



Conducting legal need surveys in the Australian context: challenges and options

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Abstract: *It is now over a decade since more than 20,000 Australians were interviewed for the seminal Legal Australia-Wide (LAW) Survey. During that time Australia's demographic profile has undergone considerable change, driven by a large growth in the population. The last ten years have also seen the rise of technology with the widespread uptake of smartphones and a digital transformation in service provision. A new legal needs survey is therefore required to reassess the extent of unmet legal need, providing insight into people's experience of everyday legal problems, the distribution of these problems across the community and the extent to which people can access the support they need to resolve problems satisfactorily.*

Legal needs surveys are the most reliable way to gain an understanding of the legal needs of the community but their design impacts significantly on their usefulness. Careful consideration must be given to the questions asked, including what types of problems are included and which problems are selected for more detailed investigation. Sample selection and the number of participants are also key considerations, along with potential interview formats (face-to-face, telephone, online). This paper reports on these considerations, drawing on the findings of the preliminary stakeholder consultation conducted by the Foundation in 2018.



About the LAW Survey

The *Legal Australia-Wide Survey: legal need in Australia* (known as the LAW Survey) provides a comprehensive assessment of a broad range of legal needs on a representative sample of the population. Published in 2012, it covers 129 different types of civil, criminal and family law problems. It examined the nature of legal problems, the pathways to their resolution and the demographic groups that struggle with the weight of their legal problems. With 20,716 respondents, including over 2,000 in each state/territory, the LAW Survey enables in-depth analysis at both the state/territory and national level. To access the LAW Survey reports go to www.lawfoundation.net.au/publications

Background

Everyday legal problems can have a substantial effect on health, wellbeing and workforce participation. For the people who are most disadvantaged in our community, they contribute to a cycle of poverty and for all Australians they can impact on quality of life and productivity in the wider economy. Preventing and responding to legal problems effectively requires reliable information about the types of problems different people experience, the context within which they occur, the impact they have and what if anything people do about them. As the vast majority of legal problems never come to the notice of the justice system¹ the only way to get a reliable and representative picture of the legal needs of all Australians is to conduct a legal needs survey, asking people directly about their experiences.

Legal needs surveys in Australia date back to 1975,² but the first large-scale survey of a wide range of legal problems was published by the Law and Justice Foundation of NSW in 2006.³ This survey was conducted in six disadvantaged localities in New South Wales (NSW). Subsequently legal aid commissions across Australia requested that the Foundation undertake a comparable national survey, which it did in 2008.⁴ At the time the Legal Australia-Wide (LAW) Survey was one of the largest legal needs surveys conducted anywhere in the world,⁵ with over 20,000 Australians participating.⁶

Since then, driven in particular by increased global attention on access to justice following the United Nation's endorsement of justice-related development goals and the associated work of the OECD and Open Society Justice Initiative, such surveys have become commonplace across the world. More than 30 separate jurisdictions have conducted a large-scale

legal needs survey in the last 25 years⁷ and over 100 are now included in the World Justice Project's Rule of Law regular surveys.⁸ In recognition of the value of such surveys, in 2018 the OECD and Open Society Justice Initiative last year released comprehensive technical guidance on designing and conducting legal needs surveys to support international efforts to improve access to justice.⁹

Australian context

The LAW Survey demonstrated how widespread legal problems are in Australia, with over half of those interviewed saying they had experienced at least one such problem in the previous year. While consumer problems were the most prevalent (see Figure 1) many problems linked directly to people's core welfare, such as housing, employment, personal finances and family life. The survey also highlighted how some people are far more vulnerable to legal problems than others, with 9% of the population reporting 65% of the problems counted by the survey. People with a disability, single parents, unemployed people, people living in social housing and small business owners were particularly vulnerable.¹⁰

Since the LAW Survey, changing population profiles and lifestyles are likely to have had an impact on the number and types of legal problems experienced. Between the 2006 and 2016 Census, the population increased from 19 to 23 million, with an increasing proportion born overseas (rising from 22% to 29% of the population) and an overall ageing of the population (with an additional 1 million Australians aged 65 or older).¹¹

Over this period Australia has also undergone a digital transformation in the way people obtain information and access services, which is likely to have had an impact not only on the types of problems people encounter but also the actions they take to resolve problems.

1 Overall, it is estimated that less than one in ten legal problems are finalised at court or by another complaint handling body, with child/divorce and business/investment/probate related matters the most likely to use these avenues (see Table 7.6, Coumarelos et al 2012)

2 See Cass & Sackville 1975.

3 See Coumarelos et al 2006.

4 See Coumarelos et al 2012.

5 See Pleasence et al 2013.

6 20,716 interviews were conducted across Australia, with over 2,000 in each state/territory and over 4,000 in each of NSW and Victoria.

7 See OECD & Open Society Justice Initiative 2018.

8 See World Justice Project 2016.

9 OECD & Open Society Justice Initiative 2018.

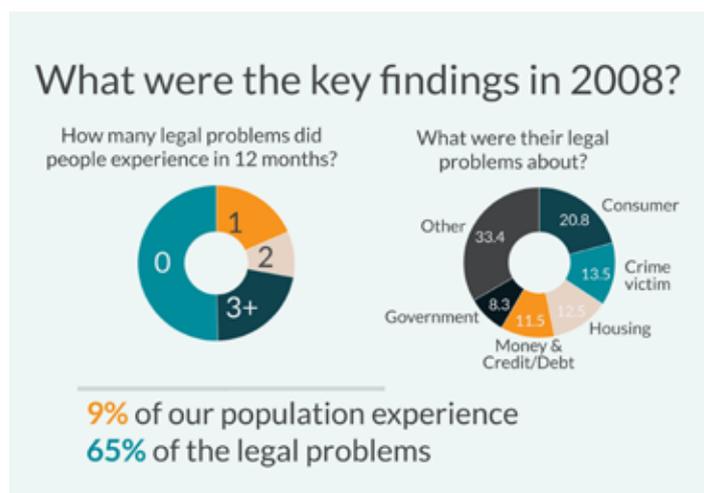
10 See Coumarelos et al 2012.

