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AIFS Seminar Series

Dr Rae Kaspiw

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Independent Children's Lawyers

Expectations and experience of practice

Dr Rae Kaspiw

Senior Research Fellow

AIFS Seminar Series

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Co-authors

Rachel Carson

Sharnee Moore

John de Maio

Julie Deblaquiere

Briony Horsfall

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Overview

- Methodology
- Main findings
- ICL functions
- Reflections on supporting participation
- Views of parents and children



Methodology

- Online surveys
 - ◆ judges (n=54), ICLs (n=146), non-ICL lawyers (n=192), non-legal professionals (n=113)
- In-depth interviews:
 - ◆ ICLs (n=20), parents/carers (n=24), children/young people: (n=10)
- Information from legal aid commissions and child protection department personnel



Research question

To what extent does having an ICL involved in family law proceedings improve the outcomes for the child?



The ICL role

- Facilitating the participation of the child in the proceedings
- Evidence gathering
- Litigation management – playing an “honest broker” role in case management and settlement negotiation



Expectations - sources

Direct

- Family Law Act 1975 (Cth) – s68LA
- Guidelines for Independent Children's Lawyers (formulated by the legal aid commissions, Family Court of Australia and the Federal Circuit Court)

Indirect

- United Nations Convention on the Rights of the Child

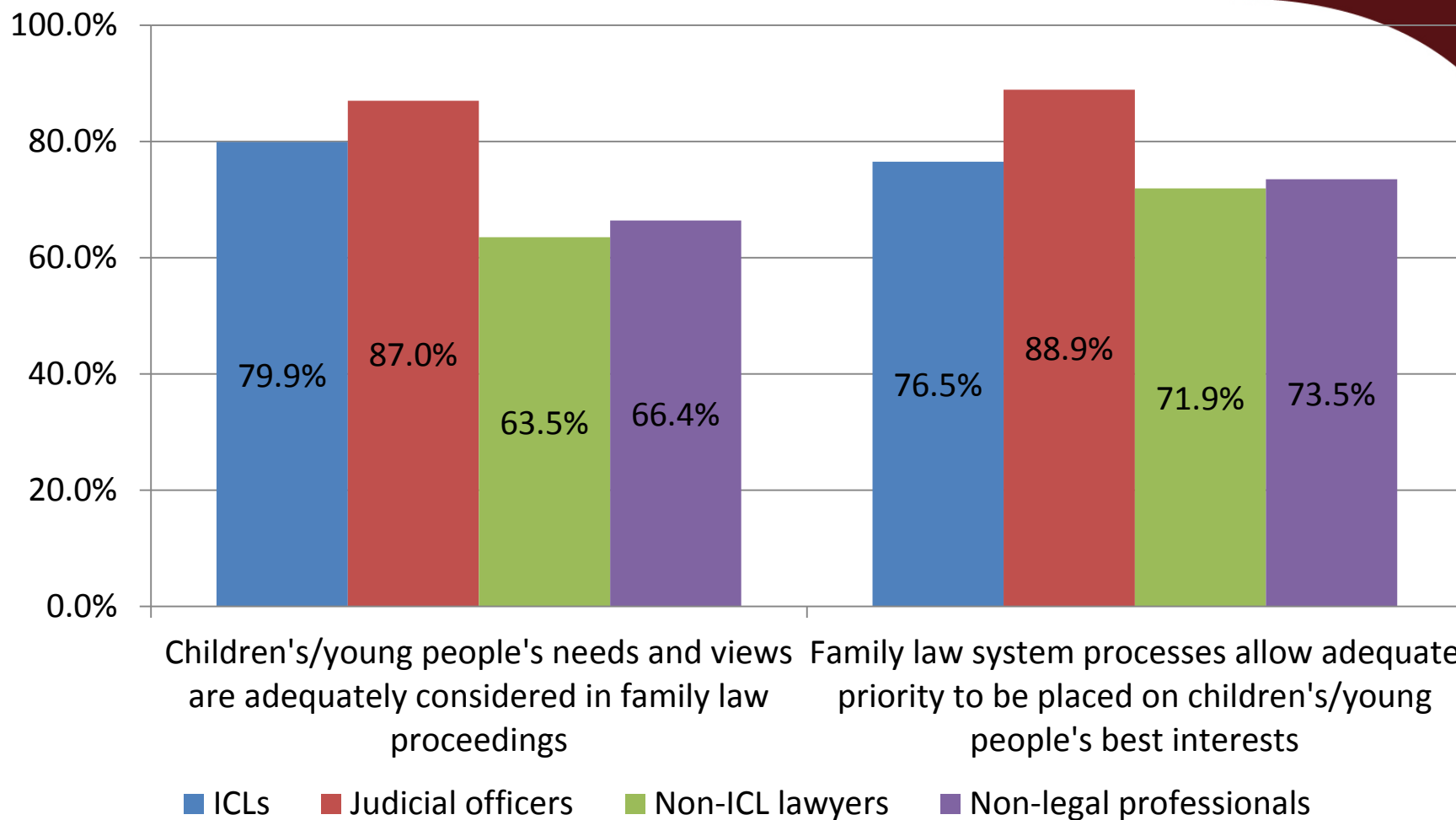


Research findings: main messages

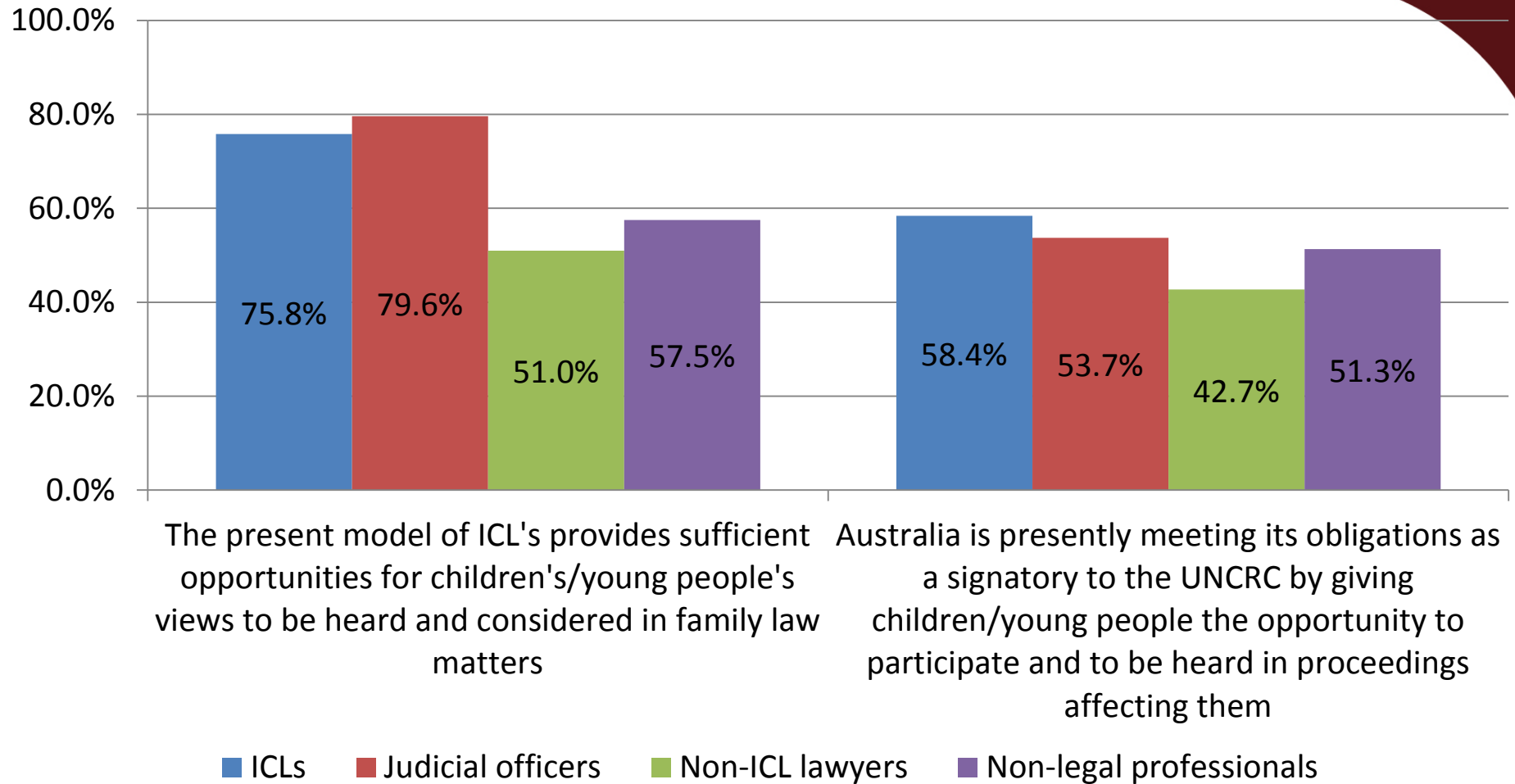
- Overall, ICL role valued, especially by judges
- Participation support aspect of role least emphasised by professionals, especially ICLs
- Parents and children disappointed in how participation functions are discharged
- All stakeholders concerned about competence of some practitioners



