



## Resolving legal problems: the role of disadvantage

**Hugh M. McDonald and Zhigang Wei**

**Abstract:** *New analysis of the Legal Australia-Wide Survey demonstrates the association between legal problem resolution, level of disadvantage and legal capability. The findings show that disadvantaged Australians are more likely to experience legal problems and less likely to resolve their legal problems than other people in the community. There is a clear association between a person's level of disadvantage and their ability to finalise their legal problems. While previous analysis demonstrates how more severe legal problems, and certain types of legal problems, are less likely to be finalised, the findings show that finalisation decreases with increasing disadvantage, irrespective of problem type or severity. The more disadvantaged a person is, the less likely they are to finalise their legal problems, even if they take some form of action or seek professional advice.*

*Finalisation through agreement with the other side decreases with a person's level of disadvantage. Finalisation through not pursuing the matter (also known as 'lumping' the situation) increased with level of disadvantage. The findings signal a group of highly disadvantaged Australians who appear less able to independently resolve their legal problems in ways commonly employed by other Australians. In particular, this group appears to be significantly less likely to resolve legal problems by negotiation and agreement with the other side, and perhaps as a consequence, may be more likely to rely on formal legal institutions and advisers to determine and/or finalise their legal problems.*

*Two case study examples are presented to illustrate the experience of multiply disadvantaged Australians in relation to legal problems, what they do and don't do, and how they struggle to achieve resolution.*

*The results show that the small minority of highly disadvantaged Australians at greater risk of experiencing unresolved legal problems should remain a priority focus of public legal assistance services policy. These findings again highlight the importance of person-centred approaches to both public legal assistance service provision and wider access to justice policy, to appropriately cater to the diverse legal need and capability of the Australian community.*

### 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 (2012).

### About the LAW Survey

The LAW Survey provides a comprehensive assessment of a broad range of legal needs of 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, the LAW Survey allows for in-depth analysis at both the state/territory and national level. The nine LAW Survey reports are available at [www.lawfoundation.net.au/publications](http://www.lawfoundation.net.au/publications)



## Background

Legal needs studies have established clear links between social and economic disadvantage and legal problem-solving behaviour (Pleasence, Balmer & Denvir 2015; Pleasence, Coumarelos, Forell & McDonald 2014). People experiencing higher levels of disadvantage have heightened vulnerability to legal problems<sup>i</sup> and tend to adopt less effective resolution strategies (McDonald & Wei 2013, 2016). Legal capability is increasingly understood as playing a role in whether and how people try to resolve legal problems (McDonald & Wei 2016; Pleasence & Balmer 2014, 2017; Pleasence, Balmer & Denvir 2015).

Legal capability refers to the personal characteristics or competencies needed to resolve legal problems effectively, encompassing overlapping knowledge, skill, psychological and resource dimensions (see further Pleasence et al. 2014).<sup>ii</sup> While legal capability varies across the community it remains somewhat unclear the

**Legal capability refers to the personal characteristics or competencies needed to resolve legal problems effectively, encompassing overlapping knowledge, skill, psychological and resource dimensions**

extent to which this reflects personal, situation and structural factors, the nature of the legal problems different people tend to experience, or some combination.

Knowledge and understanding of law and of rights varies across the community, including the

perception and characterisation of problems as ‘legal’ (and consequently, as having a legal cause or solution), what people do to try to deal with their legal problems, and whether legal information and assistance is sought.<sup>iii</sup> Analysis has shown that low income, low educational attainment, unemployment, living in disadvantaged housing, and having a non-English main language are associated with inaction for legal problems due to not knowing what to do, or concerns about cost and stress (McDonald & People 2014). Empirical studies also indicate that personal skills, abilities and resources vary and affect confidence and willingness to act to deal with a legal problem, as well as determination and willingness to persevere to achieve resolution (see

Pleasence, Balmer & Denvir 2015; Pleasence et al. 2014; Sandefur 2007).

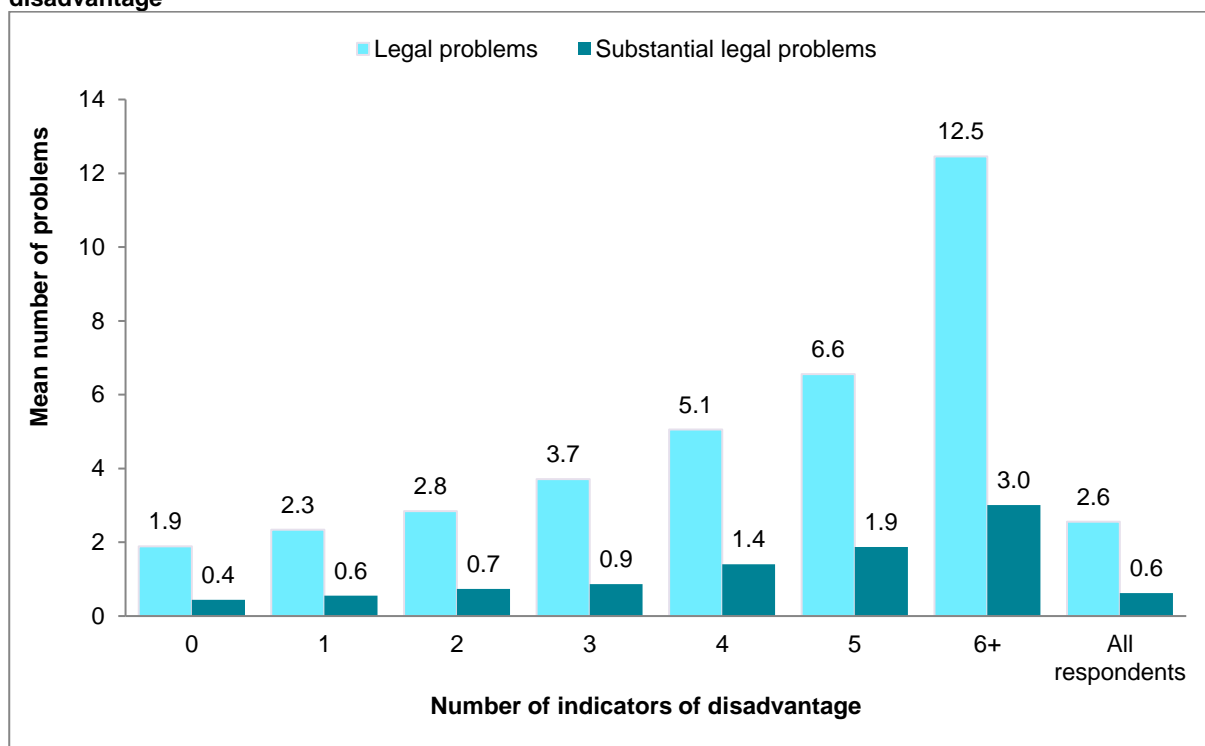
Psychological and emotional factors affect legal problem-solving. Those with higher legal confidence and empowerment tend to be those more likely to act. However, a significant minority of people are ‘paralysed’ or otherwise overwhelmed by their problems and circumstances, and do nothing to try resolve legal problems (also known as ‘lumping’ the problem by putting up with the situation), indicative of ‘helplessness’ (Genn & Paterson 2001; Gramatikov & Porter 2011; Pleasence & Balmer 2014, Pleasence et al. 2014). Legal capability is also affected by wider systemic and structural factors, such as geographic location and the accessibility of the legal service environment. For instance, personal capability constraints appear to compound gaps in legal service infrastructure and affect awareness of, access to, and use of, available legal assistance, including those available locally and online (see Pleasence et al. 2014).

