

# 1. Review of legal needs surveys

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## Background to present survey

It is now widely accepted that legal needs are ubiquitous in contemporary society, cutting across many aspects of everyday life and having broad implications for physical, emotional and social well-being (Coumarelos, Wei & Zhou 2006; Currie 2007b; Genn 1999; Pleasence 2006; Pleasence, Buck, Balmer, O'Grady, Genn & Smith 2004c). The pervasive nature of legal needs arises to a large extent because the law permeates so many aspects of public, civil and private life. Many of the problems people commonly experience are nested in legal rights and obligations. These problems span basic areas of modern-day life, such as education, employment, money, debt, injury, health, housing and family relationships.

The interplay between the law and everyday life underlines the fundamental role of access to justice in community well-being. Considerable research effort in recent years has examined the extent to which people are able to access justice to resolve their legal needs. In particular, many large-scale legal needs surveys of the population have been conducted. Such surveys have examined the prevalence of different types of legal problems, the actions people take to resolve these problems and the outcomes they achieve. By building a picture of the nature of legal problems and the pathways to their resolution, these surveys have aimed to inform, and ultimately enhance, the provision of legal services and access to justice.

Although empirical research on legal needs dates back to the 1930s in the United States (US), it gained considerable momentum in the 1990s, when ground-breaking legal needs surveys were conducted in the US by the American Bar Association (ABA 1994; Consortium on Legal Services and the Public (Consortium) 1994) and in the United Kingdom (UK) by Genn (Genn 1999; Genn & Paterson 2001). Following these studies, a number of large-scale surveys measuring a broad range of civil legal problems have been conducted around the world. These surveys have amassed a considerable body of evidence that paints a broadly consistent picture — namely:

- Legal problems are widespread, with some people experiencing multiple, severe legal problems.
- The health, social and economic consequences of legal problems can be substantial.
- Many people make no attempt to resolve their legal problems.
- Most people resolve their legal problems outside the formal justice system.
- Many people experience barriers in trying to resolve their legal problems (e.g. Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Genn 1999; Genn & Paterson 2001; Gramatikov 2008; Ignite Research 2006; Murayama 2007; Pleasence 2006; Pleasence, Balmer, Patel & Denvir 2010; van Velthoven & ter Voert 2004).

These surveys have also provided compelling evidence that socioeconomically disadvantaged groups are particularly vulnerable to legal problems and less able to resolve the problems they face. Such disadvantaged groups include people with a disability, single parents, people who are unemployed, people who have low incomes or receive welfare benefits, and people living in public housing (e.g. Buck, Balmer & Pleasence 2005; Buck, Pleasence, Balmer, O'Grady & Genn 2004;

Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Genn 1999; Genn & Paterson 2001; Gramatikov 2008; O'Grady, Pleasence, Balmer, Buck & Genn 2004; Pleasence 2006; Pleasence & Balmer 2007, 2009; Pleasence, Balmer, Buck, O'Grady & Genn 2004a; Pleasence et al. 2010; van Velthoven & ter Voert 2004).

Legal needs surveys in Australia date back to 1975 (Cass & Sackville 1975; Fishwick 1992; Rush Social Research Agency (Rush) 1999; Rush Social Research & John Walker Consulting Services 1996). However, the first large-scale Australian survey of a wide range of legal problems was conducted in New South Wales (NSW) and published in 2006 by Coumarelos et al. of the Law and Justice Foundation of NSW (LJF). This survey was reported in *Justice made to measure: NSW Legal Needs Survey in disadvantaged areas*. Consistent with overseas research, it found a high incidence of legal problems, a substantial rate of inaction in response to legal problems and a low use of legal advisers. In addition, socioeconomic disadvantage appeared to largely underlie the experience and handling of legal problems. Most notably, people with a disability had increased rates of a wide range of legal problems and decreased resolution rates.

The *Justice made to measure* report on the NSW Legal Needs Survey (NSWLNS) was enthusiastically received by the legal sector. Subsequently, the Legal Aid<sup>1</sup> commissions across Australia requested that the LJF undertake a comparable national survey. The Legal Australia-Wide Survey (LAW Survey) was thus conducted. The LAW Survey provides the first comprehensive quantitative assessment across Australia of a broad range of legal needs on a representative sample of the general population. Like its predecessors, it examines the nature of legal problems, the pathways to their resolution and the demographic groups that struggle with the weight of their legal problems. It aims to provide valuable empirical evidence for informing legal service provision and access to justice across Australia.

The LAW Survey had the largest sample of the comprehensive legal needs surveys undertaken anywhere in the world. It involved 20 716 respondents across Australia, with over 2000 respondents in each state/territory.<sup>2</sup> Thus, it allows for reliable analysis and policy implications at both the state/territory and the national levels. The present report series includes a report on each of the eight states/territories and a further report on Australia as a whole. This series details the first major findings of the LAW Survey, presenting a broad, high-level overview of legal need and legal resolution within each jurisdiction. While the nine reports complement one another and include jurisdictional comparisons, each report can nonetheless stand alone. For ease of use, each report contains the literature review and study method.

Beyond the current report series, the unprecedented size of the LAW Survey's national data set provides the potential for additional, pioneering analyses in the area of legal need. In particular, the national sample will enable more fine-grained, in-depth analysis than tends to be possible with smaller surveys. For example, subsequent analyses should be able to drill down to some minority demographic groups and rare legal problems that are often captured by surveys in insufficient numbers for meaningful investigation.

The following sections highlight the main findings from the recent legal needs surveys conducted worldwide. First, however, a brief discussion is provided of two concepts that underpin these

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<sup>1</sup> For convenience, the capitalised term 'Legal Aid' is used throughout this report to refer to the Legal Aid commissions across Australia — namely, Legal Aid NSW, Victoria Legal Aid, Legal Aid Queensland, Legal Services Commission of South Australia, Legal Aid Western Australia, Legal Aid Commission of Tasmania, Northern Territory Legal Aid Commission and Legal Aid ACT. When uncapitalised, 'legal aid' refers to legal aid services generically, including legal aid services in other countries.

<sup>2</sup> The states/territories of Australia are NSW, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory and the Australian Capital Territory (ACT).

surveys — legal need and socioeconomic disadvantage. Some of the methodological differences between legal needs surveys are also outlined, because such differences impact on the comparability of these studies.

## Concept of legal need

Research on legal problems has often proceeded without explicit, detailed definitions of the concepts of legal need and access to justice (Coumarelos et al. 2006; Schetzer, Mullins & Buonamano 2002). These concepts have increasingly expanded from initially narrow definitions as successive reforms have been made to the justice system. This relationship has been a dynamic one. As views about legal need and access to justice have evolved, the justice system has been reshaped by legislative and institutional transformations specifically intended to provide greater access to justice and to better meet legal need. Justice system reforms have also influenced the concept of access to justice and the nature of legal needs research.

Macdonald (2005) identified several waves of thinking about the concepts of legal need and access to justice which have mirrored progressive justice system reforms in Canada. Traditionally, access to justice was defined rather narrowly as access to lawyers and redress through the courts. Accordingly, early justice system reforms focused on ensuring equal access to lawyers and the courts through the provision of legal aid and community legal centres (CLCs). Subsequent reforms included correcting inadequacies within the court and legal aid systems, demystifying the law through the plain language movement and public legal information and education, enhancing preventative law through alternative dispute resolution processes, and increasing public participation in law reform. In line with such reforms, the concept of access to justice has been extended to include access to legal information, legal education, non-court-based dispute resolution mechanisms and law reform.

Similar justice system reforms have occurred in Australia, dating from the 1970s. They include the development of state-funded Legal Aid and CLCs, and significant changes to the law, such as the *Family Law Act 1975*, as well as increased focus on alternative dispute resolution and public legal information and education. Concurrently, the concept of access to justice in Australia has also expanded beyond access to the formal justice system.<sup>3</sup>

Reflecting the initial narrow view of access to justice, early legal needs research focused heavily on assessing access to lawyers and the courts (Currie 2007b; Genn 1999; Griffiths 1977; Pleasence et al. 2004c; Royal Commission on Legal Services 1979). This narrow approach to legal needs research has been criticised for ignoring legal issues that are resolved outside the formal justice system or remain unresolved (Currie 2007b; Genn 1999). The narrow approach mistakenly implies that failing to seek traditional legal resolution suggests the absence of legal need. This failing may also indicate a lack of awareness that the problem has potential legal remedies,<sup>4</sup> failings in the legal system which impair legal resolution and the use of non-legal means of resolution (Schetzer et al. 2002).

The movement away from the narrow approach to legal needs research was pioneered by the ABA (1994, p. ix), which did ‘not assume that ... “legal need” required the involvement of the legal/judicial system for resolution’ but also examined resolution via other mechanisms. Genn’s seminal *Paths to justice* study in the UK (Genn 1999; Genn & Paterson 2001) further broadened legal needs

<sup>3</sup> For example, the concept of access to justice adopted by the LJF includes the ability to obtain legal information, advice and assistance; access courts, tribunals and alternative dispute resolution mechanisms; obtain non-legal advocacy and support; and participate effectively in law reform processes (Schetzer et al. 2002).

<sup>4</sup> Throughout this report, the term ‘legal remedies’ is used to encompass remedies obtainable in accordance with rules of law, including determinations and orders under common law, equity and legislation made by courts, tribunals or authorised administrative officers, and negotiations backed by the possibility of legal proceedings (see Walker 1980).

research by more comprehensively examining a variety of non-legal advisers. Genn (1999, p. 12) used the concept of 'justiciable' problems to broadly identify circumstances where there is the potential for legal resolution. She defined a justiciable problem as a:

*matter experienced by a respondent which raised legal issues, whether or not it was recognised by the respondent as being 'legal' and whether or not any action taken ... to deal with the event involved the use of any part of the civil justice system.*

Genn's justiciable problem approach involves designing the survey questions to describe specific problematic circumstances that potentially have legal consequences and remedies without explicitly labelling them as 'legal' problems. Respondents are asked whether they have experienced these problems but are not required to judge if these problems have any legal implications. Thus, this approach allows for the inclusion of a broad array of legal problems, including those that:

- are not recognised as legal problems by the respondent
- potentially have legal resolution that is unknown to the respondent
- are resolved outside the formal justice system or by non-legal means
- are ignored or remain unresolved.

Genn's (1999) justiciable problem approach is similar to that of the ABA (1994), which also detailed relevant situations without labelling them as legal needs. Genn's approach has a number of advantages over the more traditional narrow approach. First, by broadening the scope of legal problems beyond those resolved within the formal justice system, it allows more accurate estimates of the incidence of legal problems (Coumarelos et al. 2006). Second, it potentially provides a more comprehensive assessment of all the different pathways used for the resolution of legal problems, including both legal and non-legal pathways.

In addition, Genn's (1999) broader approach provides a firmer basis for understanding both 'expressed' and 'unmet' legal need. Expressed legal need refers to the 'supply' or 'demand' side of legal need. It is widely accepted that by seeking legal information, advice or assistance a person is expressing a legal need. The narrow approach is restricted to legal need that is expressed via the use of traditional legal processes. Genn's approach expands the concept of expressed legal need to include the use of non-traditional legal resolution strategies (e.g. alternative dispute resolution) and non-legal resolution strategies (e.g. solving a dispute with neighbours by moving home).

Although expressed legal need can be estimated using survey methodology, it can also be measured through the collection of data on the use of legal services. Such data can build an invaluable picture of the demographic groups that access particular legal services, the nature of their expressed legal needs, the pathways they follow and the outcomes they achieve (e.g. Scott, Eyland, Gray, Zhou & Coumarelos 2004). However, such data cannot estimate legal need that is expressed outside the legal system or the level of unmet legal need in the community. Unmet legal need can be measured only via survey methodology.

Dignan (2004) proposed that the best practical working definition of unmet legal need is that it constitutes a gap between experiencing a legal problem and satisfactorily solving that problem. Unmet legal need includes legal problems that are not resolved because individuals are unaware of their legal rights or are somehow constrained from asserting those rights. Dignan contended that constraints to resolution can arise from individual, social or economic circumstances that affect a person's capability to resolve a legal problem, as well as from failings of the legal system which act as barriers to effective resolution. He also asserted that doing nothing to resolve legal problems

or resolving legal problems outside traditional legal services constitutes unmet legal need only if satisfactory resolution is not reached.

Constructing a definitive measure that quantifies unmet legal need is difficult, and, to date, there is no agreed-upon measure, despite a few proposed measures (e.g. Dignan 2006; Ignite Research 2006; Legal Services Agency 2006). The difficulty in quantifying unmet legal need largely reflects the complexity in defining all situations which constitute legal problems, and the subjectivity in determining the precise outcomes that would constitute satisfactory resolution of each specific problem. Nonetheless, a broader approach to legal needs research provides a better starting point for quantifying unmet legal need. At best, the traditional narrow approach can estimate the level of unmet legal need resulting from only legal problems that remain unresolved despite access to a lawyer or the justice system. Using a broader approach, unmet legal need can be better estimated as legal problems that remain unresolved or are resolved unsatisfactorily, regardless of whether any action is taken and regardless of whether there is any involvement of lawyers or the justice system.

## Concept of socioeconomic disadvantage

As already noted, legal needs surveys demonstrate that socioeconomic disadvantage is pivotal to the experience of legal problems. Despite this relationship, research into legal needs frequently proceeds without explicit definition of the concept of socioeconomic disadvantage. In the wider empirical literature, there is a shared understanding of this concept in broad terms. It is usually broadly defined as some sort of deprivation, hardship or inequality concerning a person's standard of living, well-being, capabilities or other life opportunities resulting from the person's socioeconomic status (Ainley, Graetz, Long & Batten 1995; Australian Bureau of Statistics (ABS) 2004c, 2011c; Harding, Lloyd & Greenwell 2001; Marks, McMillan, Jones & Ainley 2000). It is considered to be broader than poverty, reflecting multiple types of social inequality (Arthurson & Jacobs 2003; Saunders 2003). Accordingly, the advantages of multidimensional measures of disadvantage over unidimensional measures based on income or poverty are increasingly being propounded (Harding et al. 2001; Headey 2006; Saunders 2003; Saunders, Naidoo & Griffiths 2007). However, consensus is lacking about the precise circumstances that constitute disadvantage, the definitive set of socioeconomic indicators that should be used to measure it and the levels of each indicator that mark disadvantage (ABS 2011c; Ainley et al. 1995; Marks et al. 2000). Low income, low educational attainment, unemployment and low occupational status are often seen as key indicators of disadvantage. However, a wide range of other indicators have also been used erratically, varying across time and populations (ABS 2011c). These include poor health, single parenthood, family breakdown, poor housing, poor literacy, membership in ethnic minorities, disadvantageous geographical location, residential mobility, crime victimisation, transport difficulties and no internet access (see ABS 2003, 2004c, 2008b, 2011c; Ainley et al. 1995; Headey 2006; Marks et al. 2000; Saunders et al. 2007; Vinson 1999, 2004, 2007).

There has been growing interest in the concept of social exclusion as a framework for understanding socioeconomic disadvantage (ABS 2004c; Arthurson & Jacobs 2003; Hayes, Gray & Edwards 2008; Headey 2006; Saunders 2003; Saunders et al. 2007). Increasingly, social exclusion is defined as the adverse consequences that can result from socioeconomic disadvantage, manifested as an inability to participate in key societal activities or to access generally available standards of living, rights or opportunities (ABS 2011c; Arthurson & Jacobs 2003; Burchardt, Le Grand & Piachaud 2002).

Social exclusion is commonly described as a multidimensional concept, thereby highlighting that it can have multiple causes and multiple manifestations. In terms of causes, social exclusion is



seen as being driven by an interplay of demographic, economic, social and behavioural factors that are linked and mutually reinforcing (Bradshaw, Kemp, Baldwin & Rowe 2004; Saunders 2003; Vinson 2009). For example, the commonly cited definition of the UK's Social Exclusion Unit (1997) propounds that social exclusion can result from a series of linked problems, such as unemployment, discrimination, poor skills, low income, poor housing, high crime, ill health and family breakdown. In terms of manifestations, it is argued that social exclusion can have cumulative, intergenerational, concentrated and spiralling adverse effects in multiple life areas, such as civil, social, economic, political and cultural areas, undermining resilience and interfering with the ability to participate in society or act on rights or opportunities (Arthurson & Jacobs 2003; Bradshaw et al. 2004; Headey 2006; Miliband 2006; Saunders 2003; Vinson 2009).

Social exclusion is also argued to highlight the dynamic nature of disadvantage, suggesting that disadvantage is not static, permanent or necessarily pervasive. People can move between inclusion and exclusion at different times and with respect to different aspects of their lives (Arthurson & Jacobs 2003; Headey 2006; Saunders 2003). Headey (2006) cautioned that the causes and effects of social exclusion can be difficult to distinguish, and that 'dynamic chains' or 'vicious circles' sometimes operate where an outcome becomes a cause that further reinforces exclusion. For example, mental health can contribute to marital breakdown, which might then impact on social networks as a lone parent and create difficulties in further life domains.

Some demographic groups and some geographical areas appear to be at higher risk of social exclusion (Hayes et al. 2008; Miliband 2006; Saunders et al. 2007). For example, in Australia, demographic groups identified as having a high risk of social exclusion have included sole parents, the unemployed, low-income earners, people with a disability, Indigenous Australians, public renters and the homeless (Australian Government 2009b; Saunders et al. 2007).