11 See ABS 2016.

Acknowledgements

The knowledge and ideas reported here draw from and build on the Foundation's many years of designing, conducting and analysing legal needs and other justice surveys. The author would particularly like to acknowledge Geoff Mulherin (Foundation Director), Pascoe Pleasence (Foundation Research Fellow), Nigel Balmer (Victoria Law Foundation) and Foundation researchers Christine Coumarelos, Hugh McDonald and Sarah Randell.

FIGURE 1: LAW SURVEY FINDINGS ON PREVALENCE OF LEGAL PROBLEM EXPERIENCE



Source: Coumarelos et al 2012.

The findings of the LAW Survey have been extremely influential in shaping the Australian access to justice policy and in particular highlighting the value of targeted, joined-up, timely and appropriate legal assistance service delivery.¹² While these findings remain relevant, demographic, social, policy and technological changes since the fieldwork was completed in 2008 necessitate a new survey. The Productivity Commission recommended in its 2014 inquiry into access to justice arrangements that a legal needs survey should be undertaken at regular intervals to inform reviews of legal assistance funding.¹³ In 2018, the Foundation undertook a consultation to quantify interest in a new legal needs survey among key decision makers, experts and sector representatives. The feedback illustrated how critical the LAW Survey has been, and continues to be, in shaping access to justice policy and service provision.

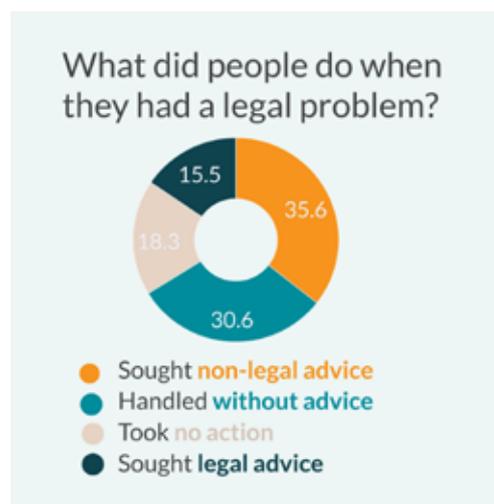
This paper draws on the Foundation’s 2018 consultation, and the Foundation’s extensive expertise in survey methodology, to provide an overview of the options for, and challenges of, conducting legal needs surveys in Australia. Rather than provide full technical details, it highlights the factors which must be taken into account when designing a cost-effective survey to support the delivery of effective legal assistance services.

Why conduct legal needs surveys?

Asking people directly about their experiences using large-scale surveys enables robust conclusions to be drawn about the number of people experiencing

legal problems, the number of legal problems experienced and the extent to which people are able to resolve problems in a fair and timely manner. This type of information is essential for understanding the potential demand for legal services of different types. Because people are asked directly about their experiences, the findings provide not only a count of the legal need that is serviced by legal services (such as by legal aid commissions and the courts) but even more importantly, of that which does not come to the attention of such services. The LAW Survey found that legal advice was sought for just 15.5% of problems (see Figure 2) with the most vulnerable the least likely to take action to resolve their problems.¹⁴ While not everyone requires or wants assistance, this nevertheless points to a large volume of unmet need.

FIGURE 2: LAW SURVEY FINDINGS ON RESPONSE TO LEGAL PROBLEMS



Source: Coumarelos et al 2012.

¹² See Pleasence et al 2014 and Council of Australian Governments 2015.

¹³ See Productivity Commission 2014.

¹⁴ See McDonald & Wei 2018.

Importantly, surveys give communities a voice. The design of effective services to meet the needs of clients requires an understanding of the reality of problems experienced and the reasons for the actions people take in response to these problems.

How to measure legal need?

Legal needs surveys vary in their conceptualisation of legal need, and therefore vary in their approach to measuring it. Since Genn's seminal *Paths to justice* study in the UK,¹⁵ the focus has been on measuring the experience of problems which potentially raise legal issues regardless of whether that is recognised

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by those experiencing them and whether or not the legal system has any involvement in problem resolution. Such problems are considered 'justiciable' in that the issues they raise are amenable to being adjudicated in a legal setting. It is not a requirement, however, that the legal aspects of the problem or the options for resolution, are recognised by those experiencing them.

However, this definition of legal need does not take into account whether the involvement of legally

qualified assistance and/or dispute resolution services are appropriate or required to resolve the problem. To inform the planning of such services further information is likely to be required. The Foundation has, for instance, developed proxy measures of need for legal assistance services (NLAS) that are informed by LAW Survey findings but use ABS Census data to provide counts of the number of people likely to require the assistance of publicly funded services were they to experience a legal problem.¹⁶

Unlike surveys to measure the prevalence of other types of experience, legal needs surveys narrow the types of experiences they count by defining relevant experiences to ensure they are justiciable. Generally, this involves limiting the scope to problems and disputes, and referring to very particular sets of circumstances that raise legal issues. For example, in asking about employment-related problems, the LAW Survey asks about problems or disputes that relate to, among others, 'being sacked or made redundant' or 'harassment, victimisation or mistreatment at work'.¹⁷

The *Paths to justice* survey approach was to ask only about difficult to solve problems, but this is no longer a recommended approach as it conflates a person's ability to manage their own legal problem with the experience of problems.¹⁸

Problem question wording

The exact wording of problem questions impacts on how well the question works to elicit reporting of the types of problems intended. Because people may not frame any problems they've experienced as having a legal component, referring to the law or asking about 'legal' or 'justiciable' problems will result in an undercount.¹⁹ The LAW Survey questions, therefore, referred predominantly to 'problems or disputes'.²⁰ Even if the words 'legal' or 'law' are avoided, the use of legal and other technical terminology (such as 'contracts' 'defamation' 'infringement') to describe problems may also result in under-reporting. Other terms may not be interpreted as intended. For instance, 'discrimination' may result in the reporting of insensitive or unpleasant behaviour rather than the type of prejudicial treatment it was intended to elicit.²¹ It is therefore important that problem questions are carefully piloted prior to being included in a survey using a technique such as cognitive interviewing to probe how they are interpreted. This is necessary even if questions are drawn from model legal surveys²² as questions can change their meaning across cultures, jurisdictions and time.

What problems to ask about?