Pleasence and Balmer (2014, p. 3) summed up the relationship between legal problem-solving behaviour and legal capability as follows:

*Problem resolution behaviour is unequivocally tied to legal capability, with action more likely among those with higher subjective legal empowerment scores, who understand their rights and/or see problems as having a legal character. Problem resolution behaviour is also ‘learned’ (both individually and within households), meaning that it is likely to recur when new problems are faced. Thus, diminished capability, in lessening people’s initial ability to resolve problems may also contribute to ‘frustrated resignation’ (Sandefur 2007) and an increasing likelihood of ‘lumping’ problems. And this is of great significance as inaction is, in turn, associated with far poorer prospects of effective problem resolution.*

In previous analysis of the Legal Australia-Wide (LAW) Survey national dataset we have documented how vulnerability to legal problems ‘compounds’ with increasing disadvantage (see Figure 1, McDonald & Wei 2013). Each additional indicator of disadvantage has an ‘additive effect’ compounding vulnerability to legal problems. We have also previously documented how legal problem-solving strategy, and use of advisers, varies by level of disadvantage. For example, as disadvantage increases, inaction and action

**Figure 1: Mean number of legal problems and substantial legal problems by number of indicators of disadvantage**



Note: N=20,716 respondents.

without the benefit of legal information or advice, also increases. In contrast, use of health and welfare advisers and not-for-profit legal services were found to increase with level of disadvantage. Notably, use of legal self-help resources decreased with increasing disadvantage (McDonald & Wei 2016). One uninvestigated issue is how legal problem resolution is related to level of disadvantage. For instance, does legal problem finalisation status, and manner of finalisation, vary by level of disadvantage?

This paper uses the LAW Survey national dataset to investigate the relationship between respondents' level of disadvantage and:

- legal problem finalisation status
- legal problem characteristics (i.e. type, severity and recency) and finalisation status
- legal problem-solving strategy and finalisation status
- manner of finalisation.

## Method

The LAW Survey measured the experience, handling and outcome of legal problems that started during or continued into the 12 months

prior to interview (see Coumarelos, Macourt, People, McDonald, Wei, Iriana & Ramsey 2012). The survey adopted the 'justiciable' problem methodology of Genn's (1999) *Paths to Justice* survey, canvassing problems likely to be justiciable in that they have potential legal consequences and remedies without explicitly labelling them as 'legal', nor limiting the scope of resolution to the formal justice system. A total of 129 specific types of legal problems were examined, covering a broad range of civil, criminal and family law problems.

Respondents were asked to identify their three 'most serious' legal problems, actions taken in response to these problems and the outcomes they achieved.<sup>iv</sup> This included questions about finalisation status: whether the problem was 'now over' or 'still ongoing'; and where problems had been finalised, the manner in which the legal problem had been finalised.<sup>v</sup> In total, the handling, resolution and outcome of 19,387 of respondents' most serious legal problems were canvassed in the LAW Survey. This paper is based on analysis of those problems.

Although the fieldwork for the LAW Survey was undertaken in 2008, there is little evidence demonstrating how community legal need and

problem-solving behaviour may have changed. On the other hand, there has been widespread demographic, policy and legal assistance service provision change in the intervening period. This includes national legal assistance services policy reforms in response to LAW Survey findings evidencing unequivocal links between legal problem vulnerability, ineffective problem-solving strategies, and social and economic disadvantage. Although new legal needs surveys are required to measure experience of legal need and how legal problem-solving may have changed, the LAW Survey dataset remains relevant, and is in fact the only comprehensive data source available to investigate new questions about Australians' legal problem-solving behaviour.

### Analyses

The paper employs several measures previously used by Coumarelos et al. (2012), McDonald and Wei (2013, 2016) and Wei, McDonald and Coumarelos (2015), including:

- demographic characteristics – gender, age and level of disadvantage<sup>vi</sup>
- legal problem-solving strategy – three hierarchical categories based on the highest level of six types of action<sup>vii</sup>
- legal problem type, severity and recency<sup>viii</sup>
- legal problem finalisation status
- manner of legal problem finalisation.

Descriptive, bivariate inferential and multivariate inferential statistical analyses were used to investigate the relationship between legal problem finalisation status and respondents' level of disadvantage.<sup>ix</sup>

The relationship between finalisation status and respondents' level of disadvantage was first examined using bivariate inferential statistics (i.e. Somers' d analysis). A multilevel logistic regression model was then fitted to test the independent influence of legal problem characteristics (i.e. recency, severity and type) and demographic characteristics (gender, age and level of disadvantage) and problem-solving strategy on legal problem finalisation status.<sup>x</sup>

The relationship between manner of finalisation and respondents' level of disadvantage was examined using bivariate inferential statistics (i.e. chi-square analysis).

## Results

### Disadvantage and finalisation status

The proportion of legal problems that had been finalised decreased significantly as respondents' level of disadvantage increased (see Figure 2).

Whereas respondents with no indicator of disadvantage reported 67 per cent of legal problems as having been finalised, only 49 per cent of legal problems experienced by respondents with five or more indicators of disadvantage had been finalised.

Regression analysis was used to examine the independent effect of respondents' level of disadvantage on legal problem finalisation (i.e. legal problems that had been finalised cf. still ongoing), controlling for legal problem characteristics (recency, severity and type), demographics (age and gender) and broad legal problem-solving strategy (see Appendix Table 1 for full regression results). The results revealed that respondents' level of disadvantage had a significant, independent effect on problem finalisation status. Legal problem type was the strongest predictor of finalisation, followed by problem-solving strategy, age, problem severity, level of disadvantage and problem recency.

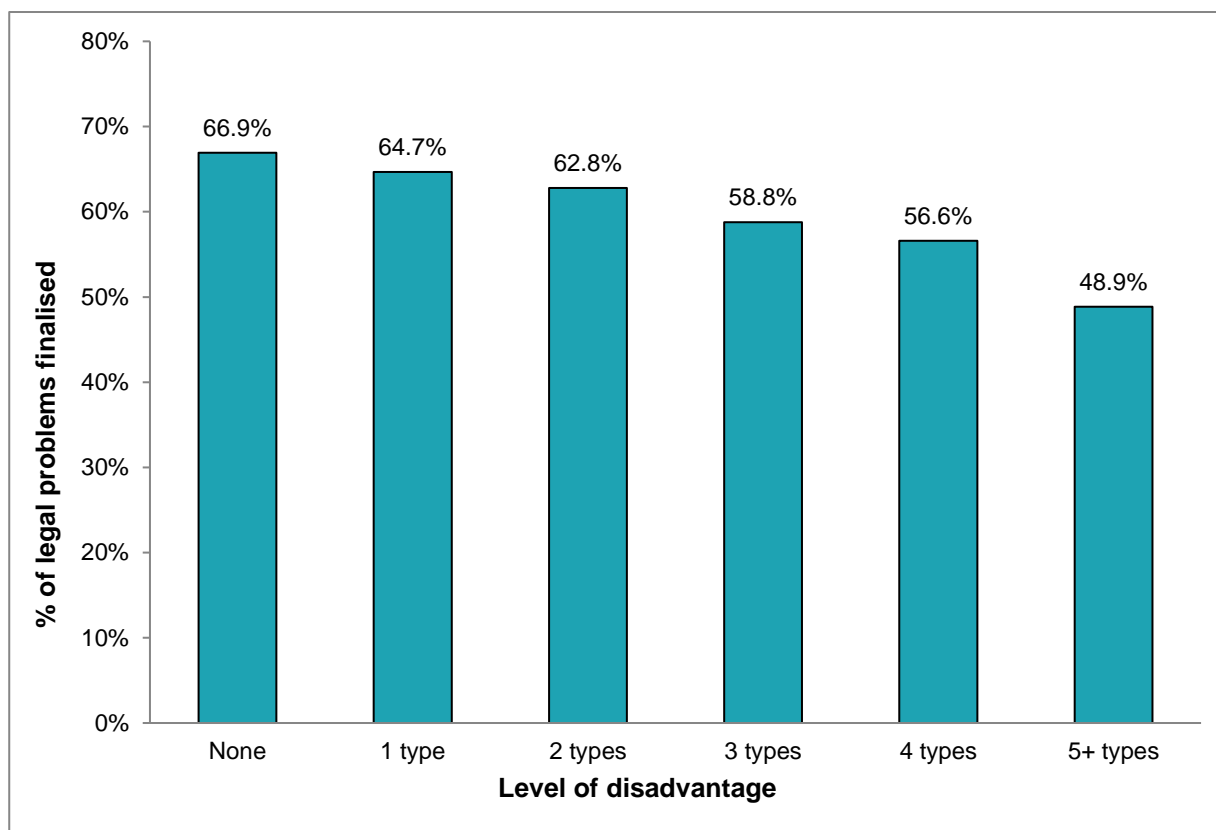
Notably, multiply disadvantaged respondents were significantly less likely than others to have finalised their legal problems. In fact, those with five or more indicators of disadvantage, the most disadvantaged group examined, were only half as likely to have finalised legal problems as those with no indicator of disadvantage (see Appendix Table 1).