Reducing social exclusion has become a goal with appeal across the political spectrum. Social inclusion policies have been adopted in a number of countries, including, recently, in Australia (Australian Government 2009a; Vinson 2009). Typically, such policies focus on demographic groups that experience multiple disadvantage. To address the multiple causes and effects of social exclusion in many life areas, they propound an integrated, coordinated or 'joined-up' approach to service provision across numerous human services and across both government and non-government organisations (Hayes et al. 2008). The Australian Government's (2009a) social inclusion agenda outlines priority areas focused on jobless families, children at risk of long-term disadvantage, the homeless, people with a disability or mental illness, Indigenous Australians and disadvantaged neighbourhoods. It includes a joined-up approach to improving access to justice through coordinated funding for legal assistance services and seamless access to information and services.

As will be detailed later, legal needs surveys suggest that social exclusion can be both a cause and a consequence of legal problems (Buck et al. 2005). These surveys have used a variety of socioeconomic indicators to identify disadvantaged subgroups within their samples. Like the broader literature, legal needs surveys have differed in the socioeconomic indicators they have used, the precise measurement of each indicator and the level of each indicator deemed to constitute disadvantage (Coumarelos et al. 2006; Currie 2007b; Pleasence 2006; Pleasence et al. 2004c). This lack of standardisation may sometimes compromise comparability between surveys.

## Methodology of legal needs surveys

Genn's (1999) justiciable problem approach in the *Paths to justice* study in the UK has been applied to the more recent, ongoing English and Welsh Civil and Social Justice Survey (CSJS;

Pleasence 2006; Pleasence et al. 2004c, 2010). This approach has also been adopted around the world, including in:

- Australia (Coumarelos et al. 2006)
- Bulgaria (Gramatikov 2008)
- Canada (Currie 2005, 2007b)
- China (Michelson 2007a, 2007b)
- Germany (Hommerich & Kilian 2007)<sup>5</sup>
- Hong Kong (Hong Kong Department of Justice (HKDOJ) 2008)
- Japan (Murayama 2007, 2008)
- the Netherlands (van Velthoven & Klein Haarhuis 2010; van Velthoven & ter Voert 2004)
- New Zealand (Ignite Research 2006; Maxwell, Smith, Shepherd & Morris 1999)
- Northern Ireland (Dignan 2006)
- Slovakia (cited in Hadfield 2010).<sup>6</sup>

In the US, state surveys broadly based on the national survey by the ABA (1994) have been conducted in 16 of the 50 states. The US surveys have tended to retain a heavier focus on access to lawyers and courts than have the surveys following Genn's (1999) approach. Nonetheless, the US surveys conducted in the following states still canvassed some actions apart from using lawyers:

- Arizona (Arizona Foundation for Legal Services & Education (AFLSE) 2007)
- Massachusetts (Schulman Ronca Bucuvalas Inc. (Schulman) 2003)
- Nevada (Gene Kroupa & Associates (GKA) 2008)
- New Jersey (Legal Services of New Jersey (LSNJ) 2009; Miller & Srivastava 2002)
- Tennessee (Tennessee Alliance for Legal Services (TALS) 2004)
- Vermont (Committee on Equal Access to Legal Services (CEALS) 2001)
- Virginia (Schulman 2007)
- Washington (Task Force on Civil Equal Justice Funding (Task Force) 2003)
- Wisconsin (GKA 2006).

The remaining US surveys focused virtually exclusively on the use of legal advisers:

- Alabama (Alabama Access to Justice Commission (AAJC) 2009)
- Connecticut (Center for Survey and Research Analysis (CSRA) 2003)
- Georgia (Dale 2009)
- Illinois (Legal Aid Safety Net Steering Committee (LASNSC) 2005)
- Montana (Dale 2005)
- Oregon (Dale 2000)
- Utah (Dale 2007).

In addition to varying in their conceptualisations of legal need and socioeconomic disadvantage, legal needs surveys have differed in their methodology. This lack of methodological harmonisation extends beyond the differences associated with the US- and Genn-based traditions and limits the

<sup>5</sup> This is a German-language report, and, as a result, the findings of this study have not been reviewed.

<sup>6</sup> The surveys in China, Germany and Slovakia were more loosely based on Genn's (1999) approach.

comparability of surveys (Coumarelos et al. 2006). Some of the main methodological differences and their impact on interpreting findings are discussed below.

### **Jurisdiction**

Legal needs surveys have been conducted in different jurisdictions, resulting in the assessment of legal needs within different systems of law, networks of legal services and infrastructures for legal remedy. Such jurisdictional variation is likely to affect the nature of legal need and resolution (Coumarelos et al. 2006). For example, the adequacy of the law in terms of legal rights may influence the legal problems experienced, the resolution strategies adopted and the outcomes achieved. The available network of legal services, including the adequacy of public legal services, may be critical in facilitating resolution and preventing the escalation of problems. The institutions of legal remedy, such as courts, tribunals and dispute resolution bodies, are also likely to affect the experience and handling of legal problems. For instance, differences between the US and the UK in legal infrastructure and practices have been argued to produce different problem-solving strategies in the two countries (Hadfield 2010; Sandefur 2009). In addition, it has been argued that the legal infrastructure can differentially affect various subgroups within a jurisdiction and can thus produce inequality in access to justice (Sandefur 2009).

There are also jurisdictional differences in the non-legal mechanisms available for resolving legal problems and in the broader social services available for dealing with any issues that may compound or exacerbate legal problems (Coumarelos et al. 2006; Forell, McCarron & Schetzer 2005). For example, it has been argued that major legal, social, economic and political transformations within countries can impact on the experience and resolution of legal problems and can complicate cross-jurisdictional comparisons (Gramatikov 2008; Hadfield 2010).

The likely impact of jurisdictional differences on the experience, handling and outcome of legal problems highlights the importance of measuring legal need within each jurisdiction of interest (Coumarelos et al. 2006).

### **Population**

Inherent differences between the populations studied, such as demographic, social, cultural, attitudinal and geographical differences, may reduce the comparability of surveys (Coumarelos et al. 2006). Such factors may influence life circumstances and may affect vulnerability to particular types of legal problems and the resolution strategies adopted.

One major difference between legal needs surveys is whether the sample is drawn from the general population or from a disadvantaged section of the population (Coumarelos et al. 2006). The US surveys all used disadvantaged samples comprising low-income households eligible for legal aid, whereas most of the surveys based on Genn's (1999) approach assessed legal needs throughout the general population. Exceptions include the NSWLNS by Coumarelos et al. (2006) and the earlier of the two Canadian surveys (Currie 2005), which were based on Genn's approach but used disadvantaged samples. The studies involving disadvantaged samples also used different criteria to select their samples, including single measures of low income (e.g. ABA 1994; Dale 2000; Rush 1999; Schulman 2003; Spangenberg Group 1989; Task Force 2003), multiple or composite measures of disadvantage within certain geographical areas (e.g. Cass & Sackville 1975; Coumarelos et al. 2006) and the investigation of specific disadvantaged groups, such as those with poor housing (e.g. Dale 2000; Pleasence et al. 2004c).

Given the relationship between socioeconomic disadvantage and legal need that has been observed within individual studies, it would be expected, other things being equal, that the incidence of



legal problems would tend to be higher in the studies involving more disadvantaged samples (see Coumarelos et al. 2006; Currie 2007b; Genn 1999; Genn & Paterson 2001; Pleasence et al. 2004c).

Social, cultural and attitudinal dissimilarities between populations may also impact on the direct comparability of surveys conducted in different countries. For example, Genn and Paterson (2001) argued that attitudinal differences may have been responsible for their finding of a lower incidence of legal problems in Scotland than in England and Wales, despite the use of identical methodology. They suggested that the Scots were less likely to construe situations as problematic and, hence, were more likely to underreport problems due to their more fatalistic, community-oriented and self-assured attitudes. However, Pleasence (2006) contended that the lower incidence in Scotland may in part reflect real differences in life experience as a result of various other dissimilarities between the populations, such as geographical, demographic and jurisdictional dissimilarities.

In China, Michelson (2007a, 2007b) found that political connections and regional area affected the experience of legal problems and the lodging of official complaints. He suggested that historical, economic and social contexts affect disputing behaviour. Similarly, Murayama (2007) noted that cultural and institutional factors have been proposed to explain the lower litigation rate in Japan compared to Western countries.

### **Coverage of legal problems**

The legal needs surveys adopting Genn's (1999) approach have used survey instruments that differ in a number of ways. Similarly, the US surveys have used non-identical instruments. The use of non-identical instruments can impact on the legal problems captured and the responses and outcomes that predominate in the results. Some major sources of variation between survey instruments are described below.

#### ***Number and types of legal problems***

The types of problems canvassed by legal needs surveys have varied considerably, ranging from fewer than 30 to more than 100 (see Coumarelos et al. 2006, pp. 14–15). Rush (1999) suggested that civil, criminal and family law issues should all be measured, as they tend to be related to different demographic profiles. However, some surveys have focused solely on civil issues, and others have examined only a restricted set of civil issues. For example, in New Zealand, Ignite Research (2006) focused only on civil issues for which grants of legal aid were available.

Furthermore, the definition and wording of each type of legal problem and the grouping of legal problems for reporting purposes have varied. Legal issues with the same name across surveys are not necessarily identical, and problem categories with the same name do not necessarily comprise the same set of specific problems. The results of different surveys are likely to be considerably affected by the number, type, range and definition of legal problems examined (Coumarelos et al. 2006). In particular, incidence rates are likely to increase with broader coverage of legal problems and with wider capture of commonly occurring problem types. The differential coverage of legal problems across studies is also likely to impact on the strategies, resolution rates and outcomes reported. For example, surveys have shown that the type of problem is a strong predictor of the response adopted, the duration of the problem and the nature of the outcome (e.g. Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Pleasence 2006; van Velthoven & ter Voert 2004).

#### ***Triviality threshold***

Legal needs surveys have typically attempted to canvass problems that involve a certain minimum level of legal need. The US studies sought to identify problems that can be remedied through

the justice system and used threshold language to ‘rule out situations unlikely to produce legal need’ (Consortium 1994, p. 5). Many of the surveys following Genn’s (1999) approach purposely filtered out ‘trivial’ problems (e.g. Currie 2007b; Dignan 2006; Genn 1999; Genn & Paterson 2001; Gramatikov 2008; HKDOJ 2008; Ignite Research 2006; Pleasence 2006; Pleasence et al. 2010). Genn’s (1999) ‘triviality threshold’ involved focusing on problems that were ‘difficult to solve’ and deemed important enough to ‘warrant action’. This type of threshold may underestimate the incidence of legal problems. It focuses too heavily on whether respondents can accurately judge the severity of problems, the likely consequences of taking action and the likely barriers to resolution. Thus, this type of threshold may sometimes fail to capture serious problems because these problems were incorrectly judged to be either trivial or unsolvable, or because they were handled easily.

A few studies have included less serious problems in order to provide a more accurate estimate of legal problem prevalence (e.g. Coumarelos et al. 2006; Murayama 2007). The inclusion of less serious legal problems does not preclude the measurement of the level of severity of each problem. Thus, comparisons between severe and trivial problems can be undertaken. In addition to including less serious problems, Coumarelos et al. (2006) included a few events that were not ‘problematic’ but had legal implications (e.g. buying or selling a house; making a will). The inclusion of ‘non-problematic’ legal events is likely to overestimate the prevalence of legal problems, since these events may not constitute legal need.

The different thresholds for inclusion of legal problems are likely to influence the proportion of serious problems captured across studies. Given that problem severity affects the response adopted and the outcome achieved (Pleasence 2006; Pleasence et al. 2004c), surveys that cover more intractable problems are thus also likely to find lower rates of successful resolution.

### ***Reference period and memory effects***

Legal needs surveys have assessed legal problems over variable periods of time, typically ranging between one and five years (Coumarelos et al. 2006). The recent Australian, New Zealand and US surveys employed one-year reference periods, while the UK, other European, Canadian, Chinese and Japanese surveys employed reference periods of between two and five years.<sup>7</sup> Variable reference periods can complicate cross-study comparisons by affecting the capture, observed impact and observed resolution of legal problems. Longer reference periods provide more opportunity for capturing infrequent legal problems, examining the long-term impacts of problems and reaching resolution (cf. Pleasence et al. 2004c). However, as detailed below, longer reference periods are more likely to involve inaccurate recall.

Memory effects are not specific to legal needs surveys but are a potential limitation of all social surveys. Both ‘memory decay’ and ‘forward telescoping’ can influence recall accuracy (see Biemer, Groves, Lyberg, Mathiowetz & Sudman 1991; Gottfredson & Hindelang 1977; Huttenlocher, Hedges & Prohaska 1988; Lynn, Buck, Burton, Jäckle & Laurie 2005; Neter & Waksberg 1964; Rubin 1982; Rubin & Baddeley 1989; Sudman & Bradburn 1973; Thompson, Skowronski & Lee 1988; Tourangeau, Rips & Rasinski 2000). Memory decay involves completely forgetting past events or forgetting details about those events, such as when they occurred. It is well established that memory decay is worse for longer time periods and for less significant events (Lynn et al. 2005; Sudman & Bradburn 1973; Tourangeau et al. 2000). Pleasence, Balmer and Tam (2009) specifically examined the recall of legal problems with the CSJS. Consistent with the broader literature, they found substantial memory decay, estimating that at least three-quarters of legal problems went unreported.

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<sup>7</sup> The recent Hong Kong survey (HKDOJ 2008) used multiple reference periods.

They also found better recall for serious than for minor problems. In addition, although the largest drop in recall occurred within the first year, recall continued to decline over time, with the worst recall for the least recent problems.

Forward telescoping involves inaccurate recall of the recency of events, with events that occurred before the reference period being incorrectly reported as having occurred during it (Lynn et al. 2005; Neter & Waksberg 1964; Rubin & Baddeley 1989; Sudman & Bradburn 1973; Tourangeau et al. 2000). There is some evidence that telescoping is more likely with more salient events and with longer reference periods (see Lynn et al. 2005; Neter & Waksberg 1964; Tourangeau et al. 2000).

Thus, longer reference periods are likely to capture a higher proportion of serious legal problems when compared to shorter periods. This expectation is due to the greater tendency both to forget minor problems over longer periods and to telescope serious problems into longer reference periods. The optimal reference period for legal needs surveys has not been examined. However, a reference period of 12 months has been proposed to be acceptable for optimising recall of crime victimisation events, given memory effects (United Nations Office on Drugs and Crime 2010).

### ***Unit of measurement***

Legal needs surveys have differed in terms of whether they measured the legal problems experienced by individuals or households (Coumarelos et al. 2006). While the US surveys have typically measured prevalence within households, the surveys conducted elsewhere have tended to use the individual as the unit of measurement. Assessing the problems faced by all household members rather than only one household member is likely to yield higher incidence rates.

### **Measurement of other key variables**

Legal needs surveys have also varied in their definition and measurement of a number of other key variables. Such variables include the demographic factors underlying the experience of legal problems, the types of advisers and resolution strategies used, the adverse impacts of legal problems, the finalisation of legal problems, and the satisfactory outcome of legal problems. To give but one example, ‘disability’ has been defined and measured inconsistently. Generally, disability has been defined expansively to include a broad range of both physical and mental illnesses or conditions that are long-term and impair functioning or participation in society (see Coumarelos et al. 2006; Currie 2007b; Pleasence 2006; Pleasence et al. 2004c). However, the conditions subsumed within ‘disability’ are not always clearly delineated and do not always include mental illness (see Balmer, Buck, Patel, Denvir & Pleasence 2010).<sup>8</sup> Again, such differences in the measurement of key variables need to be considered in cross-study comparisons.

### **Generalisability of findings**

The usefulness of social surveys depends on the extent to which their findings provide an accurate, unbiased or representative picture of the broader population. The ‘generalisability’ of the sample results to the population hinges on the adequacy of a number of methodological factors, as outlined below.

<sup>8</sup> Throughout this report, for convenience, ‘disability’ is used to refer to a variety of terms used by other authors to broadly cover both physical and mental illnesses or conditions, such as ‘chronic illness or disability’ (Coumarelos et al. 2006) and ‘long-standing ill-health and disability’ (Pleasence 2006). Where authors report on mental illness separately from other disabilities, this is noted. The specific definition of disability used by the LAW Survey, which includes both physical and mental conditions, is detailed in Appendix A2, ‘Comparison of sample and population profile: Disability status’ section.

### ***Sampling strategy***

Large-scale random probability sampling is the blue ribbon approach for selecting an unbiased sample that is representative of the population. Random sampling means that all members of a population have equal chance of selection, and, thus, that the sample profile is likely to accurately mirror that of the population. Small sample sizes can limit generalisability, even with random sampling, because they make it more difficult to capture a broad cross-section of the population. Most legal needs surveys have used random sampling. However, non-random sampling has been used occasionally, such as selecting low-income earners by approaching places they frequent (e.g. Dale 2007), selecting survey sites to maximise regional and economic variation (e.g. Michelson 2007a) and using non-random opt-in internet panels (e.g. van Velthoven & ter Voert 2004). The results of such studies may not accurately reflect legal need and resolution in the broader population.

### ***Response rate***

Poor response rates can reduce the generalisability of survey results, particularly if there are systematic differences between the people who participate and the people who refuse (American Association for Public Opinion Research (AAPOR) 2009; Groves, Cialdini & Couper 1992). In the case of legal needs surveys, obtained incidence rates could be inaccurate if the demographic groups that are especially vulnerable to experiencing legal problems are either substantially overrepresented or underrepresented in the sample due to systematic non-response.