Professionals who “agree” or “strongly agree” that aspects of the family law system are adequate



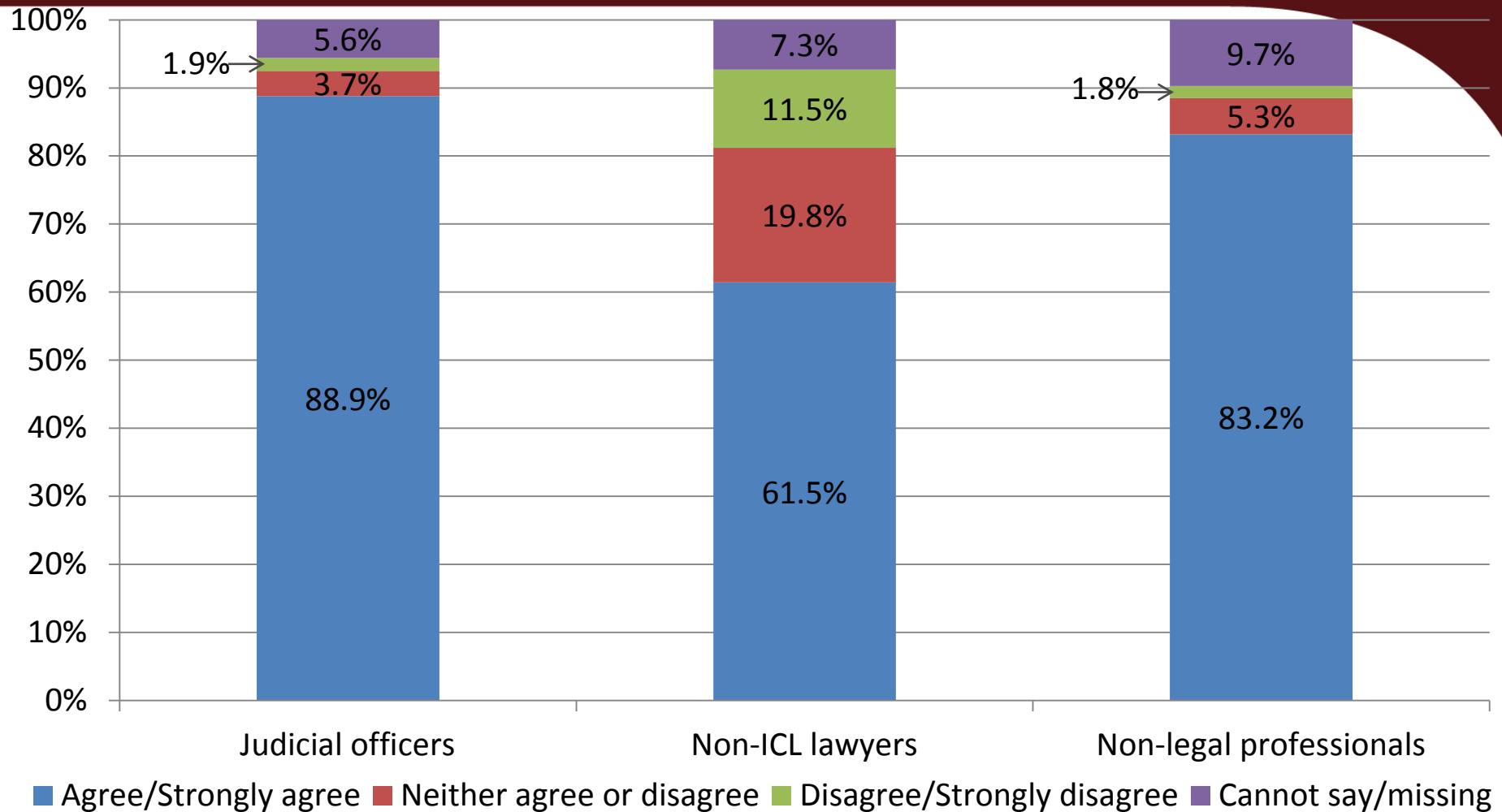
Professionals who “agree” or “strongly agree” that aspects of the family law system are adequate



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Non-ICL professionals' agreement that ICL involvement improves outcomes for children/young people





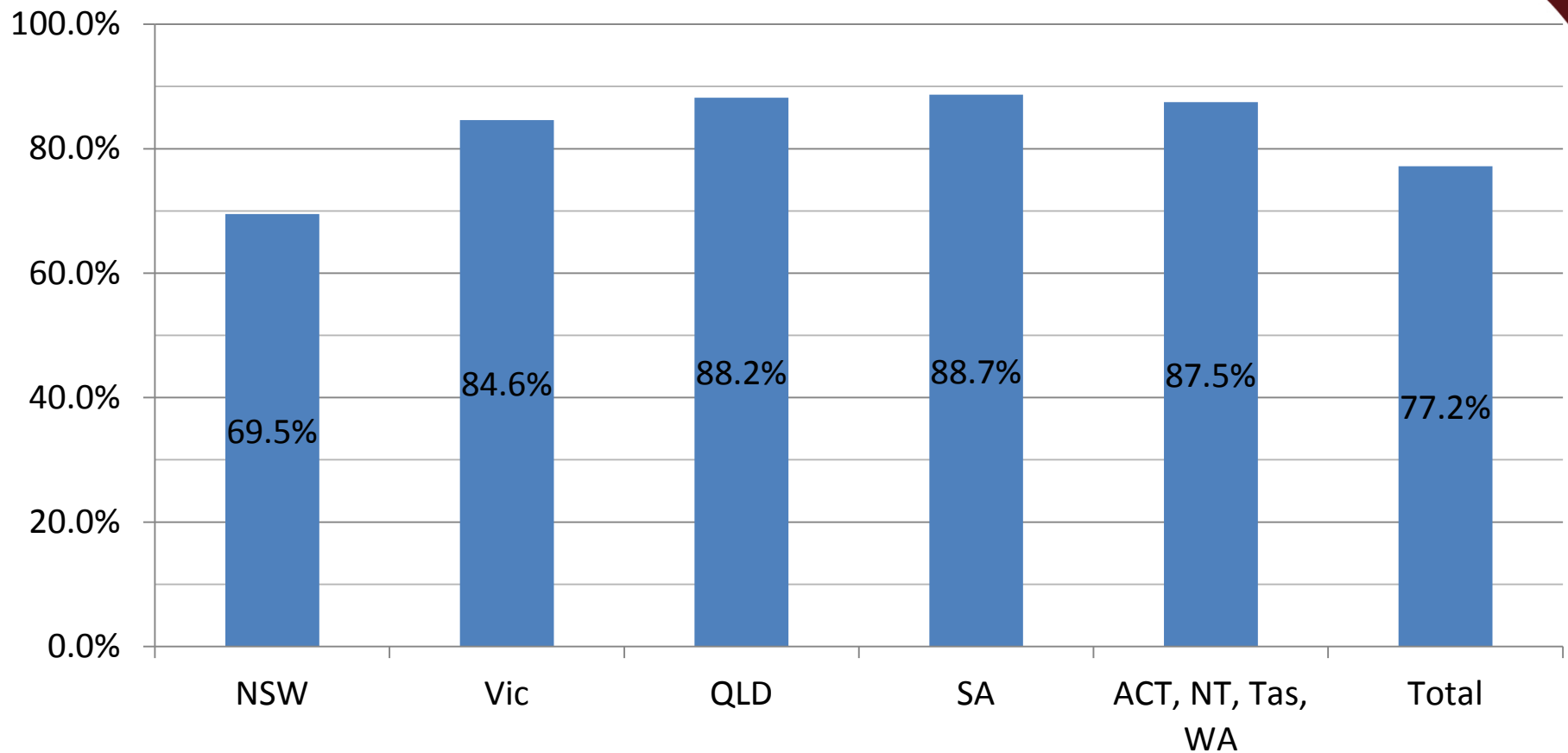
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Research findings: caseload characteristics

