



How are legal problems finalised in Australia?

Abstract: *The Legal Australia-Wide (LAW) Survey examined the manner in which respondents finalised their legal problems and whether the manner of finalisation depended on the type of problem. This paper summarises these findings. Most commonly, legal problems were finalised through agreement with the other side (30%) or as a result of the respondent not pursuing the matter at all or deciding not to pursue the matter further (30%). While only a minority of legal problems (3.4%) were finalised through legal proceedings in a court or tribunal, 24 per cent of family problems were concluded via this means.*

Source

This paper is a simplified excerpt from the report, **Legal Australia-Wide Survey: Legal need in Australia** by Christine Coumarelos, Deborah Macourt, Julie People, Hugh M. McDonald, Zhigang Wei, Reiny Iriana and Stephanie Ramsey (Law and Justice Foundation of NSW, 2012).

About the LAW Survey

The LAW Survey provides a comprehensive assessment of a broad range of legal needs on a representative sample of the population. It covered 129 different types of civil, criminal and family law problems. It examined the nature of legal problems, the pathways to their resolution and the demographic groups that struggle with the weight of their legal problems.

With 20,716 respondents across Australia, including over 2000 in each state/territory, the LAW Survey allows for in-depth analysis at both the state/territory and national level. The major findings were published in a series of nine reports, with a report on Australia as a whole and each state/territory. Some key findings were:

- legal problems are widespread and often have adverse impacts on many life circumstances
- disadvantaged people are particularly vulnerable to legal problems
- many people do nothing to resolve their legal problems and achieve poor outcomes
- most people resolve their legal problems without using lawyers or the formal justice system.

The nine LAW Survey reports are available at:

www.lawfoundation.net.au

International legal needs surveys persuasively show that there is no ‘rush to law’. Typically fewer than one-tenth of legal problems are finalised via formal court or tribunal proceedings. A similar minority 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). The manner of finalisation has been shown to be related to the type of legal problem experienced. In particular, family problems are relatively more likely to conclude via formal legal proceedings.

Finalisation status of legal problems

The LAW Survey examined 129 types of civil, criminal and family law problems. Legal problems were widespread. These legal problems were categorised into 12 problem groups—accidents, consumer, credit/debt, crime, employment, family, government, health, housing, money, personal injury and rights. In Australia as a whole, 50 per cent of respondents experienced one or more legal problems in the 12 months prior to interview.

Respondents were asked in-depth questions about their most serious legal problems, including whether their legal problems had concluded by the time of the interview. Respondents indicated that 64 per cent of their problems had been finalised while 33 per cent were still ongoing.

Regression analyses indicated that problem group was a strong predictor of the finalisation status of legal problems. Significantly higher finalisation rates were found for the accidents (87%), crime (74%), consumer (70%), personal injury (69%) and rights (68%) problem groups, and significantly lower finalisation rates were found for the family (36%), money (50%), credit/debt (51%), government (54%) and housing (58%) problem groups.

Manner of finalisation

For the legal problems reported as being over, respondents were asked by what means the legal problems had been finalised. As shown in Table 1, most commonly, legal problems were finalised through agreement with the other side (30%) or as a result of the respondent not pursuing the matter at all or deciding not to pursue the matter further (30%).

Only a minority of legal problems were finalised through legal proceedings in a court or tribunal (3.4%), and only a further 3.4 per cent were finalised through formal dispute resolution (1.5%) or complaint-handling processes (1.9%). However, 15 per cent were finalised through the decisions or actions of other agencies, such as government bodies, insurance companies or the police.

Table 1: Manner of finalisation of legal problems, Australia

<i>Manner of finalisation</i>	<i>N</i>	<i>%</i>
Court or tribunal	410	3.4
Dispute resolution ^a	176	1.5
Complaint-handling body ^b	231	1.9
Another agency ^c	1 814	15.0
Lawyer's help	196	1.6
Someone else's help	575	4.8
Agreement with other side	3 615	29.9
Other side didn't pursue further	907	7.5
Respondent didn't pursue further	3 603	29.8
Other	563	4.7
All finalised problems	12 090	100.0

^a E.g. formal dispute resolution, mediation, conciliation.

^b E.g. ombudsman, commissioner.

^c E.g. government body, insurance company, police.

Note: N=12 090 finalised problems. Data were missing for 237 problems.

Severity of problem

The LAW Survey found that the manner in which legal problems were finalised was significantly related to problem severity. For example, substantial legal problems – that is, problems that had a moderate or severe impact on everyday life – were significantly more likely than minor problems to be finalised by court or tribunal proceedings (5.1% versus 2.3%), formal dispute resolution or complaint-handling processes (5.0% versus 2.4%) or with the help of a lawyer or someone else (7.6% versus 5.6%).

Type of problem

The manner of finalisation was also significantly related to the type of problem. For example, compared to all problems on average:

- **accidents problems** were more likely to be finalised via an agency such as an insurance company (60% versus 15% on average)
- **consumer problems** were more likely to be finalised via agreement with the other side (54% versus 30%) or via the other side not pursuing the matter further (11% versus 8%)
- **credit/debt problems** were more likely to be finalised via agreement with the other side (45% versus 30%)
- **crime problems** were more likely to be finalised via the respondent not pursuing the matter further (45% versus 30%) or via an agency such as the police (26% versus 15%)
- **employment problems** were more likely to be finalised via the respondent not pursuing the matter further (39% versus 30%)
- **family problems** were more likely to be finalised via agreement with the other side (39% versus 30%) or via court, tribunal, formal dispute resolution or complaint-handling processes (24% versus 7%)
- **government problems** were more likely to be finalised via the respondent not pursuing the matter further (38% versus 30%) or via the other side not pursuing the matter further (10% versus 8%)
- **health problems** were more likely to be finalised via the respondent not pursuing the matter further (5% versus 30%)

- **housing problems** were more likely to be finalised via agreement with the other side (36% versus 30%) or via the other side not pursuing the matter further (13% versus 8%)
- **money problems** were more likely to be finalised via court, tribunal, formal dispute resolution or complaint-handling processes (12% versus 7%)
- **personal injury problems** were more likely to be finalised via the respondent not pursuing the matter further (36% versus 30%) or via an agency such as a government body or insurance company (19% versus 15%)
- **rights problems** were more likely to be finalised via the respondent not pursuing the matter further (41% versus 30%).

Conclusion

The LAW Survey confirms previous findings that there is no ‘rush to law’. Less than 10 per cent of legal problems were finalised via court or tribunal proceedings or via formal dispute resolution or complaint-handling processes. The LAW Survey replicates previous results that legal problems are more commonly finalised via agreement with the other side, via the respondent not pursuing the matter further or via the decision or action of other agencies, such as government bodies, insurance companies or the police.

Like past surveys, the LAW Survey found that family problems were significantly more likely to conclude via court or tribunal proceedings, while consumer problems were significantly more likely to conclude via agreement with the other side. To some extent, these findings appear to reflect the more serious nature of many family problems compared to consumer problems.

A number of problem types were commonly finalised via the respondent not pursuing the matter further, including legal problems from the crime, employment, government, health and rights problem groups. This finding may in part reflect the nature of some problems. For example, common crimes such as theft, burglary and vandalism often remain unsolved, due to the difficulty in identifying the perpetrator. Thus, in many instances, abandonment may be an appropriate means of finalising such crime problems. However, it is important that

decisions to abandon legal problems are properly informed. Legal information and advice services therefore have an important role to play in helping people make informed decisions about whether to pursue a legal resolution.

References

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