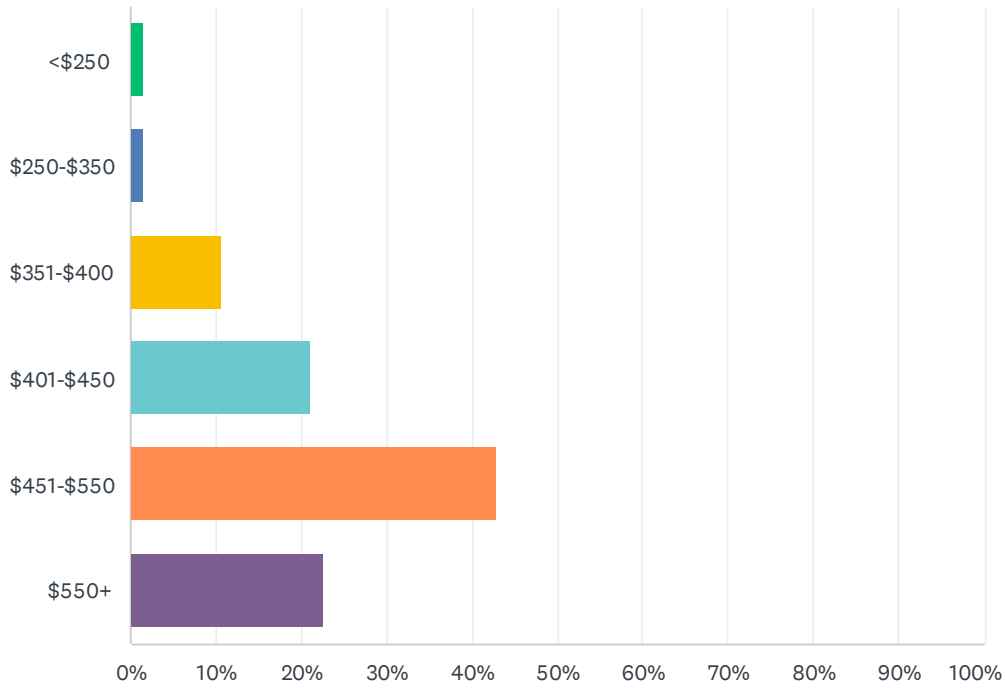
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ANSWER CHOICES	RESPONSES	
Sole practitioner	12.68%	18
2-5 lawyers	33.10%	47
6-10 lawyers	23.24%	33
10 lawyers +	20.42%	29
Independent Bar	10.56%	15
TOTAL		142

Q3 What is your private hourly rate (inc GST)?