Finalisation status was also significant at the person level, indicating that

where a person has one unresolved legal problem, they are significantly more likely to also have other unresolved legal problems (see Appendix Table 1).

**those with five or more indicators of disadvantage, the most disadvantaged group examined, were only half as likely to have finalised legal problems as those with no indicator of disadvantage**

Figure 2: Percentage of finalised problems by level of disadvantage



**Note:** N=19,305 legal problems. Data were missing for 82 problems. Somers'  $d=-0.07$  (95% CI=-0.10 - -0.05), SE=0.01,  $p=0.000$ , outcome variable is finalisation status.

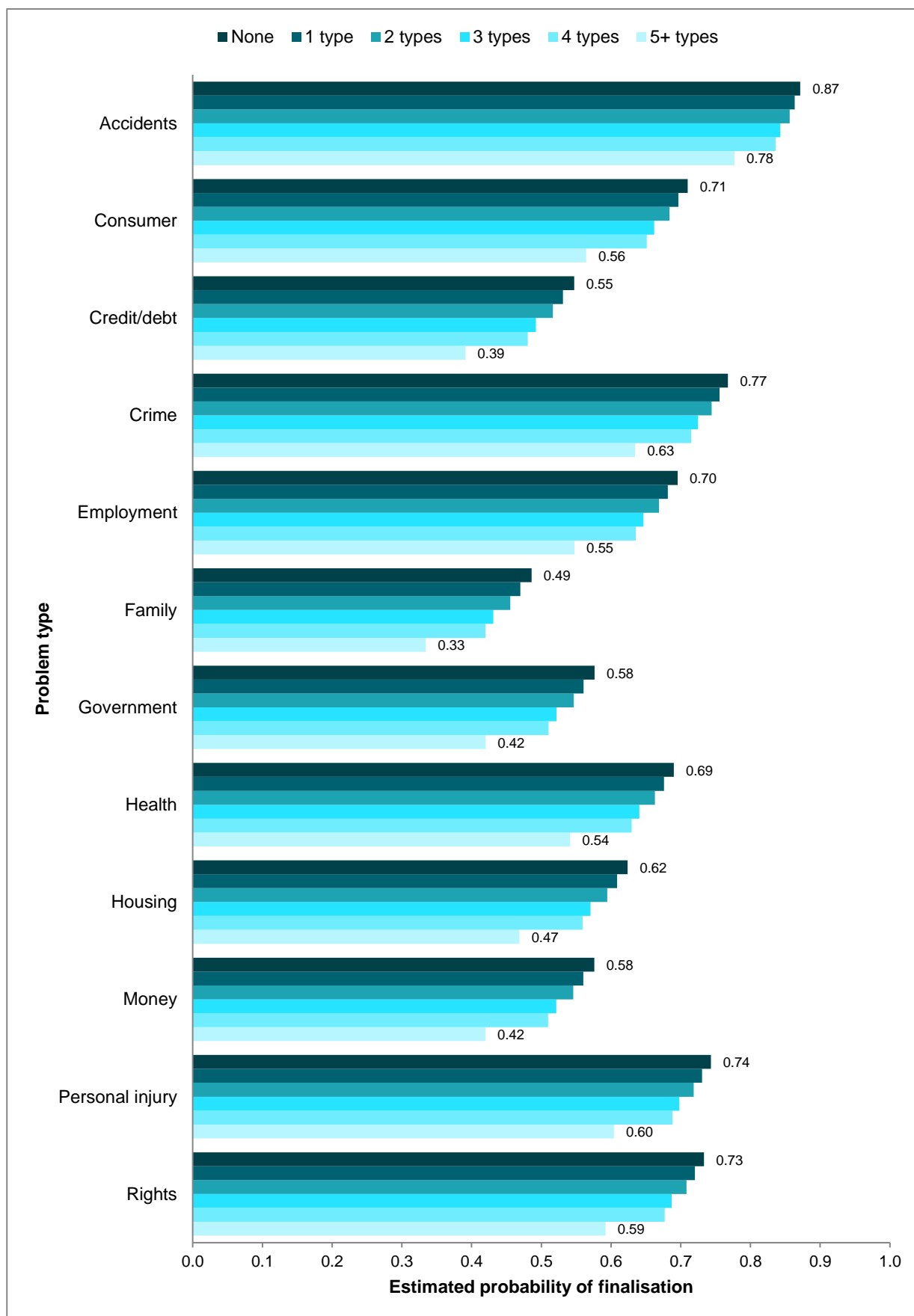
The findings clearly signal the heightened legal needs of multiply disadvantaged Australians, associated with, first, increased vulnerability to legal problems, and second, increased vulnerability to unresolved legal problems. As outlined below, the regression results were used to calculate the estimated probability of legal problem finalisation by level of disadvantage, first, by legal problem characteristics (type, severity and recency), and second, by legal problem-solving strategy, controlling for the influence of the other factors in the model. These results are presented in turn.

### Legal problem characteristics and finalisation status

#### *Type of legal problem*

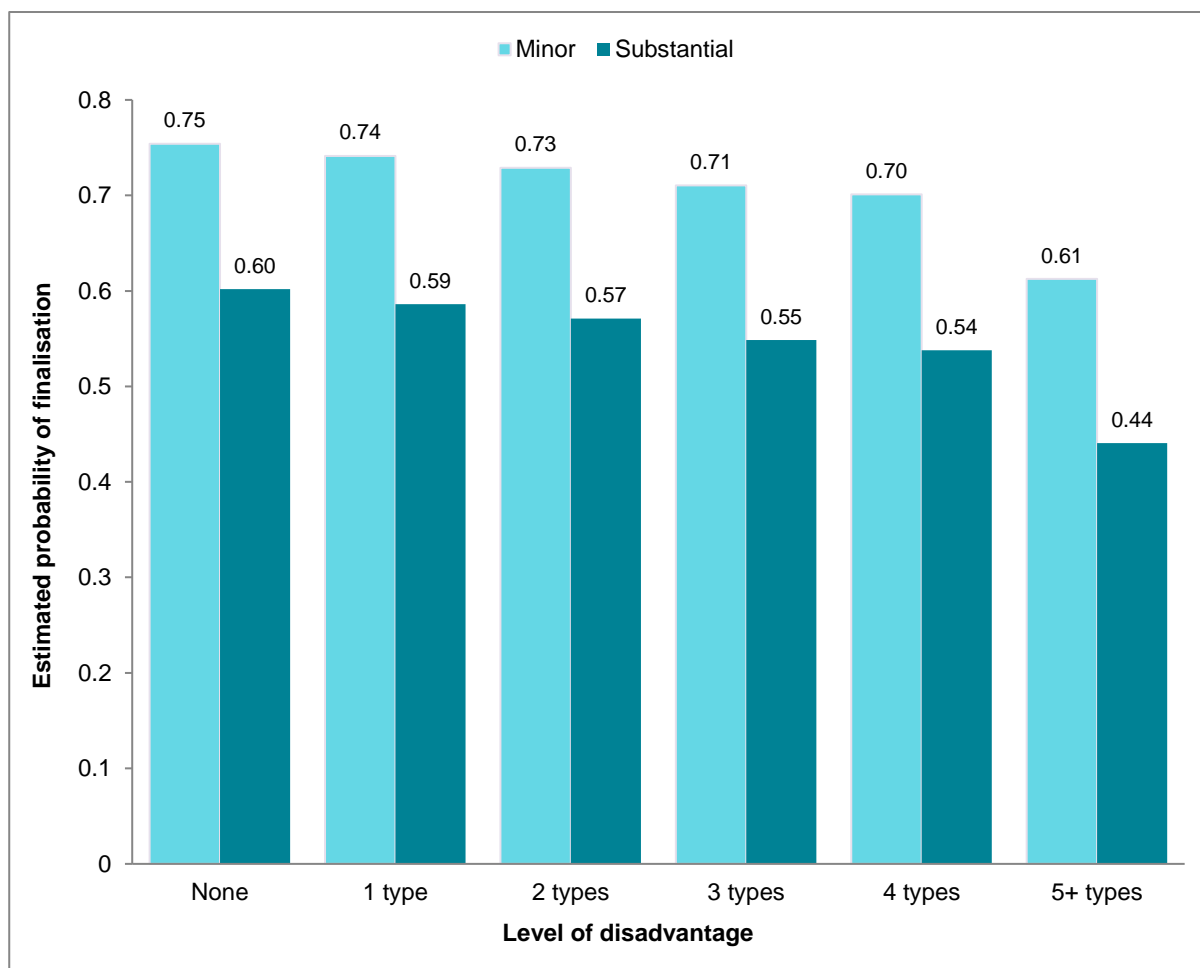
Figure 3 shows that the estimated probability of legal problem finalisation decreased with respondents' level of disadvantage for each of the 12 broad types of legal problems examined. Family, credit/debt, money and government problems were the four broad legal problem types with the lowest estimated probability of finalisation, both overall and by level of disadvantage.