Key issues “often” or “always” reflected in ICL caseloads, as reported by ICLs

Allegations of child abuse/neglect

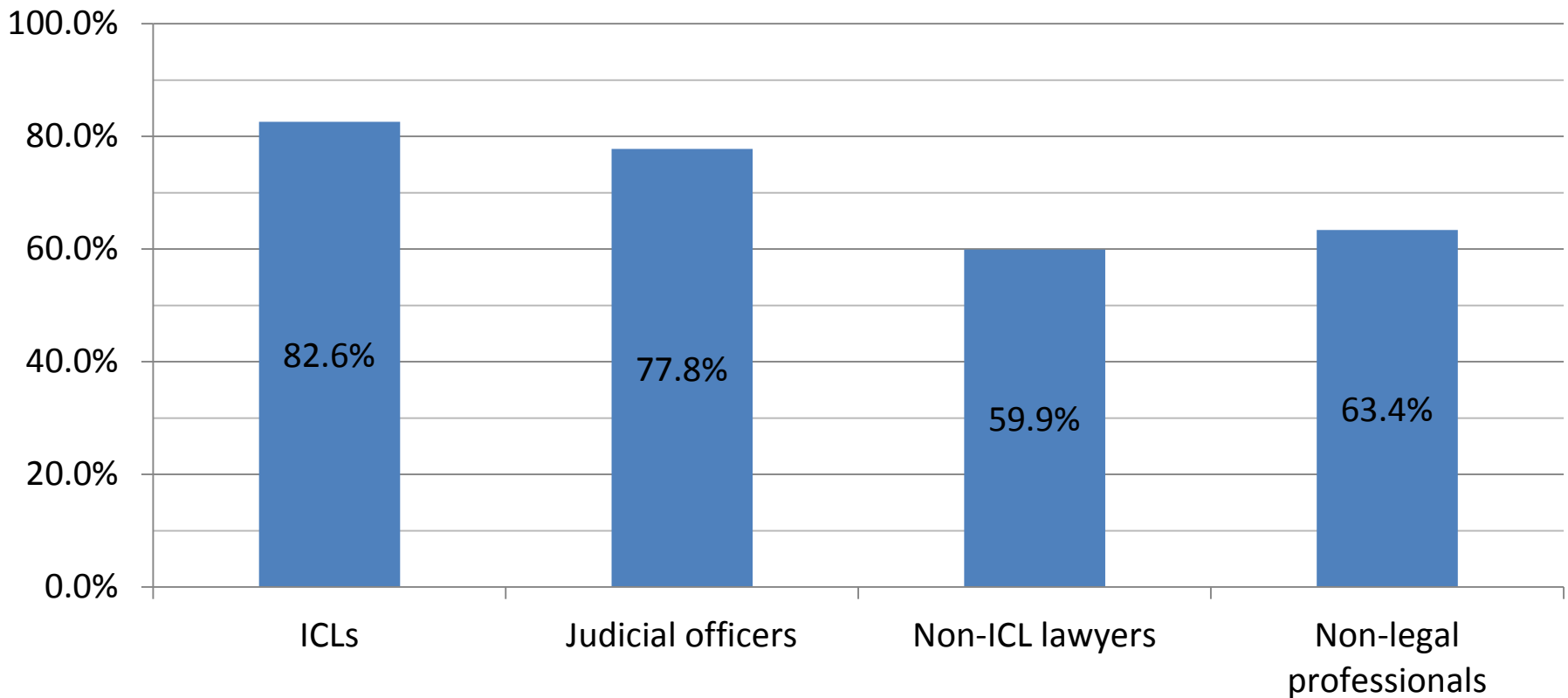


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Professionals who rate ICLs' ability to undertake particular tasks as "good" or "excellent"

Identify issues of family violence and child abuse or neglect

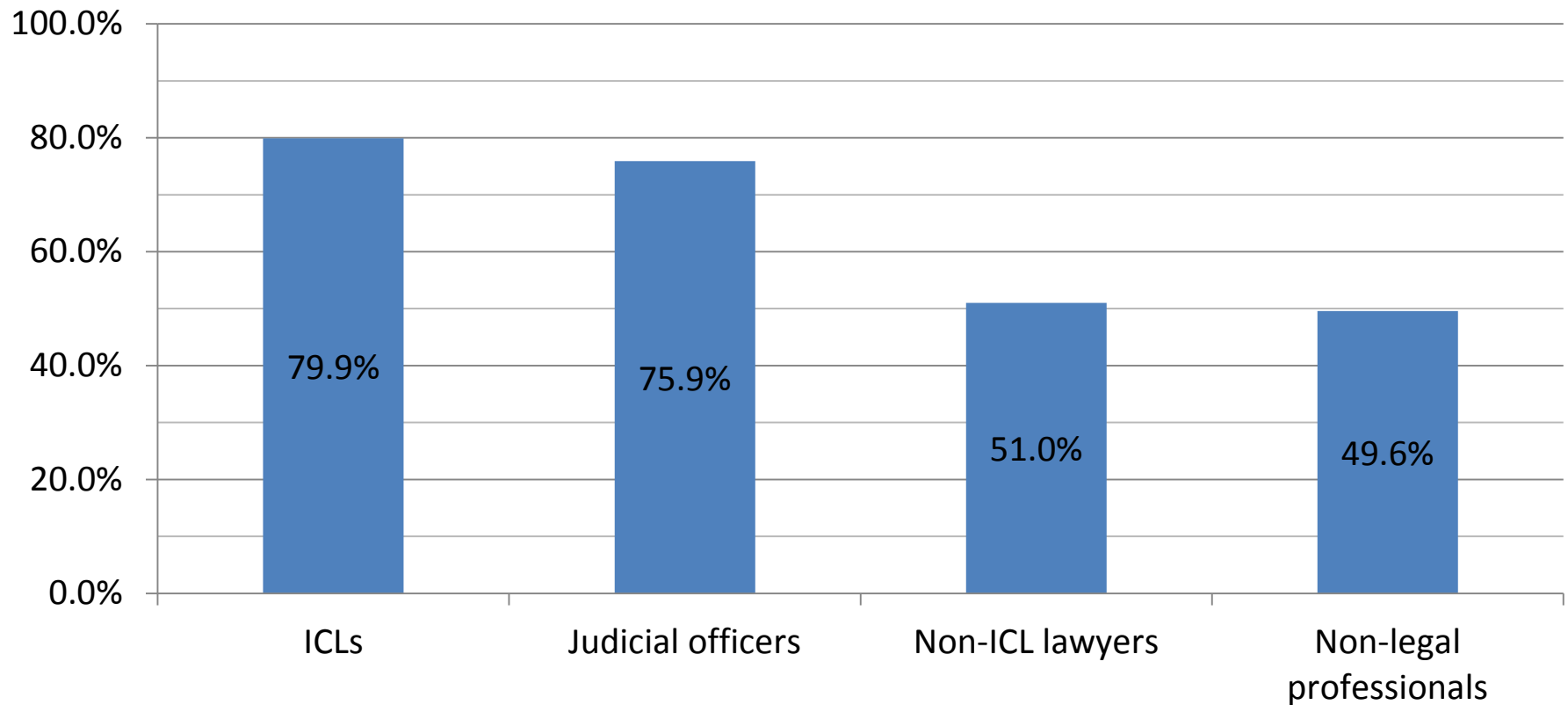


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Professionals who rate ICLs' ability to undertake particular tasks as "good" or "excellent"