There are several methods for calculating response rate, and response rate estimates can vary dramatically depending on the particular method used (Biemer & Lyberg 2003; Groves 1989). So that survey quality is open to scrutiny, it is critical that legal needs surveys detail the response rate and its calculation. It is also crucial that the demographic profile of the sample is comparable to that of the population. Some legal needs studies have provided very limited information on response rate or sample profile (e.g. Cass & Sackville 1975; Curran 1977; Dale 2000; Rush 1999; Spangenberg Group 1989; Winfield 1995).

### ***Response bias and mode of data collection***

Legal needs surveys share the limitations associated with all social surveys. As already noted, recall errors are inherent features of retrospective surveys (Sudman & Bradburn 1973). In addition, social surveys are subject to certain types of response biases that may produce inaccurate answers (Beatty, Herrmann, Puskar & Kerwin 1998). Respondents sometimes lie because of concerns about confidentiality or being viewed in a socially undesirable light. Interviewer–interviewee rapport, anonymity and topic sensitivity can also affect the accuracy of answers (Oppenheim 1992; Presser, Rothgeb, Couper, Lessler, Martin, Martin & Singer 2004; Weisberg 2005).

The mode of data collection is one factor that can influence response bias. Face-to-face interviews may be more conducive to establishing rapport, particularly in relation to personal or sensitive issues, and may provide greater opportunity for in-depth probing (see Biemer et al. 1991).<sup>9</sup> Telephone interviews, however, provide greater anonymity than face-to-face interviews, which may increase respondents' trust in confidentiality and improve the accuracy of reporting on sensitive topics (see Biemer et al. 1991; Oppenheim 1992; Weisberg 2005).<sup>10</sup>

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<sup>9</sup> Murayama (2007), for example, used face-to-face interviews because of a perceived reluctance among the Japanese to discuss personal matters over the phone. In contrast, van Velthoven and ter Voert (2004) used an internet questionnaire because of a low response rate in the Netherlands for face-to-face interviews.

<sup>10</sup> In addition, telephone interviews have the practical advantage of being less labour intensive and less expensive (see Biemer et al. 1991) and may therefore be more conducive to larger sample sizes, particularly over extensive geographical areas.

Face-to-face interviewing was typically used in the UK, other European and Asian surveys (Genn 1999; Genn & Paterson 2001; Gramatikov 2008; HKDOJ 2008; Michelson 2007a; Murayama 2007; Pleasence 2006; Pleasence et al. 2004c, 2010). Telephone interviewing was used in most of the US surveys and in the recent Australian, Canadian and New Zealand surveys (Coumarelos et al. 2006; Currie 2007b; Ignite Research 2006; Legal Services Corporation (LSC) 2007, 2009). A few studies used both telephone and face-to-face interviewing (ABA 1994; CEALS 2001; Dale 2009; Schulman 2003; TALS 2004). The Dutch studies used internet surveys (van Velthoven & ter Voert 2004) or a combination of internet and face-to-face interviews (van Velthoven & Klein Haarhuis 2010).

### **Summary of legal needs survey methodology**

Recent legal needs surveys have generally followed the Genn (1999) or ABA (1994) traditions. They have produced broadly consistent key findings, despite methodological differences. Their main common findings are reviewed below.

## **Prevalence of legal problems**

Legal needs surveys have repeatedly found that legal problems are common. At least one-quarter and sometimes more than three-quarters of respondents are typically estimated to experience legal problems over the reference period. Although legal problems are common and widespread, they are not distributed uniformly within populations. As detailed below, prevalence varies both by problem type and by demographic characteristics.

### **Prevalence of different types of legal problems**

Legal needs surveys have invariably shown that legal problems of different types do not occur with equal frequency. Despite variation in the measurement of legal problems, there is some agreement across studies about the specific types of problems that are experienced frequently and the types that are experienced only rarely. Surveys have typically found that consumer problems are very common, and that neighbours, employment and money/debt problems are also fairly common (e.g. ABA 1994; AFLSE 2007; Coumarelos et al. 2006; Currie 2007b; Dale 2000, 2005, 2007, 2009; Dignan 2006; GKA 2006, 2008; Gramatikov 2008; Ignite Research 2006; LSNJ 2009; Murayama 2007; Pleasence 2006; Pleasence et al. 2010; Schulman 2003, 2007; van Velthoven & Klein Haarhuis 2010). When included in surveys, legal problems related to mental health and immigration have often been found to be among the rarest problem types (e.g. ABA 1994; AFLSE 2007; Coumarelos et al. 2006; Currie 2007b; Dale 2005, 2009; Dignan 2006; GKA 2006, 2008; Ignite Research 2006; Pleasence 2006; Pleasence et al. 2010; Schulman 2003, 2007).

Pleasence et al. (2004c) proposed that the incidence of different types of legal problems largely reflects the frequency of the ‘defining circumstances’ necessary for each type of problem to arise. For example, consumer transactions are prerequisites for consumer problems. Given that consumer transactions are routine activities for most people, the opportunity for consumer problems to occur is high. In contrast, infrequent legal problems, such as those related to immigration and mental health, arise from circumstances that the overwhelming majority of people in the population either do not experience or experience rarely.

### **Prevalence of multiple legal problems**

Legal needs surveys have consistently found that some respondents do not experience any legal problems, while others experience multiple, severe legal problems. Typically, a minority of respondents appear to be particularly vulnerable. For example, the NSWLNS (Coumarelos et al.



2006) found that about one-third of respondents accounted for four-fifths of all the legal problems reported. Studies have also readily demonstrated an ‘additive effect’ of legal problems. That is, experiencing a legal problem increases the likelihood of experiencing an additional legal problem, with vulnerability continuing to increase as more problems are experienced (Currie 2007b; Gramatikov 2008; Pleasence 2006; Pleasence et al. 2004c). For example, Pleasence et al. (2004c) found that 46 per cent of the respondents who had experienced one legal problem reported a further problem, whereas 88 per cent of those who had experienced eight legal problems reported a further problem.

The types of legal problems that people experience in combination or in succession are not random. A number of recent studies have used hierarchical cluster analysis and factor analysis to explore the types of problems that tend to be experienced in combinations or ‘clusters’ (Coumarelos et al. 2006; Currie 2007b; Gramatikov 2008; Pleasence 2006; Pleasence et al. 2004c, 2010). The problem clusters obtained have not been identical across studies, as might be expected given differences in the populations studied and in the coverage, definition and grouping of different problems. Nonetheless, clusters of ‘family’ issues and clusters of ‘economic’ issues have usually emerged (Coumarelos et al. 2006; Currie 2007b; Pleasence 2006; Pleasence et al. 2004c, 2010). For example, analysis of the CSJS in the UK consistently resulted in family, economic and homelessness clusters (Pleasence 2006; Pleasence et al. 2010). The family cluster comprised divorce, domestic violence and relationship breakdown problems, while the economic cluster included consumer, employment, money/debt, neighbour, owned housing, personal injury and rented housing problems. Coumarelos et al. (2006) reported a family cluster, an economic cluster and a broad cluster. The family cluster comprised domestic violence, education, family law and human rights issues; the economic cluster comprised business and credit/debt issues; and the broad cluster comprised accident/injury, consumer, employment, general crime, government, housing and wills/estates issues.<sup>11</sup>

Pleasence et al. (2004c) proposed three different means by which co-occurring legal problems might be connected or related. First, the experience of one legal problem may directly cause or trigger other legal problems. Second, the defining circumstances required for various legal problems to arise may be identical or similar. For example, money transactions provide the opportunity for both consumer and credit/debt problems. Third, certain individuals may have characteristics that make them vulnerable to experiencing particular groups of legal problems, and, as has been noted, evidence indicates that disadvantage increases vulnerability.<sup>12</sup> Pleasence et al. also argued that coinciding legal problems may be connected in more than one of these three ways. However, it is worth noting that the co-occurrence of legal problems does not necessarily imply some sort of meaningful connection between problems. Legal problems may sometimes coincide by ‘chance’ — that is, without a connection due to trigger effects, defining circumstances or vulnerabilities. In particular, problem types that occur relatively frequently in the population (e.g. consumer, crime or housing problems) have more opportunity to coincide by chance.

The types of legal problems that tend to cause or trigger further legal problems have been examined in a few studies (Currie 2007b; Genn 1999; Pleasence 2006). Although the results across studies are not identical, relationship, injury and employment problems have tended to emerge as likely trigger problems. First, both Pleasence (2006) and Currie (2007b) suggested that family relationship problems can act as triggers. Pleasence (2006) conducted analyses to determine which types of legal problems tended to occur earlier in sequences of problems. Problems concerning divorce, domestic violence and relationship breakdown were significantly more likely to predate other

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<sup>11</sup> Although Dignan (2006) did not conduct cluster analyses, he found that family-related issues were the problem types that were most frequently reported to be linked to some other problem.

<sup>12</sup> See the ‘Vulnerability to legal problems: Vulnerability and disadvantage’ section later in this chapter.

problems, such as children's education, consumer, money/debt and rented housing problems. Currie (2007b) asked respondents who reported multiple legal problems whether one problem had caused or contributed to the others. Relationship breakdown was one of several problem types that acted as a trigger and appeared to trigger debt, legal action and other family problems. Pleasence (2006) argued that it is not surprising that divorce, domestic violence and separation can trigger further problems, given that they can lead to substantial life changes. For example, they may lead to financial hardship, less suitable accommodation, difficulties in maintaining employment as a single parent and dependence on maintenance, child support and welfare benefits.

Second, the results of Genn (1999), Pleasence (2006) and Currie (2007b) indicated that injury and employment problems often trigger financial problems, and that the trigger effect of injury problems may partly result from their impact on employment. Genn (1999) documented how personal injury and work-related ill health can lead to employment problems, which in turn can lead to problems related to welfare benefits and debt. Pleasence (2006) found that personal injury was significantly more likely to occur first rather than last in a sequence of legal problems. Currie's (2007b) respondents reported that employment problems triggered consumer and debt problems, while personal injury problems triggered debt and employment problems. Pleasence (2006) suggested that such findings reflect the financial hardship that can result from unemployment. He noted that other problem types that can cause unemployment, such as clinical negligence, immigration and mental health, might also be expected to trigger problems related to debt and welfare benefits.<sup>13</sup>

### Prevalence and policy

The ubiquity of legal problems across studies has led researchers to stress the importance of access to justice and the utility of adequate legal service infrastructure to facilitate the effective resolution of legal problems (e.g. Coumarelos et al. 2006; Currie 2007b; Genn 1999; Pleasence 2006; Sandefur 2008, 2009).

The key finding that legal problems often cluster together highlights the critical role that could be played by early intervention. An unresolved legal problem can trigger further legal problems, resulting in the experience of multiple simultaneous or sequential problems. Thus, early intervention strategies could be used to resolve legal problems before they reach crisis point, by minimising escalation, preventing flow-on effects and reducing the need for expensive court resolution (Coumarelos et al. 2006; Currie 2007b; Genn 1999; Macdonald 2005; Pleasence 2006).

The clustering of legal problems also suggests that it will sometimes be inadequate to deal with each legal problem in seclusion, without addressing interconnected legal issues in a more holistic fashion. This suggestion is somewhat at odds with the existing legal service practice in a number of jurisdictions. Currently, legal service delivery is often 'siloed' by the type of legal matter, largely because the complexity of the law has inevitably resulted in a degree of specialisation among legal practitioners (American Bar Association Standing Committee on the Delivery of Legal Services (ABA SCDLS) 2002; Coumarelos et al. 2006; Forell et al. 2005; Noone 2009; Queensland Public Interest Law Clearing House 2009; Trebilcock 2008). The value of a more holistic approach to legal services is therefore indicated to better handle interrelated legal problems. Such an approach might involve improved referral systems or more coordinated, client-focused or case management approaches across legal services (Coumarelos et al. 2006; Forell et al. 2005).

<sup>13</sup> He observed a non-significant tendency for clinical negligence, immigration and mental health problems to precede other legal problems, and he suggested that the failure to reach significance may have been due to small numbers.

## Vulnerability to legal problems

Legal needs surveys have repeatedly shown that some individuals are far more vulnerable to experiencing legal problems than others (Coumarelos et al. 2006; Currie 2007b; Pleasence 2006; Pleasence et al. 2008). Vulnerability to legal problems has consistently been linked to various demographic characteristics of respondents, including characteristics related to socioeconomic disadvantage.

Pleasence (2006) argued that demographic factors drive vulnerability to legal problems in a number of ways. First, age drives a ‘stages of life’ effect, whereby different types of problems tend to be experienced at different ages or life stages. Second, various demographic attributes are directly related to the defining circumstances necessary to experience certain problems. For example, parents have far greater opportunity than others to be affected by problems related to children. Third, some people have demographic characteristics that serve to increase their vulnerability to a wide range of legal problems above and beyond the necessary defining circumstances. In particular, people who experience multiple types of socioeconomic disadvantage, such as lone parents and people with a disability, appear to be especially vulnerable (Dignan 2006; Pleasence 2006).<sup>14</sup>

Despite the heightened vulnerability of disadvantaged groups, the evidence indicates that legal problems are not the exclusive domain of the disadvantaged. More affluent groups can also sometimes experience multiple, severe legal problems.

Below is a summary of the demographic variation in the experience of legal problems, including variation according to disadvantage. There can be considerable overlap between different indicators of disadvantage, with some people being considered disadvantaged according to multiple indicators. As a result, it can be difficult to separate out the effects of different indicators of disadvantage on vulnerability.<sup>15</sup> Regression analyses have the advantage that they can isolate the effects of individual demographic factors. They can determine which demographic factors are significant independent predictors of legal problem prevalence once the relationships between these demographic factors have been considered.<sup>16</sup> Regression analyses have been conducted in Australia (Coumarelos et al. 2006), Canada (Currie 2007b), China (Michelson 2007a), the Netherlands (van Velthoven & Klein Haarhus 2010; van Velthoven & ter Voert 2004), New Jersey in the US (LSNJ 2009; Miller & Srivastava 2002), Northern Ireland (Dignan 2006) and the UK (Genn 1999; Genn & Paterson 2001; Pleasence 2006). Given their greater utility, findings based on regression analyses are noted in the summary below.

### Vulnerability and age

Invariably, regressions and other analyses have revealed that age is significantly related to the overall prevalence of legal problems and to the prevalence of particular types of legal problems. It has been argued that people’s life circumstances tend to change as they age and progress through different life stages, and that, as a result, their exposure to the defining circumstances necessary to experience particular types of problems also changes (e.g. Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Pleasence 2006; van Velthoven & ter Voert 2004). Economic, family and social circumstances all tend to change with age. Typically, younger or middle-aged people have the highest overall

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<sup>14</sup> As argued by Pleasence (2006), in addition to being driven by sociodemographic characteristics, patterns of vulnerability may be driven by people’s physical make-up, experience, resources and disposition.

<sup>15</sup> An observed relationship between vulnerability and one indicator of disadvantage may be driven by a second indicator. Take the hypothetical case where unemployment increases vulnerability but low income does not. A relationship between low income and vulnerability may be observed simply because many people in the low-income group are also unemployed.

<sup>16</sup> Regressions can be conducted as multivariate analyses that examine the relationship of an outcome variable to multiple predictor variables. Bivariate analyses examine the direct relationship between two variables (see Chapter 2, ‘Data analysis’ section).

prevalence rates, and older people have the lowest (Buck et al. 2005; Coumarelos et al. 2006; CSRA 2003; Currie 2007b; Dignan 2006; GKA 2006, 2008; LASNSC 2005; LSNJ 2009; Maxwell et al. 1999; Miller & Srivastava 2002; Pleasence 2006; Pleasence et al. 2010; TALS 2004; van Velthoven & Klein Haarhuis 2010; van Velthoven & ter Voert 2004).

The different coverage of legal problems across studies means that it is difficult to make precise comparisons about the types of legal problems that peak at different ages. Nonetheless, some commonalities across studies can be discerned. First, frequent problems in the younger age groups spanning teens to early 20s include problems related to criminal activity, such as general crime, unfair treatment by police and police action; and housing problems, such as problems associated with rented housing (Coumarelos et al. 2006; Currie 2007b; Maxwell et al. 1999; Pleasence 2006). These findings have been argued to reflect younger people's lower levels of economic independence, lower standards of housing (e.g. higher rates of rented housing) and higher criminal offence and victimisation rates (Coumarelos et al. 2006; Pleasence 2006). A few studies have also found that accidents and personal injury problems are common in the younger age groups and may reflect high rates of risk-taking behaviour (Coumarelos et al. 2006; Currie 2007b; Dignan 2006).

Second, in the late 20s and early 30s, high rates of legal problems related to credit/debt and money have usually been reported. These findings have been argued to echo increasing personal expenditure and use of debt as people become more economically independent and commence acquiring major assets, such as motor vehicles and houses (Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Pleasence 2006).

Third, family-related problems, such as divorce, relationship breakdown, problems ancillary to relationship breakdown and child-related problems, tend to be frequent in the late 30s to early 40s (Coumarelos et al. 2006; Dignan 2006; Pleasence 2006). Again, this finding appears to reflect changing life circumstances whereby, by this age, many people have chosen long-term partners and have dependent children.

Finally, most types of legal problems tend to decline after middle age (Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Pleasence 2006). However, a few studies have found that wills, estates and power of attorney issues tend to be common in the older age groups (Coumarelos et al. 2006; Currie 2007b; Maxwell et al. 1999).