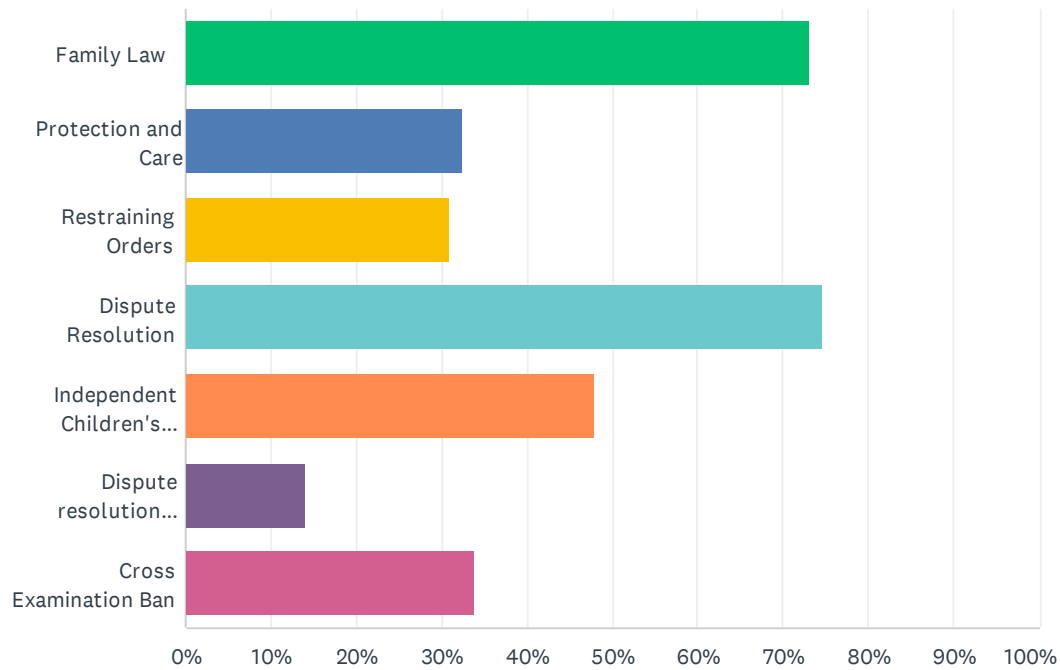
Answered: 142 Skipped: 0



ANSWER CHOICES	RESPONSES
<\$250	1.41% 2
\$250-\$350	1.41% 2
\$351-\$400	10.56% 15
\$401-\$450	21.13% 30
\$451-\$550	42.96% 61
\$550+	22.54% 32
TOTAL	142

Q4 Which Legal Aid (WA) panels are you on (select all that apply)

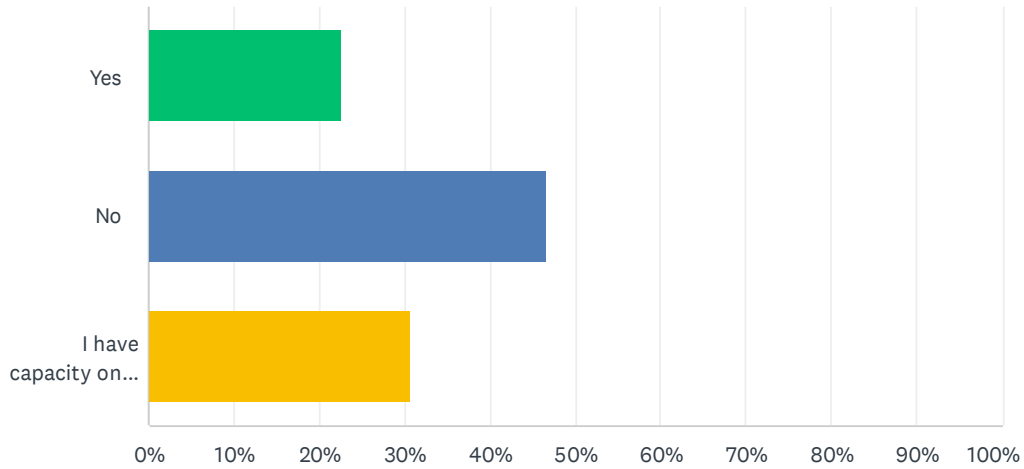
Answered: 71 Skipped: 71



ANSWER CHOICES	RESPONSES	
Family Law	73.24%	52
Protection and Care	32.39%	23
Restraining Orders	30.99%	22
Dispute Resolution	74.65%	53
Independent Children's Lawyer and Child Representatives	47.89%	34
Dispute resolution Chairperson (children and/or property)	14.08%	10
Cross Examination Ban	33.80%	24
Total Respondents: 71		

Q5 If you are on a legal aid panel, are you currently listed as having capacity?