As a prompt to problem recall, and to inform an understanding of the nature of legal need, surveys usually ask separate questions about a range of problem types. Everyday life presents many opportunities to experience legal problems and it is unrealistic to cover all of these in a questionnaire. Surveys vary, therefore, in the problem types they cover. The more prompts included, the greater the number of problems that are likely to be recalled but too many questions will increase the burden on respondents. This in turn may affect the quality of the information provided and risk respondents dropping out mid-survey. The LAW Survey captured the experience of more than 125 legal problem types, although more than 30 of these were derived from descriptive responses to a general 'other legal problem or dispute' question.²³ While the inclusion of an 'other' catch-all question is important if the

15 See Genn 1999.

16 See Mirrlees-Black & Randell 2017, Mirrlees-Black & Randell 2018 and Mirrlees-Black 2019.

17 On the other hand, the measure of motor vehicle accidents, injury related, and crime victim problems only require the experience, not that it was, or caused, a problem or dispute.

18 See OECD & Open Society Justice Initiative 2018.

19 See Pleasence et al 2013.

20 The questions were introduced with the following statement: 'I am now going to ask you whether you've had certain problems or disputes in the last 12 months that may raise legal issues'. However no further reference was made to legal issues in each of the problem/dispute type questions except in a final question 'Have you had any other legal problems or disputes ...'.

21 See Pleasence et al 2011.

22 See OECD & Open Society Justice Initiative 2018.

23 See Coumarelos et al 2012.

intention is to report confidently on the prevalence of any problem experienced, the allocation of these problems to problem types will add greatly to the resources required for processing the survey data. Also problematic is the inherent ambiguity of such a catch-all question, which is likely to result in non-justiciable problems being reported.

Asking about more types of problems may increase the count but is a burden for respondents

To avoid a survey becoming too lengthy, one approach is to ask about a smaller set of problem categories, with examples of specific problem types to assist recall. Another option is to only ask about the most commonly experienced problems, for which sufficient numbers are likely to be reported to provide reliable population estimates and support analysis by problem type. A survey could also focus on problem types that are of particular policy interest.

If one of the aims of a survey is to compare survey counts of problems with the number of problems brought to the attention of legal assistance services or to formal dispute resolution, it may be beneficial to align problem types with legal problem groupings. Early consideration of how problems are going to be grouped for analysis and reporting purposes will facilitate comparisons of this type.

Recall period

When asking about the experience of problems, a time period has to be specified. The shorter the time period, such as the last week or month, generally the better the recall of experiences.²⁴ However, too short a recall period will result in too few problems being reported for analysis. On the other hand, with long recall periods ('up to five years' and 'ever in life' have been used elsewhere²⁵) respondents will struggle to recall events, particularly

Increasing the recall period increases the number of problems for analysis but is likely to bias the profile to more serious problems.

less serious ones, leading not only to an undercount and increased error in reported problem details, but also to a problem profile biased to more memorable and serious problems.

As well as the absolute amount of elapsed time, bounding recall periods with memorable events (such as the calendar or school year) may increase accuracy or at least provide consistency in the impact

of memory on recall. A further consideration is how the findings will be reported. Annual prevalence is probably the most usual approach and dividing three-year recall periods by three or multiplying one month recall periods by 12 will give quite different counts than a one-year recall. The LAW Survey used a 12-month recall period.

Selecting problems to ask questions about

Although headline findings on the extent of problem experience are important to understanding the nature of unmet legal need, of even greater value for policy development are questions about the impact problems have and the actions people do or do not take to attempt to resolve problems.

As some respondents experience many problems, it isn't feasible to collect full details, such as actions taken in response for every problem experienced. There are various options for selecting problems for follow-up, including random selection, asking only about the most recent, or the most serious, or prioritisation by problem type. The advantages and disadvantages of each approach are summarised in [Table 1](#) (p. 6).

What do we want to know about problems?

Our consultation found that there was interest in:

- the history of problems
- the complexity of problems
- the triggers to seeking help
- the financial, health and wellbeing impacts
- the costs and other barriers associated with trying to resolve them.

Stakeholders want to understand the range of actions people take and the outcomes they seek compared to those they achieve. There is particular interest in 'what works' in problem resolution and how this varies by financial and legal capability. But also in the reasons that some people choose to do nothing, and the extent to which this is an informed decision or not.

Technology was a consistent theme in the consultation. Is the gig economy having an impact on legal problems? Are new technologies transforming service awareness and online access? What is the impact of disruptive technologies? How important is the digital divide in the provision of legal assistance? As noted above, there has been a digital transformation since the 2008 LAW Survey was conducted.

Examples of the kinds of topics that can be addressed are outlined in [Box 1](#) (p. 7).

²⁴ In practice, however, there may be a tendency for respondents to want to be helpful and/or report on events that occurred outside a short time period.

²⁵ See OECD & Open Society Justice Initiative 2018, p. 64.

TABLE 1: SELECTING PROBLEM(S) FOR FOLLOW-UP QUESTIONS

<i>Problem(s) to follow up</i>	<i>Pros</i>	<i>Cons</i>	<i>Other issues</i>
All	Provides a representative set of problems.	Too burdensome for respondents experiencing more than a few problems.	
Random sample – of problems reported by an individual	Provides a set of problems with a known relationship with the full sample of reported problems.	Problem sample will be dominated by the more common problems (which may also be the more trivial), limiting the opportunity for analysis of serious and rarer problems. This approach in combination with for instance ‘most serious’ and ‘prioritised problem type’ may be an appropriate compromise.	For this and other methods that select only a sample of problems to follow up, it may be necessary to correct for bias introduced by the increased likelihood of following up problems experienced by individuals that have fewer problems.
Most recent – respondents asked to locate their problem in time, with the most recent followed up first and so on	Assuming there is no seasonality to problems then this method can provide a set of problems with a known relationship with the full sample of reported problems.	Most recent problems are those with the shortest follow-up period and there may be too short a time since problem experience and resolution. Second most recent is therefore an alternative approach.	Other recall biases may undermine the representativeness of the sample of problems, for instance problems with greater impact (and therefore more memorable) appearing as more recent.
Most serious – selecting from problems exceeding a defined severity threshold	Avoids the sample of problems being dominated by less serious problems. Increases chance of inclusion of rarer problem types as rarer types surveyed tend to be more serious in nature. May be easier for respondents to recall events and actions for serious problems.	Problem profile biased towards more serious problems. Seriousness is subjective and may vary in a non-random way by respondent. Problem profile (including actions taken in response) of those experiencing multiple problems will differ from those with one or two.	This is not a sample of the most serious problems experienced as it is only the most serious problems reported by each individual respondent, many of which may be relatively trivial.
Prioritised problem type – selects problems for follow-up according to a formula with the problem types of most interest having increased chance of selection	Can be used to increase the inclusion of rarer problem types. A variant is to exclude a proportion of the more common problem types.	Without prior knowledge of the prevalence of different problems type there is a risk of over-selection or under-selection.	Questionnaire problem selection programming/ guidance and weighting strategies are likely to be complex to reflect the probability of inclusion of each type of problem. This increases the risk of error in data collection and reporting.
Concluded problems only – that is, problems the respondent sees as resolved and for which no further action will be taken	Concluded problems provide more information on how problems resolve.	Excludes problem that are ongoing at the time of the survey, which may be the more difficult to resolve or experienced by those less capable of resolving problems.	