Figure 3: Estimated probability





**Figure 4: Estimated probability of legal problem finalisation by problem severity and level of disadvantage**



**Note:** N=19,128 legal problems. Data were missing for 260 problems. Based on the regression in Appendix Table 1.

### **Severity of legal problem**

The estimated probability of legal problem finalisation by level of disadvantage and problem severity was also calculated from the regression results. Figure 4 shows that while the estimated probability of finalisation was lower for substantial legal problems than minor legal problems, the estimated probability of finalisation declined with respondents' level of disadvantage for both minor and substantial legal problems.

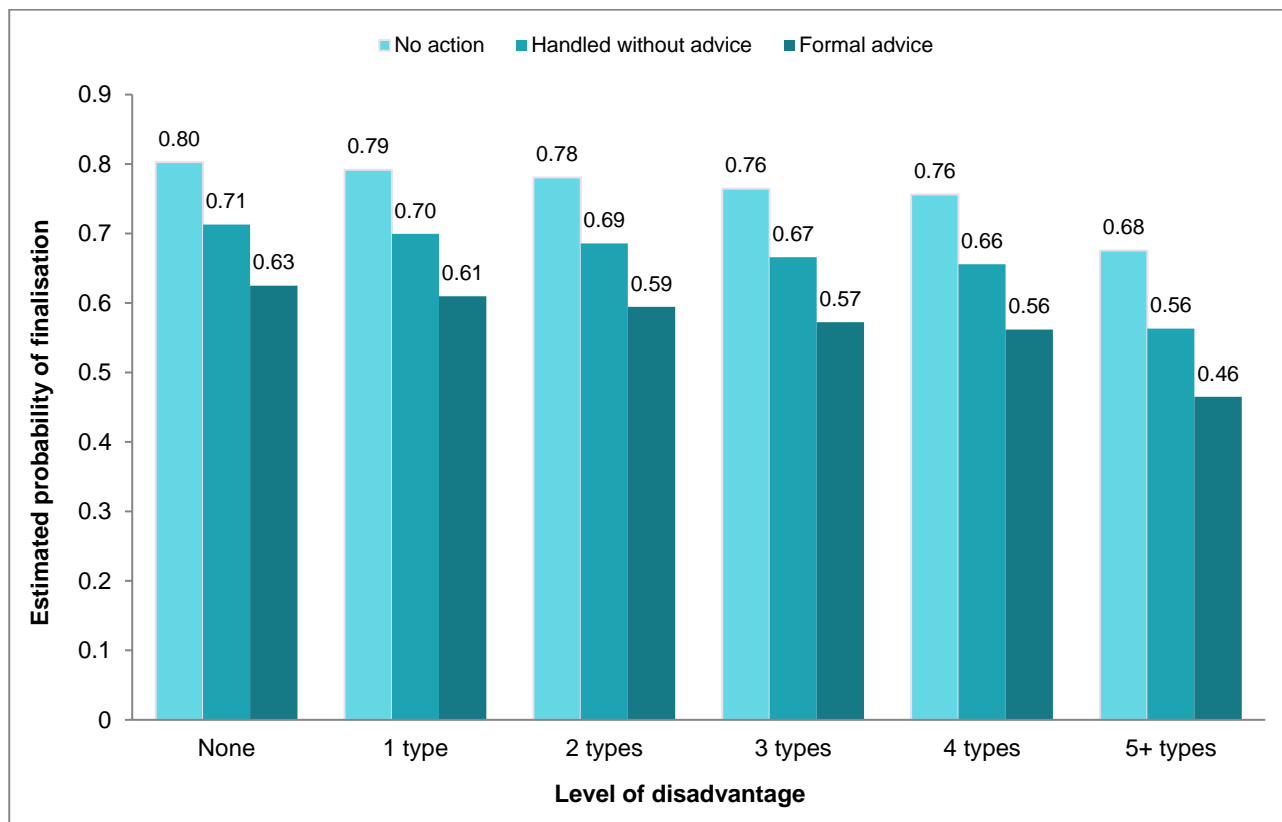
### **Legal problem-solving strategy and finalisation status**

Figure 5 shows the estimated probability of legal problem finalisation also declined with increasing disadvantage for each type of legal problem-

solving strategy. Note that, consistent with previous analyses, legal problems were less likely to have been finalised where a person takes some form of action to try to resolve the problem, and where a person sought professional advice (see further Coumarelos et al. 2012).

Less than 15 per cent of LAW Survey respondents had three or more indicators of disadvantage. As such, these results signal a small minority of more disadvantaged Australians who are significantly more likely than others to have ongoing legal problems, irrespective of the type or severity of the legal problem and the legal problem-solving strategy adopted.

**Figure 5: Estimated probability of legal problem finalisation by legal problem-solving strategy and level of disadvantage**



### Disadvantage and manner of finalisation

LAW Survey respondents who reported that problems were over were asked how the problem had been finalised.<sup>xi</sup> Manner of finalisation was significantly related to respondents' level of disadvantage (see Table 1).<sup>xii</sup> The most common manner of finalisation was agreement with the other side (29.9% of legal problems), followed by the respondent not pursuing the matter any further (29.8%) and finalisation through another agency, such as a government body, insurance company or the police (15.0%). Together these three methods accounted for the finalisation of three-quarters of legal problems.

Examination of adjusted standard residuals in chi-square analysis indicated significant differences in these three most common methods of finalisation according to respondents' level of disadvantage.

The proportion of legal problems finalised by agreement with the other side generally decreased

with respondents' level of disadvantage, while the proportion finalised by the respondent not pursuing the matter generally increased with level of disadvantage. Critically, these findings further demonstrate that likelihood of a legal problem being 'lumped', that is, by putting up with the problem or otherwise accepting it rather than trying to pursue resolution, increases with level of disadvantage (see Genn 1999; Pleasence & Balmer 2014).

Compared to average, the proportion of legal problems finalised through another agency was significantly higher among those respondents with no indicator of disadvantage and significantly lower for those with two or three indicators.

These findings further signal a minority of highly disadvantaged Australians who appear less able than others to independently resolve the types of legal problems they experience.



**Table 1: Manner of finalisation by level of disadvantage**

Manner of finalisation	Level of disadvantage					
	None		2	3	4+	Total
	%	%	%	%	%	%
Court or tribunal	2.9	3.6	3.8	3.5	3.7	3.4
Dispute resolution or complaint-handling body	3.1	3.5	3.2	4.5	3.0	3.4
Another agency <sup>a</sup>	17.7 <sup>^</sup>	15.7	11.9 <sup>v</sup>	10.2 <sup>v</sup>	11.8	15.0
Lawyer's help	1.3	1.5	1.6	2.2	3.6	1.6
Someone else's help	4.1	4.4	5.2	6.4	6.3	4.8
Agreement with other side	31.5 <sup>^</sup>	30.1	30.7	25.6 <sup>v</sup>	22.3 <sup>v</sup>	29.9
Other side didn't pursue further	7.3	7.2	7.5	9.4	7.5	7.5
Respondent didn't pursue further	27.3 <sup>v</sup>	29.4	31.9	32.6	36.8 <sup>^</sup>	29.8
Other	4.7	4.6	4.1	5.4	5.1	4.7
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

**Note:** N=12,090 legal problems. Data were missing for 237 problems.  $\chi^2=163.69$ ,  $F_{32,325804}=2.64$ ,  $p=0.000$ .

<sup>a</sup> E.g. government body, insurance company, police.

<sup>^</sup> A significantly higher than expected value for this cell (i.e. adjusted standard residual > 2.0).

<sup>v</sup> A significantly lower than expected value for this cell (i.e. adjusted standard residual < -2.0).