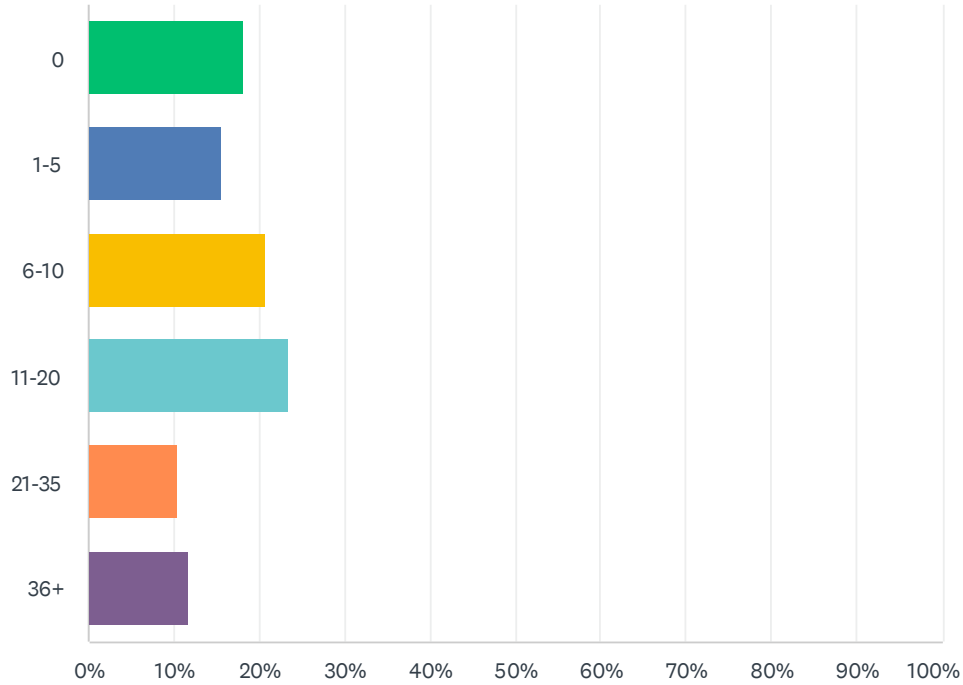
Answered: 75 Skipped: 67



ANSWER CHOICES	RESPONSES	
Yes	22.67%	17
No	46.67%	35
I have capacity on some panels, but not on others	30.67%	23
TOTAL		75

Q6 If you are on a panel, how many matters funded by Legal Aid do you currently have?

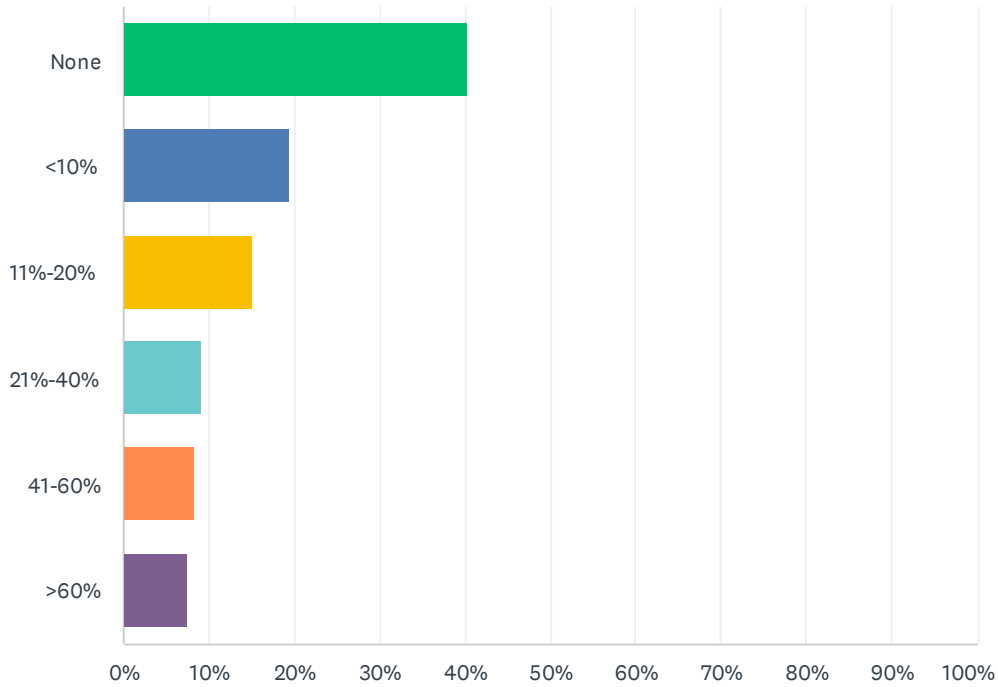
Answered: 77 Skipped: 65



ANSWER CHOICES	RESPONSES	
0	18.18%	14
1-5	15.58%	12
6-10	20.78%	16
11-20	23.38%	18
21-35	10.39%	8
36+	11.69%	9
TOTAL		77

Q7 What percentage of your file load comprises legally aided matters?