Note: Any method that decreases the chance of inclusion of problems experienced by those experiencing multiple problems will have an impact on the representativeness of the problem profile. Depending on the information collected and the purpose of the analysis, this may be corrected by weighting.

Counting problems

Legal needs surveys can be used to provide estimates of the total number of legal problems. The LAW Survey estimated over 8 million Australians experienced a legal problem in 2008. Questions have to be worded carefully to facilitate reliable counts. It is good practice, for instance, to precede each question with the phrase ‘apart from anything you have already told me about’ to avoid the double counting of problems. Recording an exact number is preferable to a range (e.g. ‘between 2 and 5’) as ranges don’t readily translate into estimates of the number of problems.

Recalling how many problems they have experienced can be particularly challenging for

those experiencing multiple, frequent or related problems that can’t readily be isolated into discrete events. Some surveys include a top range (e.g. ‘more than 100’) or a ‘too many to remember’ option while others require the interviewer to enter an approximate number.

An approach drawn from victim surveys is to ask whether any of the problems were part of series of related events, and to employ separate counting rules that reflect the challenge of separating them into discrete events. For example, a relationship breakdown, ongoing housing problems, a number of partner assaults and a dispute over child maintenance could constitute such a series.

BOX 1: EXAMPLE OF FOLLOW-UP TOPICS IF PROBLEM(S) EXPERIENCED

- Number of problems of distinct types experienced during recall period
- Date (or order) of problems
- Perceived seriousness of problems
- Impact of problems on life generally, health, finances, time
- Who is perceived as responsible for problems
- The nature of other parties/the other side to disputes
- Whether problems affect other people (e.g. in households or communities)
- Whether action is taken in response to problems and, if not, why not
- Triggers to taking action
- What factors affect choice of action
- Amount of resource/time/travel to access assistance/information
- Elapsed time between problem experience and seeking assistance/information
- Use of technology to get information or for other purposes
- Who was approached for help
- Who provided support
- Value of support provided
- Whether formal dispute resolution was considered and/or used
- Whether problems are resolved
- How problems resolved
- Elapsed time from problem experience to resolution
- Satisfaction with the outcome
- Retrospective assessment of alternative courses of action
- Links with other problems experienced
- Assessment of capability to address problems effectively

Whatever approach is taken, if estimates of total numbers of problems are going to be computed, decisions need to be taken regarding outliers. The inclusion of very high counts from a very small proportion of the sample can have a large impact on the overall count and may undermine the reliability of estimates.²⁶ On the other hand, excluding extreme counts can be seen to under-represent the experience of the most vulnerable to repeat problems. A compromise is to cap the count at specified amount that reflects the reality of the repeat experience.²⁷

²⁶ If it is intended to repeat surveys on a regular basis, the volatility of the estimates this approach results in may also be an issue.

²⁷ For example, the Crime Survey for England and Wales has historically deployed a cap of 5 incidents. This is now being replaced with a cap equalling the average 98th percentile from three years of surveys. See Office for National Statistics 2017.

Who should participate?

Our consultation confirmed that all the groups identified in the LAW Survey remained high priority for a new legal needs survey, but there is particular interest in the needs of people with disabilities, those experiencing family violence, and those that had spent time in out-of-home care. Although vulnerable and disadvantaged people remain the focus of concern, there was also interest in better understanding the ‘missing middle’²⁸: including how they are utilising online help and the costs and other barriers they face in resolving their problems. There was also interest in better understanding the legal needs of small business owners.

Surveys for some communities may require special design, such as those for Aboriginal and Torres Strait Islander people, newly arrived migrants, business owners, students or the very elderly. Although this may mean that findings cannot be robustly compared to the findings of general populations surveys, the advantage is that the content can be tailored for the community of interest and the most appropriate sampling method for that group selected. For instance, a survey of the legal problems of the very elderly may best be conducted via social caseworkers based in elderly care homes²⁹ while one of Aboriginal and Torres Strait Islander people will require adhering to accepted principles for the conduct of research that respect these communities’ rights to self-determination.³⁰

The choice of survey method will be relevant here. For instance, in Australia, for ethical reasons, only adults (18+) can be interviewed by mobile phone unless arrangements are made in advance to obtain parental consent.³¹ This is not generally feasible in the context of random digit dialling surveys but may be easier to obtain during a face-to-face home based interview. The children of the household might then be interviewed by follow up phone call, or given an online or paper survey to complete in their own time.

²⁸ The missing middle consists of people who do not qualify for not-for-profit legal assistance support but do not have the financial means to access private legal advice.

²⁹ See Ikenaga & Wagatsuma 2018.

³⁰ See Australian Institute of Aboriginal and Torres Strait Islander Studies 2012.

³¹ See Australian Market & Social Research Society 2017 Code of Professional Behaviour. This states that parental consent is required for all research with under 14s, and where sensitive information is being collected for those aged 14-17. Sensitive information includes, for example, information about racial or ethnic origin and health related information.

TABLE 2: POTENTIAL SOURCES OF BIAS IN A SURVEY SAMPLE

<i>Examples of selection bias</i>	<i>Description</i>	<i>Solution</i>
Under coverage	The sample is drawn from a population that excludes some groups of interest e.g. excluding people without access to the internet.	Ensure sampling frame is representative of the population of interest.
Non-response	A proportion of the selected sample will choose not to participate or can't be contacted. A low response rate increases the likelihood that the sample differs in systematic ways from the population. However, it is not impossible to have an unbiased sample with a low response rate but unless there is good information on who has not participated it will be hard to conclude this.	Strategies to maximise participation, such as multiple attempts at contact and the use of incentives. ^a
Voluntary response	Those that want to participate are more likely to have an interest in the topic or strong opinions.	Careful marketing of the survey and strategies to promote high response.

