



Seeking formal advice for legal problems in New South Wales

Abstract: *This paper summarises findings from the Legal Australia-Wide Survey (LAW Survey) concerning the use of advisers for legal problems in New South Wales (NSW). What people in NSW do about legal problems, including what, if any, advisers and legal advisers they use, how they source main advisers, and what barriers to using legal advisers they experience, are summarised. Notably, the LAW Survey found that NSW respondents sought formal advice from a lawyer for only a minority (16%) of legal problems. Implications of these findings are discussed.*

Source

This paper is a simplified excerpt from the report, **Legal Australia-Wide Survey: Legal need in New South Wales** 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

Legal needs survey research in Australia and around the world has demonstrated diversity in people's response to legal problems (American Bar Association 1994; Cass & Sackville 1975; Coumarelos, Wei & Zhou 2006; Currie 2007; Fishwick 1992; Genn 1999; Genn & Paterson 2001; Pleasence 2006; Pleasence, Balmer, Patel & Denvir 2010). Not everyone who experiences a legal problem takes action to resolve it, and not everyone who takes action seeks advice from a legal adviser. Notably, only a minority of people seek advice from legal advisers or use the formal litigation system. Many people handle their legal problems on their own or seek advice only from friends and family, and non-legal advisers.

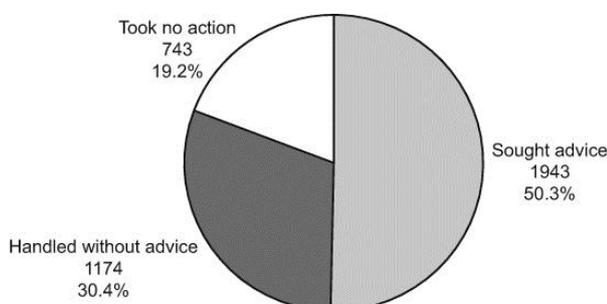
Measuring legal needs

A representative sample of 20 716 respondents across Australia aged 15 years or over were interviewed, including 4113 respondents in NSW. Respondents were asked whether they had experienced a legal problem in the 12 months prior to interview. The LAW Survey covered 129 different types of civil, criminal and family law problems. These legal problems were categorised into 12 problems groups—accidents, consumer, credit/debt, crime, employment, family, government, health, housing, money, personal injury and rights. In NSW, 50 per cent of respondents experienced one or more legal problems. This translates to an estimated 2 825 000 people aged 15 years or over experiencing a legal problem each year in NSW.

What do people do about their legal problems?

Respondents were asked in-depth questions about their most serious legal problems, including questions about actions taken. Respondents sought advice from formal or professional advisers for 50 per cent of problems (see Figure 1). Thirty per cent of problems were handled without formal advice, via a variety of other means or actions (e.g. communicating with the other side, consulting relatives or friends informally, using a website or other self-help, court or tribunal proceedings, formal dispute resolution sessions). Multiple actions were common. At least two types of action were taken for 44 per cent of legal problems. Finally, for the remaining 19 per cent of legal problems, respondents took none of the types of actions measured.

Figure 1: Strategy in response to legal problems, NSW



Note: N=3860 problems. Data were missing for 43 problems.

What type of advisers do people use?

Notably, legal advisers were used for less than one-third of the problems where respondents sought formal advice. Given that respondents did not seek formal advice for one-half of their problems, this translates to respondents in NSW having sought advice from a legal adviser for only 16 per cent of legal problems. A wide range of non-legal advisers were commonly used, including government advisers (39% of problems), health or welfare advisers (29%) and financial advisers (22%). The non-legal advisers used also included dispute/complaint-handling bodies (7% of problems), trade unions or professional associations (7%) and other advisers (17%).

As might be expected, legal advisers were more likely than the other types of advisers to provide respondents with some type of legal help, including pre-packaged legal information, advice on legal rights and procedures, help with legal documents, help with court or tribunal proceedings or preparation, help with formal dispute resolution sessions and referral to a lawyer or legal service. Nonetheless, legal help was not the exclusive

domain of legal advisers, with non-legal advisers providing some type of legal help in a considerable proportion of cases.

What type of legal advisers do people use?

Private lawyers were used for nearly one-quarter (24%) of the legal problems where respondents in NSW sought advice.¹

Not-for-profit legal services, such as Legal Aid NSW, LawAccess NSW and community legal centres, were used for a relatively small proportion of the legal problems where respondents sought advice (9.7%). Legal Aid NSW was the most frequently used not-for-profit legal advice service (5% of all legal problems), while court services (3.5%), community legal centres (1.8%) and LawAccess NSW (0.7%) were also sometimes used.

What type of legal problems do people use legal advisers for?

