



The nature of personal injury

A working paper

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Abstract: *Traditional sources of data give only partial insight into the nature of personal injury as a legal problem. These data typically say little about personal injury that does not result in hospitalisation or in compensation or claims processes. This paper uses data from the Legal Australia-Wide (LAW) Survey to estimate the prevalence in the Australian population of different types of personal injury problems that are likely to be 'justiciable' or have legal aspects. It also reports on the severity of these problems and their adverse impacts on broader life circumstances. The results show that personal injury problems are common and can be severe with considerable knock-on effects beyond the original injury. The results highlight the value of effective legal resolution of personal injury problems, and indicate that coordination with broader human services may often be beneficial to manage the knock-on effects of these problems.*

Source

This paper presents new findings from the Legal Australia-Wide Survey (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 2,000 in each state/territory, the LAW Survey allows for in-depth analysis at both the state/territory and national level. Download the reports at www.lawfoundation.net.au/publications

Definition of personal injury

Globally, injury makes a significant contribution to mortality (Lozano, Naghavi, Foreman et al. 2012). Many injuries, but not all, have a legal dimension, with the potential availability of legal compensation processes. Such injuries typically include motor vehicle injuries, work-related injuries and other injuries due to the liability or negligence of another person or organisation (e.g. injuries resulting from falls due to negligence and product faults).

In health and medical contexts, 'injury' clearly refers to harm to the individual. In legal contexts, the term 'personal injury' is typically used to refer to those injuries to the person for which another person or organisation is legally liable, and hence, for which compensation is claimable.ⁱⁱ Both physical and psychological harm to the person can constitute personal injury, and personal injury is distinct from injury to a person's reputation or property, which are covered by different legal actions.ⁱⁱⁱ In keeping with these legal definitions, 'personal injury' will be used in the present paper to refer to injury to the person which *potentially has legal implications*, whereas the term 'injury' per se will be used more inclusively to refer to the broader category covering both injuries with and injuries without potential legal consequences.



Traditional data sources

In Australia, two leading information sources shed light on personal injury. The first source is injury and health service surveillance data, typically from hospital admissions and surveys, which tell us about the scale and circumstances of injury. The second source, from compensation and insurance systems, provides insight into personal injury that becomes the basis for legal claims for compensation.

However, these data sources leave gaps in our understanding of personal injury problems. First, health surveillance data does not distinguish personal injury problems from other injury problems that do not have legal implications. Second, these data sources tell us little about injury that results neither in hospitalisation nor in a claims process (McInnes, Clapperton, Day et al. 2014). For example, little is known about injury at the lower end of the severity spectrum (Berecki-Gisolf, Collie & McClure 2013). Third, some injury types, particularly transport accident and work-related injury, are better captured by surveillance and compensation datasets than other injury types, such as product-related injury.

These data sources also do not typically explore the knock-on effects of injury on peoples' lives. The adverse impacts of injury have been explored in qualitative studies (e.g. Grant 2015; Murgatroyd, Cameron & Harris 2011; Roberts-Yates 2003), but typically not in large-scale quantitative research. Thus, information is lacking about the scale of these impacts.

Legal needs surveys

Since their emergence in the mid-1990s, many 'legal needs' surveys around the globe provide another source of data on personal injury problems. These surveys focus on the general public's experience and handling of a broad range of 'everyday' problems involving the law, and often include personal injury problems among the problems they measure (e.g. Coumarelos, Macourt, People et al. 2012; Currie 2007; Dignan 2004; Genn 1999; Pleasence 2006). Based on Genn's (1999) approach, most legal needs surveys measure problems that have 'legal' aspects or are 'justiciable' in that the law provides a *potential* route to their resolution, regardless of whether any action was taken involving the justice system.^{iv} Consequently, these surveys typically capture everyday problems that are likely to be justiciable, and examine a broad range of responses to these problems, both within and outside the legal sphere.

Legal Australia-Wide (LAW) Survey

In Australia, the most comprehensive and representative population survey of legal needs is the Legal Australia-Wide (LAW) Survey (Coumarelos et al. 2012). The LAW Survey followed Genn's approach (1999) and was carefully limited to include only problems that are likely to be justiciable in that, by definition, they have potential legal consequences or remedies. Each problem was described in sufficient detail to allow respondents to say whether they had experienced it, without requiring them to know that the problem was likely to have legal implications. Personal injury problems were among the legal or justiciable problems measured by the LAW Survey. The questions about personal injury problems were limited to injury problems for which legal compensation processes are typically available – motor vehicle injuries, work-related injuries, product-related injuries and other negligent accidents.^v

Coumarelos et al. (2012) estimated that, per annum, 7.0 per cent of Australians aged 15 years or over experience a personal injury problem – that is, an injury problem that is likely to be justiciable. In addition, 3.3 per cent are likely to experience a 'substantial' personal injury problem that has a 'moderate or severe' impact on their everyday life. They also demonstrated the considerable impacts that personal injury problems can have on broad life circumstances, and that people do not always address the legal aspects of personal injury problems.