^a Incentives (such as gift cards) can be provided before, or promised before and provided after survey completion. There is some evidence the former is more effective. Where resources are limited incentives can be used only to attempt to convert an initial refusal, or offered as a prize for participants entered into a draw.

Methods of sampling

It is not necessary for everyone within a community of interest to participate in a survey. Only interviewing a sample can provide fit for purpose estimates for much less resource. The most commonly used options for selecting samples, with their respective advantages and disadvantages, are outlined in Appendix A.

How many people should be interviewed?

Legal needs surveys are intended to provide findings that can be generalised to the population of interest, be that all adult Australians or just young Aboriginal and Torres Strait Islander people living in just one geographic region. To ensure this can be done reliably the first requirement is that the sample is representative of the population of interest (ideally achieved through random sampling) and secondly that it is large enough to provide an estimate of sufficient precision.

If the sample is not representative of the population of interest, it will not provide reliable findings for that population. Examples of sources of potential bias and how to minimise them are described in Table 2.

Determining the necessary sample size depends on the degree of precision required for the key estimates. For instance, is it good enough to know that between 45% and 55% of people experienced a problem or does it need to be between 48% and 52%? Table 3 provides a guide of the number of answers required to a survey question to achieve each level of precision. Where the population is less evenly split, that is less or more than 50% have the characteristic of interest, a smaller sample size may be sufficient. However, the findings of a survey are not generally known at the time decisions are made about sample sizes, so these sample sizes provide a useful rule of thumb.

These sample sizes are appropriate if only headline tracking of the prevalence of legal problems is required. However, a specific challenge for legal needs surveys is that to utilise survey findings for the purpose of planning effective response to the experience of legal problems, it is probably necessary to distinguish between segments of the population (priority groups), different problem types, and different responses. Each of these will narrow the available sample for analysis. The full LAW Survey sample of more than 20,000 Australians was therefore necessary to undertake much analysis of this type.

TABLE 3: EXAMPLES OF SAMPLE SIZES

<i>Precision at a 95% confidence level^a</i>	<i>Sample size required^b</i>
49% to 51%	9,600
48% to 52%	2,400
47% to 53%	1,100
45% to 55%	400
40% to 60%	100

^a This means that 95% of samples would contain the population value, so there is a 5% chance that the true (population) value does not lie within these ranges.

^b The sample size will have to be increased if sample clustering is used. It can be decreased if stratification is used.

Why weighting is required

Most legal needs survey data will need to be weighted before it can be analysed. A weight is a numerical adjustment applied to each respondent's data to correct for over or under representation in the sample of people with the same characteristic(s). This can have arisen due to the sample design and/or the impact of non-response.

A variant of a design weight is one that adjusts for population counts. In the LAW Survey, for instance, smaller states were oversampled to enable state-based analysis. For Australia-wide analysis it was therefore necessary to weight the data back to the Australian state population profile.

A sample **design weight** would be required, for instance, if a face-to-face interview is only conducted with one person at each sampled address. People living in single person households will then be over-represented compared to those living in larger households. Another example of a design weight would be one that corrects for the increased chance of selection for a random digit dialling mobile telephone survey for respondents with multiple mobile phone numbers.

Weighting for **non-response** aims to correct for differential participation rates, that is to compensate for certain characteristics that have an impact on the likelihood of being included in the survey. This type of weighting is not straightforward as it requires information about the underlying population and careful selection of the characteristics to correct for. These usually include demographic characteristics, such as age, gender, income and ethnicity as these can be compared to census distributions but may also – if the data is available – include attitudinal and behavioural characteristics.

What do we need to know about respondents?

To understand the legal needs of different communities and people with different life contexts it is necessary to collect information about the characteristics of respondents, generally known as their socio-demographic characteristics.

At a minimum it is necessary to collect sufficient details to provide information on the representativeness of the sample and to inform the construction of weights. This is facilitated by the use of 'harmonised' questions that have been tested across other surveys and/or used in the Australian Census. It is also important to give consideration to the question option categories. Non-banded options give greater flexibility for analysis but may increase refusals and 'don't knows' for more sensitive items such as age and income.

There are many potential socio-demographic questions that could be included, and their choice will depend on how it is intended to use the survey findings. In Australia, it will be important to include questions that can determine whether respondents belong to one or more of the NPA priority groups for legal assistance services (see [Box 2](#)). The NPA does not provide definitions for most of these, so consultation may therefore be required to determine the most appropriate way to assign respondents to these groups. Moreover, many of these groups are unlikely to figure prominently in national probability surveys so raise the potential need for oversampling (where this is feasible) or the conduct of parallel surveys with bespoke sampling methods.

Other suggestions for socio-demographic questions that could provide valuable insights are listed in [Box 3](#).

BOX 2: NPA 2015–20 PRIORITY CLIENT GROUPS

- (a) children and young people (up to 24 years);
- (b) Indigenous Australians;
- (c) older people (aged over 65 years);
- (d) people experiencing, or at risk of, family violence;
- (e) people experiencing, or at risk of, homelessness;
- (f) people in custody and prisoners;
- (g) people residing in rural or remote areas;
- (h) people who are culturally and linguistically diverse;
- (i) people with a disability or mental illness;
- (j) people with low education levels; and
- (k) single parents.

BOX 3: OTHER RESPONDENT CHARACTERISTICS OF POTENTIAL INTEREST

- Educational attainment and current status
- Type of housing
- Vehicle ownership and access to transport
- Access and use of technology
- Time spent in care
- Time spent in prison
- Major life events: illness, accident, crime, financial etc.
- Employment type, and working arrangements
- Business ownership
- Contact with health, human and community services
- Social networks and social isolation
- Citizenship/visa status and/or time in Australia
- Caring responsibilities
- Self-assessed skills and psychological wellbeing

What other topics should be included?

As well as providing estimates of legal need, it can be valuable to include questions on other topics that while not directly related to the problems experienced can help provide the context within which people experience and respond to legal problems more generally.