People's responses to their legal problems were strongly influenced by the nature and seriousness of their problems. Family problems and money problems (e.g. wills and estates problems) were particularly likely to result in the use of legal advisers. It is notable that family problems tended to be more severe in that they comprised the highest proportion of substantial problems and had the highest mean number of adverse consequences.

How do people source legal advisers for legal problems?

The LAW Survey assessed how respondents sourced main advisers who were legal, dispute/complaint-handling or government advisers. The means used to source these main advisers was related to adviser type. For example, legal advisers were significantly more likely than the other types of advisers to be sourced via referral from both professionals and personal contacts.

What are the barriers to using legal advisers for legal problems?

The LAW Survey assessed barriers to obtaining advice from main advisers who were legal, dispute/complaint-handling or government advisers. Cost was more likely to be reported as a barrier in relation to legal advisers than to the other types of advisers examined (23% versus 2–5%), and was, in fact, the most common barrier in relation to legal advisers. However, cost was not among the most common reasons for taking no action at all. Thus, although cost is not a key

impediment for the majority of legal problems that people prefer to handle outside legal services, it is sometimes an issue for problems for which people wish to seek expert legal advice.

In addition, legal advisers were more often reported to be too far away or too hard to get to than the other adviser types (11% versus 5%). This finding may in part reflect the greater use of face-to-face consultation with legal advisers.

Another barrier to using legal advisers may also have been lack of awareness of not-for-profit legal services. The LAW Survey also found considerable gaps in awareness of not-for-profit legal services. While there was very high awareness of Legal Aid NSW (87% of respondents), awareness of services for Aboriginal and Torres Strait Islander people was more moderate (59%) and awareness of the other legal services examined was even lower: court services (42%), community legal centres (37%) and LawAccess NSW (14%).

Conclusion

The LAW Survey findings demonstrate diversity in the experience and handling of legal problems in NSW. Some people ignore their legal problems while others use various self-help strategies without seeking formal advice. Many who seek formal advice consult only non-legal professionals. In fact, legal advisers were used for a minority of legal problems—only 33 per cent of legal problems where respondents sought advice, which equates to only 16 per cent of all problems. Unsurprisingly, legal advisers were more likely than other types of advisers to provide respondents with some type of legal help.

The findings suggest the benefit of a more holistic approach to justice that is both integrated and multifaceted. First, the findings support a more holistic approach that better integrates legal and non-legal services. For example, the widespread use of non-legal professionals suggests that they are ideally placed to notice legal problems and serve as gateways to legal services through being better supported to make timely referral to appropriate legal services.

Second, the findings support a holistic approach to justice that is multifaceted and includes multiple strategies to cater for the diverse ways in which people handle their legal problems. Justice must be ‘made to measure’ according to the varying legal needs, capabilities and behaviours of different people.

Third, the findings suggest the value of information and education strategies about the range of not-for-profit legal services available, and more broadly about useful first ports of call, to decrease reliance on handling legal problems without expert advice or ignoring legal problems because of a lack of awareness of available legal services.

The findings also suggested that cost can sometimes be a barrier to resolving the legal problems for which people wish to obtain legal advice, even though it appears not to be a key impediment for the majority of legal problems, which people prefer to handle outside legal services (such as via self-help or non-legal professionals).

References

- American Bar Association 1994, *Legal needs and civil justice: a survey of Americans. Major findings from the comprehensive legal needs study*, ABA, Chicago, IL.
- Cass, M & Sackville, R 1975, *Legal needs of the poor: research report*, Australian Government Publishing Service, Canberra.
- Coumarelos, C, Wei, Z & Zhou, AZ 2006, *Justice made to measure: NSW Legal Needs Survey in disadvantaged areas*, Law and Justice Foundation of NSW, Sydney, <www.lawfoundation.net.au/report/survey2006>.
- Currie, A 2007, *The legal problems of everyday life: the nature, extent and consequences of justiciable problems experienced by Canadians*, Department of Justice Canada, Ottawa.
- Fishwick, E 1992, *Back to basics: legal needs in the '90s*, Legal Aid Commission of NSW, Sydney.
- Genn, H 1999, *Paths to justice: what people do and think about going to law*, Hart, Oxford.
- Genn, H & Paterson, A 2001, *Paths to justice Scotland: what people in Scotland do and think about going to law*, Hart, Oxford.
- Pleasence, P 2006, *Causes of action: civil law and social justice*, 2nd edn, Stationery Office, Norwich.
- Pleasence, P, Balmer, NJ, Patel, A & Denvir, C 2010, *Civil justice in England and Wales 2009: report of the 2006–9 English and Welsh Civil and Social Justice Survey*, Legal Services Research Centre, London.

ⁱ For about one-in-five of these problems (21%), a private lawyer who was a relative or friend was consulted.