### **Vulnerability and gender**

Regression analyses have not typically revealed a link between gender and overall prevalence of legal problems (Coumarelos et al. 2006; Dignan 2006; LSNJ 2009; Miller & Srivastava 2002; Pleasence 2006; van Velthoven & Klein Haarhuis 2010; van Velthoven & ter Voert 2004). Occasionally, however, regression analyses have produced gender differences on some types of legal problems. For example, the NSWLNS found higher rates of accident/injury problems for males (Coumarelos et al. 2006). The CSJS showed higher rates of domestic violence and neighbour problems for females, and higher rates of employment problems, money/debt problems and unfair treatment by police for males (Pleasence 2006). Currie (2007b) found higher rates of family and relationship problems for females, and higher rates of problems related to debt, police action and threat of legal action for males.

### **Vulnerability and disadvantage**

Recent legal needs surveys have amassed a substantial body of evidence indicating that socioeconomically disadvantaged groups have enhanced vulnerability to a large range of legal

problems. Both trends across studies and the results of regression analyses within individual studies support this notion.

An emerging trend across legal needs surveys is that prevalence rates tend to be higher in disadvantaged rather than in general population samples (Coumarelos et al. 2006). Prevalence rates in general population samples have ranged between approximately 20 and 50 per cent, with the majority being below 40 per cent (Dignan 2006; Genn 1999; Genn & Paterson 2001; Gramatikov 2008; HKDOJ 2008; Ignite Research 2006; Maxwell et al. 1999; Murayama 2007; Pleasence 2006). In contrast, prevalence rates considerably above 40 per cent have been more common in disadvantaged samples. In the US, 13 surveys focusing on low-income samples had prevalence rates between 33 and 87 per cent, with 11 of these rates being above 40 per cent, and six being above 60 per cent (AAJC 2009; ABA 1994; CSRA 2003; Dale 2009; GKA 2006, 2008; LASNSC 2005; LSNJ 2009; Miller & Srivastava 2002; Schulman 2003, 2007; TALS 2004; Task Force 2003). Two Australian surveys in disadvantaged areas also reported high prevalence rates of 67–69 per cent (Cass & Sackville 1975; Coumarelos et al. 2006).

This trend across studies provides suggestive but not conclusive proof that disadvantage increases vulnerability to legal problems. Other methodological differences between disadvantaged and general population surveys may also have contributed to this trend. For example, the higher prevalence of legal problems in the US surveys may be due to their capture of household problems, whereas most of the general population surveys captured problems experienced by individuals. Note, however, that the two Australian disadvantaged sample surveys assessed legal problems faced by individuals. Furthermore, the higher prevalence in disadvantaged samples cannot be attributed to the use of longer reference periods. Typically, the disadvantaged population surveys have used one-year periods, whereas the general population surveys have used periods of 3–5 years.<sup>17</sup>

One way to isolate the effects of disadvantaged versus general population samples is to employ otherwise identical methodology. Virtually identical methodology has been used in a few instances. First, in Canada, a slightly higher prevalence of legal problems was obtained when a low- to moderate-income sample was surveyed (48%) than when a general population sample was surveyed (45%; Currie 2005, 2007b). Using the CSJS in the UK, a dramatically higher prevalence rate (84%) was obtained for temporary accommodation residents than for the general population (33–36%; Pleasence 2006). In addition, although examining only disadvantaged samples, some of the US studies subdivided their samples based on income and found that the group on the lowest incomes had higher prevalence rates or a greater number of legal problems (CEALS 2001; Dale 2005, 2009; LSNJ 2009; Schulman 2003, 2007; Task Force 2003).<sup>18</sup>

The most compelling evidence of a link between socioeconomic disadvantage and vulnerability to legal problems comes from studies using regression analyses. As detailed below, these studies have typically found increased vulnerability for people with a disability, single parents, people living in impoverished housing, people on low incomes or welfare benefits, and unemployed people.

### ***Disability status***

Legal needs surveys have repeatedly found that people with a disability are not only more likely to experience legal problems but are, in fact, more vulnerable to a wide range of legal problems. For example, in Australia, regression analyses by Coumarelos et al. (2006) on the NSWLNS revealed

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<sup>17</sup> The likely effects of other methodological differences (e.g. differences in coverage of legal problems, modes of data collection, jurisdictional factors and populational factors) are more difficult to predict.

<sup>18</sup> Note, however, that a few of the US studies reported similar prevalence rates for their low- and middle-income subgroups (GKA 2006, 2008; Miller & Srivastava 2002; TALS 2004).



that disability stood out as the indicator of disadvantage most consistently linked with increased vulnerability. Disability was linked to high overall prevalence rates and high rates of most problem types — namely, accident/injury, consumer, credit/debt, education, employment, family, general crime, government and housing problems.

Regression results on the CSJS in the UK have also shown that disability is related to increased rates of most legal problem types — namely, clinical negligence, consumer, discrimination, domestic violence, employment, mental health, money/debt, neighbour, owned housing, personal injury, relationship breakdown, rented housing, unfair treatment by police and welfare benefits (Buck et al. 2005; Pleasence 2006). Regression analyses in Canada have also found disability to be linked to increased rates of most problem types (Currie 2007a).

In Northern Ireland, other analyses have similarly revealed a link between disability and most types of legal problems (Dignan 2006). Descriptive results from some US surveys also showed higher prevalence for low-income respondents with a disability than for other low-income respondents (AAJC 2009; Dale 2000, 2005, 2007; LASNSC 2005; Task Force 2003).

The strong propensity for people with a disability to experience legal problems is consistent with the contention that these people constitute the most socially excluded of all disadvantaged groups and have restricted life opportunities in multiple life areas (Coumarelos & Wei 2009; Howard 1999; Pleasence 2006). For example, people with a disability are more likely to have low incomes, have low levels of educational attainment, be unemployed or experience disadvantage in the labour market, have poorer housing and be victims of crime (ABS 2004c; O’Grady et al. 2004; Pleasence 2006). They are also less likely to participate in various societal activities (ABS 2011e). In addition, a number of authors have argued that the link between disability and legal problems is likely to be bidirectional. Not only are people in this demographic group more likely to experience legal problems, but the wide range of legal problems they face may impact negatively on their lives and further entrench their social exclusion (Coumarelos et al. 2006; O’Grady et al. 2004; Pleasence 2006). The combined health and legal needs of people with a disability have led authors to propose that better coordination between legal and health services is likely to improve both health and justice outcomes for this demographic group (Balmer, Pleasence, Buck & Walker 2006; Coumarelos & Wei 2009; Pleasence et al. 2004c).

### ***Family type***

Regression analyses have found significant links between family type and the prevalence of a broad range of legal problems. Single-parent families appear to be particularly vulnerable to legal problems (e.g. Buck et al. 2004). However, the measure of family type has varied across studies, and only a few studies have examined single-parent families. Prevalence rates have variously been explored by marital status or the presence of dependent children.

Family types were categorised according to both marital/cohabiting status and the presence of children in the regression and other analyses conducted on CSJS data in the UK. Lone-parent families had the highest prevalence of legal problems, while childless families had the lowest. In addition, cohabittees had higher prevalence rates than married people, and the presence of children generally increased prevalence (Buck et al. 2004; Pleasence 2006; Pleasence et al. 2010). Furthermore, lone parents had increased rates of many problem types, including both problems typically affecting single people and problems typically affecting parents. They had high rates of problems regarding children, divorce and relationship breakdown, domestic violence, mental health, money/debt, neighbours and rented housing.

Similarly, regressions in Northern Ireland found that lone parents and divorced individuals had among the highest overall prevalence of legal problems. Additional analyses indicated that lone parents had elevated rates of a wide range of legal problems (Dignan 2006). In Canada, Currie's (2007b) regression results showed that lone parents had increased prevalence in most problem categories, including consumer, debt, discrimination, employment, family law, housing, police action and threat of legal action. The most problem-free respondents based on marital and family status were those without children.

In the Netherlands, regression analyses on legal problem prevalence examined marital status but not the presence of children. Those who were divorced or cohabiting had more problems than those who were widowed (van Velthoven & ter Voert 2004).

In New Jersey, marital status was not examined, but regression analysis revealed higher prevalence of legal problems for households with children (Miller & Srivastava 2002). Using descriptive data, some other US studies found higher prevalence for single-parent households or households with children (AAJC 2009; CSRA 2003; GKA 2006, 2008; LSNJ 2009; Schulman 2003; TALS 2004).

Lone parents often experience multiple types of disadvantage, such as poverty, poor housing and disability (Buck et al. 2004). Pleasence (2006) argued that the changes in personal circumstances that result from family breakdown, such as changes in family, economic and housing circumstances, can leave lone parents particularly vulnerable to a range of further problems which constitute elements of social exclusion. Meeting the legal needs of lone parents has been identified as a priority, given their heightened vulnerability to multiple disadvantage and multiple legal problems (Buck et al. 2004; Moorhead, Sefton & Douglas 2004).

### ***Income and welfare benefits***

The relationship between economic circumstances and the experience of legal problems has proven to be complex and, at first glance, far from clear-cut. High overall prevalence rates have been linked to both low and high income. Variation across studies in the measurement of economic circumstances (e.g. personal income, household income and receipt of welfare benefits) and the capture of legal problems further obfuscates the issue. Nonetheless, an emerging trend is that poorer people experience different types of legal problems from wealthier people. Wealthier people tend to experience problems reflecting greater opportunity for economic activity, due to higher levels of disposable income and assets, whereas poorer people tend to experience problems consistent with socioeconomic disadvantage (Buck et al. 2005; Coumarelos et al. 2006; Dignan 2006; Pleasence 2006).

In the Netherlands, using regression analysis, van Velthoven and Klein Haarhuis (2010) reported that both people on low incomes and people on high incomes experienced more legal problems than those on average incomes. Similarly, regression and other analyses on the CSJS in the UK found high overall prevalence rates for both the group with the highest incomes and the group with the lowest incomes, and also for those on welfare benefits (Pleasence 2006; Pleasence et al. 2010). High-income earners were more likely to report legal problems with clinical negligence, consumer issues, investment services and owned housing. Pleasence (2006) argued that these findings reflect a greater opportunity for investments, substantial assets and purchases of consumer goods and services. In contrast, low-income earners and welfare recipients tended to report legal problems with children's education, debt, homelessness, money management, unsatisfactory or rented housing, and welfare benefits. These types of legal problems are similar to those experienced by other disadvantaged groups, such as people with a disability and lone parents, and have been argued to reflect poorer

housing options and less economic independence (Buck et al. 2005; Pleasence 2006).<sup>19</sup> As noted further below, certain clusters of legal problems appear to be associated with social exclusion.

In Australia, regressions revealed that the high-income group had high prevalence of legal events overall and of accident/injury, consumer, general crime, housing and wills/estates events (Coumarelos et al. 2006). These findings were again argued to reflect high-income earners' greater levels of disposable income, assets and possessions. For example, the high rate of housing events largely reflected high rates of buying or selling a home. Similarly, the high rate of general crime events was consistent with owning valuables, because it was driven by being a victim of stolen or vandalised property.

In Canada and Northern Ireland, respondents on low incomes and welfare benefits were found to have high rates of a large number of legal problem types, and, again, many of these problem types appeared to reflect elements of socioeconomic disadvantage. In Canada, using regression analyses, Currie (2007b) found that low-income earners and welfare recipients had high prevalence of problems related to debt, discrimination, family issues, hospital treatment and release, housing, social services, and welfare and disability benefits. In Northern Ireland, using other analyses, Dignan (2006) reported that welfare recipients had high rates of problems related to discrimination, domestic violence, family and relationship matters, homelessness, mental health, neighbours, rented housing, treatment by police and welfare benefits. Welfare recipients also tended to have other 'markers' of disadvantage, such as lone parenthood or disability, and Dignan suggested that multiple sources of disadvantage can interact to increase vulnerability to legal problems.

A number of the US surveys of disadvantaged samples also noted differences in the types of legal problems experienced according to income, although these findings were not based on regressions. In particular, respondents on lower incomes more commonly reported problems related to employment, housing and welfare benefits (e.g. Dale 2009; GKA 2006, 2008; LSNJ 2009; Schulman 2003; TALS 2004).

### ***Employment status***

Employment status has usually been found to predict the prevalence of legal problems. However, similarly to income level, the direction of the relationship has varied, with higher overall rates of legal problems being linked sometimes to unemployment and sometimes to employment. Differences in the measurement of employment status across studies (e.g. long-term versus current unemployment) may, along with other methodological differences, contribute to the apparently inconsistent relationship with overall prevalence. Again, however, it appears that employed and unemployed individuals are likely to experience different types of problems.

Using regression, Dignan (2006) found that Northern Irish respondents who had never worked or had experienced long-standing unemployment reported lower overall rates of legal problems. Descriptive and regression results from a few US studies similarly indicated higher prevalence among employed people than among unemployed or retired people (GKA 2006; LSNJ 2009; Miller & Srivastava 2002; TALS 2004).

Conversely, Currie's (2005, 2007b) regression results showed that Canadians who were unemployed at the time of interview had higher rates of several types of legal problems, such as consumer, debt, disability, employment, housing, relationship breakdown and other family problems, and threatened

<sup>19</sup> Although, like high-income earners, welfare recipients had high rates of consumer problems, the latter group were more likely to experience consumer problems reflecting low-value purchases of basic items, such as food and small appliances (see Pleasence 2006).

legal action. Pleasence's (2006) regression analysis in the UK similarly indicated that unemployment increased the likelihood of experiencing some types of legal problems, such as problems related to crime victimisation, domestic violence, employment, money/debt, neighbours and rented housing. He noted that the problem types experienced by the unemployed are consistent with other research that has identified unemployment as an important driver of many aspects of social exclusion.

### ***Housing***

People's housing circumstances often reflect their economic circumstances and, hence, their levels of economic disadvantage (Pleasence 2006). The few legal needs surveys that have examined housing have generally found that poorer housing is linked to greater vulnerability to legal problems. Furthermore, as housing becomes more impoverished, respondents are more likely to report problems that are indicative of social exclusion (e.g. problems related to debt and welfare benefits) and less likely to report problems that are indicative of economic activity (e.g. consumer problems). For example, as noted earlier, the CSJS demonstrated much higher overall rates of legal problems for temporary accommodation residents than for the general UK population (Buck et al. 2005; Pleasence 2006). The temporary accommodation respondents were also found to have higher rates of many problem types, including problems related to discrimination, employment, immigration, rented housing and welfare benefits. However, they had lower levels of consumer problems, reflecting their substantially lower incomes and consumer activity.

Regression and other analyses on the general CSJS sample have consistently shown that both dwelling type and tenure type have a strong relationship with the experience of legal problems (Pleasence 2006). In terms of dwelling type, people living in high-density housing, such as flats, were more likely to report legal problems. Regarding tenure type, people living in rented housing had the highest overall prevalence rates, followed by people paying off a mortgage, with home owners having the lowest rates (Pleasence et al. 2010). In addition, different problem types were associated with different housing circumstances. For example, mortgagees and home owners had high rates of consumer problems, residents of high-density or rented housing had high rates of problems concerning debt, neighbours and welfare benefits, and public renters also had high rates of homelessness during the reference period. Again, it appeared that wealthier respondents experienced problems related to greater economic activity, whereas poorer respondents experienced problems reflecting social exclusion.

Similarly, in Northern Ireland, Dignan's (2006) regression results revealed that public and private renters had increased incidence of legal problems. In addition, both these demographic groups reported problems related to rented housing. However, while public renters also had high rates of neighbour problems, private renters had high rates of consumer and employment problems.

In New Jersey, using regression analyses, Miller and Srivastava (2002) found higher overall prevalence of legal problems for renters. Furthermore, descriptive data from some US surveys showed that people who are homeless or live in low-standard housing are more vulnerable to legal problems overall or to certain types of legal problems (CSRA 2003; Dale 2000, 2005, 2007; GKA 2006, 2008; LSNJ 2009).

### ***Education***

Legal needs surveys have typically found that people with high levels of education report high rates of legal problems overall or high rates of a number of legal problem types when compared to those with low levels of education. This finding has emerged from both regression analyses (Coumarelos et al. 2006; Currie 2007b; Pleasence 2006; van Velthoven & Klein Haarhuis 2010; van

Velthoven & ter Voert 2004) and other analyses (GKA 2006, 2008; LSNJ 2009; Maxwell et al. 1999). Interestingly, this finding is not in the expected direction, given that low education is an indicator of disadvantage, but other indicators of disadvantage are usually related to increased vulnerability to legal problems.

The simplest explanation is that the lower reporting rates by people with low education levels accurately reflect a lower actual incidence of legal problems. However, it has been proposed that the lower reporting rates may instead reflect underreporting of real incidence levels, which may be driven, for example, by a failure to recognise or admit to legal problems (Coumarelos et al. 2006; Currie 2007b). This second explanation is more consistent with the broader findings that disadvantaged groups tend to have increased prevalence rates. It is also in keeping with the contention that individuals must have basic legal knowledge or legal ‘capability’ to be able to recognise and resolve legal problems (e.g. Genn & Paterson 2001). Recent CSJS analyses have shown that less educated people are less knowledgeable about legal rights and processes, and are more likely to ignore their problems (Balmer et al. 2010; Buck, Pleasence & Balmer 2008). Thus, it is possible that a lack of legal knowledge among these people may hinder their ability to identify legal problems and lead them to underreport the legal problems they experience. The concept of legal capability is discussed in more depth later.