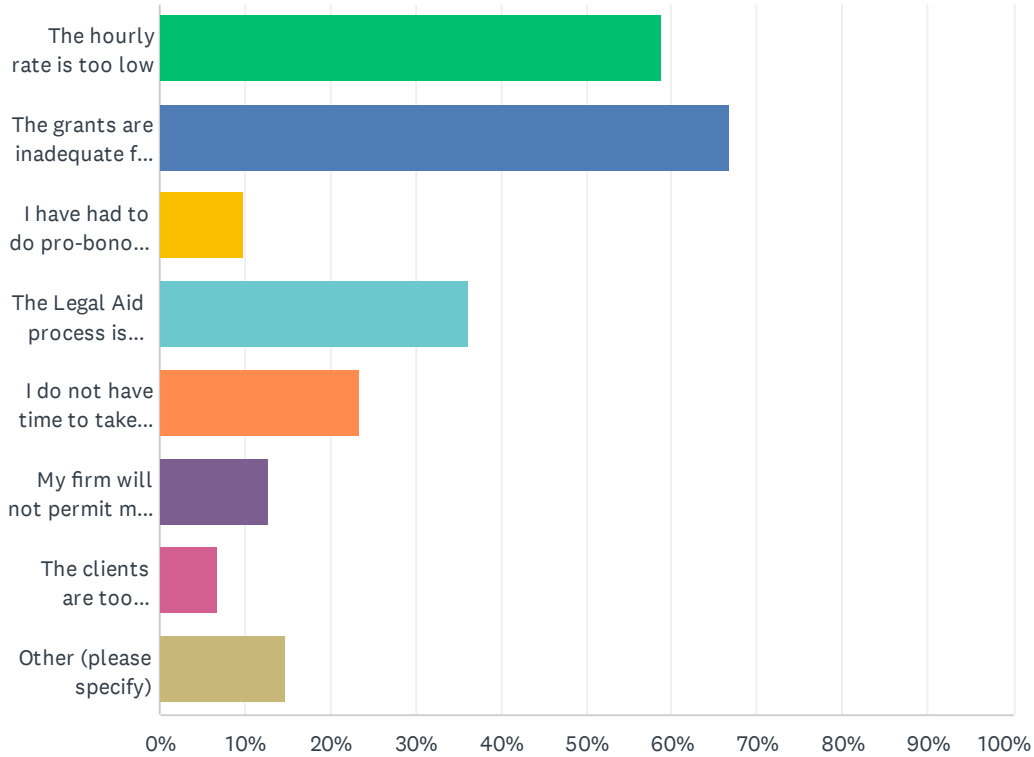
Answered: 119 Skipped: 23



ANSWER CHOICES	RESPONSES	
None	40.34%	48
<10%	19.33%	23
11%-20%	15.13%	18
21%-40%	9.24%	11
41-60%	8.40%	10
>60%	7.56%	9
TOTAL		119

Q8 If you are not on a panel, why not? Please select the 2 most applicable answers

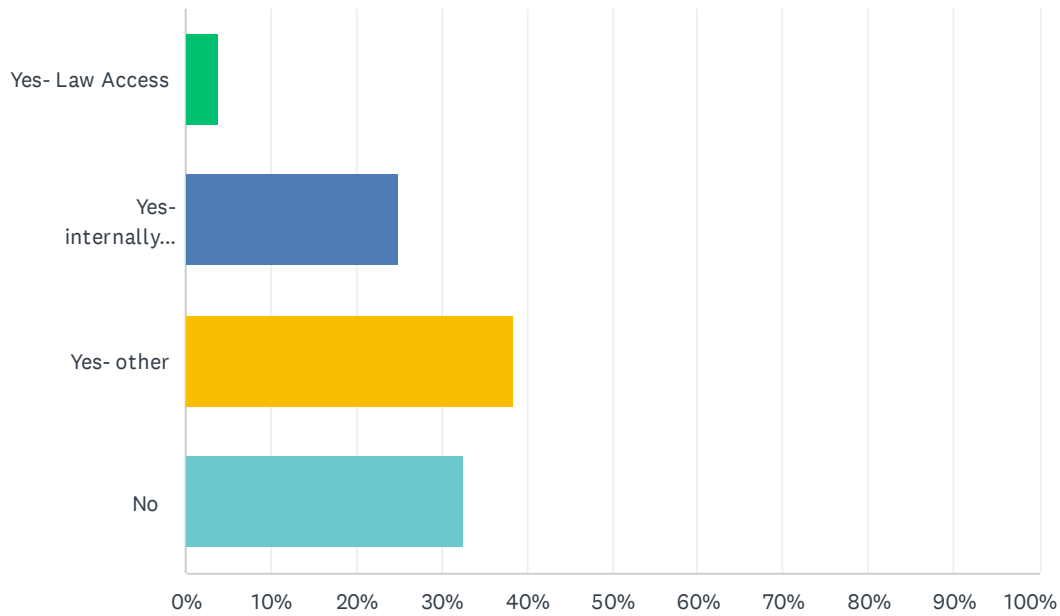
Answered: 102 Skipped: 40



ANSWER CHOICES	RESPONSES	
The hourly rate is too low	58.82%	60
The grants are inadequate for the amount of work actually required	66.67%	68
I have had to do pro-bono work on the file in the past because I cannot apply retrospectively	9.80%	10
The Legal Aid process is administratively too onerous	36.27%	37
I do not have time to take on non-private matters	23.53%	24
My firm will not permit me to take on non-private matters	12.75%	13
The clients are too difficult to manage	6.86%	7
Other (please specify)	14.71%	15
Total Respondents: 102		

Q9 If you are not on a panel, do you do any pro bono work?