Assess allegations of family violence and child abuse or neglect

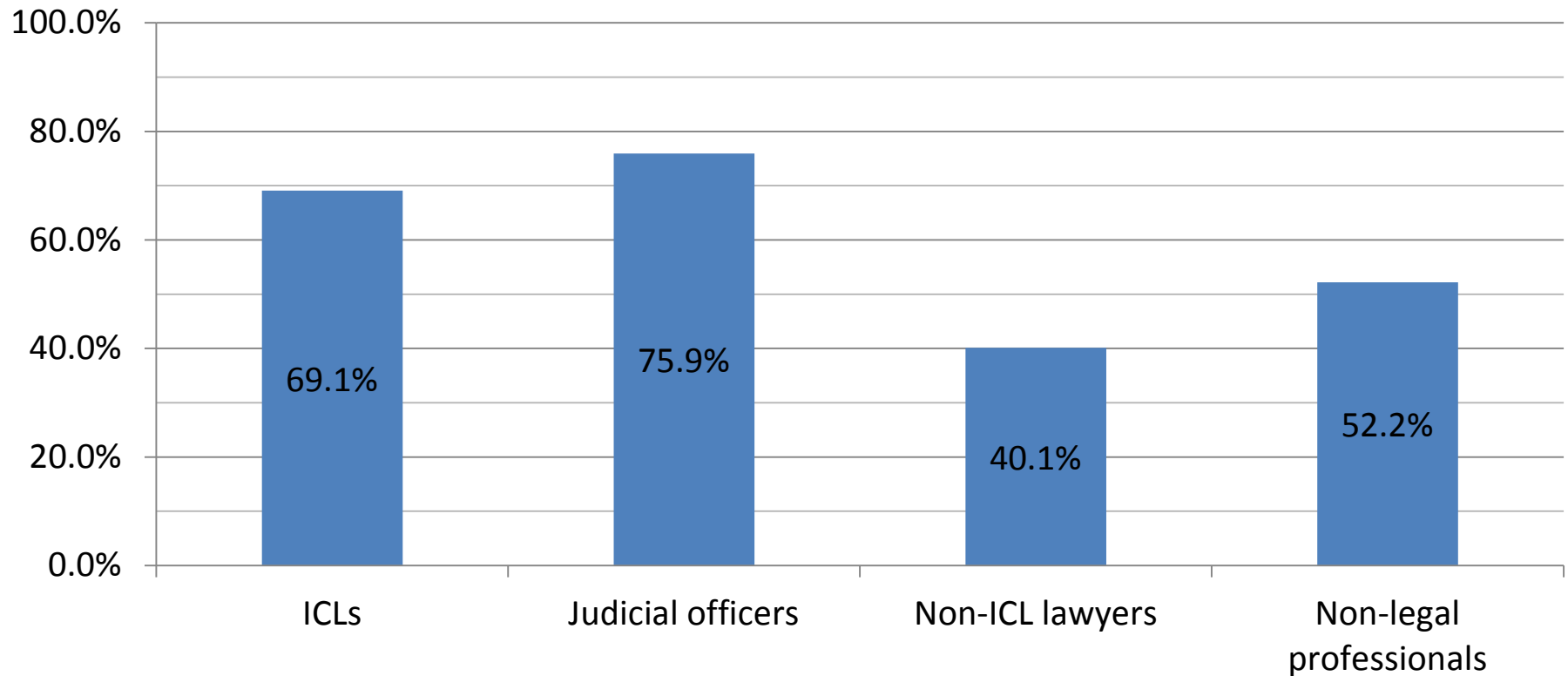


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Professionals who rate ICLs' ability to undertake particular tasks as "good" or "excellent"

Detect and respond to safety issues for children/young people

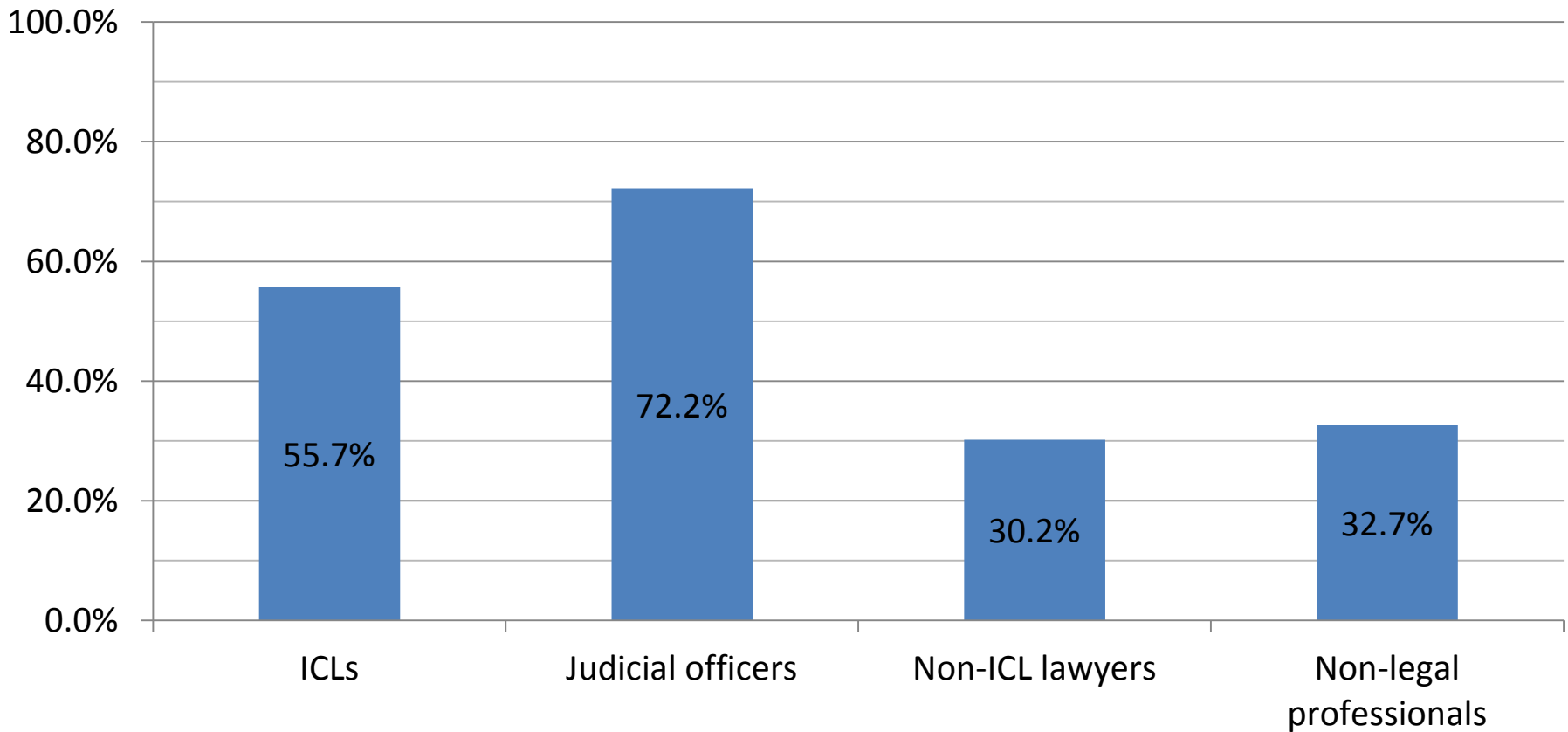


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Professionals who rate ICLs' ability to undertake particular tasks as "good" or "excellent"