Some of the current hot topics we heard about during our consultation were the impact of the National Disability Insurance Scheme (NDIS); the legal needs of those transitioning from out-of-home care; and, financial and care related forms of elder abuse.

There was also interest in whether the increasing number of alternative dispute resolution mechanisms, ombudsmen and complaint handling bodies are having the presumed impact of improving access to justice. To some extent this could be explored through questions investigating problem resolving behaviour, although the number of respondents having contact with these organisations is likely to be small. It could also be investigated more broadly by asking directly, or through hypothetical scenarios, about awareness and understanding of the role and function of these bodies.

It is generally cost-effective – particularly for those survey methods with a high cost associated with achieving an interview – to include questions that can be answered by all respondents, not just those that have experienced problems. However, one

Asking general questions only of those not reporting a problem may even-out respondent burden but will result in biased findings.

of the challenges of designing legal needs surveys is that respondents who have experienced one or more problems are asked far more questions than those who have not experienced any problem. There is therefore considerable variation in the burden on individual respondents. Unfortunately,

only asking general questions of those who have not experienced a problem is not an option as this will not provide a representative sample.³²

Questions suitable for all respondents include: knowledge of the justice system and legal assistance provision, perceptions of the justice system and legal assistance sector, self-assessed ability and confidence to manage problems and knowledge of legal rights (the latter can be assessed through the use of hypothetical scenarios).

To maximise the cost-effectiveness of conducting surveys it may also be possible to utilise the sample in additional ways, such as experimentation, linking to other datasets and following up selected sub-samples for further research. Experimentation could include methodological investigation, such as varying the order of questions or question responses for subgroups of the sample (although this may present a challenge to determining which findings to report). It could also include providing information to a proportion of the sample, before the survey is conducted and comparing the impact on responses to knowledge or attitudinal questions.³³

Linking to other data, such as legal assistance client data, or indeed health, education or financial data, will generally require acquiring respondents consent at the conclusion of the survey and ensuring that the identifying details collected are sufficient to support high level of matching.³⁴ However, given the concerns about the use of personal data there are risks in attempting this.

Less confronting is to ask respondents if they are willing to participate in future interviews or other research projects. Although second contact samples will not be as representative, due to lower response rates, they will almost certainly be adequate for qualitative research samples. This is a very cost-effective way of identifying samples of people who have experienced specific types of legal problem and/or taken specific actions in response to those problems.

How should the interviews be conducted?

Surveys can be conducted face-to-face, over the telephone, online or by post. A summary of the advantages and disadvantages of each method is provided in Appendix B.

Face-to-face surveys are the most expensive, as they require interviewers to travel. However, they tend to provide the highest participation rates and allow for longer interviews – generally at least 45 minutes to justify the travel time. In Australia where the population is concentrated in major cities and greatly dispersed elsewhere, cost tends to preclude face-to-face interviewing in regional and remote areas. Interviewing in Indigenous communities will also require consulting with community elders and negotiating appropriate access.

Telephone surveys are less expensive but are limited in length with 30 minutes a suggested maximum. When the LAW Survey was conducted in 2008, the most cost-effective method for reaching a

³² One way to manage the questionnaire length of additional questions is to split them into two or more modules and allocate to random portion of the sample. However it is then not possible to analyse the relationship between responses to questions contained in separate modules.

³³ See Pleasence et al 2018 and Chapman et al 2002.

³⁴ Approval of an ethics committee may be required by data providers or funders to link datasets.

representative sample of the population was landline telephone. Since then the percentage of adult Australians with a fixed line telephone service at home has declined to 64%.³⁵ Dual-mode random digit dialling (RDD) is a variant of telephone sampling that has been developed in response to the decline of the landline, whereby the landline sample is augmented by a mobile phone sample. Weighting strategies must take account of the increased chance of selection of respondents with both a landline and a mobile phone, or indeed more than one mobile phone. Because mobile telephones don't have a geographical identifier, one option is to draw samples from listings of mobile telephone numbers for which the place of residence is known, but the lack of representativeness of these listings introduces significant bias to these samples.

Online surveys (including sms) are becoming more common but have limitations for legal needs surveys. These are cheap to administer and attractive to those

... online surveys do not currently provide sufficiently representative general population samples for robust estimates of the type required in a legal needs survey.

parts of the community used to conducting their lives online. However, this isn't yet everyone. According to the 2016 Census, 6.2% of Australians aged 15 to 64 do not have access to the internet from their home, but this figure increases to 16.4% of those of who are potentially the least capable of resolving their own legal problems due to their financial resources and

level of educational attainment.³⁶ In addition to the lack of inclusion of Australians without internet, it is difficult to monitor who is actually completing an online survey.

Online panels³⁷ are a more robust option than other forms of online survey, as weights can be used to correct for some of the potential biases. However close attention should be paid to the characteristics of the panel as it may only include a restricted age group, restricted regional cover, require good English language skills etc.³⁸ There are also some known biases of online panel participants, and while socio-demographic biases may be corrected through weighting it is less straightforward to correct

for attitudinal and lifestyle differences.³⁹ It is our assessment that online surveys do not currently provide sufficiently representative general population samples for robust estimates of the type required in a legal needs survey. However, they may be of value for questions not requiring precise estimates; for targeting some groups (e.g. business owners, students); for piloting questions; and for indicative estimates to inform further survey design.

Paper surveys can be relatively cheap to administer (depending on arrangements for their return as postal costs can be high) but generally do not provide sufficient participation rates unless they are compulsory or participation is pre-arranged face-to-face or by telephone. For this reason they are not recommended as the main method of conducting legal needs surveys.

Hybrid surveys combine one or more of the above methods to maximise participation rates and minimise costs. For instance, in a longitudinal survey face-to-face interviews might be used to recruit respondents, while follow-up interviews are by phone or online. A mixed mode of interviewing can also work well where a specific module of questions, such as on a sensitive topic, are asked of everyone using a self-completion method (online or paper) in the context of a face-to-face survey. There can also be merit in using alternative methods for recruitment and to follow up non-response. For instance, a geographical sample of respondents could be initially approached by letter, perhaps with the offer of an incentive to participate in a telephone or online survey. As this provides a geographically based (e.g. state/territory) sample without the need for a face-to-face visit it has some merit, but opt in methods such as this tend to suffer poor participation rates. More problematic is varying mode of interview within a survey. This is because mode of questioning has an impact on responses due to differences in the way questions have to be asked and responses elicited. For some types of question the presence, or absence, of an interviewer can also have an effect. While it is tempting to offer options for mode of participation (such as online or telephone), mixing modes of interviewing for one set of questions delivered at one point in time is therefore likely to have an impact on data integrity and should be avoided.⁴⁰

Survey methodology is always developing but currently we would only recommend face-to-face or dual-mode telephone surveys to conduct an in-depth general population legal needs survey in Australia. The advantages and disadvantages of these methods are summarised in [Table 4](#).