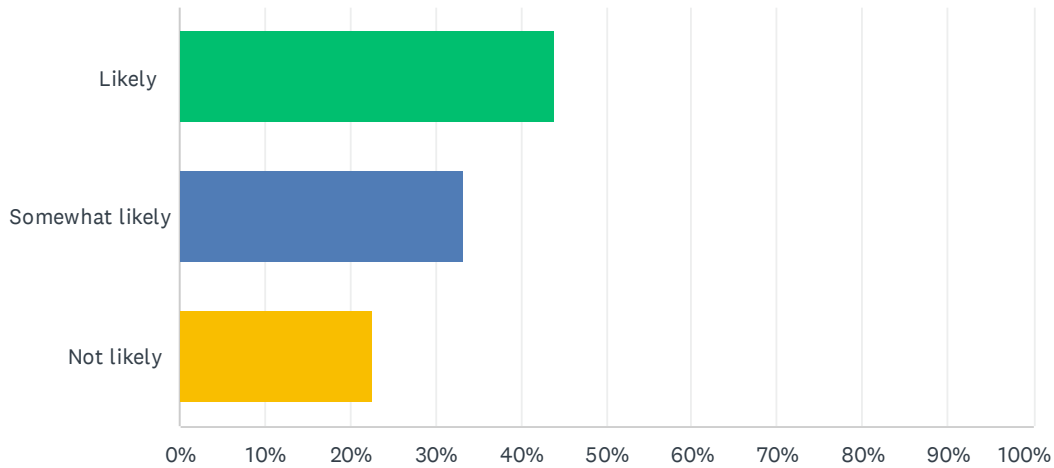
Answered: 104 Skipped: 38



ANSWER CHOICES	RESPONSES
Yes- Law Access	3.85% 4
Yes- internally referred	25.00% 26
Yes- other	38.46% 40
No	32.69% 34
TOTAL	104

Q10 How likely are you to take on more legally aided matters if the hourly rate increases to be a proportion of the scale rate for junior lawyers set out in the Legal Profession (Family Court of Western Australia) Determination? (eg. 70% of \$374 per hour= \$261.80)

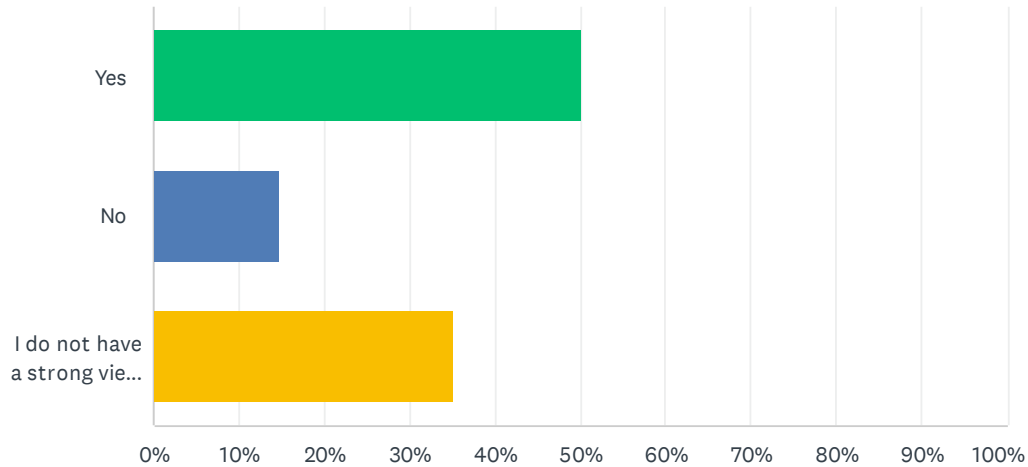
Answered: 141 Skipped: 1



ANSWER CHOICES	RESPONSES	
Likely	43.97%	62
Somewhat likely	33.33%	47
Not likely	22.70%	32
TOTAL		141

Q11 Should lawyers acting as Independent Children's Lawyers be paid a higher rate than those acting on behalf of a party?