## Discussion and conclusion

The results demonstrate that not only do more disadvantaged Australians have heightened vulnerability to legal problems, but also

**... not only do more disadvantaged Australians have heightened vulnerability to legal problems, but also heightened vulnerability to unresolved, ongoing legal problems.**

heightened vulnerability to unresolved, ongoing legal problems.

Finalisation decreases with each additional indicator of disadvantage. This suggests that level of disadvantage has a compounding, 'additive effect' that

heightens legal problem vulnerability, and constrains legal problem resolution. Of particular concern is a minority of highly disadvantaged Australians who are significantly less likely than others to have resolved their legal problems. This finding held across problems of different types and different levels of severity and for each legal problem-solving strategy.

Each of the three most common methods of legal problem finalisation – agreement with the other side, the respondent not pursuing the matter any further, and through another agency – were

significantly related to respondents' level of disadvantage. It is of further concern that the most disadvantaged have the highest levels of legal problem finalisation by 'lumping', that is, by simply giving up on pursuing resolution, and also notably lower levels of finalisation through reaching agreement with the other side of the problem or dispute.

The results are consistent with other empirical research that has found more disadvantaged people are more likely than others to give up trying to resolve their legal problems, perhaps deciding that they just can't manage it, or perhaps becoming 'frustrated', 'helpless' and 'resigned' to the situation (see Pleasence, Balmer & Denvir 2015; Pleasence et al. 2014; Sandefur 2007).

**It is of further concern that the most disadvantaged have the highest levels of legal problem finalisation by 'lumping', that is, by simply giving up on pursuing resolution ...**

The findings are consistent with other LAW Survey analysis demonstrating that some disadvantaged groups are significantly more likely to take no action to deal with their legal problems due to not knowing what to do, as well as cost and stress concerns (McDonald & People 2014).

The results clearly demonstrate that more disadvantaged Australians have reduced capability to achieve legal problem finalisation, once again signalling the need for an accessible justice system, with accessible legal assistance services

**The results clearly demonstrate that more disadvantaged Australians have reduced capability to achieve legal problem finalisation.**

appropriately matched to diverse legal need and capability across the Australian community. The results add to the growing empirical evidence of the lower personal and

legal capability among the most disadvantaged Australians, and of their comparatively greater risk of experiencing ongoing legal problems and unmet legal need.<sup>xiii</sup>

There are a number of possible explanations for these findings. For instance, and as noted above, other LAW Survey analysis has shown that more disadvantaged people are more likely to experience a higher number of legal problems, including a higher number of substantial legal problems having a severe impact on everyday life (see Coumarelos et al. 2012; McDonald & Wei 2013). Consequently, it is possible that more disadvantaged people experience a greater number of concurrent or simultaneous legal problems, straining personal resources available to deal effectively with each problem. It is also likely that more disadvantaged people also experience a higher number of competing non-legal needs, further straining personal resources. For example, Coumarelos et al. (2012) noted how the health and other non-legal needs of people with a disability could undermine and complicate legal problem resolution. Qualitative studies have also demonstrated how in addition to legal needs, more disadvantaged people are also likely to experience a range of pressing, immediate, non-legal needs which constrain the time and resources available to deal with legal problems (see Pleasence et al. 2014).

Research has also demonstrated that while it is comparatively rare for legal problems to be finalised via formal legal processes and legal advisers, when they are, doing so will generally take longer (see Coumarelos et al. 2012; Pleasence & Balmer 2014; Pleasence, Balmer & Denvir 2015). Thus, more disadvantaged people may well have lower levels of finalisation, at least in part, due to the nature of their legal needs and

capability, and the fact that the types of legal problems they experience are more likely to involve formal legal processes and legal advisers. As noted above, this may reflect either the actual nature of their legal problems (e.g. experience of more problems, and more severe and intractable problems), or their personal and legal capability, or as is likely, some combination of the two.

A related explanation stems from how lower personal and legal capability affects legal problem-solving (see further Pleasence et al. 2014). For instance, even if more disadvantaged people experienced the same type, number and severity of legal problems they may nevertheless not have the knowledge, skills, psychological readiness and resources to resolve legal problems as effectively as others. Reduced capability may be, at least in part, due to poorer knowledge about legal rights and remedies, awareness of public legal assistance services, and literacy and communication skills, as identified in other research (see Balmer et al. 2010; Coumarelos et al. 2012; Pleasence et al. 2014).

More disadvantaged people tend towards delayed, crisis-driven help-seeking, at which point legal problems may have not only escalated in severity and consequences, but also become increasingly complex, intractable and difficult to resolve (see Pleasence et al. 2014). For instance, resolution options may have narrowed, and certain processes and actions may have commenced which cannot be independently concluded.

Another possible explanation is that more disadvantaged people experience a higher proportion of more intractable legal problems that they are more likely characterise as ‘ongoing’.<sup>xiv</sup> Other LAW Survey analysis has shown, for example, that highly disadvantaged people are significantly more likely than others to have ongoing fines problems (Wei, McDonald & Coumarelos 2018). Just like fines problems, some other types of matters, such as credit and debt issues, will almost certainly take longer to finalise when a person lacks the financial resources to immediately do so. Especially in situations where the law and legal processes are being used against someone (e.g. bankruptcy, breach of a court order, child welfare and protection, criminal prosecution, mortgage default etc.), there may be more limited scope to independently finalise legal matters.

The LAW Survey did not measure whether the respondent was a potential plaintiff or applicant,

or a potential defendant or respondent. Other research, however, has shown that disadvantaged people have heightened vulnerability to a wide range of interactions with government authorities, including education, housing and welfare authorities, as well as criminal justice institutions including the police and courts (see Australian Institute of Health and Welfare 2017; Family Law Council of Australia 2012; Productivity Commission 2016). This includes, for example, legal matters concerning less secure forms of tenancy and homelessness, social security entitlements, and various forms of behavioural, community and intervention orders (e.g. orders resulting from criminal offending, family violence, mental illness etc.).

Similarly, where people experience legal problems arising out of ongoing relationships or circumstances, such as neighbour disputes, discrimination, crime victimisation, and various problems related to children (e.g. child protection, child contact and child support payments), those problems may be more likely to be unresolved and ongoing, particularly where the person lacks the personal resources and capability to effectively manage those relationships and circumstances. Just as some people and groups are more likely to experience the defining circumstances of some types of legal problems, more disadvantaged people and groups may be more likely to experience defining circumstances of ongoing or recurrent legal problems, such as those associated with the ongoing control and sanctioning of behaviour. Pleasence (2006, p. 30) suggested that ‘people’s physical make-up, experience, resources and disposition’ all effect vulnerability to legal problems. Similar factors appear to also affect vulnerability to unresolved legal problems, and personal and legal capability to finalise legal problems.

It is also worth bearing in mind that one of the ways in which disadvantage manifests is in inequality of access to, participation in, and the responsiveness of social institutions to everyday life events. Inequality of access to justice may not only reproduce and extend disadvantage, but erode the rule of law. Empirical research also suggests a bi-directional relationship between legal problems and social exclusion (see Coumarelos et al. 2012; Pleasence 2006; Pleasence et al. 2014). Disadvantaged groups have been shown to be more vulnerable to particular types of legal problems that heighten social

exclusion and heighten vulnerability to legal and non-legal problems (see Coumarelos et al. 2012; Pleasence 2006). As such, it is possible that adverse health, financial and social consequences will not only extend and entrench disadvantage, but also further constrain legal capability (Coumarelos et al. 2012; Pleasence et al. 2014).

Of course, other important factors affecting the nature and experience of legal problems may not have been captured by the LAW Survey measures. While the regression model controlled for some aspects affecting the nature of the legal problem experienced, other important features may also have affected resolution. For example, the nature of the relationship between the parties, their relative power in the circumstances, and the role of each party in initiating or responding to a legal dispute or action is not captured in the analysis.

The findings nevertheless signal the higher comparative need of the minority of highly disadvantaged Australians for accessible legal assistance to help resolve the legal problems they experience. They further add weight to the potential benefit of more person-centred approaches to justice policy and of public legal assistance services suggested by Pleasence et al. (2014) – that is, targeted to those most in need; joined-up with other services likely to be used or needed; timely to minimise the detrimental impact and consequences of legal problems, and to maximise the utility of legal assistance services; and appropriate to the legal need and capability of anticipated users.