Detect and respond to safety issues for parents

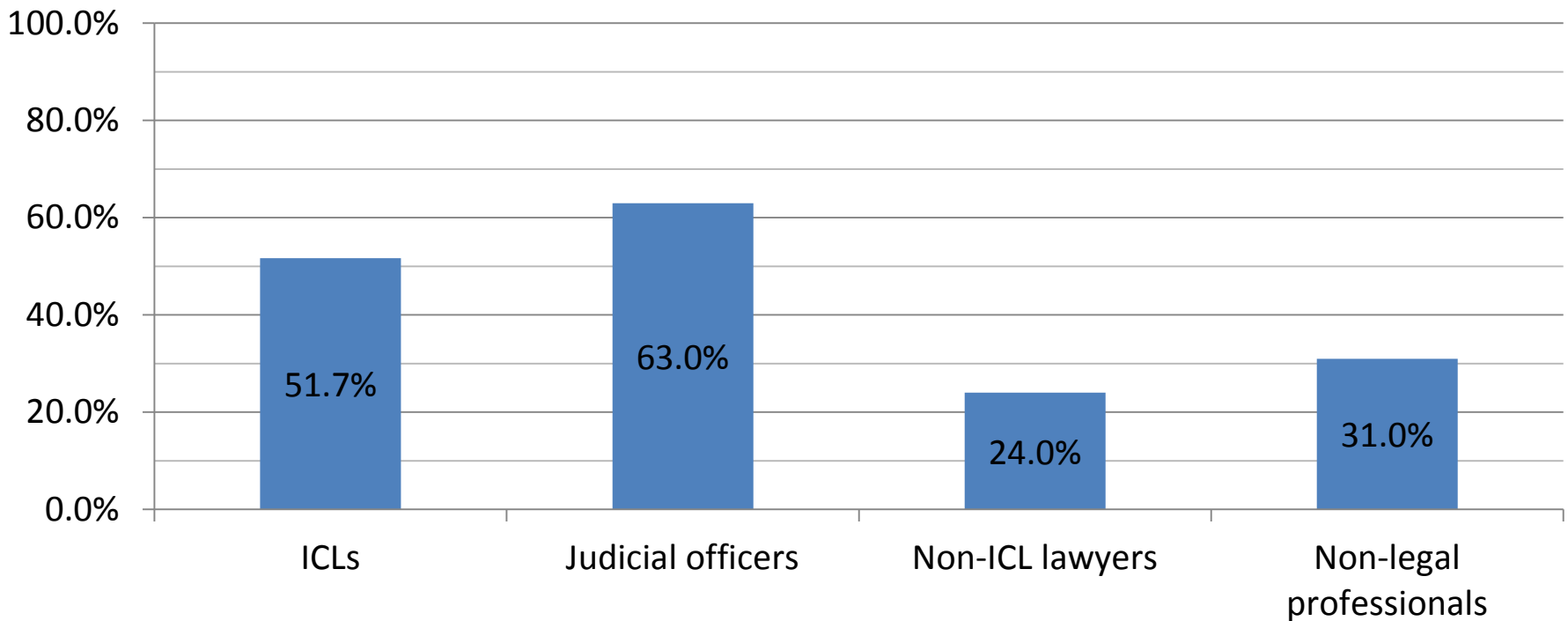


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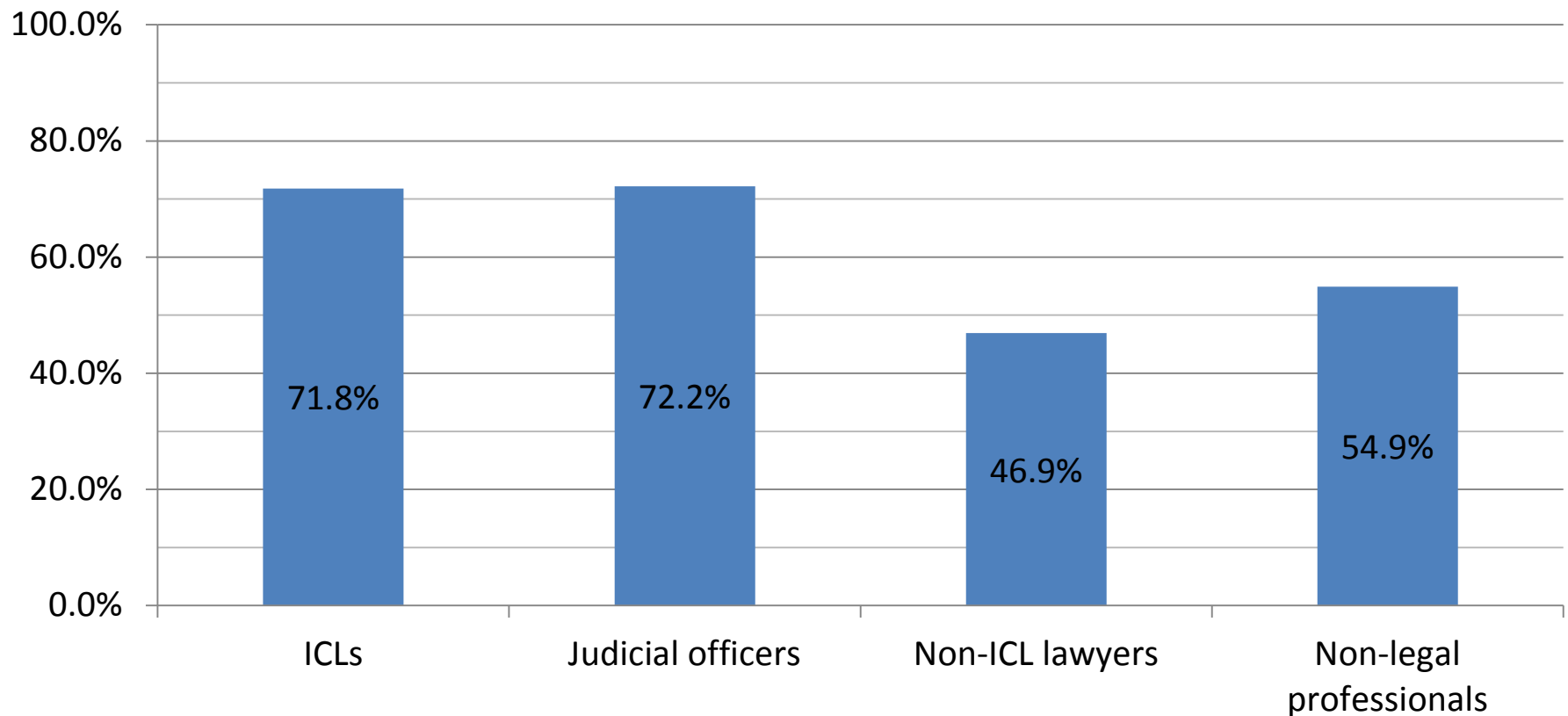
Professionals who rate ICLs' ability to undertake particular tasks as "good" or "excellent"

Identify circumstances where children/parent/caregiver may be suicidal or at immediate risk of self-harm



Professionals who rate ICLs' ability to undertake particular tasks as "good" or "excellent"

Identify circumstances where children/young people are at immediate risk of harm



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Functions: relative importance

Relative significance: % nominating 'significant', 'very significant'

	ICLs	Judicial officers	Non-ICL lawyers	Non-legal professionals
Participation	55%	65%	63%	62%
Evidence gathering	83%	94%	88%	86%
Litigation management	73%	83%	78%	67%
Facilitate agreement	81%	91%	82%	87%