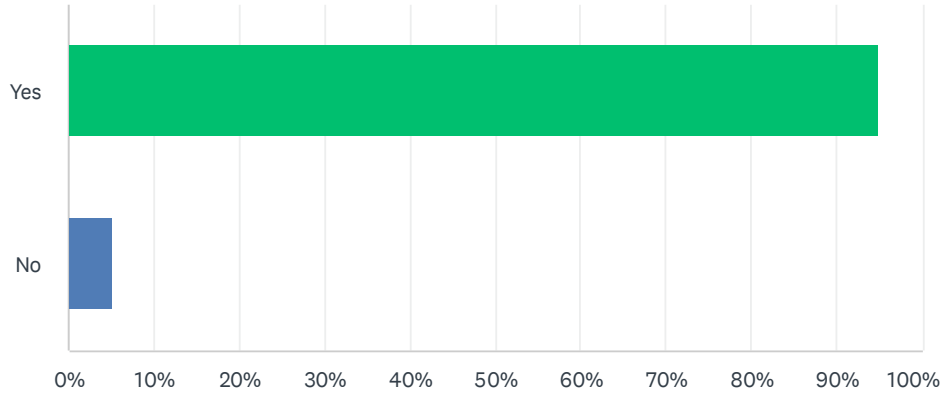
Answered: 142 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	50.00%	71
No	14.79%	21
I do not have a strong view either way	35.21%	50
TOTAL		142

Q12 Do you think a higher hourly rate will attract more lawyers to take on Legal Aid matters (including ICL matters)?

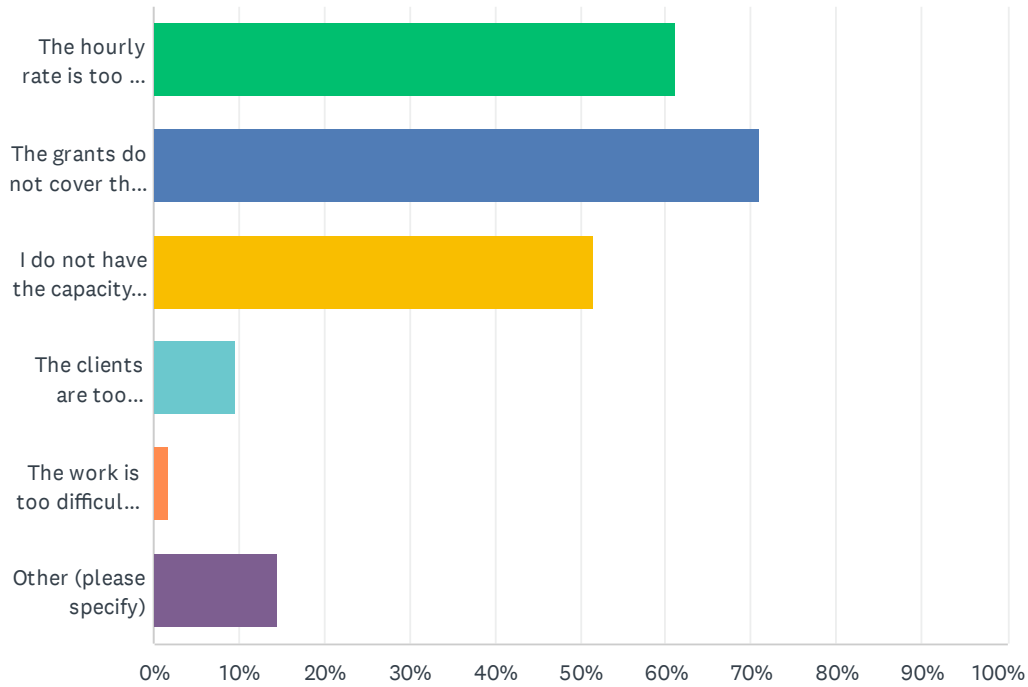
Answered: 139 Skipped: 3



ANSWER CHOICES	RESPONSES	
Yes	94.96%	132
No	5.04%	7
TOTAL		139

Q13 If you are on a panel but not currently accepting grants, why not? Select the 2 most relevant answers

Answered: 62 Skipped: 80



ANSWER CHOICES	RESPONSES	
The hourly rate is too low for me to devote further time	61.29%	38
The grants do not cover the full work required to discharge my professional obligations	70.97%	44
I do not have the capacity to deal with the administrative requirements of those files	51.61%	32
The clients are too difficult to manage	9.68%	6
The work is too difficult to manage	1.61%	1
Other (please specify)	14.52%	9
Total Respondents: 62		

Q14 Is there anything else you would like to add about LAWA funding?

Answered: 57 Skipped: 85