



Legal needs of Indigenous people in Australia

Abstract: *This paper summarises findings from the Legal Australia-Wide (LAW) Survey showing that Indigenous Australians had high prevalence of multiple legal problems and government, health and rights problems. They were also less likely to have finalised their legal problems. The policy implications of these findings for meeting the needs of Indigenous people are discussed.*

Source

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

It is well established that Indigenous people are among the most disadvantaged Australians, tending to suffer multiple disadvantage (Australian Bureau of Statistics (ABS) 2004, 2009; Cunneen & Schwartz 2008; Hunter 2009; Steering Committee for the Review of Government Service Provision (SCRGSP) 2007).

Measuring legal needs of Indigenous people

A representative sample of 20 716 respondents across Australia aged 15 years or over were interviewed by telephone. 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 problem groups — accidents, consumer, credit/debt, crime, employment, family, government, health, housing, money, personal injury and rights.

The sample included 612 Indigenous respondents, who answered 'yes' to the question 'Are you of Aboriginal or Torres Strait Islander origin?' While broadly representative of the general population, the survey is likely to have underrepresented some marginalised groups who cannot be easily reached via landline telephones. Notably, the survey is likely to have underestimated the level of Indigenous disadvantage, because a considerable proportion of Indigenous people do not have landline telephone access, particularly in remote communities (Hunter & Smith 2000; Papandrea 2010).ⁱ

Predicting the prevalence of legal problems

A series of regression analyses were conducted using the Australian LAW Survey data to examine the demographic groups that had increased likelihood of experiencing:

- legal problems overall—that is, increased likelihood of experiencing a legal problem of any type
- substantial legal problems—that is, increased likelihood of experiencing a legal problem that had a ‘moderate’ or ‘severe’ impact on everyday life
- multiple legal problems—that is, increased likelihood of experiencing a greater number of legal problems
- problems from each of the 12 legal problem groups.

The regression results replicated past findings that vulnerability to legal problems is not random but varies according to problem type and demographic characteristics. In particular, like a number of past surveys, the LAW Survey showed that several disadvantaged or socially excluded groups had increased vulnerability.

Although Indigenous status was generally unrelated to the prevalence of legal problems overall or the prevalence of substantial legal problems, Indigenous people had significantly increased prevalence of multiple legal problems, with a rate that was 1.3 times as high as that of non-Indigenous people. In addition, the regression on each of the 12 legal problem groups revealed that Indigenous people had increased prevalence of government, health and rights problems.

Predicting strategy in response to legal problems and finalisation of legal problems

Regression analyses using the Australian data were also conducted to examine how demographic characteristics are related to the strategies used in response to legal problems and the finalisation of legal problems.

In terms of strategy, the LAW Survey defined three broad strategies that respondents took in response to their legal problems: seeking advice from a legal or non-legal professional, handling problems without professional advice and taking no action. Two regression analyses were conducted on strategy. The first regression analysis examined the likelihood of taking action to resolve legal problems, and the second regression analysis examined the likelihood of seeking advice when action was taken to resolve problems.

In terms of finalisation, a regression analysis examined the relationship between demographic characteristics and whether legal problems had been finalised by the time of interview.

Indigenous status and strategy

In Australia as a whole, and in most states/territories, Indigenous status was not significantly related to strategy. The only exception was in the Northern Territory, where Indigenous respondents had significantly lower odds (0.6) of taking action compared to other respondents. This finding may possibly reflect the higher number of Indigenous interviews from the Northern Territory due to its higher proportion of Indigenous people. It may also reflect the greater level of disadvantage of Indigenous people in the Northern Territory relative to other Indigenous Australians (SCRGSP 2007).

Indigenous status and finalisation of legal problems

It was found that Indigenous respondents had significantly lower odds of finalisation (0.8) than other respondents. The finalisation rate was 61 per cent for Indigenous respondents compared to 64 per cent for other respondents.

Conclusion

The LAW Survey demonstrated that Indigenous respondents had increased prevalence of multiple legal problems, and they had increased levels of government, health and rights problems. Indigenous people also had low levels of finalising their legal problems. Given their level of disadvantage, it is noteworthy that the LAW Survey did not find a greater number of associations involving Indigenous status. It is possible that methodological issues, such as the small numbers of Indigenous respondents interviewed and the underestimation of the level of Indigenous disadvantage, may have militated against observing a greater number of significant associations.

Nevertheless, given their disadvantage and tendency to experience multiple legal problems, Indigenous people are likely to benefit from a more holistic or client-focused approach to their problems, including a coordinated response across legal and other human services. Furthermore, their lower levels of finalising legal problems suggest that they may sometimes have a reduced capacity to achieve legal resolution and may require considerable legal and non-legal support to do so.

Reducing multiple disadvantage for Indigenous people is a whole-of-government goal in Australia. For example, the National Integrated Strategy for Closing the Gap in Indigenous Disadvantage outlines targets for reducing disadvantage in the areas of life expectancy, early childhood, health, education and employment. A multitude of small-scale initiatives have been introduced at the national and state/territory level to address these targets (Department of Families Housing Community Services and Indigenous Affairs 2011). Although such initiatives often extend to disadvantage in access to justice, they tend to focus on criminal rather than civil justice, given the overrepresentation of Indigenous people in the criminal justice system (ABS 2011; SCRGSP 2007; Snowball & Weatherburn 2006).

In fact, it has been observed that Aboriginal and Torres Strait Islander Legal Services across Australia tend to focus on criminal law matters, and there is a paucity of Indigenous legal services for family and civil law (Cunneen & Schwartz 2008; Joint Committee of Public Accounts and Audit 2005; Senate Legal and Constitutional References Committee 2004). The present results more firmly entrench civil and family legal needs among the multiple legal needs that should be addressed for Indigenous people. The results suggest that the scope of Aboriginal and Torres Strait Islander Legal Services need to be broad enough to comprehensively address criminal, family and civil law needs. They suggest that multidisciplinary initiatives that aim to reduce Indigenous disadvantage should also include the aim of increasing legal capability and effectively meeting legal needs in all areas of law, including civil and family law.

References

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Endnote

- ⁱ Nationally, 34 per cent of all Indigenous households (including 29 per cent of those in non-remote areas and 61 per cent of those in remote areas) did not use a home landline telephone during a one-month period (ABS & AIHW 2010).