35 See Australian Communications and Media Authority 2017.

36 See Mirrlees-Black & Randell 2018.

37 An online panel consists of recruited participants that are asked to participate in a number of different surveys, on for instance a monthly basis. The quality of the panels depends on how the participants were recruited and refreshed, the frequency and type of surveys they are asked to participate in, and how they are remunerated.

38 The World Justice Project survey of legal need conducted in Australia in 2014, for instance, used an online panel whose sample was drawn only from Sydney, Melbourne and Brisbane. (see World Justice Project 2014, Methodology, p. 72)

39 See Pennay et al 2018.

40 See de Leeuw 2005.

TABLE 4: SUMMARY OF ADVANTAGES (TEAL) AND DISADVANTAGES (RED) OF FACE-TO-FACE AND DUAL-MODE TELEPHONE SURVEYS IN THE AUSTRALIAN CONTEXT

Face-to-face	Dual-mode (landline & mobile) telephone
45+ minute interview length	Up to 30 minute interview length
Can easily sample by geography e.g. interview in some states and not others	As location of mobiles is unknown, some sample will have to be discarded if doesn't fall into selected area
Unlikely to include outer regional and remote areas	No geographic limitations
Higher participation rates	Lower participation rates
Longer fieldwork period, due to travel requirement	Shorter fieldwork period
Can explore more sensitive topics through embedded self-completion	No integral option for self-completion
Option of postal questionnaires for other household members	Cannot include people aged under 18
Higher cost per interview	Lower per interview cost

Conclusion

This paper outlines some of the factors that impact on the design of legal needs surveys. Inevitably, many of these are quite technical in nature and their application will require the expertise of research professionals with a detailed understanding of the access to justice sector.

Selecting the most appropriate design for a legal needs survey will depend primarily on the purpose of conducting such a survey. If the requirement is limited to Australia or statewide ball-park estimates of the prevalence of legal problems with no analysis of *who* is experiencing those problems and/or *how* they are responding to them, then the cheaper methods such as (probability sample) online panels can provide these indicative findings.⁴¹

However, for evidence of appropriate quality to support policy and/or operational decision making, survey methods that facilitate access to representative and adequately sized samples of communities of interest will be required. It was clear from our consultation that there is interest in small but important vulnerable groups, but also in probing the actions taken in response to specific types of problems and in reporting key survey findings by state. Because of the rigour, scale and complexity of analysis necessary to report this depth of analysis accurately, an appropriate survey design will be expensive. The cost is mainly determined by the method of interviewing and the size of the sample needed to examine key questions for communities of interest.

Regarding **method**, our recommendation is to use dual-mode telephone survey method, as this has become the standard social survey interviewing method in Australia. This is most cost-effective if all Australia is covered, as otherwise people contacted from non-participating jurisdictions have

to be discarded from the sample and the interview terminated after they confirm they live in an out-of-scope state or territory. Although face-to-face interviewing has its advantages, the additional cost and the feasibility of reaching more regional and remote areas, may outweigh these.⁴²

In terms of the **sample size** requirements, although the larger the sample the greater the options for analysis, this must be weighed against the longer fieldwork period and subsequent time taken to report on findings due to data cleaning and the additional options for analysis that a larger sample provides. Our recommendation, therefore, is to aim for a 10,000 probability sample survey, which allows for state level findings for the three largest states. The potential sample distribution across Australia that this would provide is shown in **Table 5**.

Even with this sample size it will not be feasible to report separately for the smaller states or smaller communities of interest. It may be feasible to include some oversampling to boost sample sizes in some states/territories, but this would be relatively expensive to achieve.

Alternatively, we would propose conducting smaller annual or biennial surveys of at least 2,000 interviews which provide headline Australia-wide findings annually and could also be combined over time to provide larger samples for analysis. The advantage of this approach is that it spreads costs and supports timely reporting of regular headline findings. The disadvantage is the delay in being able to report by

If comparability of findings between communities or across time is important, then changes to survey questions, mode of interviewing, and sample selection should be avoided.

⁴¹ These less robust methods can also be useful in demonstrating the likely scale of an issue to determine the value and design of further research.

⁴² Not only is the cost per interview higher, because interviews have to be geographically clustered, each face to face interview effectively adds less to the count of interviews than a telephone interview in that the estimates derived from a face to face sample will have a wider margin of error associated with them.

TABLE 5: ESTIMATED DISTRIBUTION OF A RANDOM 10,000 SAMPLE BY STATE AND PRIORITY CLIENT GROUPS

	<i>NSW</i>	<i>VIC</i>	<i>QLD</i>	<i>SA</i>	<i>WA</i>	<i>TAS</i>	<i>NT</i>	<i>ACT</i>	<i>AUS</i>
Indigenous	70	16	59	11	25	8	20	2	213
Single parent	171	129	110	40	51	13	5	8	527
Unemployed	115	98	87	31	50	8	4	5	399
Culturally and linguistically diverse	842	684	234	120	185	12	14	38	2,128
Social housing	110	55	57	34	33	9	15	8	320
Disability 18–64	77	58	50	19	18	7	2	3	235
Disability over 65	121	92	66	29	28	9	1	5	352
TOTAL 18+ sample	3,203	2,550	1,986	728	1,049	220	94	170	10,000

Source: ABS Census 2016.

Note: Counts are based on census distributions and no correction is made for differential survey response rates. Differential response rates will have an impact on this profile: that is some of these groups may have lower contact and response rates than others.

problem type, on responses to legal problems or to deliver findings at state level or for the smaller communities of interest. If this approach is adopted it will be important to invest in a survey method and questionnaire design that maintains comparability between surveys but incorporates sufficient flexibility to allow the inclusion of new topics of interest as they arise.