**The findings nevertheless signal the higher comparative need of the minority of highly disadvantaged Australians for accessible legal assistance to help resolve the legal problems they experience.**

Boxes 1 and 2 provide case study examples which are composites of LAW Survey respondents – Adam and Bella<sup>xv</sup> – that illustrate the experiences of disadvantaged Australians, what they do and don’t do to try to cope with their legal problems, and how they struggle to achieve resolution. These examples throw further light on the above findings and discussion of their possible explanations.

### Box 1: Adam, multiple indicators of disadvantage, residing in a regional area



Adam lived in a small, isolated town. He had completed schooling to Year 10 and reported a number of mental and physical disabilities that profoundly restricted his daily activities. Adam was on the

disability support pension and indicated that he was widowed and not living with a partner.

Adam reported more than a dozen legal problems that had either started or continued in the year before he was interviewed for the LAW Survey. He reported most of these problems as having had a moderate or severe impact on his everyday life, several of which appeared to be inter-related or recurrent.

This included problems from a number of different legal problem subgroups, including two or more problems with child protection, child contact, credit/debt, crime victimisation, as well as numerous problems concerning his neighbours and the local council. Although Adam indicated he was living in his own home, he also reported experiencing a severe problem with mortgage repayment.

Neither of Adam's two children, aged under 18 years, were currently residing with him. He indicated that this was his most serious problem - a child protection matter, which had actually started more than 14 months earlier. The problem also appeared to be related to his multiple problems concerning child contact. Adam said that the matters concerned the [Child Welfare Agency] taking the children away without doing proper paperwork, and that he did not receive any papers before attending court, and that the children were upset because they could not live at home with their father.

There had been court proceedings and Adam said that the matter had caused him both ill-health and financial strain.

Adam reported receiving advice from a number of different advisers, including doctors, health or welfare workers and a Legal Aid lawyer, all of whom he said had been very helpful. He indicated that the most helpful adviser had been the lawyer. Adam was aware of Legal Aid from prior knowledge or previous

experience. The Legal Aid lawyer helped with legal documents and paperwork, the court proceedings, and had also negotiated or communicated on his behalf with the [Child Welfare Agency]. The lawyer had also spoken with or written to another professional or agency. The lawyer advised Adam on his rights or legal procedures, and had given him pre-packed legal information. He said that this matter was ongoing and that further court proceedings were likely.

Adam's next two most serious problems appeared to be inter-related, one a long-running dispute with neighbours, the other, a problem with the local council. Both problems had started more than a year ago, but Adam reported them both as still ongoing. He said that his neighbour had been constantly intimidating and threatening him after he had made a complaint to the local council about the noise and the people who attended their parties. He said that the local council had not acted on the complaint, and had not conducted any proper investigations.

Adam reported trying to obtain help for these problems from a number of sources, including seeking help from the police, a doctor, a psychologist/counsellor, and health or welfare worker on multiple occasions. For the problem with the local council he also sought assistance from community organisations and tried to get help from a complaint-handling body, but he indicated that they had not been very helpful. Adam identified that a health or welfare professional had been the most useful adviser, and had provided counselling or support. He indicated that this adviser had been very helpful and had provided a referral to a lawyer. However Adam did not appear to have acted on that referral.

Adam did not report receiving information or advice from any family or friends for these three most serious legal problems, nor had he tried to obtain any printed or online information or self-help materials.

On the occasions when Adam communicated with the Legal Aid lawyer, it had only been in-person, and he had travelled more than 80 kilometres.

Adam characterised each of his three most serious problems as ongoing.

## Box 2: Bella, multiple indicators of disadvantage, residing in a metropolitan area



Bella identified as an Aboriginal or Torres Strait Island woman and was living in an outer suburb of a major metropolitan area when she was interviewed for the LAW

Survey. She had two sons under 18 years whom she lived with in rented public housing. Bella had completed school to Year 9, and while she was currently employed, had experienced periods of unemployment in the previous year, and had been in receipt of Newstart Allowance. Bella reported having a mental health issue that sometimes had a mild impact on her daily activities, and had affected her ability to work. She was divorced from her husband and not living with a partner.

In the 12 months prior to being surveyed, Bella reported multiple legal problems, including multiple credit/debt problems and multiple rights problems, including both a discrimination problem she said was related to her parental or carer responsibilities, as well as a problem with one of her son's having been being bullied or harassed at school. Bella also reported a problem with child support payments, an employment problem concerning being sacked or made redundant, as well as a problem with her rented public housing. Bella rated each of these problems as having had a severe impact on everyday life.

Bella identified her three most serious problems as the problem with child support payments, the problem with being sacked or made redundant, and the problem with her son being bullied or harassed at school.

Bella's child support payments problem had stopped nearly five years ago, and had caused her a number of adverse consequences, including stress-related illness, loss of income or financial strain and having to move home. She reported seeking information and advice from Centrelink and the Child Support Agency, which she identified as her most useful adviser. Bella indicated that she had been referred to the Child Support Agency by Centrelink and that

the problem had actually been finalised through the help of the Child Support Agency. She said that she started receiving child support payments three months ago, and that the payment would be \$50 a month.

For the problem involving being sacked or made redundant, Bella said that she had missed some shifts at work because of issues with her sons and that her boss had just sacked her. She reported getting advice from two health or welfare advisers, and also indicated that she had gone to a financial adviser. The most useful adviser had been a psychologist/counsellor, who provided her with counselling/support services. This adviser did not provide her with referrals to any other professionals. Bella reported that the matter had been finalised through her deciding not to take it any further.

Bella's next most serious problems was the problem with her son being bullied or harassed at school. She said that her son had been bullied and that some students and teachers had been spreading false rumours about him and something he was supposed to have done around the school. She said that when she spoke to the Principal she was not even aware of what had been going on, and that she would investigate the matter.

This matter caused Bella both stress-related illness and financial strain. She had obtained advice from two health or welfare advisers, and had spoken to an adviser at the school (who may have been the Principal). Bella indicated that the matter had been finalised by another agency, but that it was mostly not in her favour, and she was very dissatisfied with the outcome.

Bella didn't obtain legal information or legal advice for any of her three most serious problems, notwithstanding that she indicated that her child support payment problem had involved court or tribunal proceedings, and that she had attended formal dispute resolution proceedings for the problem concerning her son being bullied.

When asked, Bella was unable to name any services providing free legal information, advice or assistance, although she later indicated that she was aware of legal aid and community legal centres.



The examples of Adam and Bella suggest that the nature of legal problems, and their associated resolution and finalisation processes, together with the respondents’ level of disadvantage and

**... the experience and impact of disadvantage can be dual-edged, increasing vulnerability to legal problems while also constraining personal capability to effectively deal with those problems.**

legal capability, contribute to the comparatively low levels of finalisation observed among a minority of highly disadvantaged Australians. These examples further illustrate how legal problems following action by welfare agencies and often multiple other

government agencies and authorities can be ongoing issues for disadvantaged people to try to manage.

The examples further illustrate that the experience and impact of disadvantage can be dual-edged, increasing vulnerability to legal problems while also constraining personal capability to effectively deal with those problems. As such, it is essential that the minority of highly disadvantaged Australians can access legal assistance for the types of legal problems that they experience, and that their legal needs and capability are taken into consideration in determining the kind of assistance required to achieve effective resolution

– legal information, legal advice, minor assistance and representation. In particular, legal aid commissions should consider targeting more intensive forms of assistance, such as minor assistance and casework services, to highly disadvantaged Australians, particularly in civil areas of law where scope for grants of legal aid tends to be restricted.

Further research is also required to better understand how legal capability interacts with and affects the nature of legal problems, problem-solving behaviour, and effective and efficient legal services. Nuanced understanding is vital to inform justice policy and support the design and provision of legal assistance services that appropriately meet to the needs and capability of disadvantaged Australians. Why are more disadvantaged people more likely to ‘lump’ their problems? Do they give up on their legal rights because of barriers to accessing the legal assistance or dispute resolution processes they require? If so, what do they need, and ‘what works’ to effectively meet their heightened needs? Improved understanding is vital to shed light on how the nature of legal problems and legal capability affect legal problem-solving behaviour, especially among more disadvantaged people and groups.

**Why are more disadvantaged people more likely to ‘lump’ their problems? Do they give up on their legal rights because of barriers to accessing the legal assistance or dispute resolution processes they require?**

The findings unequivocally indicate that disadvantaged Australians should remain a priority focus of public legal assistance services. Not only in terms of their heightened vulnerability to legal problems, but also their heightened vulnerability to experiencing unresolved legal problems.

