



What price justice? Income and the use of lawyers

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This paper presents **new findings** from the Legal-Australia Wide (LAW) Survey. The first major findings for Australia as a whole were published in **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. The nine LAW Survey reports are available at www.lawfoundation.net.au/publications

Introduction

It is widely believed throughout the community and amongst many legal professionals that cost is a central barrier to obtaining legal assistance. Australian voices from the Law Society of NSW (Law Society of NSW 1998), through to public submissions to access to justice enquiries (Schetzer & Henderson 2003, Law and Justice Foundation of New South Wales 2003) have cited the high cost of legal services and inadequate funding for legal assistance services as key barriers to legal assistance. Supporting these views, a recent study of unmet legal need by the Australia Institute (2012) found that the vast majority of survey respondents, 83 per cent, agreed with the statement that ‘only the very wealthy can afford to protect their legal rights’ (Denniss, Fear & Millane 2012). Similar perceptions exist in comparable jurisdictions. In Canada, the Chief Justice has argued that ‘... many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system’ (McLachlan 2007), while Kritzer (2008) has observed from research findings across seven countries, “a central aspect of much of the debate over access to justice is the cost of legal services.”

These common perceptions have been in part challenged by recent legal needs research, centred on representative surveys of the actual experience of and response to legal problems by individual members of the community, rather than opinion-based research. The Legal Australia-Wide (LAW) Survey is the latest and largest of these surveys of the legal problems experienced by members of the community.

Published findings from the LAW Survey indicate that concerns about cost only infrequently prevent people from taking some form of action (which could include a self-help strategy, informal advice from family or friends, or professional advice) to deal with legal problems – with cost being cited as a reason for taking no action in just 5 per cent of legal problems overall (Coumarelos, Macourt, People, McDonald, Wei, Iriana & Ramsey 2012). However, cost is commonly reported as a concern in the context of legal assistance. Respondents to the LAW Survey whose main adviser was a lawyer reported that they were ‘too expensive’ in 23 per cent of cases. Elsewhere, the 2006 New Zealand Survey of Unmet Legal Needs and Access to Services found that 27 per cent of respondents did not approach a lawyer to help with legal problems because of ‘the cost’ (Ignite Research 2006).

Drawing on findings from seven countries, Kritzer (2008) suggested that “income has relatively little relationship with the decision to use a legal professional to deal with a dispute or other legal need”, with the decision primarily dictated by the nature of problems and an “evaluation of the costs and benefits of hiring a lawyer.” Nevertheless, surveys undertaken in New Zealand (Pleasence & Balmer 2009, Maxwell, Smith, Shepherd, & Morris 1999), Canada (Currie 2009), the Netherlands (Van Velthoven & Ter Voert 2005) and the United Kingdom (Genn & Paterson 2001, Pleasence & Balmer 2009, Pleasence & Balmer 2012) — jurisdictions with long established legal aid schemes — point to a more subtle relationship between income and lawyer use; one that links to the availability of legal aid and alternative funding mechanisms. If legal aid is available, survey findings point to a ‘U’-shaped relationship between income and lawyer use, with people at the top and bottom of the income scale accessing lawyers more than some middle income groups. If alternative payment mechanisms (such as ‘no win, no fee’ agreements) are available, findings point to income having little bearing on lawyer use. Otherwise, in the absence of both legal aid and contingent fees, it appears that lawyer use increases with income.

In this short paper we build upon already published LAW Survey findings by:

- setting out the demographic profile of LAW Survey respondents who named cost as a reason for taking no action to deal with severe legal problems;
- setting out the demographic profile of the respondents who reported cost as a barrier to

obtaining assistance from a lawyer who was their main adviser;

- exploring the relationship between income and lawyer use.