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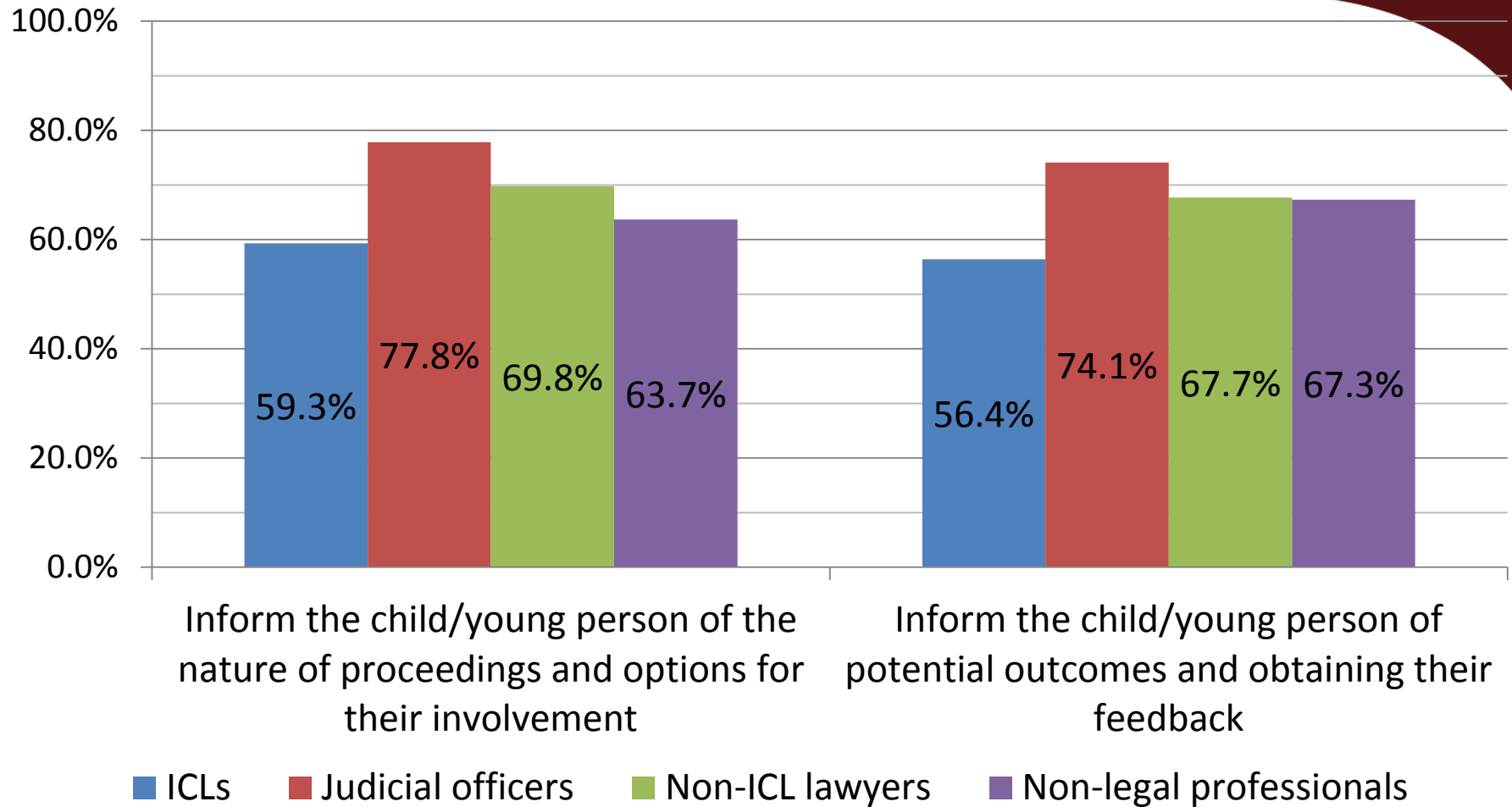
Aspects of participation

Participation

Respecting children's views means that such views should not be ignored; it does not mean that children's opinions should be automatically endorsed. Expressing an opinion is not the same as taking a decision, but it implies the ability to influence decisions. A process of dialogue and exchange needs to be encouraged... In such a process, adults must provide direction and guidance to children while considering their views in a manner consistent with the child's age and maturity. Through this process, the child will gain an understanding of why particular options are followed, or why decisions are taken that might differ from the one he or she favoured. UNICEF



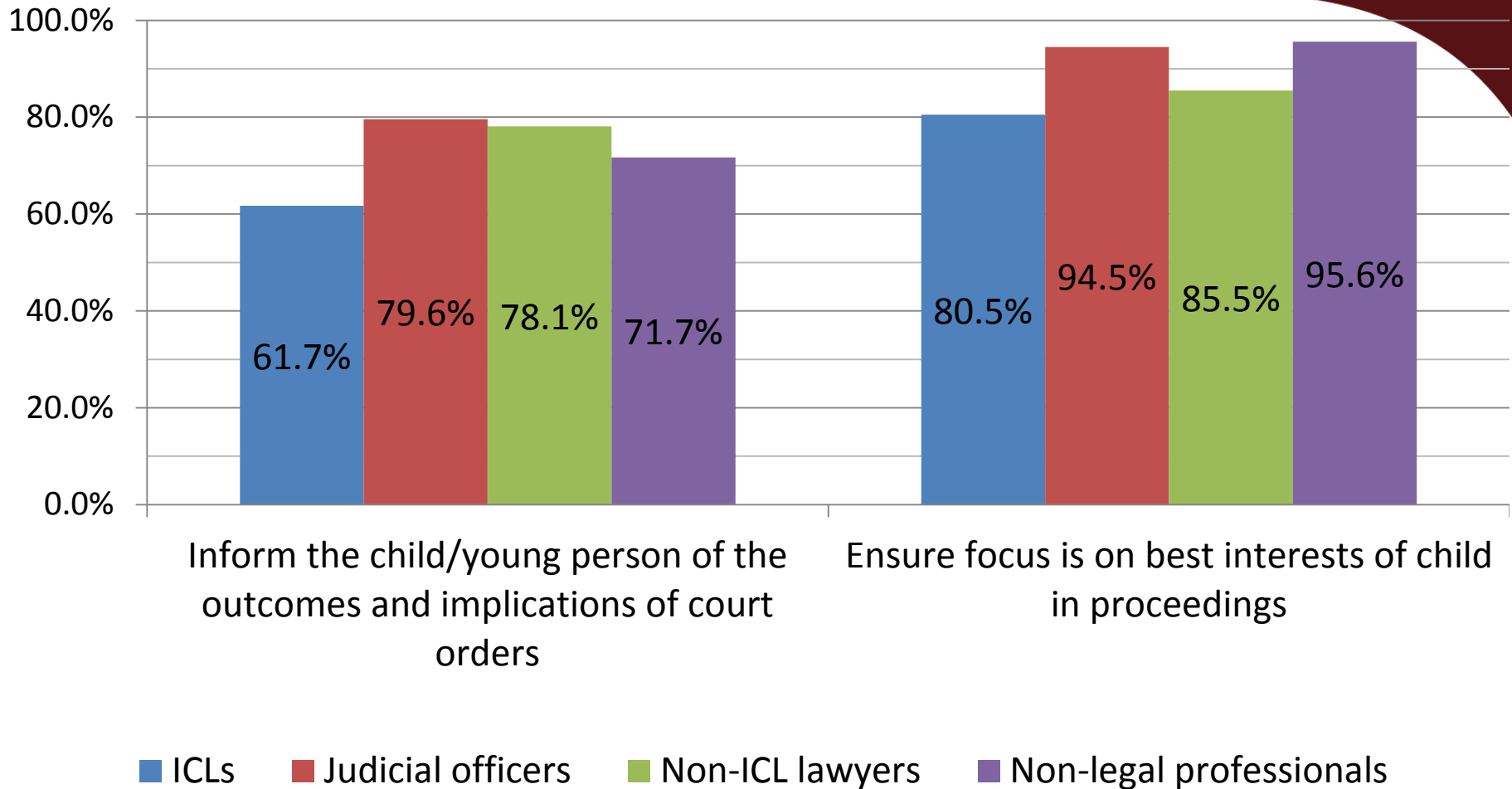
Professionals' ratings ("significant" or "very significant") of ICL participation tasks