### ***Ethnicity***

Given that ethnic minorities are often disadvantaged, many legal needs surveys have examined the link between ethnicity and legal problems. However, a clear pattern across studies has not emerged, with some studies finding higher prevalence rates for ethnic minorities and some finding lower rates. The inconsistent relationship should not be too surprising, given the methodological differences between studies. First, and perhaps most obviously, studies in different countries have necessarily examined different ethnic groups, often characterised by distinct demographics, cultural backgrounds, attitudes, life experiences, life opportunities and levels of disadvantage. Second, ethnic groups have been identified by a variety of disparate measures, including country of birth, Indigenous status, main language and self-identification. Third, in some samples, the number of respondents in various ethnic groups may have been too small to produce reliable results. Fourth, the lower reporting rates by ethnic minorities in some studies may reflect a failure to recognise legal problems, due to a lack of legal knowledge, and may not accurately reflect prevalence.

According to regression analysis, although ethnicity was not related to the overall prevalence of legal problems in the UK, discrimination and immigration problems were more prevalent for Black and minority ethnic respondents than for White respondents (Pleasence 2006).

In Canada, Currie’s (2007b) regression results showed that prevalence was related to a number of measures of ethnicity. Self-identified Aboriginal respondents had higher rates than non-Aboriginal respondents for nine legal problem types. Foreign-born respondents had higher rates of immigration and discrimination problems than Canadian-born respondents. Self-identified members of ‘visible minority’ groups had higher rates of 10 problem types. When compared to respondents whose main language was French, those whose main language was English had higher rates of 11 problem types. In addition, Black Canadians had higher rates of six problem types.

Based on regression and other analyses, several US surveys found higher overall prevalence of legal problems for various non-White groups, including African Americans, Native Americans, Latinos/Hispanics and non-English speakers (CSRA 2003; Dale 2000, 2005, 2007; GKA 2006; LASNSC 2005; LSNJ 2009; Miller & Srivastava 2002; Schulman 2003, 2007; TALS 2004).



In New Zealand, Maxwell et al. (1999) found that legal problem prevalence was related to country of birth and Indigenous status. Respondents born in New Zealand reported higher rates of most problem types compared to those born elsewhere. Maoris had higher rates of most problem types compared to other ethnic groups.

In Australia, regressions by Coumarelos et al. (2006) indicated that Indigenous respondents had similar overall rates of legal problems to non-Indigenous respondents but had higher rates of credit/debt, employment and family legal events.<sup>20</sup> In addition, respondents born in a non-English-speaking country had lower overall prevalence rates than those born in an English-speaking country. Coumarelos et al. suggested that the results for people born in a non-English-speaking country, like those for people with low education levels, may reflect a failure to recognise legal problems. They noted that qualitative studies have reported that ignorance about legal rights and resolution among migrant and non-English-speaking groups exacerbates the legal problems they experience (e.g. Australian Law Reform Commission (ALRC) 1992; Cass & Sackville 1975).

### ***Crime victimisation status***

Crime victimisation is another factor that has been linked to high overall rates of legal problems (Kemp, Pleasence & Balmer 2007; Pleasence 2006). Kemp et al. (2007) noted that a strong link between crime victimisation and social exclusion is well established and mirrors the link between civil legal problems and social exclusion. Socially excluded groups are not only at high risk of crime victimisation and civil legal problems, but also at high risk of experiencing multiple instances of both. Using regression analysis on CSJS data, Kemp et al. estimated that multiple crime victimisation increases the risk of civil legal problems by 192 per cent, while indicators of social exclusion, such as disability, lone parenthood, receipt of welfare benefits and very low income, increase the risk of civil legal problems by 60, 136, 39 and 30 per cent, respectively. They concluded that the overlap between crime victimisation, civil legal problems and social exclusion indicates that strategies aimed at preventing, resolving or mitigating any of these three issues are likely to have a broad impact on the other two issues as well. Hence, an integrated service approach in response to these issues was argued to be more beneficial than focusing on any of these issues in isolation.

### ***Urban, rural and remote areas***

Some studies have examined the association between legal problem prevalence and urbanisation or geographical location. A few studies using regression or other analyses have found higher prevalence rates in more urban areas (Dignan 2006; GKA 2006; Gramatikov 2008; Miller & Srivastava 2002). In contrast, one study reported higher rates for rural respondents than for regional respondents (LASNSC 2005). In China, Michelson (2007a) found regional differences in legal problem prevalence. He also found that the number and type of problems in each region reflected the region's economic and employment conditions. Maxwell et al. (1999) found that overall prevalence rates were not significantly different in rural and urban areas but found differences between rural and urban areas in the prevalence of particular problem types.

## **Vulnerability to multiple legal problems and disadvantage**

The previous sections detailed the demographic factors that underlie whether or not legal problems are experienced. Additionally, a few studies have examined the demographic factors related to experiencing multiple or a greater number of legal problems. The evidence suggests that, as well as

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<sup>20</sup> Indigenous respondents also had lower rates of wills/estates events. It was noted that the wills/estates events tended to indicate taking positive legal action to put one's affairs in order rather than constituting problems. Thus, it was argued that the lower rate of wills/estates events for Indigenous respondents was consistent with a higher level of unmet legal need.

being more likely to experience legal problems, disadvantaged demographic groups are especially prone to experiencing multiple legal problems. However, more affluent demographic groups can sometimes also experience multiple legal problems.

First, regression analyses have shown links between disadvantage and multiple legal problems. Pleasence (2006) found that the following indicators of disadvantage predicted multiple legal problems: disability, welfare benefits, lone parenthood, high-density housing, rented housing and low income. Being male and having a high income also predicted multiple problems in some cases. Pleasence et al. (2010) supplemented the regressions with descriptive data showing that disadvantaged groups were increasingly overrepresented as the number of problems increased. For example, lone parents accounted for six per cent of the respondents reporting one problem, but for 22 per cent of those reporting at least six problems. Similarly striking patterns were evident for other disadvantaged groups. Of the respondents who had at least six problems, over 40 per cent had a disability, over 60 per cent had a mental illness and over 50 per cent received welfare benefits. Currie's (2007b) regression analysis also revealed that disability and welfare benefits predicted multiple legal problems, and that these disadvantaged groups were increasingly overrepresented as the number of problems increased.<sup>21</sup>

Second, Pleasence (2006) and Currie (2007b) both reported that the groups that experienced multiple legal problems tended to experience problem types that are usually associated with social exclusion. Currie (2007b) argued that problems related to debt, disability pensions, housing and social assistance often indicate elements of social exclusion, reflecting a transition from self-sufficiency within mainstream society to dependency. These 'problems of social exclusion' were increasingly reported as the number of problems increased. For example, debt was reported by 20 per cent of all respondents, but by 79 per cent of those with at least six problems. Pleasence (2006) similarly found that vulnerability to legal problems related to relationship breakdown, homelessness, unfair police treatment, domestic violence and rented housing particularly increased as the number of problems increased.

Third, the demographic groups vulnerable to experiencing specific clusters of legal problems have been examined (Pleasence 2006; Pleasence, Balmer, Buck, O'Grady & Genn 2004b). As noted earlier, cluster analyses of CSJS data produced family, economic and homelessness clusters.<sup>22</sup> Regression results showed that disadvantaged groups were prone to experiencing multiple problems within each cluster. Specifically, lone parents, people with a disability and renters were particularly vulnerable to 'family cluster' problems. Welfare recipients, residents of high-density housing, people with a disability and low-income earners were particularly vulnerable to 'economic cluster' problems. Economically inactive respondents, welfare recipients, low-income earners, renters and people with a disability were particularly vulnerable to 'homelessness cluster' problems. Note that disability was associated with all three clusters, while low income and renting were each associated with two clusters. However, multiple problems were not solely confined to socially excluded groups. The most affluent groups had increased vulnerability to multiple problems in the family and economic clusters, and the clusters peaked at different ages.

<sup>21</sup> According to bivariate analyses, a number of other disadvantaged groups were also more likely to experience multiple problems — namely, single parents, visible minority ethnic groups, Aboriginals, Black Canadians, unemployed people, people without university education and low-income earners. Younger people and people living outside Quebec were also more likely to experience multiple problems according to these analyses (Currie 2007b).

<sup>22</sup> The family cluster included divorce, domestic violence and relationship breakdown problems. The economic cluster included consumer, employment, money/debt, neighbours, owned and rented housing, personal injury and welfare benefits problems. The homelessness cluster included action against the respondent, homelessness and unfair police treatment.

## Vulnerability and policy

The empirical evidence that social exclusion drives much of the experience of legal problems, including the experience of multiple, compounding legal problems, has led researchers to emphasise the importance of ensuring that legal services meet the needs of disadvantaged groups. In particular, the potential benefits of targeting the disadvantaged groups that are prone to multiple disadvantage and multiple legal problems, such as people with a disability, lone parents and people on welfare benefits, have been propounded. Furthermore, given their vulnerability to multiple legal problems, it has been argued that holistic, client-focused approaches to legal service provision for such disadvantaged groups are likely to have considerable value (e.g. Buck et al. 2005; Coumarelos et al. 2006; Currie 2007b; Forell et al. 2005; Maxwell et al. 1999; Pleasence 2006; Sandefur 2007, 2008).

Given that such disadvantaged or socially excluded groups can experience a broad range of non-legal problems in addition to their legal problems, a complete solution to their problems may require both legal assistance and broader non-legal support through other human services. Accordingly, the value of a coordinated response to the legal and non-legal needs of socially excluded groups is increasingly being proposed (Buck & Curran 2009; Buck, Smith, Sidaway & Scanlan 2010b; Coumarelos et al. 2006; Curran 2007; Forell et al. 2005; Forell & Gray 2009; Moorhead, Robinson & Matrix Research and Consultancy 2006; Noone 2007, 2009; Pleasence 2006). For example, the coordination, integration or co-location of legal services with other services, such as health, housing, financial, social, welfare, family and crime victim services, has been advocated (Buck et al. 2010b; Kemp et al. 2007; Moorhead et al. 2006; Pleasence 2006; Pleasence, Balmer & Buck 2007a; Pleasence, Balmer, Buck, Smith & Patel 2007b; Pleasence, Buck, Balmer & Williams 2007c).

In the UK, several initiatives have improved coordination between legal and other human services. These include co-locating citizens advice bureau services within health settings and setting up Community Legal Advice Centres (CLACs) and Networks (CLANs) to deliver integrated social welfare law services (Balmer et al. 2006; Legal Services Commission 2006; Pleasence 2006).<sup>23</sup> However, several challenges in implementing these initiatives suggested that successfully joining up services is a complex process requiring considerable planning, resources and support (Buck et al. 2010b; Buck, Smith, Sidaway & Balmer 2010a; Fox, Moorhead, Sefton & Wong 2010; Smith & Patel 2010).

In Australia, there has been only limited discussion about what joined-up or integrated legal services would entail (Noone 2007, 2009). Recently, the Council of Australian Governments' (COAG 2010) National Partnership Agreement on Legal Assistance Services proposed reforms to increase collaboration among legal services, and also between legal services and other services.

Promoting access to justice is therefore seen as one important route to tackling social exclusion (Pleasence 2006). Additionally, however, it has been argued that policies concerning access to justice need to be set out in a broader context than that of social exclusion. Despite the tight nexus between social exclusion and legal problems, the evidence also shows that legal problems are frequently encountered by people from all walks of life, including people of all ages and people from more affluent backgrounds. Thus, it has been argued that policies concerning access to justice must be broadly directed to enable all citizens to make effective use of the available legal remedies (Currie 2007b; Genn 1999; Pleasence 2006). For example, the age-related experience of legal

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<sup>23</sup> The ongoing operation of CLACs and CLANs is uncertain, given the likely cut to legal aid spending as part of the recently proposed 23 per cent reduction in the annual budget for the Ministry of Justice by 2014–2015 (Ministry of Justice 2010).

problems suggests that there may be benefits to tailoring legal information, education and advice strategies for different age groups, so that the problems typically faced at various life stages can be resolved efficiently (Balmer et al. 2010; Coumarelos et al. 2006; Dignan 2006; Macdonald 2005; Pleasence 2006).

## Adverse consequences of legal problems

Several legal needs surveys have examined the adverse consequences that legal problems can have on a range of economic, health and social circumstances. Adverse impacts are common and can be severe and debilitating. First, a number of surveys have included a broad-brush measure of problem severity and have found that many legal problems have a substantial negative impact on day-to-day life. For example, CSJS respondents spent all or most of their time worrying about almost 40 per cent of legal problems (Pleasence 2006). In Canada, almost 60 per cent of legal problems made daily life somewhat to extremely difficult (Currie 2007b). In Northern Ireland, 40 per cent of legal problems had a severe impact (Dignan 2006).

Second, surveys have explored whether legal problems result in a variety of specific adverse impacts on economic, health and social circumstances. A high percentage of problems resulted in at least one adverse impact, with percentages ranging from 38 in Canada to 52 in the UK (Currie 2007b; Dignan 2006; Pleasence 2006; Pleasence et al. 2010). Furthermore, respondents with multiple legal problems were more likely to experience adverse impacts (Currie 2007b). Although the specific types of adverse impacts measured across studies have varied, stress-related ill health is typically the most frequent adverse consequence (22–39%). Sizeable proportions of legal problems have also been reported to cause loss of confidence (12–32%), loss of income (13–26%), physical ill health (10–24%), relationship breakdown (4–16%), loss of employment (4–14%), moving home (4–10%) and violence (4–6%; Currie 2007b; Dignan 2006; Ignite Research 2006; Pleasence 2006; Pleasence et al. 2010). An in-depth qualitative and quantitative study that examined clients presenting at solicitors' firms and advice agencies similarly observed that legal problems caused or were accompanied by considerable stress, anxiety, physical and mental health problems, leaving clients with little energy for solving their legal problems (Moorhead et al. 2006).

Not surprisingly, some types of legal problems tend to be more severe than others and have more adverse impacts on a variety of life circumstances. For example, in the UK, approximately two-thirds or more of legal problems related to clinical negligence, domestic violence, employment, homelessness, mental health, personal injury and relationship breakdown led to at least one adverse consequence (Pleasence et al. 2010). In addition, discrimination, divorce, domestic violence, employment, homelessness and relationship breakdown tended to result in multiple impacts (Pleasence 2006; Pleasence et al. 2007b). In contrast, much lower proportions of consumer problems were found to result in adverse consequences across studies (Currie 2007b; Dignan 2006; Ignite Research 2006; Pleasence et al. 2010).

Pleasence and colleagues also examined the types of legal problems that are especially likely to cause specific adverse impacts. Physical ill health often stemmed from legal problems concerning clinical negligence, domestic violence, mental health and negligent accidents. Stress-related ill health often resulted from legal problems involving domestic violence, employment, homelessness, mental health and relationship breakdown (Pleasence, Balmer & Buck 2008; Pleasence et al. 2007a). In addition, an in-depth study on debt problems which used CSJS and qualitative data found that debt problems can cause a range of adverse impacts, including ill health, relationship breakdown and unemployment (Pleasence et al. 2007c).

## **Adverse consequences and disadvantage**

Disadvantage appears to play a role not only in vulnerability to legal problems, but also in the likelihood that the legal problems experienced will have various adverse consequences. For example, using regression analyses, Currie (2007b) found that disability, unemployment, being on social assistance, having at least three children and being 45–64 years of age were associated with increased likelihood of adverse consequences.

Similarly, a link between disadvantage and the adverse impacts of legal problems has been reported by a few studies using CSJS data. First, using regression analyses, Pleasence and Balmer (2009) found that people with a mental illness were especially likely to report stress-related ill health as a result of their legal problems. They concluded that legal problems not only are associated with mental illness, but also can cause and exacerbate mental illness. Second, Sandefur's (2008) regression results showed that CSJS respondents with low socioeconomic status were more likely to experience multiple negative consequences as a result of money/debt and housing problems. Third, Balmer et al. (2010) found that many disadvantaged groups were overrepresented among those who lacked legal knowledge and failed to obtain advice for their legal problems and then suffered adverse consequences. These groups included lone parents, people with a disability, people with a mental illness, public renters, people with no academic qualifications, welfare recipients and low-income earners.

## **Adverse consequences and policy**

Legal needs surveys have demonstrated that legal problems can change life circumstances dramatically. The adverse impacts of legal problems on a broad range of economic, health and social outcomes indicates that the link between disadvantage and legal problems is dynamic and bidirectional. That is, not only does socioeconomic disadvantage or social exclusion increase the likelihood of experiencing legal problems, but experiencing legal problems can create, perpetuate or further entrench social exclusion (Buck et al. 2005; Currie 2007b).

The finding that socially excluded groups not only experience more legal problems, but also experience more adverse consequences as a result of these problems further indicates that promoting access to justice is likely to have flow-on effects in tackling social exclusion (Pleasence 2006). This finding stresses the benefit of quick, effective and inexpensive means of resolving legal problems before they multiply, escalate and resonate throughout numerous life areas. Furthermore, it adds weight to the proposal that disadvantaged people tend to experience both legal and non-legal problems and, hence, may benefit from the joining up, integration or co-location of legal services with broader human services, such as health, housing, financial counselling, social, welfare, family and crime victim services (Kemp et al. 2007; Moorhead et al. 2006; Pleasence 2006; Pleasence et al. 2007a, 2007b, 2007c).

The considerable negative impacts that legal problems can have on people's personal circumstances have also been argued to translate to an enormous cost to society at large. In the UK, using CSJS data, the economic impact on health and other public services of the adverse consequences of legal problems was estimated to be at least £13 billion over a 3.5-year period and prompted the Lord Chancellor to state that solving people's legal problems must remain a priority across government (see Pleasence 2006, p. i).



## Legal knowledge and capability

As already discussed, legal problems are common, everyday occurrences faced by people from all walks of life. The following sections describe what people do about their legal problems and what determines whether they achieve effective resolution.