Aim

Coumarelos et al. (2012) reported on personal injury problems as a single category, but did not examine different types of personal injury separately. Using LAW Survey data, the present paper extends the work of Coumarelos et al. (2012) by breaking down personal injury problems into the four types captured – namely, 'motor vehicle injury', 'work-related injury', 'product injury' and 'other negligence injury' (see Table 1 for descriptions).^{vi} The paper examines the prevalence of these different types of personal injury in the Australian population, their seriousness and their adverse impacts on broader life circumstances.

Results

Prevalence of each type of personal injury

Table 1 shows the prevalence of each type of personal injury problem in the Australian population aged 15 years or over. Work-related injuries were the most

prevalent type of personal injury problem, with 3.9 per cent of LAW Survey respondents experiencing this type of problem in the 12 months prior to interview. The other types of personal injury problems were reported by one to two per cent of respondents. The lowest prevalence (1.0%) was for product injury. Converting these percentages to population estimates suggests that, within a 12-month period, approximately 738,000 Australians

aged 15 years or over experience a work-related injury, 242,000 experience a motor vehicle injury, 192,000 experience a product-related injury and 281,000 experience an injury due to other negligence. In total, 7.0 per cent or approximately 1.3 million Australians aged 15 years or over are estimated to experience a personal injury problem of some type within 12 months.^{vii}

Table 1: Percentage of respondents reporting each type of personal injury problem, Australia

Personal injury type	Question number	Description ^a	Respondents reporting 1+ problems	
			%	N
Motor vehicle	P21.1	Injury to self or someone else due to motor vehicle accident	1.3	263
Work-related	P21.3	Work-related injury or illness to self	3.9	802
Product	P21.4	Injury or illness to self due to a faulty product (e.g. electrical goods, toys, food products)	1.0	209
Other negligence	P21.5, P21.6	Injury to self or someone else due to other negligent accident (e.g. sports injury; injury from slips/trips and other accidents in public/private places)	1.5	306
Any personal injury			7.0	1,444

a See Coumarelos et al. (2012), Appendix A1, pp. 261–294, for a copy of the survey instrument.

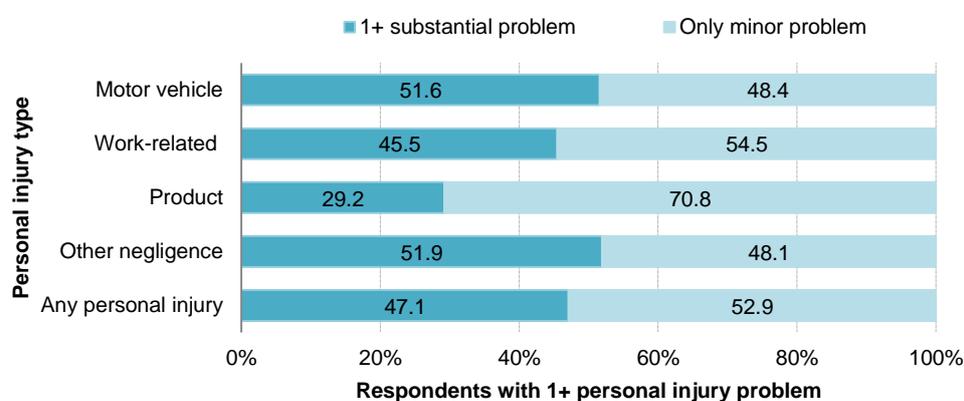
Note: N=20,716 respondents. Consistent with Coumarelos et al. (2012), injury-free motor vehicle accidents and clinical negligence problems were not categorised as personal injury problems, but within the ‘accidents’ and ‘health’ legal problem groups, respectively.

Severity of each type of personal injury

Figure 1 is based on the respondents who experienced personal injury problems. Overall, almost half (47.1%) of the respondents who experienced a personal injury problem reported that they experienced a ‘substantial’ personal injury problem – that is, a personal injury problem that had a ‘moderate or severe’ impact on their everyday life.

Compared to other types of personal injury, product injury problems were, in raw terms, less often substantial problems. Less than one-third (29.2%) of the respondents with a product injury reported having at least one substantial problem of this type compared to approximately half (45.5–51.9%) of the respondents with other types of personal injury problems.

Figure 1: Each type of personal injury problem by severity of problem, Australia



Note: N=1,444 respondents with at least one personal injury problem, including 263 with a motor vehicle injury problem, 802 with a work-related injury problem, 209 with a product injury problem and 306 with another negligence injury problem.

Broader adverse impacts of each type of personal injury

LAW Survey respondents were asked whether their most serious legal problems^{viii} caused adverse impacts on various broader life circumstances, including health, social and financial circumstances. Respondents reported on the adverse impacts of 1,132 personal injury problems. The broader impacts of personal injury problems are directly relevant to their legal implications, given that the aim of compensatory damages is that the person be returned as far as possible to their position prior to suffering the injury.^{ix}

Coumarelos et al. (2012) demonstrated that personal injury problems can have considerable negative knock-on effects, such as income loss or financial strain (28.8%), stress-related illness (23.2%), relationship breakdown (7.2%) and having to move home (4.4%).