New findings from the LAW Survey

The demographics of those reporting cost to be a barrier

Just under half (49.7%) of LAW Survey respondents reported experiencing one or more legal problems, with 5 per cent of problems involving no action on the part of respondents because, among other reasons, taking action ‘would cost too much’. Relatively few (13%) of the problems that involved no action because of cost were described as having had a severe impact on the respondent’s everyday life. However, the small percentage (0.75%) of respondents who reported a severe legal problem, but did nothing about it because of cost, were characterised by an overrepresentation of disadvantaged people; in terms of Indigenous status (6% versus 2%), disability status (51% versus 37%), educational attainment (44% progressing beyond school versus 54%), income (45% earning less than \$400pw versus 33%), unemployment (24% versus 18%) and English as a first language (7% versus 13%). They were also less aware of free legal services.

The 23 per cent of problems where respondents reported cost as a barrier to obtaining assistance from a lawyer (who was their main adviser) included an overrepresentation of Indigenous respondents (3% versus 2%) and respondents with a disability (30% versus 26%). However, there was no overrepresentation of disadvantaged people in terms of educational attainment, income, unemployment or language.

Income and the use of lawyers

We conducted multilevelⁱ binary logistic regression (using MLwiN (Rasbash, Steele, Brown, & Goldstein 2009, Goldstein 2010) to explore the relationship between income and the use of lawyers, controlling for problem severity. A measure of family unit income was used within the analyses, with respondents split into those most likely to be eligible for means tested legal aid services (just under 30% of respondents), others with a family income below \$41,600, those with an income between \$41,600 and \$51,999, and those with an income above \$52,000.ⁱⁱ

In recognition of the strong association between lawyer use and problem type, we split the LAW survey data into three separate datasets, to explore family, personal injury and other legal problems separately. For ‘other’ problems we also controlled for problem type within the analysis.

We conducted three analyses with each dataset; one exploring the use of private practice lawyers, one the use of low-income focused (i.e. legal aid and CLC) lawyers and one the use of lawyers in general. Output from the 9 models is presented in an appendix.

Looking first at family problems (which included problems concerning children and relationships), 56 per cent of 1096 problems involved help being sought from a lawyer, with 39 per cent involving help from a private lawyer and 20 per cent help from a low-income focused lawyer. The regression analyses indicated that those in the highest income bracket were more likely than those in the lowest bracket to have sought help from a private practice lawyer (see Figure 1 and Table 1). Conversely, those in the lowest bracket were most likely to have sought help from a low-income focused lawyer, with use steadily decreasing as income rose (see Figure 1 and Table 2). The combined effect was that

there was no statistically significant difference in the use of lawyers of any type between income groups (see Figure 1 and Table 3). However, this is not to say that a larger sample or more detailed/comprehensive income data would not have identified a difference. In line with findings from elsewhere, while not statistically significant, the coefficients were consistent with a ‘U-shaped’ relationship between income and lawyer use overall.

A far lesser proportion of the 1139 personal injury problems studied involved help being sought from a lawyer (16%). There was no statistically significant difference in the use of private practice lawyers, low-income focused lawyers or lawyers in general between income groups (Tables 4-6). Again, this is not to say that a larger sample or more detailed/comprehensive income data would not have identified differences.

Finally, for the broad range of other problem types included in the LAW Survey, there was an evidently greater use of private lawyers and a lower use of low-income focused lawyers by respondents with higher family incomes (Figure 2 and Tables 7-8).

In all 9 models, problem severity was a significant predictor, with a greater likelihood of lawyer use for more severe problems.