Felstiner, Abel and Sarat's (1981) influential model of disputing behaviour proposes a few prerequisites before an individual will take action to try to resolve a legal problem. The individual must first recognise the situation as problematic (naming), must then attribute fault or responsibility to someone else (blaming) and must also be aware of a potential legal remedy and be prepared to seek such a remedy despite any perceived risks or negative consequences in doing so (claiming). Thus, the model implies that some legal awareness or legal knowledge is a prerequisite before an individual will attempt to resolve a legal problem. The model additionally implies that while some legal knowledge is necessary, it is not sufficient for action to occur. A myriad of factors may constrain or prevent action. Constraining factors may include shortcomings within the legal system that hinder access to legal information, advice or redress. Furthermore, constraining factors may include various personal characteristics or circumstances, such as social, economic and psychological factors.

There has been increasing interest in the personal characteristics or competencies necessary for an individual to resolve legal problems effectively — that is, in 'legal capability'. It has been argued that some people lack the capability to solve legal problems alone and may require broader non-legal support in addition to legal assistance in order to achieve legal resolution (Coumarelos et al. 2006; Forell et al. 2005; Genn & Paterson 2001; Mulherin & Coumarelos 2007; Pleasence 2006). The interest in legal capability predates Felstiner et al.'s (1981) model. Galanter (1976) argued that a person's lack of capability poses the most fundamental barrier to accessing justice. Several authors have delineated the types of competencies that constitute legal capability. These competencies tend to fall into three areas: knowledge, skills and psychological readiness (cf. Jones 2010).<sup>24</sup>

First, basic legal knowledge is proposed to be an essential component of legal capability. Individuals require a basic awareness of the role of the law in everyday solutions. They must have the rudimentary legal knowledge to recognise that their rights or entitlements may have been violated or that they may have a grievance or claim. They must also have sufficient knowledge to realise that there are potential legal solutions, to know when further information or assistance may be necessary and to know where to begin to obtain such assistance (cf. Felstiner et al. 1981; Galanter 1976; Genn & Paterson 2001; Jones 2010; Kirby 2011).

Second, beyond legal knowledge, people must have the necessary skills to pursue legal resolution effectively. At the most elementary level, they must have adequate literacy, language, communication and information-processing skills (Genn & Paterson 2001; Jones 2010; Kirby 2011; Nheu & McDonald 2010). Literacy, in particular, is seen as a vital capacity, without which understanding and invoking one's legal rights can be very limited (see Maddox 2008; Nussbaum 2000; Sen 2003). In addition, people must have 'functional literacy' — that is, the information-processing skills required to locate, understand and act on information or advice in a problem-solving or goal-oriented way (see Nheu & McDonald 2010). More specific skills may also at times be needed, such as the ability to make decisions, keep track of calls and correspondence or manage claims competently (Galanter 1976; Jones 2010).

<sup>24</sup> The notion of 'legal capability' is consistent with Sen's landmark 'capabilities' approach, which applies more broadly to all areas of human development and welfare (Nussbaum 2000, 2011; Sen 1999, 2010).

Third, legal capability requires the psychological readiness to act and persevere until legal resolution is achieved. For example, individuals must have attitudes such as confidence and determination, as well as emotional or psychic fortitude, to see problems through to satisfactory conclusions (Galanter 1976; Genn & Paterson 2001; Jones 2010).

As a step towards understanding and measuring legal capability, legal needs surveys have attempted to quantify the level of legal knowledge in the community by assessing respondents' legal awareness. Typically, the findings have indicated large gaps in the legal knowledge of the general public or of certain demographic groups. The US surveys consistently showed low levels of awareness of various aspects of the justice system among their disadvantaged respondents. Roughly one-fifth to one-half of respondents were aware of free legal services, and approximately one-tenth to one-half were aware of lawyer referral services (ABA 1994; LSC 2007, 2009). A number of US surveys also reported that many respondents did not realise they were eligible for free legal aid (36–80%; ABA 1994; LSC 2007, 2009). In Australia, the earlier survey by Cass and Sackville (1975) found widespread ignorance and confusion about eligibility for public legal services in the disadvantaged areas surveyed.

Gaps in legal knowledge have also been revealed by general population surveys. Fishwick (1992) found significant gaps in the general public's understanding of the law and legal services in NSW. In New Zealand, there was high awareness of legal aid (85%), but less awareness of community law centres (48%; Ignite Research 2006). In Japan, only 53 per cent of respondents with a legal problem were aware that the problem had a legal component (Murayama 2007). In Hong Kong, while there was high awareness of legal aid (81–85%), there was less awareness of arbitration and mediation services (50–51%; HKDOJ 2008). In the UK, around two-thirds of respondents who experienced a legal problem were unaware of their legal rights in relation to the problem, and a similar proportion were unaware of the formal legal processes available to deal with their problem (Balmer et al. 2010).

### **Legal capability and disadvantage**

Qualitative and quantitative studies focusing on the legal needs of specific disadvantaged groups have demonstrated low levels of legal capability within these groups, including homeless people, people with a mental illness, prisoners, people with debt problems, marginalised youth and vulnerable workers (Buck, Tam & Fisher 2007; Casebourne, Regan, Neathey & Tuohy 2006; Day, Collard & Hay 2008; Forell et al. 2005; Grunseit, Forell & McCarron 2008; Karras, McCarron, Gray & Ardasinski 2006; Parle 2009). These studies have typically found poor knowledge within these disadvantaged groups about legal rights, legal remedies and the justice system. They have also identified a lack of the skills and psychological readiness required to achieve legal resolution. They revealed poor literacy, language or communication skills; feelings of despair, hopelessness or being overwhelmed; feelings of being unworthy or undeserving of justice; feelings of being afraid, intimidated by or distrustful of the legal system; more pressing basic needs (e.g. accommodation, food or financial needs); and ignoring problems until they reach crisis point.

Using CSJS data, the recent study by Balmer et al. (2010) provided quantitative evidence that disadvantaged groups have lower levels of legal knowledge than other sections of the community. In particular, low income, low levels of education, disability, mental illness and living in rented housing were all linked with less knowledge about legal rights and processes.

Poor literacy within disadvantaged groups is well established in the broader literature. For example, the 2006 Adult Literacy and Life Skills Survey found low literacy levels for a general population

sample in Australia, with even lower levels for disadvantaged groups (ABS 2008a). Almost half of the sample scored below the minimum literacy and numeracy standards necessary to meet the demands of everyday life, and around 70 per cent lacked the skills needed to solve non-routine problems. In addition, literacy levels were lower than average for younger and older people, the unemployed, people whose first language was not English, low-income earners and people with low education levels. These findings are in keeping with a recent qualitative study on law reform processes. This study concluded that disadvantaged groups have poor functional literacy — that is, low ability for using information in a goal-oriented way to solve problems (see Nheu & McDonald 2010).

## Response to legal problems

Just as legal needs surveys have demonstrated diversity in people's experience of legal problems, they have also demonstrated diversity in people's responses to legal problems. Not everyone who experiences a legal problem takes action to resolve it. Those who take action use a variety of resolution strategies. Notably, only a minority of people seek advice from lawyers or use the formal litigation system. Many seek advice only from non-legal advisers, while others are capable of resolving their legal problems successfully on their own without professional advice. The evidence suggests that the choice of strategy used in response to a legal problem depends on both the nature of the problem and the characteristics of the respondent. Once again, disadvantage appears to play a role in what people elect to do about their legal problems. As detailed below, certain disadvantaged groups are more likely to ignore their legal problems and are less likely to seek advice (Coumarelos et al. 2006; Currie 2007b; Pleasence 2006).

### Inaction

Legal needs surveys have repeatedly shown that ignoring legal problems is common, with typically between about one-tenth and one-third of legal problems resulting in no attempt at resolution (ABA 1994; Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Gramatikov 2008; Maxwell et al. 1999; Pleasence 2006; Pleasence et al. 2004c, 2010).<sup>25</sup> This level of inaction is not intrinsically a matter of concern. As noted earlier, inaction does not always constitute unmet legal need. While inaction signals the possible risk of unmet legal need, it can sometimes be apposite (Dignan 2006; Pleasence 2006). As inferred by Felstiner et al.'s (1981) influential model, seeking a remedy may sometimes be unwarranted, because the legal problem may be too trivial or may be the individual's own fault.

Surveys have examined the reasons why people do nothing to resolve legal problems. These reasons confirm that inaction is appropriate in some cases but reflects unmet legal need in others. Similarly, Balmer et al. (2010) made a distinction between informed and constrained inaction. The former means that the individual correctly decides that taking action is unnecessary, while the latter means that the individual wants to act but is constrained from acting by factors such as a lack of legal knowledge or capability. Across surveys, many of the common reasons for inaction suggest unmet legal need. For example, these reasons have included:

- unawareness or confusion about the legal nature of the problem, legal rights, legal services or possible legal solutions
- intimidation or insufficient power regarding legal processes or remedies

<sup>25</sup> As already noted, methodological factors (e.g. coverage of legal problems, triviality threshold and level of disadvantage in the sample) may have influenced the levels of inaction obtained. Note also that some US surveys reported the proportion of problems where a lawyer was not used but not the proportion of problems where no action at all was taken.

- concern about escalating the problem, such as becoming involved in acrimony, fearing repercussions or damaging the relationship with the other side
- concern about the personal or financial costs of taking action, such as taking too much time, being too stressful, being too embarrassing, being unable to afford it or not knowing about free legal services (e.g. AFLSE 2007; Cass & Sackville 1975; Consortium 1994; Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Fishwick 1992; Genn 1999; HKDOJ 2008; Ignite Research 2006; Maxwell et al. 1999; Pleasence 2006; Pleasence et al. 2004c; Rush 1999; Sandefur 2007; Schulman 2003; van Velthoven & ter Voert 2004).

Thus, these reasons indicate that taking action can be undermined both by gaps in people's legal knowledge and by limitations in their legal capability, due to psychological factors such as anxiety, embarrassment, fear and stress.

Other commonly cited reasons for inaction, if taken at face value, suggest that inaction may have been sensible and may not necessarily indicate unmet legal need:

- The problem was trivial or unimportant.
- Nothing could be done, or taking action would make no difference.
- There was no dispute, or the respondent was at fault.
- It was too early to act, or the problem was likely to be resolved without the respondent needing to do anything (e.g. Coumarelos et al. 2006; Consortium 1994; Currie 2007b; Dignan 2006; HKDOJ 2008; Ignite Research 2006; Maxwell et al. 1999; Pleasence 2006; Pleasence et al. 2004c; Schulman 2003; van Velthoven & ter Voert 2004).

Where such beliefs correctly mirror reality, inaction may be appropriate. Reasons such as 'nothing could be done' or 'it would make no difference' may sometimes accurately reflect failings within the justice system and institutions of remedy (see Genn 1999; Pleasence 2006; Sandefur 2009). However, a few authors have argued that such beliefs are ultimately based on the respondent's legal knowledge. Given that there appear to be extensive gaps in the general public's legal knowledge, lay judgements about the seriousness of problems, the possible legal solutions and the likely outcomes of certain resolution strategies will sometimes be erroneous (Balmer et al. 2010; Buck et al. 2008; Genn 1999; Pleasence 2006). Thus, legal needs surveys suggest that, while inaction in response to legal problems is not always a matter for concern, it is likely to be a matter of concern in many cases.

## **Action types**

There has been considerable variation across surveys in their measurement of the responses to legal problems. Many surveys following Genn's (1999) approach have examined a broad range of actions, including consulting lawyers, consulting non-legal professionals, negotiating with the other side, using self-help guides and the internet, and consulting family and friends (Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Genn 1999; Genn & Paterson 2001; HKDOJ 2008; Murayama 2007; Pleasence 2006; Pleasence et al. 2010; van Velthoven & Klein Haarhuis 2010; van Velthoven & ter Voert 2004). These types of actions (or their absence) have often been grouped into three main action strategies for reporting purposes:

- seeking advice from professionals (whether legal or non-legal)
- handling the problem alone or without professional advice
- inaction or doing nothing.

In contrast, many of the early surveys, and some of the recent US surveys, focused virtually exclusively on the use of lawyers and the formal justice system (e.g. AAJC 2009; Cass & Sackville 1975; CSRA 2003; Curran 1977; Dale 2000, 2005, 2007, 2009; Fishwick 1992; LASNSC 2005; Rush 1999). While a number of the recent US surveys captured information on non-legal advisers, when compared to Genn's (1999) surveys they still retained a heavier focus on the use of traditional legal remedies (e.g. ABA 1994; AFLSE 2007; CEALS 2001; GKA 2006, 2008; LSNJ 2009; Miller & Srivastava 2002; Schulman 2003, 2007; TALS 2004; Task Force 2003).

Surveys following Genn's (1999) approach have emphatically demonstrated that people use a wide variety of actions to handle legal problems. First, significant proportions of people (e.g. 10–40%) handle the matter alone, without seeking expert advice, via actions such as negotiating with the other side or obtaining information from self-help guides, the internet, family and friends (Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Genn 1999; Genn & Paterson 2001; Pleasence 2006; Pleasence et al. 2010; van Velthoven & ter Voert 2004).

Second, although seeking expert advice is a frequent response, typically reported for around two-fifths to two-thirds of all legal problems, people by no means restrict themselves to advice from traditional legal practitioners. Instead, a wide variety of non-legal advisers are used, including dispute resolution and government bodies, trade unions, and health, welfare and financial professionals. Furthermore, the use of non-legal advisers is common and can be more frequent than the use of legal advisers. Surveys using Genn's (1999) approach have typically reported the use of legal advisers for no more than two-fifths of all problems, which usually translates to no more than about half of the cases involving external advice (Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Genn 1999; Genn & Paterson 2001; HKDOJ 2008; Pleasence 2006; Pleasence et al. 2010; van Velthoven & ter Voert 2004).<sup>26</sup>

The earlier surveys and the US surveys have also invariably confirmed that lawyers are used fairly rarely. Earlier Australian surveys found that respondents obtained legal advice for less than half of their legal problems (Cass & Sackville 1975; Fishwick 1992; Rush 1999). Similarly, the US surveys have typically reported that less than one-fifth of all legal problems experienced by low-income households led to the use of a lawyer, and the pattern was similar when only more severe problems were examined (LSC 2007, 2009).

Just as inaction is not intrinsically problematic, failure to seek advice in general or legal advice in particular also does not necessarily imply unmet legal need (Dignan 2006). Indeed, as will be discussed later, some people are able to achieve satisfactory resolution without legal advice. Nonetheless, the evidence suggests that failure to consult a legal adviser can sometimes result in unmet legal need. For instance, in some of the US studies, the reasons provided by respondents for failing to seek legal help confirmed a lack of awareness that their problem had a legal dimension, had a potential legal solution or could be addressed by legal aid (LSC 2009).

## Response and different types of legal problems

Legal needs surveys have consistently revealed that, fittingly, the nature of a legal problem influences the type of response. First, the severity of the problem influences the response. As might be expected, more important or severe problems are less likely to be ignored and more likely to result in the use

<sup>26</sup> For example, in Scotland, Genn and Paterson (2001) found that a little over one-quarter of problems resulted in consulting a solicitor and represented almost one-half of problems involving some type of advice. In England and Wales, Pleasence (2006) found that 30 per cent of respondents who obtained advice consulted a solicitor. Dignan (2006) found that lawyers were used for 29 per cent of problems involving advice in Northern Ireland, which represented 17 per cent of all problems. In Australia, legal advisers were used for 26 per cent of the problems where respondents sought help (Coumarelos et al. 2006).



of legal advice (Currie 2007b; Dignan 2006; Genn 1999; Pleasence 2006; Pleasence et al. 2004c, 2010).

Second, studies have invariably found, via both regression and other analyses, that the type of response depends on the type of legal problem. Despite the differing coverage of legal problems and actions across studies, some commonalities have emerged. Most notably, family breakdown problems usually result in high rates of taking action, seeking advice or seeking legal advice (ABA 1994; Cass & Sackville 1975; Currie 2007b; Dale 2005, 2007; Dignan 2006; Genn 1999; LASNSC 2005; Pleasence 2006; Pleasence et al. 2010; Rush 1999; Schulman 2003, 2007; Task Force 2003).<sup>27</sup> Problems regarding conveyancing, clinical negligence, personal injury, and wills, estates or advance directives usually also result in high rates of taking action or seeking advice of some sort (Cass & Sackville 1975; Coumarelos et al. 2006; Currie 2007b; Fishwick 1992; Genn 1999; Pleasence 2006; Pleasence et al. 2010; Schulman 2003, 2007).<sup>28</sup> In contrast, high rates of inaction usually result from problems related to discrimination, human rights and unfair police action (Coumarelos et al. 2006; Currie 2007b; Fishwick 1992; Pleasence 2006; Pleasence et al. 2010). In addition, consumer problems tend to have lower rates of seeking advice and tend to result either in higher rates of inaction or in higher rates of handling the problem alone (Cass & Sackville 1975; Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Pleasence 2006; Pleasence et al. 2010).

Not all of the results regarding the link between the type of legal problem and strategy can easily be explained in terms of the severity of the problem. Rather, both problem severity and problem type appear to have an influence (Dignan 2006; Pleasence 2006). Pleasence (2006) argued that some legal problems with high levels of inaction, such as problems concerning discrimination, domestic violence, mental health and unfair police action, may reflect concerns about the consequences of taking action rather than a lack of seriousness. He noted that, strikingly, such problems reflect substantial imbalances in knowledge, standing and institutional support, or else reflect substantial interpersonal conflict.