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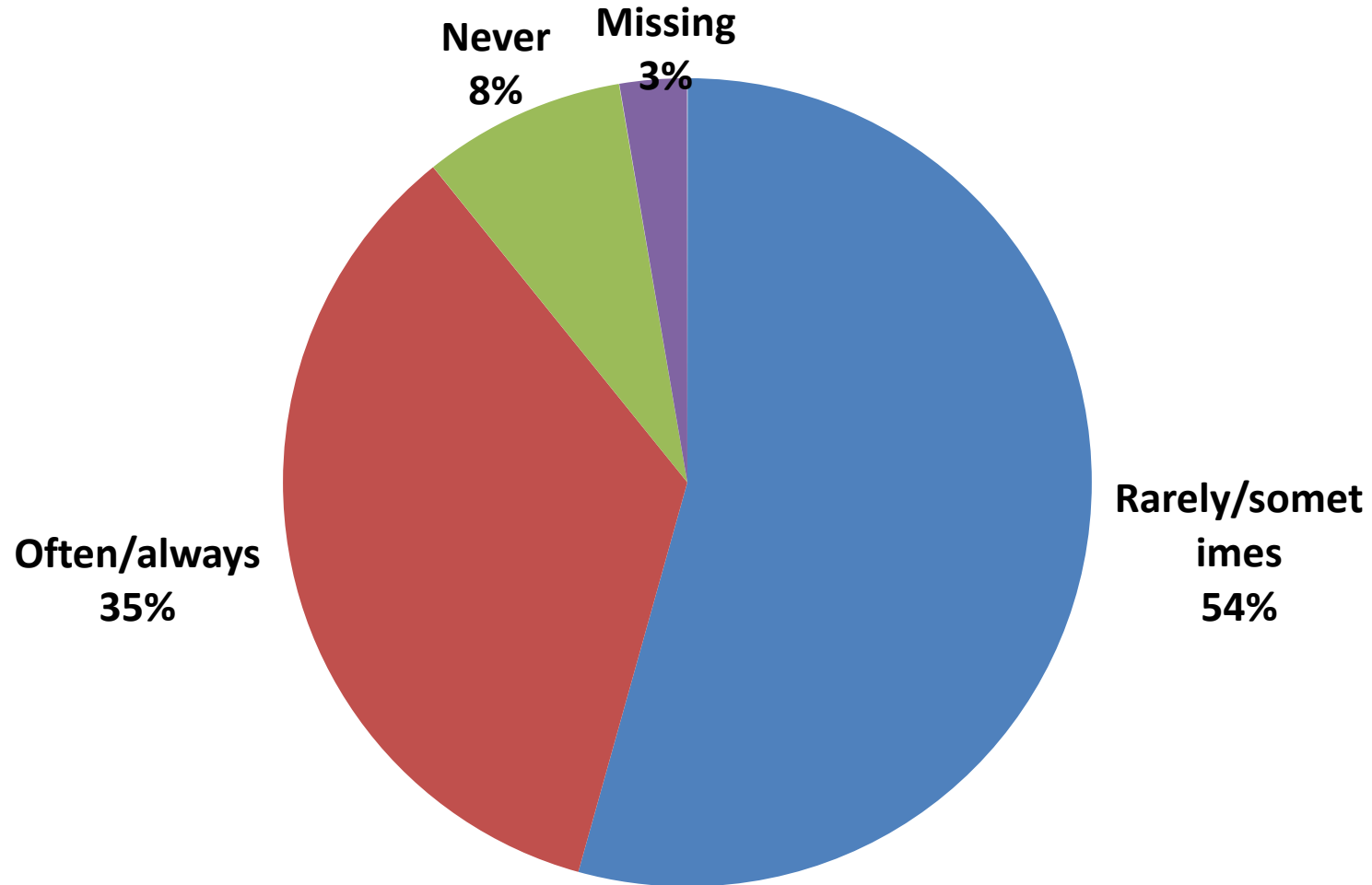
Professionals' ratings ("significant" or "very significant") of ICL participation tasks



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Frequency of ICL direct contact with children/young people

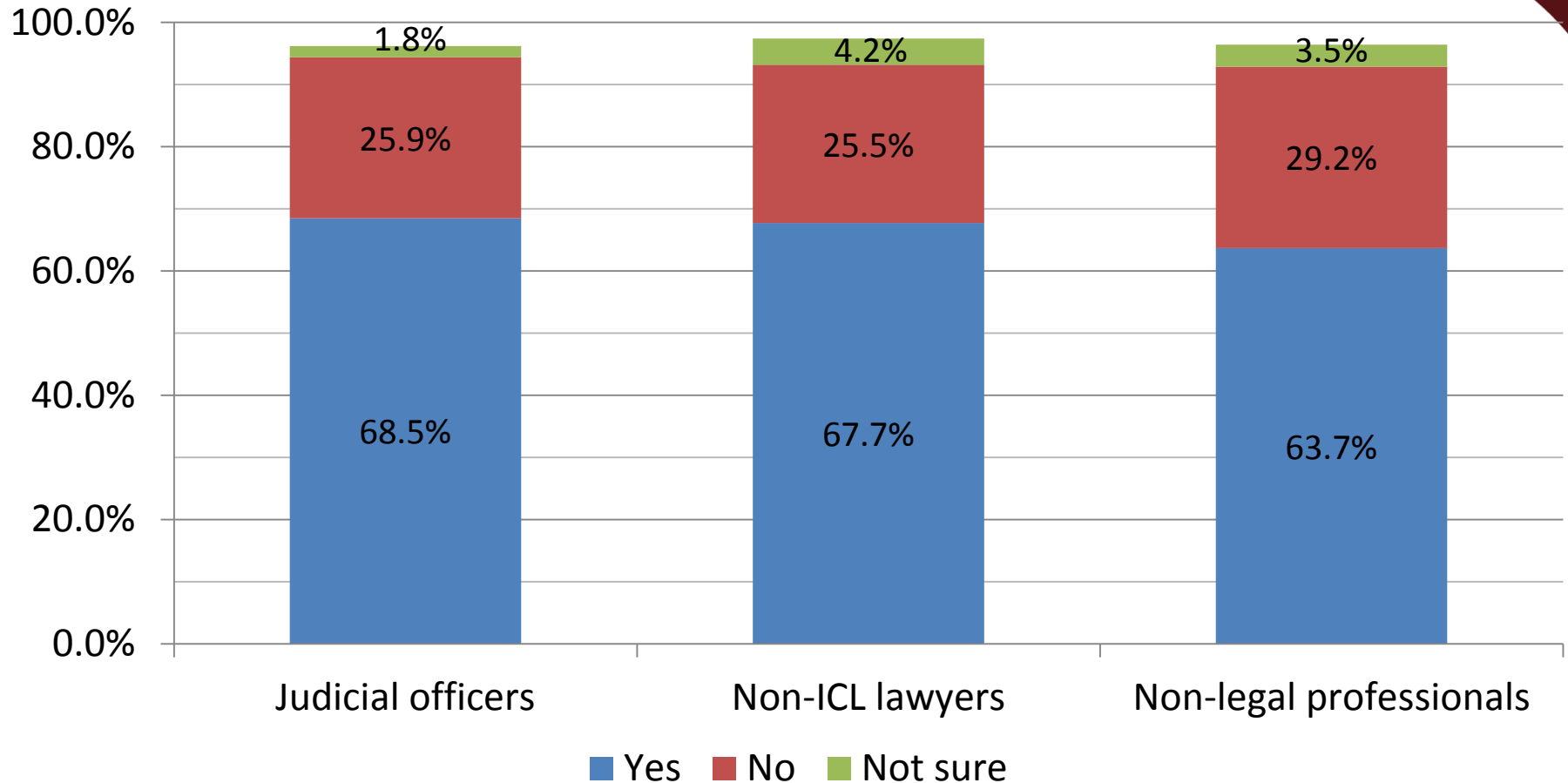


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Should ICLs have direct contact with children/young people in each case?

Contact in person or by telephone where the child is of sufficient maturity



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Reasons for meeting with children/young people

Reassuring children and explaining appropriately what is happening can be enormously beneficial for children. I think it is very difficult for ICLs to have credibility with parents if they do not talk to sufficiently mature children, and it diminishes their ability to help resolve matters.

**Non-ICL lawyer
survey**



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Reasons for meeting with children/young people

The parents are far more satisfied with ICLs involvement if they take the time to speak with the children and find out their views. They also feel like their children aren't just "names on a page" and that the ICL's views are somehow more valid having met the children.