**The role of disadvantage in legal problem resolution**

An infographic to accompany this paper is available to view or download:

LJF\_Resolution\_disadvantage\_infographic



@NSWLawFound



www.facebook.com/NSWLawFound/



## References

- Australian Institute of Health and Welfare 2017, *Australia's welfare 2017*, AIHW, Canberra.
- Balmer, NJ, Buck, A, Patel, A, Denvir, C & Pleasence, P 2010, *Knowledge, capability and the experience of rights problems*, Plenet, London.
- Browne, W 2016, *MCMC estimation in MLwiN version 2.36*, Centre for Multilevel Modelling, University of Bristol, Bristol.
- Collard, S, Deeming, C, Wintersteiger, L, Jones, M & Seargent, J 2011, *Public legal education: evaluation framework*, University of Bristol Personal Finance Research Centre, Bristol.
- Coumarelos, C, Macourt, D, People, J, McDonald, HM, Wei, Z, Iriana, R & Ramsey, S 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney.
- Family Law Council of Australia 2012, *Improving the family law system for Aboriginal and Torres Strait Islander clients: a report to the Attorney-General*, Canberra.
- 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.
- Goldstein, H 2003, *Multilevel statistical models*, 3rd edn, Arnold, London.
- Gramatikov, M & Porter, RB 2010, *Yes, I can: subjective legal empowerment*, TISCO working paper series on civil law and conflict resolution systems no. 008/2010 & Tilburg Law School research paper no. 023/2010, Tilburg University, Tilburg, The Netherlands.
- Jones, M 2010, *Legal capability*, Plenet, London.
- McDonald, HM & People, J 2014, *Legal capability and inaction for legal problems: knowledge, stress and cost*, Updating justice, no. 41, Law and Justice Foundation of NSW, Sydney.
- McDonald, HM, Forell, S & People, J 2014, *Limits of legal information strategies: when knowing what to do is not enough*, Updating justice, no. 44, Law and Justice Foundation of NSW, Sydney.
- McDonald, HM & Wei, Z 2013, *Concentrating disadvantage: a working paper on heightened vulnerability to multiple legal problems*, Updating justice, no. 24, Law and Justice Foundation of NSW, Sydney.
- McDonald, HM & Wei, Z 2016, *How people solve legal problems: level of disadvantage and legal capability*, Justice issues paper 23, Law and Justice Foundation of NSW, Sydney.
- Parle, LJ 2009, *Measuring young people's legal capability*, Plenet, London.
- Pleasence, P 2006, *Causes of action: civil law and social justice*, 2nd edn, The Stationery Office, London.
- Pleasence, P & Balmer, N 2014, *How people resolve 'legal' problems*, PPSR, Cambridge, United Kingdom.
- Pleasence, P & Balmer, N 2017, *Legal confidence and attitudes to law: developing standardised measures of legal capability*, PPSR, Cambridge, United Kingdom.
- Pleasence, P, Balmer, NJ & Denvir, C 2015, *How people understand and interact with the law*, PPSR, Cambridge, United Kingdom.
- Pleasence, P, Coumarelos, C, Forell, S & McDonald, HM 2014, *Reshaping legal assistance services: building on the evidence base: a discussion paper*, Law and Justice Foundation of NSW, Sydney.
- Pleasence, P, Balmer, NJ & Reimers, S 2011, 'What really drives advice seeking behaviour? Looking beyond the subject of legal disputes', *Oñati Socio-Legal Series*, vol. 1, no. 6.
- Productivity Commission 2016, *Overcoming Indigenous disadvantage: key indicators 2016*, Productivity Commission, Canberra.
- Rasbash, J, Steele, F, Browne, W & Goldstein, H 2016, *A user's guide to MLwiN version 2.36*, Centre for Multilevel Modelling, University of Bristol, Bristol.
- Sandefur, RL 2007, 'The importance of doing nothing: everyday problems and responses of inaction', in Pleasence, P, Buck, A & Balmer, NJ (eds), *Transforming lives: law and social process. Papers from the Legal Services Research Centre's International Research Conference, Transforming Lives, Queen's University, Belfast, 19th to 21st April, 2006*, The Stationery Office, London, pp. 112–132.
- Wei, Z, McDonald, HM & Coumarelos, C 2015, *Indigenous people, multiple disadvantage and response to legal problems*, Updating justice, no. 48, Law and Justice Foundation of NSW, Sydney.
- Wei, Z, McDonald, HM & Coumarelos, C 2018, *Fines: Are disadvantaged people at a disadvantage?*, Justice issues paper 27, Law and Justice Foundation of NSW, Sydney.

## Appendix

**Appendix Table 1: Parameter estimates for multilevel logistic regression on legal problem finalisation status (finalised cf. ongoing problems)**

Finalisation status						
Demographic variable	Categories compared	$\beta$	SE	p	Odds ratio (95% CI)	
<b>FIXED EFFECTS</b>						
<b>Problem recency (cf. <math>\leq</math> 6 months)</b>	7+ months	<b>0.251</b>	<b>0.039</b>	<b>0.000</b>	<b>1.29</b>	<b>(1.19–1.39)</b>
<b>Problem severity (cf. minor)</b>	Substantial	<b>-0.822</b>	<b>0.039</b>	<b>0.000</b>	<b>0.44</b>	<b>(0.41–0.47)</b>
<b>Problem group (cf. mean)</b>	Accidents	<b>1.335</b>	<b>0.100</b>	<b>0.000</b>	<b>3.80</b>	<b>(3.12–4.62)</b>
	Consumer	<b>0.174</b>	<b>0.045</b>	<b>0.000</b>	<b>1.19</b>	<b>(1.09–1.30)</b>
	Credit debt	<b>-0.649</b>	<b>0.076</b>	<b>0.000</b>	<b>0.52</b>	<b>(0.45–0.61)</b>
	Crime	<b>0.526</b>	<b>0.050</b>	<b>0.000</b>	<b>1.69</b>	<b>(1.53–1.87)</b>
	Employment	0.092	0.066	0.163	1.10	(0.96–1.25)
	Family	<b>-0.948</b>	<b>0.071</b>	<b>0.000</b>	<b>0.39</b>	<b>(0.34–0.45)</b>
	Government	<b>-0.512</b>	<b>0.060</b>	<b>0.000</b>	<b>0.60</b>	<b>(0.53–0.67)</b>
	Health	0.064	0.101	0.526	1.07	(0.87–1.30)
	Housing	<b>-0.274</b>	<b>0.055</b>	<b>0.000</b>	<b>0.76</b>	<b>(0.68–0.85)</b>
	Money	<b>-0.503</b>	<b>0.070</b>	<b>0.000</b>	<b>0.60</b>	<b>(0.53–0.69)</b>
	Personal injury	<b>0.366</b>	<b>0.079</b>	<b>0.000</b>	<b>1.44</b>	<b>(1.24–1.68)</b>
Rights	<b>0.326</b>	<b>0.073</b>	<b>0.000</b>	<b>1.39</b>	<b>(1.20–1.60)</b>	
<b>Gender (cf. male)</b>	Female	-0.002	0.040	0.960	1.00	(0.92–1.08)
<b>Age (cf. 65+)</b>	15–17	<b>0.947</b>	<b>0.135</b>	<b>0.000</b>	<b>2.58</b>	<b>(1.98–3.36)</b>
	18–24	<b>0.732</b>	<b>0.092</b>	<b>0.000</b>	<b>2.08</b>	<b>(1.74–2.49)</b>
	25–34	<b>0.395</b>	<b>0.081</b>	<b>0.000</b>	<b>1.48</b>	<b>(1.27–1.74)</b>
	35–44	<b>0.205</b>	<b>0.080</b>	<b>0.010</b>	<b>1.23</b>	<b>(1.05–1.44)</b>
	45–54	0.039	0.083	0.638	1.04	(0.88–1.22)
	55–64	0.064	0.089	0.472	1.07	(0.90–1.27)
<b>Strategy (cf. took no action)</b>	Sought advice	<b>-1.030</b>	<b>0.055</b>	<b>0.000</b>	<b>0.36</b>	<b>(0.32–0.40)</b>
	Handled without advice	<b>-0.567</b>	<b>0.057</b>	<b>0.000</b>	<b>0.57</b>	<b>(0.51–0.63)</b>
<b>Level of disadvantage (cf. none)</b>	1 type	-0.075	0.052	0.149	0.93	(0.84–1.03)
	2 types	<b>-0.143</b>	<b>0.060</b>	<b>0.017</b>	<b>0.87</b>	<b>(0.77–0.97)</b>
	3 types	<b>-0.247</b>	<b>0.075</b>	<b>0.001</b>	<b>0.78</b>	<b>(0.67–0.90)</b>
	4 types	<b>-0.306</b>	<b>0.103</b>	<b>0.003</b>	<b>0.74</b>	<b>(0.60–0.90)</b>
	5+ types	<b>-0.752</b>	<b>0.136</b>	<b>0.000</b>	<b>0.47</b>	<b>(0.36–0.62)</b>
<b>Constant</b>		<b>1.546</b>	<b>0.097</b>	<b>0.000</b>	<b>4.69</b>	<b>(3.88–5.68)</b>
<b>RANDOM EFFECTS</b>						
<b>State</b>		0.005	0.004	0.211	1.01	(1.00–1.01)
<b>Person</b>		<b>0.800</b>	<b>0.077</b>	<b>0.000</b>	<b>2.23</b>	<b>(1.91–2.59)</b>