### **Response, demographics and disadvantage**

Several studies have used regression analyses to examine the link between demographic characteristics and response to legal problems. Comparisons between these studies are sometimes difficult to interpret, however, because they have contrasted different types of responses. Some of these studies have compared seeking advice to a category grouping all other responses (e.g. Coumarelos et al. 2006; Genn 1999; Genn & Paterson 2001). In contrast, the CSJS and Dutch studies firstly compared inaction to a category grouping all types of action and then also compared the two actions of seeking advice and handling the matter alone (Pleasence 2006; van Velthoven & ter Voert 2004). In Canada, Currie (2007b) examined five strategies: inaction due to unimportance, inaction for a reason, handling alone, non-legal advice and legal advice. In New Jersey, seeking assistance from a lawyer was compared to a category that included all other responses — namely, inaction, seeking assistance from a non-lawyer and handling the matter alone. The comparison was then repeated with the exclusion of inaction (LSNJ 2009; Miller & Srivastava 2002). The findings are outlined below.

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<sup>27</sup> Using bivariate analyses, Coumarelos et al. (2006) found higher rates of seeking help for family than for civil and criminal law problems. However, using regression analyses, family problems did not result in significantly higher rates of seeking help.

<sup>28</sup> Pleasence (2006) found that personal injury problems resulted in high rates of inaction but, when action was taken, they resulted in higher rates of seeking advice than handling problems alone.

### ***Response, age and gender***

Typically, regression analyses have found that age predicts the response to legal problems. Middle-aged or somewhat older respondents are often reported to have the highest rates of taking action or seeking advice. In contrast, the younger respondents, and sometimes also the oldest respondents, are reported to have low rates of taking action or seeking advice (Coumarelos et al. 2006; Currie 2007b; Genn 1999; Pleasence 2006; van Velthoven & ter Voert 2004). Other types of analyses have further supported this relationship (Fishwick 1992; Ignite Research 2006).

While some regression analyses have found a relationship between gender and type of response (e.g. Genn 1999; Pleasence 2006; Pleasence et al. 2004c), others have not (e.g. Coumarelos et al. 2006; Currie 2007b; Genn & Paterson 2001; Miller & Srivastava 2002; van Velthoven & ter Voert 2004). The studies finding a relationship have reported higher rates of inaction or lower rates of seeking advice for males (Genn 1999; Pleasence 2006; Pleasence et al. 2004c). Similarly, other analyses have indicated that males are less likely to take action to handle legal problems (Fishwick 1992; Ignite Research 2006; Maxwell et al. 1999).

### ***Response and disadvantage***

There is considerable evidence that certain disadvantaged groups are more likely to ignore their legal problems than other sections of the community. First, lower rates of taking action, seeking advice or seeking legal advice more specifically have tended to emerge from disadvantaged populations than from general populations. For example, Hadfield (2010) provided a comparative assessment of legal needs surveys conducted in the US, the UK, Japan, the Netherlands and Slovakia. She noted that the low-income samples in the US had higher rates of inaction than the general population samples in the other countries. She also noted greater use of legal advisers in the UK than in the US. Hadfield argued that differences in legal environments may have contributed to these results, given that, for example, non-lawyers can provide legal advice in the UK and the Netherlands but not in the US. However, as detailed earlier, a variety of other differences between studies may also have affected the response rates, such as differences in the coverage of legal problems and actions. Thus, such a comparative analysis of surveys provides suggestive but not conclusive evidence that disadvantage increases inaction and reduces the use of legal advice.

Second, stronger evidence that socioeconomic disadvantage may influence response to legal problems has come from the CSJS in the UK, which used identical methodology to survey both a disadvantaged and a general population sample. A much higher rate of inaction was found for the disadvantaged sample (28%) than for the general population sample (10–19%; Pleasence et al. 2004c).

Third, regression analyses have provided evidence of a link between disadvantage and either inaction or failure to seek advice. In particular, such analyses have revealed that less educated respondents and ethnic minorities have higher rates of inaction or lower rates of seeking advice (Coumarelos et al. 2006; Currie 2007b; Genn 1999; LSNJ 2009; Pleasence 2006; Pleasence et al. 2004c; van Velthoven & ter Voert 2004). With regard to ethnicity, different studies have necessarily focused on different ethnic groups. For example, Coumarelos et al. (2006) found lower rates of seeking advice for Indigenous Australians. Currie (2007b) reported that foreign-born Canadians and members of visible minorities had higher rates of inaction. Pleasence et al. (2004c) found that Black and minority ethnic groups in the UK were less likely to take action. Studies using other analyses have also indicated that people with low levels of education and/or ethnic minorities are more likely to do nothing in response to their legal problems (Cass & Sackville 1975; Task Force 2003).

A few studies using regression analysis have found a link between employment status and response to legal problems. Genn and Paterson (2001) found that managers were more likely than others to seek advice. Pleasence et al. (2004c) found that the employed and self-employed were less likely to take action, but, when they did act, full-time employees were less likely to seek advice and the self-employed were most likely to seek advice. Currie (2007b) found that the employed and self-employed had higher rates of non-legal assistance, and that the unemployed had higher rates of inaction.

While other indicators of disadvantage have sometimes been linked to inaction or failure to seek advice for legal problems, these links have been less consistent. For example, the link between taking action and income has been inconsistent. Based on regression analyses, while Genn and Paterson (2001) found low rates of seeking advice among high-income earners and Pleasence (2006) found high rates of taking action among welfare recipients, others have found high rates of taking action or seeking advice among high-income earners (Genn 1999; van Velthoven & ter Voert 2004).

Regression and other analyses on CSJS data have also provided evidence that, when action is taken in response to legal problems, disadvantage influences the type of action taken. Disadvantaged groups are less likely to handle their problems alone and more likely to seek advice. Temporary accommodation residents, people with no academic qualifications, lone parents, public renters, people with a disability, people with a mental illness and people on welfare benefits were all found to have lower rates of handling their problems alone and higher rates of obtaining advice (Balmer et al. 2010; Pleasence 2006). Currie's (2007b) regression results similarly indicated that people with a disability and welfare recipients were more likely than other respondents to seek legal advice.

### **Response, legal capability and disadvantage**

Legal knowledge appears to be an important determinant of whether action is taken to resolve legal problems. For example, Pleasence (2006) found higher rates of taking action among people who were aware of local advisers. Balmer et al. (2010) found that people who sought advice for legal problems were more likely to successfully obtain relevant advice if they had some knowledge of their legal rights.

People also appear to be predisposed to take certain types of action, and legal capability seems to be linked to these predispositions. For example, Genn and Paterson (2001) argued that people's capacity to tackle legal problems on their own varies considerably. Some people have the knowledge and self-confidence required to take action and solve their problems, while others are so traumatised by their problems that they are 'paralysed'. They noted that the people who were unable to take action had 'low levels of capability in terms of education, income, confidence, verbal skill, literacy skill and emotional fortitude' (p. 260). They suggested that such people can require considerable assistance to solve their problems.

Disadvantaged groups, in particular, appear to lack legal knowledge and have difficulty solving their legal problems without assistance. Balmer et al. (2010) showed that disadvantaged people who took action tended to seek advice. They argued that this tendency was due to a lack of capacity to solve legal problems without assistance, and they demonstrated that disadvantaged groups were underrepresented among those who had knowledge of their legal rights and handled their problems alone. They noted, however, that the greater number of severe problems faced by disadvantaged people may also contribute to their difficulty in solving problems alone.

There is evidence that unsuccessful strategies in response to legal problems can become entrenched, and that this entrenchment may be linked to poor legal capability. CSJS respondents tended to

use the same strategies that they had used in the past — those who took no action for one legal problem had an increased probability of taking no action for subsequent legal problems, while those who handled a legal problem alone were more likely to do so again (Buck et al. 2008; Pleasence 2006). The persistent use of a specific strategy is not problematic if good outcomes are achieved. Entrenched inaction, however, is of particular concern, as people may flounder with each new legal problem they encounter.

A focus group study suggested that entrenched inaction in low-income participants often resulted from a lack of psychological readiness to resolve legal problems. These respondents tended to explain their inaction in terms of shame and embarrassment, insufficient power, fear, gratitude and frustrated resignation (Sandefur 2007). These psychological barriers are similar to those identified by other qualitative studies with disadvantaged groups (Forell et al. 2005; Grunseit et al. 2008; Karras et al. 2006; Nheu & McDonald 2010). Sandefur (2007) noted that such obstacles can undermine the ability to confront the other party or seek assistance from a third party. In addition, failure to solve legal problems because of these obstacles tended to create pervasive, entrenched inaction for subsequent problems. For example, some people had learnt that trying to resolve legal problems is frustrating and, thus, were resigned to tolerating rather than solving new problems.

Sandefur (2007) and Balmer et al. (2010) have propounded that the demographic groups that repeatedly adopt poor strategies in response to legal problems must be empowered to adopt better strategies in the future. Balmer et al. proposed that public legal education initiatives have the potential to break entrenched maladaptive responses. They noted, however, that such initiatives must address the wider legal capabilities necessary for people to resolve legal problems, including basic literacy skills and other vulnerabilities.

### **Barriers to obtaining advice**

Not everyone who seeks advice for a legal problem is successful in obtaining the advice they need. In the UK, one in seven or eight people who sought advice were not successful in obtaining it (Pleasence 2006). Furthermore, those who manage to obtain advice sometimes experience difficulties in doing so. Legal needs surveys have identified various types of barriers to obtaining advice or assistance. The precise barriers experienced are likely to be influenced by jurisdictional and populational factors, such as the available systems for legal redress and the capabilities of specific populations. Nonetheless, common barriers have related to the accessibility of legal services, the adequacy of the information obtained and the cost of legal services.

In particular, barriers to the accessibility of legal services have been widely reported. These have included difficulties related to getting through on the telephone, obtaining a suitable appointment, inconvenient opening hours, advisers taking too long to respond, a lack of local services and language barriers (Coumarelos et al. 2006; Genn 1999; Genn & Paterson 2001; Ignite Research 2006; Pleasence 2006).

The mode of service delivery can also be an important determinant of the accessibility of legal services, particularly for socially excluded groups. It has been argued that groups with low legal capability, such as those with complex problems or with language or communication difficulties, may require face-to-face advice, because they may have greater difficulty understanding phone advice and using the internet (Buck, Day, Collard, Smith & Patel 2009; Buck et al. 2007, 2008; Forell et al. 2005; Forell & Gray 2009; Genn & Paterson 2001; Giddings & Robertson 2001; Grunseit et al. 2008; Hunter, Banks & Giddings 2007; Karras et al. 2006; Moorhead, Sefton & Douglas 2004; Pearson & Davis 2002; Pleasence 2006; Scott & Sage 2001).

In addition, failing to obtain useful information has been commonly reported, such as the adviser being unable to provide any help or the information being insufficient, irrelevant, unclear or difficult to understand (Coumarelos et al. 2006; Dignan 2006; Ignite Research 2006; Pleasence 2006). In some cases, this finding may reflect inadequacies within certain legal services. However, it may also reflect limitations in people's legal capability, such as in their ability to understand advice, due to literacy, language or communication problems, or in their ability to choose an appropriate adviser for the problem at hand (Pleasence 2006). Analyses by Pleasence (2006), for example, indicated some difficulty in choosing an appropriate first adviser.

The cost of services has also been cited as a barrier to obtaining advice, specifically from private lawyers rather than other advisers (ABA 1994; AFLSE 2007; Coumarelos et al. 2006; Dale 2000, 2005, 2007; Genn 1999; Genn & Paterson 2001; LASNSC 2005; LSNJ 2009; Miller & Srivastava 2001; Schulman 2007; Task Force 2003). In addition, there has been some indication that cost may especially be a barrier to obtaining legal assistance for people in the middle-income range — that is, people who are neither eligible for legal aid nor able to afford costly legal fees. For example, the availability of free or low-cost public legal services has been found to increase the use of lawyers among people who are eligible for these services (see Currie 2007b; Genn 1999; Genn & Paterson 2001). However, low-income earners who fall outside the eligibility criteria are significantly less likely to use lawyers for the types of problems covered by legal aid (Pleasence 2011).

Thus, the barriers to obtaining advice for legal problems appear to reflect not only limitations in people's capability to handle legal problems, but also various structural limitations within legal services that restrict effective resolution.

## **Response and policy**

The low level of legal knowledge within the general community demonstrates the vital need for improved public information and education about legal rights and redress (Balmer et al. 2010; Buck et al. 2008; Coumarelos et al. 2006; Genn 1999; Genn & Paterson 2001; Pleasence 2006). Poor legal knowledge often seems to constrain people from acting to resolve their legal problems. Genn (1999, p. 70), for example, noted that the reasons for failure to take action conveyed, on the whole, 'a rather negative and powerless quality'. Information and education are therefore necessary to motivate and empower people to take effective action to resolve legal problems (Coumarelos et al. 2006; Macdonald 2005; Pleasence 2006). Given that psychological factors such as fear, anxiety, stress, embarrassment and lack of confidence can constrain action, some people may require broader, non-legal support in order to resolve their legal problems (Buck et al. 2005, 2008; Coumarelos et al. 2006; Currie 2007b; Pleasence 2006; Sandefur 2007).

The evidence that disadvantaged groups are especially likely to lack legal capability stresses the potential benefits of targeting information, education and advice strategies to meet their specific legal needs (Balmer et al. 2010; Coumarelos et al. 2006; Pleasence 2006). Disadvantaged groups tend to have less legal knowledge, be more likely to ignore their legal problems and be less able to handle their problems without expert advice. Thus, disadvantaged groups are likely to benefit from legal information and education strategies that are specifically designed to direct them to appropriate legal advice services (Balmer et al. 2010). In addition, disadvantaged individuals who have multiple, complex legal problems and lack legal capability may require broader non-legal support services in order to achieve legal resolution successfully (Buck et al. 2005; Coumarelos et al. 2006; Forell et al. 2005; Pleasence 2006).

The widespread use of advisers outside the traditional legal sphere by people with legal problems has a number of major policy implications. First, a comprehensive view of legal resolution must extend



beyond traditional legal remedies to include all advisers routinely consulted about legal problems. Thus, public legal information and education programs should stress the many avenues that can be used to obtain justice, and that the use of lawyers and formal legal proceedings is often only a rare and last resort (Coumarelos et al. 2006; Macdonald 2005; Pleasence 2006).

Second, the routine use of non-legal professionals for legal problems indicates that they are ideally placed to notice or ‘signpost’ legal problems and to act as ‘gateways’ to legal services (Pleasence et al. 2004c). Non-legal professionals would not be expected to take on the role of lawyers. However, they could be better equipped to identify people who have legal problems and also to refer them to legal professionals or to provide them with basic legal information packages.

Third, the frequent use of non-legal advisers further strengthens the case for better coordinating legal services with other human services. Non-legal professionals are often the first and only professionals consulted by people with legal problems. Thus, the value of quick and effective referrals between legal and non-legal services has been emphasised (Clarke & Forell 2007; Coumarelos et al. 2006; Pleasence 2006; Pleasence et al. 2004c). Inappropriate referrals can result in ‘referral fatigue’, where people become increasingly more likely to ignore new referrals and to abandon the matter (Pleasence 2006). In addition, the use of clear, simple gateways to quality legal advice has been advocated (Clarke & Forell 2007; Coumarelos et al. 2006; Pleasence 2006). For example, Coumarelos et al. (2006) advocated raising awareness about useful first ports of call for legal advice, such as legal ‘triage’ services that provide an initial legal ‘diagnosis’ and appropriate referrals to specialist legal services.

The widely reported barriers to the accessibility of legal services indicate that expanding legal services to ‘mirror’ the behaviour of those who wish to use them is a continuing need (Pleasence 2006). Extension of operating hours, telephone, internet and outreach services, and services in appropriate languages have all been suggested (Buck et al. 2007, 2008; Coumarelos et al. 2006; Pleasence 2006). In addition, the indication that some disadvantaged groups may benefit more from face-to-face advice than from telephone advice or internet information needs to be considered when expanding services. Expansion of face-to-face services, such as physically locating services within easy reach or providing outreach services, may be critical for some disadvantaged groups (Buck et al. 2007, 2008; Forell et al. 2005; Forell & Gray 2009; Genn & Paterson 2001; Pleasence 2006).

## Outcome of legal problems

### **Manner of finalisation**

Legal needs surveys have persuasively shown that there is no ‘rush to law’ (ABA 1994; Genn 1999). Typically, under one-tenth of legal problems are finalised via formal court or tribunal proceedings. A similar minority of problems are finalised via formal dispute resolution, complaint or mediation processes (Consortium 1994; Coumarelos et al. 2006; Dignan 2006; Genn 1999; Genn & Paterson 2001; HKDOJ 2008; Ignite Research 2006; Maxwell et al. 1999; Murayama 2007; Pleasence 2006; van Velthoven & ter Voert 2004). Generally, the most common manner of finalisation is via agreement with the other party (Dignan 2006; Genn 1999; Genn & Paterson 2001; Ignite Research 2006; Maxwell et al. 1999; Pleasence 2006; van Velthoven & ter Voert 2004). Problems are also finalised via third-party intervention, by the problem resolving itself and by the respondent failing or ceasing to pursue the matter (Currie 2007b; Dignan 2006; Ignite Research 2006; Pleasence 2006).