Figure 1 – Predicted probability of seeking help from lawyer for family problems

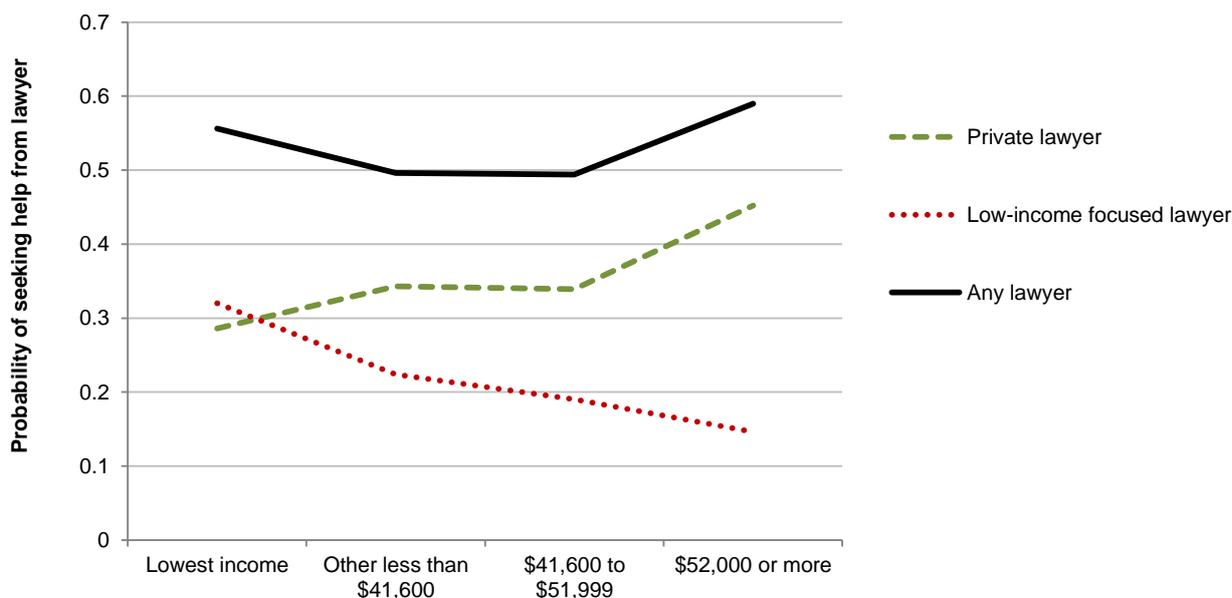
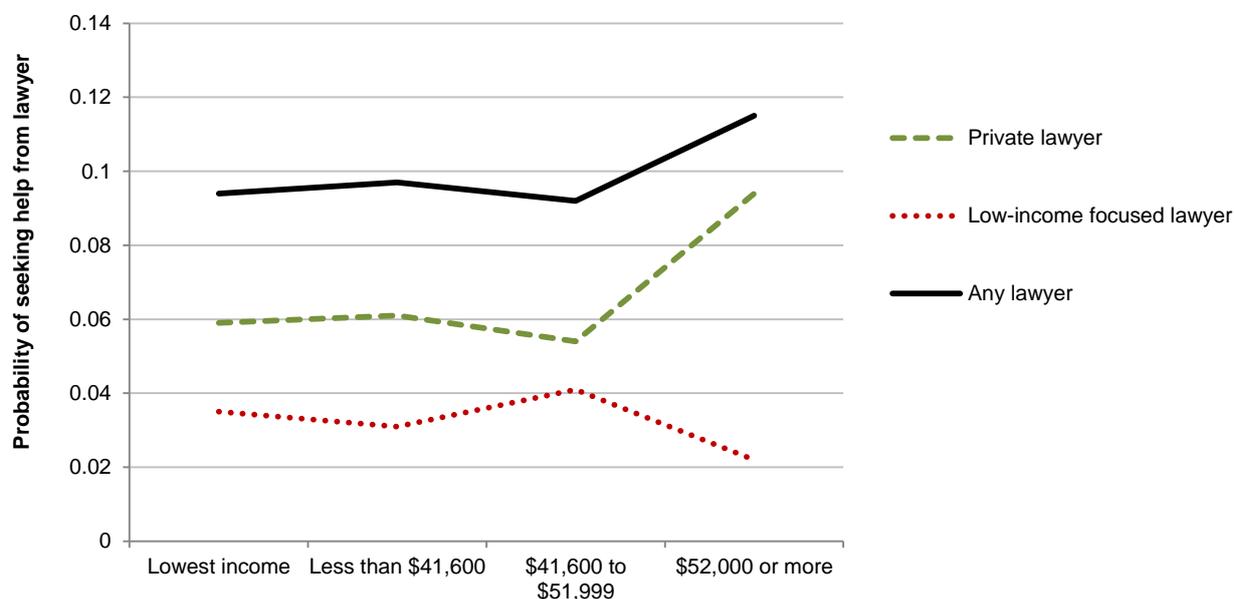