**Note:** N=19,128 legal problems. Data were missing for 260 problems. Significant odds ratios (ORs) are presented in bold. A bold odds ratio (OR) >1.0 indicates that the category in question had significantly higher odds than the reference category. OR <1.0 indicates that the category in question had significantly lower odds. The size of the OR indicates the strength of the relationship. E.g. OR=2.0 means that the odds for the category in question were twice those for the reference category. OR=0.5 means that the odds for the category in question were half those for the reference category, or, in other words, that the odds for the reference category were twice those (i.e. 1/0.5=2.0) for the category in question.

## Endnotes

- i The term 'legal problem' is used throughout this paper for easy reference to a problem that is 'justiciable' in that it raises legal issues with the potential for legal resolution, regardless of whether the respondent recognised this or took any action involving the justice system (cf. Genn 1999).
- ii The concept of legal capability continues to evolve with more sophisticated understanding of legal problem-solving behaviour, and policy responses based on more appropriately matching legal assistance services to client or user needs. Legal capability is generally understood as being multifaceted or multidimensional, with varied personal competencies seen as facilitating or constraining capability (see Collard, Deeming, Wintersteiger, Jones & Sargeant 2011; Coumarelos, Marcourt, People, McDonald, Wei, Irana, Ramsey 2012; Parle 2009; Pleasence et al. 2014; Pleasence & Balmer 2017). Consideration, however, of what capabilities a person may require to have effective opportunity to determine whether or not to try to use the justice system to resolve a potentially justiciable problem remains underspecified (see Pleasence & Balmer 2017; Pleasence et al. 2014). Consequently, theoretical and empirical development has been constrained by the lack of robust standardised measures of legal capability. Pleasence and Balmer (2017), however, have recently developed some coherent and working measures of legal confidence, one dimension of legal capability.
- iii See, for example, Balmer, Buck, Patel, Denvir & Pleasence 2010; Coumarelos et al. 2012; Jones 2010; McDonald & People 2013; McDonald, Forell & People 2014; Pleasence et al. 2014; Pleasence, Balmer & Reimers 2011).
- iv See Coumarelos et al. (2012) regarding the process used to determine the 'most serious' problems that were followed up in depth for each respondent by the LAW Survey.
- v Finalisation status was measured by the following question: 'I'll ask later whether you're satisfied with any outcome of the problem. Could you please first tell me: Is the problem or dispute now over, or is it still ongoing?' (see Coumarelos et al. 2012, p. 290).
- vi Respondents' level of disadvantage was measured using a count of the following nine indicators or types of disadvantage measure in the LAW Survey: disability, disadvantaged housing, Indigenous background, low education, low income, a non-English main language, living in a remote or outer regional area, single parenthood and unemployment. With the exception of low income, all of these indicators of disadvantage were identical to those used by Coumarelos et al. (2012; pp. 316–317). Low income was based on before-tax personal income and/or before-tax combined income with a partner. Respondents were asked to report either their personal income or their combined income with a partner or both. 'Low income' was defined as personal income less than \$20,800 p.a. or combined income less than \$41,600 p.a. Respondents who provided both personal and combined income had to have both a personal income less than \$20,800 p.a. and a combined income less than \$41,600 p.a. to be categorised as having 'low income'. Note that these measures of low income use 2008 figures. For young people aged 15–22 years who were dependent on parents or guardians, their income status was similarly defined according to the personal income of their single parent/guardian or the combined income for their partnered parents/guardians. Respondents who did not provide any information on income (N=3009) were excluded from the 'low income' group (see McDonald & Wei 2013; Wei, McDonald & Coumarelos 2015).
- vii The six action types were (1) sought advice from a professional, (2) communicated with the other side, (3) consulted relatives or friends, (4) used a self-help resource, (5) court or tribunal proceedings occurred or were likely and (6) formal dispute resolution occurred or was likely. Multiple actions were sometimes taken. Legal problem-solving strategy was determined based on the highest level of action used, namely: 'Sought advice' if a professional adviser was used, regardless of other actions; 'Handled without advice' if a professional adviser was not used, but any of the other actions were taken; and 'Took no action' if none of the six actions were used. For further information see Coumarelos et al. (2012), pp. 92–96.
- viii As noted, the LAW Survey canvassed 129 specific types of legal problems. These problems were categorised into 12 problem groups (see Appendix Table A2.1, Coumarelos et al. 2012, pp. 297–301). For each specific type of legal problem reported, the respondent was asked to rate the severity of the problem in terms of the impact that it had on impact on their everyday life, choosing from 'none', 'slight', 'moderate' and 'severe' impact. Problems rated as having no impact or only a slight impact on everyday life are described as 'minor problems', while problems rated as having a moderate or severe impact on everyday life are described as 'substantial problems'. The LAW Survey measured the recency of each problem by asking respondents the month and year that the problem started.
- ix Bivariate inferential statistics examine the relationship between two variables whereas multivariate inferential statistics examine the relationship between multiple variables simultaneously.
- x Regression modelling was implemented using MLwiN (Rasbash, Steele, Browne & Goldstein 2016; Browne 2016). The model had a three-level hierarchical structure, with legal problem nested within respondent, and respondent nested within state. Given the hierarchical structure of the data, multilevel models are appropriate (Goldstein 2003).
- xi Manner of finalisation was measured with the following question: 'How was the problem or dispute finalised? Stop me when I get to the answer that best describes how it was finalised. Was it through: (1) A court or tribunal, (2) Formal mediation, conciliation or dispute resolution, (3) An ombudsman or complaint-handling body, (4)

---

Another agency (e.g. government body, insurance company, police, etc.), (5) A lawyer's help, (6) Someone else's help, (7) Direct agreement between you and the other side, (8) The other side not pursuing the matter or doing what you wanted, (9) You doing what the other side wanted, (10) You deciding not to take the matter further, (11) You resolving the matter without anyone's help (specify), (12) Some other method (specify) (see Coumarelos et al. 2012, p. 290).

- xii Due to relatively small numbers in some of the cells for those respondents with five or more indicators of disadvantage, for the purpose of this analysis this group was combined with those having four indicators of disadvantage.
- xiii There may also be other important features of legal problems that affect finalisation which are not measured sufficiently measured by the LAW Survey. While the regression model fitted controls for some important legal problem characteristics (recency, severity and type), and adjusts for the clustering of problems within people, there are other relevant features of legal problems that may affect legal problem finalisation. Other possible

explanations are set out in the discussion and conclusion.

- xiv Note that the LAW Survey measures may not fully capture differences in the severity or complexity of legal problems, and that the analysis presented here is based on 12 broad legal problem groups rather than more specific types of problems. For example, problem severity was only measured in terms of respondents' perceived rating of 'impact on everyday life'. Consequently, the regression analysis may not fully capture differences in the objective or subjective complexity and intractability of legal problems.
- xv These names are fictitious, and their case examples are composites drawn from the experiences of multiple people with similar experiences of disadvantage and legal problems. To preserve LAW Survey participant anonymity, some demographic and other information has also been changed. As such, while these examples do not report the particular experiences of any individual, they are nevertheless illustrative of the experiences and actions of highly disadvantaged LAW Survey respondents.