**Non-ICL lawyer
survey**



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Participation

- Varied approaches among practitioners and between states/territories
- Disjunction between expectations of stakeholders and approach of some practitioners



Views of parents and children/young people

- Qualitative interviews
 - ◆ 24 parents/carers
 - ◆ 10 children/young people aged between 10 and 17
- Most parent/carers reported the cases involved family violence/child safety
- All children/young people reported issues relating to safety (broadly defined)



Main insights from parents/children

- Their cases were long and complex
- Few wholly positive experiences with the ICL; several very negative
- Only one child/young person reported a mainly positive experience



Concerns (parents/carers)

- Competence of ICL
- ICL's communication with parents and child/young people
- Lack of impartiality
- Negative impact on trajectory of proceedings



Good points (parents/carers)

- Someone listening to the child/young person
- Facilitating processes to help children/young people understand what was happening
- Short-circuiting 'mud-slinging'
- Ensuring court understood protective concerns



"Elise"

"She didn't let, you know, lack of funding or anything else get involved in her...need to do the right thing for the kids"



Children/young people

- Most reported little if any contact with the ICL
- Expectations that ICL would help them, stick up for them, listen to them, mostly not met
- Some children felt their viewpoint was ignored



Children/young people (2)

"Sarah" – a positive experience

- Described a sensitive approach to communication
- Indicated she felt engaged by the way the ICL consulted her in the proceedings

"if my word didn't get out properly...I don't think I would be where I was now..."



Competence

- All professionals raised concerns: judges, ICLs, non-ICL lawyers, non-legal professionals
- Issues raised most frequently
 - ◆ Rigour
 - ◆ Commitment
 - ◆ Impartiality



Competence

"The range of competence is wide. There are some ICLs who you know when you see their name of the appearance sheet that the case will be well prepared and they they will give careful consideration to the issues. Others are of little assistance or no assistance. In some cases, the ICLs are not particularly competent and lack judgment" (judicial officer)



Underlying issues

- Funding – legal aid rates insufficient to meet the costs of running cases for private practitioners
- Training and professional development – need for better training, especially in working with
 - ◆ Children/young people
 - ◆ Family violence and child abuse



Conclusion

Do ICLs improve outcomes for children/young people?

- Competent ICLs can
 - ◆ More comprehensive information before the court
 - ◆ Litigation better managed
- Significant issue
 - ◆ Practices concerning participation



Acknowledgements

Thanks to

- Attorney General's Department, which commissioned the research
- National Legal Aid and the Family Law Working Group, which supported the research
- Parents and children/young people who spoke with us
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- Consultants Patrick Parkinson, Judy Cashmore and Nicola Ross





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Thank you for attending this AIFS Seminar

Upcoming seminar & publication details at:

www.aifs.gov.au

In their own words

Gosh, I don't know. Some colourful phrases come to mind ... I don't know, I think that if she just listened, that would've made a difference, but she didn't and, yeah.

Samantha
12-14 years



In their own words

It would be a lot better if we had contact with her and was able to give our side of the story across ... And she could give our side of the story in court.

Hannah
15-17 years



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In their own words

That I'd just want to stay
here like, um, that I'd, um,
I'd say I'd never really
want to be anywhere else
but here.

James
12-14 years



In their own words

I like the way how you guys gave me the choice of like “Did you want to do this?” and ... let me know what was going to happen and that you told me at the end what I [or you] was gonna say.

Sarah

12-14 years



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In their own words

I would've said that,
something like, um, "You
could've done better or
you're a terrible children's
lawyer. You barely helped
me".

Dylan

12-14 years



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In their own words

Probably that it was—what she did was a waste of time. [It would have been a positive experience] if she had represented ... what we actually asked her to do and actually, I think, taken into consideration what we were saying. Then it would have been a lot better ... [The ICL was] representing views that weren't actually our views ... I don't think she actually cared what we actually wanted.

Alex

15-17 years



In their own words

*Um, how come you didn't
just get me to stay with
my mum earlier? Get me
to stop going to my dad's
sooner.*

Georgia
5-11 years



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In their own words

What I would ask is, well,
if she could give us more
time with our mum and
less time with our dad ...
to whenever we want to

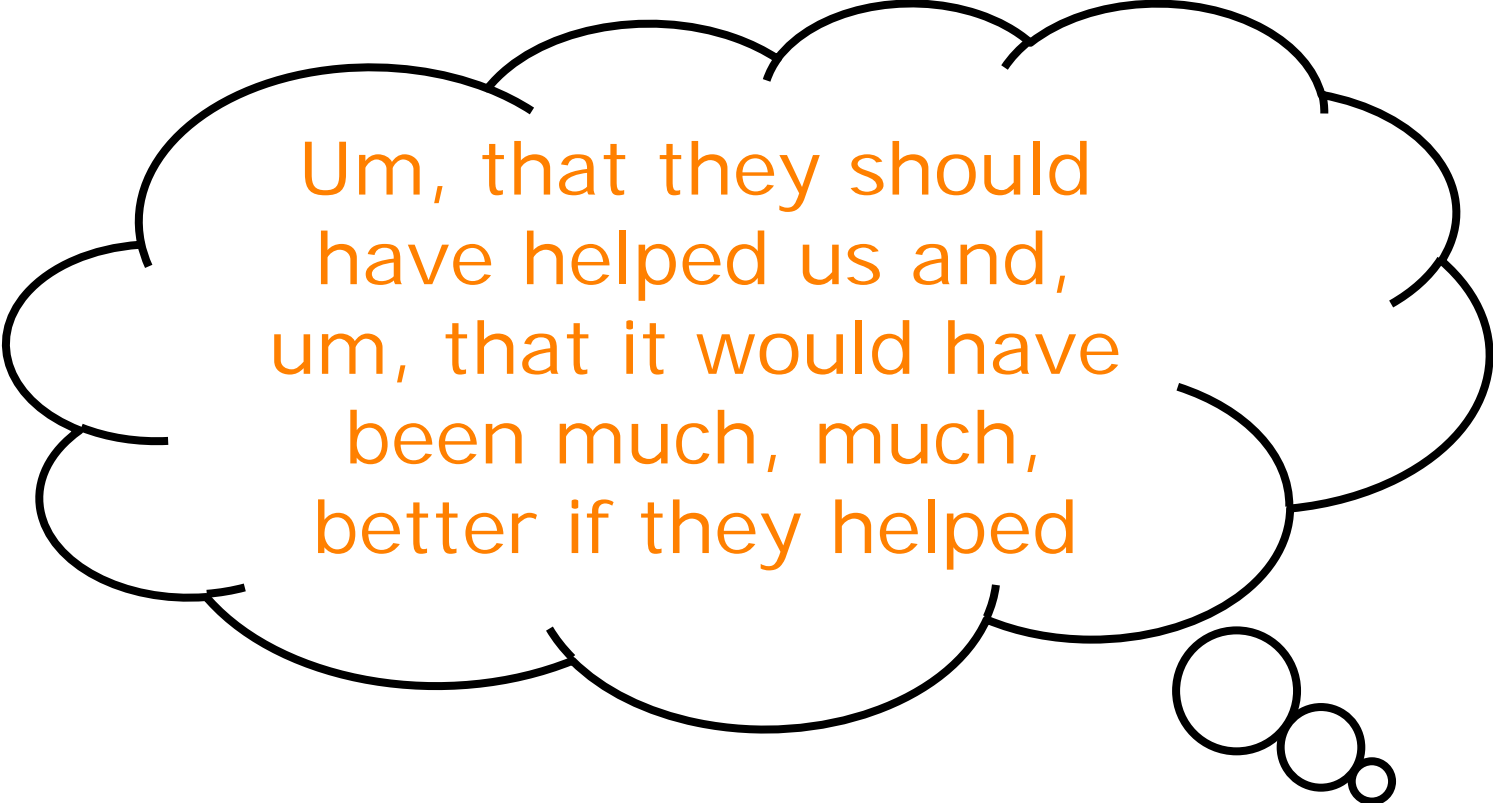
Sophie
12-14 years



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In their own words



Um, that they should
have helped us and,
um, that it would have
been much, much,
better if they helped

Zoe

5-11 years



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In their own words

Um, I probably would have told her that it probably would be better had she just actually represented me ... I still don't know where she got her facts from, but I think it would have been better if she had actually represented me ... [She could have done that by] taking my viewpoints and not making decisions about what was best for me before actually meeting with me. And stating them and getting a chance to know me ... Like, not meeting me prior to that, I think that was very dodgy, 'cos she already made the viewpoint. I don't know where that came from that she had, and at least doing that to see my point of view.

Lachlan

15-17 years



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