The present analyses similarly show that each type of personal injury can have considerable negative impacts beyond the physical health consequences of the injury (see Table 2). Almost one-third (31.1%) of motor vehicle injuries resulted in income loss or financial strain and 30.2 per cent resulted in stress-related illness. Similarly, considerable proportions of work-related injuries resulted in income loss or financial strain (30.9%) and stress-related illness (22.3%), as did other negligence injuries (26.9% and 24.4%, respectively). Consistent with their less severe nature (see Figure 1), a smaller percentage of product injury problems (in raw terms) resulted in these adverse consequences (16.3% and 13.6%, respectively). Each type of personal injury also resulted in relationship breakdown (5.6–7.8%) and having to move home (2.9–7.2%) in a small proportion of cases.

Thus, our findings suggest that each type of personal injury can have considerable negative impacts on broad life circumstances.

Table 2: Adverse consequences of each type of personal injury problem, Australia

Personal injury type	Adverse consequence					Total
	Stress-related illness	Physical ill health	Relationship breakdown	Moving home	Income loss or financial strain	
	%	%	%	%	%	N
Motor vehicle	30.2	54.3 ^a	5.8	3.1	31.1	213
Work-related	22.3	99.7	7.8	4.3	30.9	616
Product	13.6	99.3	5.6	2.9	16.3	117
Other negligence	24.4	93.2	7.6	7.2	26.9	186
Any personal injury	23.2	90.0	7.2	4.4	28.8	1,132

a Includes both motor vehicle accidents that resulted in injury to the respondent and motor vehicle accidents that resulted in injury to someone else.
 Note: N=1,132 personal injury problems.

Conclusion

Using LAW Survey data, this paper provides new insights into the nature of personal injury as a legal problem. It is estimated that approximately 1.3 million Australians aged 15 years or over experience some type of personal injury problem each year – that is, an injury that is likely to have legal aspects or remedies. Importantly, the results show that the impact of personal injury problems is often substantial, with considerable adverse knock-on effects on broader health, social and economic circumstances.

The substantial nature of many personal injury problems and their adverse impacts on broad personal circumstances highlight the importance of

facilitating the effective legal resolution of such problems, and the valuable role that adequate compensation may play in injured people’s lives.

In addition, the physical health aspects of personal injury problems, together with their potentially wide-ranging knock-on impacts on life circumstances, indicate that people experiencing personal injury may benefit from broader human support services. Thus, the results point to the potential value of ‘joining-up’ between legal, health and other human services, such as effective referrals, to address the legal and non-legal consequences of personal injury problems.

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Endnotes

- ⁱ Senior Principal Researcher and Researcher at the Law and Justice Foundation of NSW, and Lecturer at the Faculty of Law, Monash University, respectively.
- ⁱⁱ Finkelstein & Hamer (2015).
- ⁱⁱⁱ For example, see Finkelstein & Hamer (2015);
<http://www.legalaid.wa.gov.au/InformationAboutTheLaw/BirthLifeandDeath/Personalinjury/Pages/PersonalInjuryGeneralInformation.aspx>;
<http://www.pilchnsw.org.au/compensation-claims-for-personal-injury-in-australia/>
- ^{iv} The term 'legal problem' is used throughout this paper for easy reference to a problem that is 'justiciable'.
- ^v See Coumarelos et al. (2012), Appendix A1, pp. 261–294, for a copy of the survey instrument, and the following questions measuring personal injury problems: P21.1 and P21.3 to P21.6.
- ^{vi} Note that, for the sake of simplicity, these category names refer, respectively, to 'motor vehicle personal injury', 'work-related personal injury', 'product-related personal injury' and 'personal injury due to other negligent accidents'. Consistent with Coumarelos et al. (2012), injury-free motor vehicle accidents and clinical negligence problems were not categorised as personal injury problems, but within the 'accidents' and 'health' legal problem groups, respectively.
- ^{vii} These figures are based on estimated resident Australian population aged 15 years or over as at June 2014, drawn from the census (Australian Bureau of Statistics 2015).
- ^{viii} Respondents were asked in-depth follow-up questions about up to three of their 'most serious' problems, including questions about the adverse impact of these problems. This pool of 'most serious' problems was determined as follows. The LAW Survey asked about 129 specific types of legal problems. Respondents who had experienced legal problems were asked to order the different specific types of legal problems they had experienced in terms of seriousness, and then to identify the worst instance of each specific type. The worst instance of the three most serious specific types of problems were then followed up in depth. Respondents who had experienced fewer than three specific types of problems were only asked about the worst instance of the (one or two) specific types they had experienced.
- ^{ix} For example, see Finkelstein & Hamer (2015); and
<http://www.legalaid.wa.gov.au/InformationAboutTheLaw/BirthLifeandDeath/Personalinjury/Pages/PersonalInjuryGeneralInformation.aspx>