Figure 2 – Predicted probability of seeking help from lawyer for legal problems (excluding family and personal injury problems)



Comment

The above findings from the LAW Survey indicate that concern about cost only infrequently prevents people from taking action to resolve legal problems. However, the small percentage of people who take no action to resolve severe problems because of cost concerns are characterised by their relative social disadvantage.

Nevertheless, once people act to resolve problems, the cost of legal services is a matter of broad concern.

Lawyers appear to be most often used by those on higher incomes. To some extent this may reflect the greater monetary value of the issues they face, although the analysis did control for problem severity. But, it appears that in the case of problems for which low or no cost assistance is available from services such as legal aid and community law centres, such as family problems, the impact of cost is mitigated for those on the lowest incomes. This points to the success of these services in broadening the accessibility of legal services. Alternative funding mechanisms (such as ‘no win, no fee’ agreements) also appear to do the same.

The above findings also point to the potential difficulty faced by those on lower-middling incomes in obtaining legal services, and suggest the existence of a ‘U’-shaped relationship between income and lawyer use in the case of family problems. To the extent that this is driven by

cost concerns, financial assistance and alternative payment mechanisms may be effective in broadening access to legal services. Capable middle-income families may also benefit from forms of limited (i.e. unbundled) assistance or support for self-help.

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Appendix – statistical output

Below is set out the statistical output from the 9 multilevel binary logistic models reported on in the text. Significant findings ($p < 0.05$) are in bold.

Table 1: Family problems: private lawyer

Predictor	Estimate	Standard Error	
Constant	-2.720	0.564	
Problem severity	0.505	0.104	
Income	Lowest income (ref)	-	
	Others less than \$41,600	0.537	0.461
	\$41,600 to \$51,999	0.473	0.491
	\$52,000 or more	1.460	0.421
	Income not known	1.345	0.684
Between state variance	0.034	0.058	
Between respondent variance	6.812	3.314	

Note: N=1096 problems

Table 2: Family problems: low-income focused lawyer

Predictor	Estimate	Standard Error	
Constant	-1.159	0.117	
Problem severity	0.195	0.036	
Income	Lowest income (ref)	-	
	Others less than \$41,600	-0.508	0.235
	\$41,600 to \$51,999	-0.747	0.205
	\$52,000 or more	-1.055	0.165
	Income not known	-0.860	0.384
Between state variance	0.034	0.026	
Between respondent variance	0.132	0.035	

Note: N=1096 problems

Table 3: Family problems: any lawyer

Predictor	Estimate	Standard Error	
Constant	-0.379	0.166	
Problem severity	0.338	0.057	
Income	Lowest income (ref)	-	
	Others less than \$41,600	-0.293	0.258
	\$41,600 to \$51,999	-0.304	0.289
	\$52,000 or more	0.179	0.185
	Income not known	0.301	0.364
Between state variance	0.008	0.009	
Between respondent variance	1.047	0.795	

Note: N=1096 problems

Table 4: Personal injury problems: private lawyer

Predictor	Estimate	Standard Error	
Constant	-2.867	0.297	
Problem severity	0.807	0.070	
Income	Lowest income (ref)	-	
	Others less than \$41,600	-0.679	0.403
	\$41,600 to \$51,999	-0.886	0.538
	\$52,000 or more	0.190	0.257
	Income not known	0.020	0.411
Between state variance	0.447	0.423	
Between respondent variance	0.008	0.011	