The manner of finalisation depends on both the type of legal problem and the strategy adopted in response to the legal problem. In particular, family problems are relatively more likely to conclude

via formal legal proceedings, while consumer problems are relatively more likely to conclude via agreement (Dignan 2006; Genn 1999; Genn & Paterson 2001; Ignite Research 2006; Maxwell et al. 1999; Pleasence 2006; van Velthoven & ter Voert 2004).<sup>29</sup> Furthermore, problems involving advice have the highest rates of finalisation via formal legal proceedings, whereas problems handled alone have the highest rates of finalisation via agreement (Pleasence 2006). These findings may partly reflect the use of legal proceedings for more serious problems (Pleasence 2006). For example, family problems tend to be serious and often involve seeking advice, whereas consumer problems tend to be less serious and are often handled without advice.

## **Finalisation rate**

The duration of legal problems varies considerably, with some problems being finalised quickly and others enduring for many years. Pleasence et al. (2006) estimated that about half of all legal problems last less than three months, about one-fifth last more than one year, and a few per cent last five years or longer. Thus, surveys using short reference periods of one year are likely to capture a sizeable proportion of legal problems that are still ongoing at the time of interview.

Studies have varied considerably in their measurement of legal problem finalisation. While some studies have measured the duration of finalised problems, others have assessed the proportion of problems that were finalised or resolved at the time of interview. The definition of 'finalised' or 'resolved' problems has also varied. Resolved or finalised problems sometimes include abandoned problems (e.g. Coumarelos et al. 2006) and at other times exclude abandoned problems, including only problems where an outcome has been reached via agreement, adjudication or decision (e.g. Currie 2007b; Genn 1999; van Velthoven & ter Voert 2004).

The duration of legal problems or their finalisation rate has been related to the nature of the problem, its severity, the strategy used in response to the problem and various demographic characteristics.

### ***Finalisation rate and different types of legal problems***

A legal problem's severity influences how quickly it is finalised. Pleasence (2006) showed that several different measures of problem severity were related to problem duration. Problem type is another major determinant of problem duration, according to both regression and other analysis. In particular, family problems have been consistently found to have longer durations or lower finalisation rates (Coumarelos et al. 2006; Currie 2007b; Genn 1999; Ignite Research 2006; Pleasence 2006). Again, the severity of family problems may partly explain their persistence. A few studies have also found that problems regarding neighbours or welfare benefits have longer durations or lower finalisation rates (Currie 2007b; Dignan 2006; Genn 1999; Genn & Paterson 2001; Pleasence 2006).

### ***Finalisation rate and strategy***

The strategy used in response to a legal problem is another factor that is related to problem duration or finalisation rate. Regressions from a few studies showed lower resolution rates for legal problems where no action was taken (Coumarelos et al. 2006; Genn 1999).<sup>30</sup> These regressions also revealed higher resolution rates when respondents handled the legal problem alone than when they sought advice. Pleasence (2006) similarly found shorter durations for legal problems that were handled alone, without seeking advice. In addition, he found that legal problems endured for even longer when multiple advisers were used. It has been argued that this link between problem duration and strategy may reflect problem severity. People may handle legal problems alone when they are less

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<sup>29</sup> Another consistent finding is that personal injury problems tend to be finalised as a result of the respondent failing to pursue the matter or deciding not to pursue the matter further (Dignan 2006; Pleasence 2006; van Velthoven & ter Voert 2004).

<sup>30</sup> Van Velthoven and ter Voert (2004) similarly reported lower resolution rates when no action was taken.

serious, less complex or easier to resolve, but seek advice for more serious problems that are complex and difficult to resolve (Coumarelos et al. 2006; Pleasence 2006). Consistent with this reasoning, Pleasence (2006) showed that when problems concerned money, the likelihood of seeking advice increased as the monetary amount increased.

### ***Finalisation rate, demographics and disadvantage***

A few regression analyses have shown a relationship between age and the finalisation or resolution rate of legal problems. Coumarelos et al. (2006) reported that 55–64 year olds had the lowest resolution rate in absolute terms, and Genn (1999) similarly found that respondents aged 45–54 or over 65 years had lower resolution rates.

Some studies have found a relationship between disadvantage and the resolution rate of legal problems. However, this relationship has not been heavily researched, and the results have been somewhat inconsistent. Genn's (1999) regression analysis indicated that low resolution rates were linked to low education levels and low income. Using other analyses, a few studies have similarly reported a relationship between low resolution rates and low education levels, low income, unpaid work or welfare benefits (Maxwell et al. 1999; van Velthoven & ter Voert 2004). In contrast, disability was the only indicator of disadvantage linked to low resolution rates in the regression by Coumarelos et al. (2006) and demographic factors did not predict resolution rates in the regression by Genn and Paterson (2001).<sup>31</sup> Thus, the link between disadvantage and legal problem resolution is less well established than the associations of disadvantage with legal problem prevalence and the strategies used in response to legal problems.

### **Satisfactory outcome**

Surveys have used various measures to examine the outcomes of legal problems. Most US surveys and the recent Australian and Northern Ireland surveys examined respondents' satisfaction with the outcomes of legal problems (Coumarelos et al. 2006; Dignan 2006; LSC 2009). The UK and Dutch surveys asked whether respondents had secured their objectives, such as objectives related to money, property, employment, enforcing rights, punishing the other party and obtaining an apology from the other party (Genn 1999; Genn & Paterson 2001; Pleasence 2006; Pleasence et al. 2004c; van Velthoven & ter Voert 2004). The UK surveys also asked whether the outcomes were fair, as did the Canadian surveys (Currie 2007b; Genn 1999; Genn & Paterson 2001; Pleasence 2006). Survey measures of satisfactory outcomes rely on respondents' perceptions and may not always be accurate. Their accuracy depends on whether respondents have realistic expectations about the probable outcomes, based on their legal knowledge and the extent to which they are fully informed about their legal rights and the available remedies.

Most usually, surveys have reported that the majority of respondents perceive the outcomes of legal problems as being satisfactory (Coumarelos et al. 2006; Currie 2007b; Dignan 2006; Genn 1999). However, some US surveys have reported that less than half of their disadvantaged respondents were satisfied with the outcomes of their legal problems (Dale 2005, 2007; GKA 2008; Task Force 2003).

### ***Satisfactory outcome and different types of legal problems***

Typically, the nature of the legal problem has been reported to influence the outcomes achieved (Coumarelos et al. 2006; Currie 2007b; Genn 1999; Genn & Paterson 2001). However, the specific types of legal problems associated with particular outcomes have been inconsistent across studies.

<sup>31</sup> However, Genn and Paterson (2001) noted that this regression result may have been due to the small numbers, given that bivariate analysis revealed a link between low educational attainment and low resolution.

In the UK, Genn (1999) and Genn and Paterson (2001) conducted regressions on both achieving objectives and perceived fairness of outcomes, with somewhat different results. Genn (1999) found that problem type strongly predicted achievement of objectives, but not perceived fairness of outcome. Divorce, employment, landlord and neighbours problems had lower rates of achieving objectives, while accidental injury, consumer, tribunal matters and work-related ill health had higher rates. Only employment problems were linked to (lower) perceived fairness. In contrast, Genn and Paterson (2001) found that problem type predicted perceived fairness of outcome, but not achievement of objectives. Divorce, employment, landlord and owned property problems had lower rates of perceived fairness, while consumer and neighbour problems had higher rates.

In Australia, a regression analysis by Coumarelos et al. (2006) revealed lower odds of satisfaction with outcomes for business, consumer, general crime and government problems, and higher odds for accident/injury and wills/estates problems.

Other analyses have also shown outcome to vary by the type of legal problem. In Canada, Currie (2007b) found lower rates of perceived fairness for the outcomes of discrimination and police action problems, and higher rates for debt, disability pension, immigration, powers of attorney, relationship breakdown, threat of legal action and wills problems. In New Zealand, Maxwell et al. (1999) found higher rates of satisfaction with the outcomes of property, separation/divorce and wills matters, and lower rates for debt problems. Some US surveys found higher rates of satisfaction with the outcomes of consumer, family and wills and estates problems, and lower rates for benefits, employment and immigration problems (ABA 1994; Dale 2005, 2007; GKA 2006, 2008; LSNJ 2009; Schulman 2003, 2007).

The variation between studies in the types of legal problems with satisfactory outcomes may partly be due to differences in the measurement of satisfactory outcomes and the coverage of different types of legal problems. Legal problem groupings may also be too broad to reveal reliable relationships.

### ***Satisfactory outcome and strategy***

There is considerable evidence that the strategy used in response to a legal problem influences the outcome. Studies have reported poorer outcomes when people take no action or fail to seek advice (ABA 1994; Coumarelos et al. 2006; Currie 2007b; Dale 2009; Dignan 2006; Maxwell et al. 1999; Miller & Srivastava 2002). For example, using regression analysis, Coumarelos et al. (2006) found the lowest rates of satisfaction with the outcomes of legal problems when respondents took no action (69%). They also found higher satisfaction with the outcomes when respondents handled the problem alone (85%) than when they sought help (81%). Pleasence (2006) similarly showed that different strategies in response to legal problems can produce different outcomes. Respondents who obtained advice or handled problems alone had higher rates of securing objectives than those who had tried but failed to obtain advice. Legal aid recipients were also more likely than others who obtained advice to secure their objectives in the 2001 CSJS, although this finding was not significant in 2004.

Regression analysis by Genn and Paterson (2001) found that the strategies used in response to legal problems were not related to the outcomes achieved.<sup>32</sup> However, Genn's (1999) regression findings showed that people who sought advice from a lawyer were more likely to perceive the outcomes of their legal problems as fair but less likely to achieve their objectives. Although Genn did not provide an explanation for this result, it is possible that legal problems taken to lawyers tend to be more serious, making it harder to meet objectives. Lawyers may also provide people with more realistic expectations about the likely outcome, resulting in higher levels of perceived fairness.

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<sup>32</sup> The authors noted that the small sample size for Scotland may have contributed to fewer significant results for Scotland than for England and Wales.

Using other analyses, many of the US surveys also examined the relationship between the strategies adopted by respondents in response to legal problems and the outcomes they reported. Typically, respondents were more likely to report that the outcome was fair or that they were satisfied with the outcome when they consulted a lawyer than when they took another action or did nothing (e.g. ABA 1994; AFLSE 2007; CEALS 2001; Dale 2000, 2007, 2009; LSNJ 2009; Miller & Srivastava 2002). Some US studies have also found much higher rates of dissatisfaction with the outcome — more than double — when legal help was sought but not obtained (81%) as opposed to when legal help was actually obtained (35–39%; Dale 2005; Task Force 2003).

### ***Satisfactory outcome, demographics and disadvantage***

The few regression analyses that have examined the relationship of demographic factors to the outcomes of legal problems have produced inconsistent findings (Coumarelos et al. 2006; Genn 1999; Genn & Paterson 2001). Coumarelos et al. (2006) found that none of the demographic characteristics examined were significant predictors of satisfaction with the outcomes of legal problems, whereas the nature of the problem and the action strategy were both significant.

In the UK, Genn's (1999) regression results indicated that employment status, gender and income were related both to achieving objectives and to perceived fairness of outcomes, whereas age, education and social class were related only to achieving objectives. Furthermore, the direction of the relationship for gender was inconsistent, with women being less likely to achieve objectives but more likely to perceive outcomes as fair. The direction of the relationship for employment status was also inconsistent. Similar regressions by Genn and Paterson (2001) resulted in none of the demographic variables being significant.<sup>33</sup>

Using other types of analyses, a few US studies have found lower rates of satisfaction with the outcomes of legal problems for respondents on lower incomes (ABA 1994; LSNJ 2009).

Thus, the evidence suggests that the nature of legal problems and the strategies used in response to legal problems, rather than demographic characteristics or disadvantage, are the main determinants of the outcomes achieved for legal problems. Any variation in the outcomes of legal problems between demographic groups may largely be explained in terms of the nature of the legal problems they face (e.g. the severity of their problems) and their responses to these problems.

### **Outcome and legal capability**

The recent analyses of CSJS data by Balmer et al. (2010) suggested that respondents' legal knowledge can influence the outcomes they achieve for their legal problems. For respondents who obtained advice, knowledge of legal rights made little difference to securing objectives. In contrast, for respondents who handled problems alone, legal knowledge resulted in securing objectives more often. A similar picture was apparent when respondents were asked whether they regretted the strategy they had adopted in response to legal problems. Again, a lack of legal knowledge made little difference to regret among those who had obtained advice but was linked to higher levels of regret among those who had handled problems alone, did nothing or tried but failed to obtain advice. Balmer et al. concluded that obtaining help from an adviser with suitable expertise negates the importance of individuals having legal knowledge themselves. However, people's legal knowledge appears to be a critical factor in determining the outcomes of legal problems for all other strategies, with far superior outcomes being achieved by respondents with legal knowledge in these cases.

<sup>33</sup> As noted earlier, the authors suggested that small numbers may have militated against significant findings.



## Outcome and policy

The finding that ignoring legal problems results in poorer outcomes underlines the importance of empowering people to act to resolve their legal problems. This finding adds further weight to the argument that legal information and education strategies could play a critical role in mobilising people to resolve their legal problems, by helping them to identify their legal rights and to locate relevant advice services.

The finding that many people who handle their legal problems themselves achieve satisfactory outcomes suggests that promoting self-help legal strategies may be effective for some sections of the community. In fact, there has been a trend towards ‘unbundling’ legal services into discrete components so that clients can choose self-help strategies for tasks they can easily handle alone but still obtain legal assistance for other, more difficult tasks (cf. Giddings & Robertson 2003b). However, the evidence suggests that self-help strategies are not suitable in all situations. Their utility depends on both the nature of the legal tasks and the legal capability of the individual (cf. ABA SCDLS 2002; Balmer et al. 2010; Barendrecht 2011; Giddings & Robertson 2001, 2002, 2003a, 2003b; Hunter, Banks & Giddings 2007, 2009; Lawler, Giddings & Robertson 2009; MacDermott 2003; Shirvington 2003). Non-routine legal tasks involving the exercise of substantial discretions are not well suited to self-help (Barendrecht 2011; Giddings & Robertson 2003b; Lawler et al. 2009). Furthermore, it has been argued that self-help strategies should not be seen as stand-alone services that can universally replace other legal services and can always provide complete solutions. Rather, self-help may sometimes be more effective as a component of a suite of legal services or as a supplement to other legal services (see Giddings & Robertson 2001, 2003a; Hunter et al. 2009; Lawler et al. 2009).

Self-help strategies also appear to be more viable options for people with high levels of legal capability, such as more educated, articulate people. Disadvantaged people often fall outside this group (Balmer et al. 2010; Giddings & Robertson 2003b; Hunter et al. 2007, 2009; Lawler et al. 2009). In particular, self-help strategies may be ill-suited for people with poor legal knowledge, people with limited literacy, language and communication skills, and people with multiple or complex legal problems (Genn & Paterson 2001; Lawler et al. 2009; Scott 2000).

Nonetheless, given that people who handle legal problems alone achieve superior outcomes if they have good legal knowledge, the use of targeted initiatives to increase this capability within relevant groups has been proposed (Balmer et al. 2010). People with high legal capability may benefit from ‘state-of-the-art’ legal information and education initiatives which further enhance their ability to solve their problems alone (Balmer et al. 2010; Barendrecht 2011). However, such initiatives may be of little value to people with low legal capability. Initiatives that signpost advice services may be far more relevant for these people, especially given that expert advice appears to negate the effect of poor legal knowledge and may be critical for some low-skilled people (Balmer et al. 2010; Barendrecht 2011). Improved coordination among legal and non-legal services is also likely to assist people with capacity issues to locate relevant advice efficiently and avoid referral fatigue (Pleasence 2006).

## Summary of legal needs survey findings

Legal needs surveys reveal that legal problems are widespread throughout society and can have dramatic adverse impacts on many aspects of daily life. Access to justice must therefore aim to enable all citizens to make effective use of the law.

The evidence also highlights the merits of a multifaceted approach to justice that can accommodate the considerable diversity in the experience, handling and outcome of legal problems. Disadvantaged or socially excluded groups appear to fare worst. Not only are they more vulnerable to experiencing multiple legal problems, they are also less likely to take action to resolve these problems, less capable of handling their problems alone and more likely to suffer a variety of adverse consequences that may further entrench their social exclusion. Thus, tailoring legal service provision to meet the legal needs of socially excluded groups is an important priority, and access to justice is likely to play a critical role in combating social exclusion. In contrast, educated, affluent individuals more often have sufficient legal capability to handle their legal problems successfully without recourse to expert advice. The legal capability of such people could be further enhanced through legal information, education and self-help initiatives.

Furthermore, the empirical evidence indicates the potential benefits of effective coordination among legal services and between legal services and other human services. Notably, socially excluded groups can struggle with numerous, intertwined legal and non-legal problems and, thus, may benefit from a holistic approach to resolution that tackles all the problems they face. In addition, the widespread use of non-legal advisers in response to legal problems throughout the broader community further strengthens the case for better coordination between legal and non-legal services, in order to prevent the escalation and multiplication of legal and other related problems.

## Structure of present report

Chapter 2 provides the methodology for the present study, including the procedure for conducting the LAW Survey and the data analyses performed.

Chapters 3–8 present the results for Australia as a whole. They detail the prevalence of legal problems (Chapter 3), the nature of legal problems (Chapter 4), the strategies used in response to legal problems (Chapter 5), the use of legal and non-legal advisers (Chapter 6), the finalisation of legal problems (Chapter 7) and the outcome of legal problems (Chapter 8).

The results for Australia that are presented in Chapters 3–8 are interpreted further in Chapters 9 and 10. Chapter 9 compares the results for Australia as a whole to the LAW Survey results for each state/territory and to international findings. Finally, Chapter 10 provides the implications of the LAW Survey results for improving access to justice across Australia.