A sustainable yet flexible design is necessary to track trends over time in problem experience and to assess the impact of systemic and service changes on problems and the resolution strategies deployed. If comparability of findings between communities or across time is important, then changes to survey questions, mode of interviewing, and sample selection should be avoided.

Our consultation found that in the context of dramatic population change and technological innovation over the last decade, there is resounding support for a new survey. This would ideally deliver state level findings and, although not required annually, should be frequent enough – every 2 to 5 years – to monitor sector developments and assess emerging trends and hot topics. A new legal needs survey will give government and service providers the opportunity to hear direct from the public about the everyday legal problems they experience, and what actions they take to resolve them, if any. Australia needs a regular assessment of legal needs and the pathways people follow when facing legal problems to ensure Australian policy and service delivery is most effectively targeted, and makes best use of available resources.

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Appendix A: Sampling methods

Sampling methods can be categorised into probability and non-probability. In a probability sample the chance of a respondent being included in the sample is known. For instance, because the sample is drawn from a list of all residential addresses of from the frame of potential telephone numbers. In a probability sample, interviewers can't determine who to interview, they must make repeated attempts to include the selected person/address/telephone number and can't substitute an alternative if the selected person does not respond. This may make it difficult to achieve the number of interviews required. However, probability samples are preferable if it is important that findings can be generalised to the relevant population, providing sufficiently precise estimates to inform decisions, to describe differences between subgroups and to quantify changes over time.

This is because although non-probability sampling methods are a cheaper, they all suffer significant risk of producing biased samples. Convenience samples, whereby interviews are conducted in particular locations or with people who volunteer to participate, are an obvious example, but even the more widely used quota sampling is prone to this effect. Inevitably, quotas are filled with

easier to contact respondents, meaning that the achieved sample is potentially biased to exclude the harder to reach. To some extent this bias can be corrected by adjustments to each respondent's inclusion in the analysis. This procedure is called weighting and is used to adjust the achieved sample to known population totals for all the respondent characteristics that are related to the questions of interest. However, weighting cannot correct for all bias resulting from propensity to respond.

Because simple random probability samples are expensive and not always practicable, two techniques are often deployed to minimise costs and ensure that the sample includes respondents from communities of particular interest. These are clustering and stratification. In cluster sampling the population is split into smaller groups (such as local government areas) and a sample of these groups is randomly selected. Interviews take place within *selected* cluster. However, if there is variation between clusters, there is a loss of representativeness from this method that decreases the precision of the estimates from the survey. In stratified sampling, the population is divided in to subgroups of interest (strata), and simple random sampling is undertaken within *each* stratum. Stratification can improve the representativeness of the sample and the precision of estimates.

TABLE A1: SUMMARY OF ADVANTAGES AND DISADVANTAGES OF ALTERNATIVE SAMPLING METHODS

Sample type	Pros	Cons
Convenience – e.g. using directories, interviewing in the street, pop up online surveys, referral from service providers, acquaintances etc.	Cheap and quick. If high response rate achieved may be sufficiently representative of the targeted population. May be the only feasible way to reach some hard to reach communities.	Samples will not represent the general population, so findings cannot be interpreted as applying to the general public. If poorly defined sampling frame (number eligible that were asked to participate) then not feasible to determine response rate and therefore whether there is likely to be bias in the achieved sample.
Quota – interviewing until quotas e.g. of certain age groups are met and then excluding potential respondents with these characteristics to focus on filling other quotas	Cheaper than probability samples. Guarantee sufficient sample for analysis.	Potential for bias as quotas are filled with easier to contact respondents. Tests of statistical significance may not be valid.
Random probability	Minimises the impact of bias on survey findings. Tests of statistical significance are valid.	Expensive to achieve acceptable response rates. May generate insufficient sample for analysis. Requires careful selection of an appropriate sampling frame. For instance, in Australia the electoral roll excludes residents that are not citizens.
Random probability within clusters	Reduces cost of geographically based samples, such as face-to-face, as distances between interviews are smaller.	As people living in proximity tend to have more similar characteristics clusters decrease the representativeness of the sample. This decreases sampling efficiency. Adds to the complexity of analysis.
Stratified	Ensures sample drawn from all subgroups of interest. Increases sampling efficiency: same sample size provides more precise estimates.	May not be feasible if the information to construct strata is not available. Adds to the complexity of analysis.

Appendix B: Interviewing methods

TABLE B1: SUMMARY OF INTERVIEW METHODS AND THEIR ADVANTAGES AND DISADVANTAGES

<i>Interview method</i>	<i>Pros</i>	<i>Cons</i>
Face-to-face	Higher response rates. Longer questionnaire length. Options for self-completion for sensitive topics. Options for data from other household members.	Expensive, particularly for geographically dispersed populations. Therefore may exclude regional areas and have clustered samples. Longer fieldwork period. Longer post-fieldwork period.
Telephone (landline)	Can give un-clustered coverage of a selected geographic area. Interview takes place at home.	Shorter questionnaire length than face-to-face. Only 64% of households now have a landline telephone.
Telephone (mobile)	Use of SMS to set up interviews.	Can't reliably select sample by geography, which adds to cost per interview if out of area call recipients need to be screened out. Potentially shorter questionnaire length than face-to-face or landline as interviews on the go/not at home. Declining response rates due to call blocking and screening.
Online (fresh sample)	In some circumstances may be a way to reach hard to reach groups.	Biased samples. Excludes those without access to the internet. No control over who actually completes the survey.
Online Panel (panel members undertake a number of surveys on a regular basis)	Cheap. Quick. A quality panel provides good information on who participated and who did not (Australia has only one probability based online panel: Life in Australia ^a). Can be useful for piloting new questions or for headline findings.	Sample size limited. Number of questions limited. Samples tend to be biased in predictable ways (e.g. internet access). Correction by weighting does not fully correct for this. ^b Panel members may become 'expert' respondents and with no control over what other questions they are being asked there is the potential for these to have a differential impact each time the survey is run – which will affect the reliability of trends.
Postal	Cheaper than face-to-face and telephone. Respondent can complete at convenient time. Can include all in household.	Generally have poor response rates.

^a This was established by the Social Research Centre in 2016.

^b See Penny et al 2018.

Note: There are directories of mobile numbers drawn from various sources but these will not meet the requirements for a probability sample as they will not be representative of the population of interest.