Note: N=1136 problems

Table 5: Personal injury problems: low-income focused lawyer

Predictor	Estimate	Standard Error
Constant	-3.999	0.434
Problem severity	0.424	0.112
Income		
Lowest income (ref)	-	-
Others less than \$41,600	0.121	0.552
\$41,600 to \$51,999	-1.421	1.291
\$52,000 or more	-0.781	0.518
Income not known	-1.608	1.218
Between state variance	0.132	0.222
Between respondent variance	0.050	0.043

Note: N=1136 problems

Table 6: Personal injury problems: any lawyer

Predictor	Estimate	Standard Error
Constant	-2.643	0.280
Problem severity	0.798	0.068
Income		
Lowest income (ref)	-	-
Others less than \$41,600	-0.432	0.371
\$41,600 to \$51,999	-0.674	0.472
\$52,000 or more	0.325	0.255
Income not known	0.248	0.386
Between state variance	0.368	0.402
Between respondent variance	0.003	0.002

Note: N=1136 problems

Table 7: Other problems: private lawyer

Predictor	Estimate	Standard Error
Constant	-3.561	0.203
Problem severity	0.437	0.017
Income		
Lowest income (ref)	-	-
Others less than \$41,600	0.035	0.121
\$41,600 to \$51,999	-0.108	0.137
\$52,000 or more	0.516	0.078
Income not known	0.296	0.126
Problem type		
Accidents	-	-
Consumer	0.117	0.204
Credit/debt	1.116	0.215
Crime (victim and offender)	0.534	0.203
Employment	0.632	0.215
Government	0.948	0.206
Health	0.244	0.253
Housing	1.083	0.203
Money	2.478	0.202
Rights	0.745	0.222
Between state variance	0.070	0.030
Between respondent variance	0.380	0.092

Note: N=16 880 problems

Table 8: Other problems: low-income focused lawyer

Predictor	Estimate	Standard Error
Constant	-3.471	0.261
Problem severity	0.557	0.030
Income		
Lowest income (ref)	-	-
Others less than \$41,600	-0.155	0.189
\$41,600 to \$51,999	0.156	0.190
\$52,000 or more	-0.508	0.133
Income not known	-0.347	0.232
Problem type		
Accidents	-	-
Consumer	-1.125	0.302
Credit/debt	-0.032	0.307
Crime (victim and offender)	-0.525	0.288
Employment	-0.440	0.308
Government	-0.129	0.290
Health	-0.874	0.368
Housing	0.391	0.275
Money	-0.046	0.310
Rights	-0.149	0.311
Between state variance	0.036	0.032
Between respondent variance	1.562	0.263

Note: N=16 880 problems

Table 9: Other problems: any lawyer

Predictor	Estimate	Standard Error
Constant	-2.337	0.070
Problem severity	0.496	0.014
Income		
Lowest income (ref)	-	-
Others less than \$41,600	0.007	0.102
\$41,600 to \$51,999	-0.032	0.112
\$52,000 or more	0.230	0.067
Income not known	0.082	0.112
Problem type		
Accidents	-	-
Consumer	-0.232	0.160
Credit/debt	0.779	0.172
Crime (victim and offender)	0.378	0.157
Employment	0.290	0.171
Government	0.681	0.161
Health	-0.288	0.211
Housing	1.009	0.157
Money	2.088	0.161
Rights	0.351	0.179
Between state variance	0.030	0.015
Between respondent variance	0.403	0.076

Note: N=16 880 problems

Endnotes

ⁱ To account for the hierarchical nature of the LAW Survey data.

ⁱⁱ The structure of the data did not allow for any higher income family units to be disaggregated for the purposes of analysis. For just under 10% of respondents, family income was not known. Diverse eligibility criteria within and between states, along with limited LAW Survey data relating to income, necessitated the creation of a relatively simplistic legal aid eligibility proxy. For the purposes of this paper LAW Survey respondents were treated as (likely to be) eligible for legal aid if they were single and earned below \$20,800, if they were a single parent and earned below \$31,200, if they lived with a partner and earned below \$41,600, or if they reported no income and appeared to have government payments as their main source of income. The rate of proxy legal aid eligibility was 29.7%.

