

Submission to The Royal Commission into Victoria's Mental Health System

About the Victoria Law Foundation

The Victoria Law Foundation supports better justice through research, education and grants. Following the Victorian Government's Access to Justice Review, the Foundation recently established a research function to focus on the legal and related needs of Victorians.

Key findings

For those with mental health problems, the findings provide support for integrated legal, health and broader human services. For courts, findings point to in-court programs (e.g. navigator schemes) to help people through a stressful process that too many typically feel is inaccessible.

Mental health and vulnerability to legal issues

A significant number of large-scale legal need surveys around the world¹ have demonstrated that everyday problems that raise legal issues (justiciable problems) are rarely experienced in isolation – they are fundamentally linked to other aspects of people's lives. Certain groups are consistently associated with an elevated experience of justiciable problems, and particularly prominent are those with mental health problems.²

Those experiencing more severe mental health problems are more likely to have heightened vulnerability to a wide range of legal and related issues. Experience of justiciable problems tends to extend and entrench experience of social and economic disadvantage, further exacerbating vulnerability to justiciable problems and reinforcing disadvantage.³

Our survey

Our new report "*Law...What is it Good For? How People see the Law, Lawyers and Courts in Australia*"⁴ (the report) builds on Australian and international legal need survey research. Across Australia, 1,846 adults were asked how they -

- recognise law as relevant to everyday justiciable problems
- assess the importance of legal advice in the context of such problems and
- view the accessibility of lawyers and courts.

This was done by –

- presenting scenarios, all of which raise legal issues, and asking respondents to identify when it would be important to get advice from a lawyer, and when they thought the law was relevant to the situation; and
- asking respondents to what extent they agreed or disagreed with a range of words and short phrases focussed on accessibility of courts and lawyers (e.g. complexity, approachability, ease of use, communication).⁵

¹ OECD/Open Society Foundations (2019)

² Balmer et al., (2010); Coumarelos, Pleasence & Wei (2013).

³ Coumarelos, Pleasence & Wei (2013); Pleasence, Coumarelos, Forell & McDonald (2014).

⁴ Balmer et al., (2019).

⁵ These were used to construct Perceived Inaccessibility of Courts (PIC) and Perceived Inaccessibility of Lawyers (PIL) scales (Balmer et al., 2019).

How many respondents identified as having serious mental illness?

Using the K6 screening scale for serious mental illness,⁶ 228 respondents (12.4%) reported a serious mental illness.⁷ The K6 screening scale is a widely-used short scale that screens for the presence of serious mental illness.

Overall findings

Not all justiciable problems were thought of as 'legal'. There was significant variation in the perceived relevance of the law and importance of lawyers across different problem types, with some problems almost universally seen as 'legal' and others not.

Courts were typically viewed as inaccessible, particularly with regards to matters of complexity, cost, speed of process and communication.⁸ Conversely, lawyers were largely viewed as accessible, particularly with respect to their approachability and their ability to enforce rights. A significant percentage, however, still viewed lawyers as inaccessible, particularly where questions referred to their cost, complexity or speed.

People with a serious mental illness

Respondents reporting serious mental illness were far more likely than others to see the law as relevant to problems and more likely to feel that a lawyer was important.⁹ However, those reporting a serious mental illness viewed both courts and lawyers as significantly less accessible than other respondents.¹⁰

Compared to other groups, those reporting serious mental illness also tended to view the law as being more relevant than others irrespective of the seriousness of the legal matter type. For example, people in this group were more likely to see law as relevant for serious matters such as family violence,¹¹ as well as comparatively less serious problems, like those concerning modest sums of money and services from tradespeople.¹² Notably, they also saw lawyers as more important for some less serious issues, for example, receiving a police warning for crossing a road without using a pedestrian crossing, or Centrelink demanding \$100 in overpaid benefits (a full list of the legal scenarios provided to respondents is in the report).¹³

These differences point to

- deficits in legal knowledge and capability
- differences in experience of law and the justice system

⁶ Kessler et al., (2010)

⁷ Respondents scoring 13 to 24 on the K6 were classified as having a serious mental illness and those scoring 0 to 12 were not (Kessler et al., 2003).

⁸ They were viewed more positively where questions concerned physical access, problem resolution and respect, though for the majority of items they were generally thought inaccessible.

⁹ Across the problem scenarios presented to respondents, those with serious mental illness, on average, saw the law as relevant and a lawyer as important for three more problems than other respondents.

¹⁰ An increase of 7.5 points on the Perceived Inaccessibility of Courts and 7.7 points on the Perceived Inaccessibility of Lawyers Scale compared to other respondents (changes equating to 0.6 standard deviations in both cases) for those reporting serious mental illness compared to other respondents. This clearly demonstrates that people reporting serious mental illness perceive courts and lawyers as being significantly *less* accessible than others.

¹¹ For example, compared to other respondents, 19% more of those with a serious mental illness viewed the law as quite or very relevant for a scenario involving a spouse or partner lightly slapping you (or 15.3% more for a forceful slap).

¹² For example, compared to other respondents, 18% more of those with a serious mental illness viewed the law as quite or very relevant for a scenario involving a carpenter breaking a windowpane at their home. Moreover 20% more viewed the law as quite or very relevant for an insurer refusing a \$100 claim and 18% more for a dispute with a relative over a small sum of money.

¹³ Compared to other respondents, 21% more of those with a serious mental illness viewed a lawyer as quite or very important when fined by the police for not crossing the road at a pedestrian crossing (and 19% more for a warning rather than a fine). Meanwhile, 22% more viewed a lawyer as quite or very important for unmanageable credit card debt, 22% more where Centrelink demanded \$100 returned in overpaid benefits and 34% more for the scenario involving a carpenter breaking a windowpane at their home.

- problems taking on a different character and
- the role that lawyers are seen to play in addressing power imbalances and providing voice or agency.

Conclusions

Findings from Australian and international legal need surveys together with the report, highlight the need for legal assistance services and the wider justice system to effectively respond to diverse legal need and capability across the community.

For people with a serious mental illness, the findings indicate that more needs to be done to successfully overcome the perception that courts and lawyers are inaccessible.

This points to the need to change the way in which the justice system operates.

- For courts, the findings point to in-court programs (e.g. navigator schemes) to help guide people (particularly those with mental health problems) through what is often complex and stressful processes that they typically feel is inaccessible.
- For legal assistance services, the findings point to partnering and integration with the types of health and broader human assistance services that people with a serious mental illness are likely to use and trust, to better overcome access barriers.

The report confirms the importance of continuing to examine and evaluate the operation of the justice system from a ‘bottom-up’, user-centred perspective, rather than a ‘top-down’ approach, focused on formal processes and institutions (Pleasence & Balmer, 2019a).¹⁴

This is particularly the case in addressing the needs of people with serious mental illness, who tend to see law and lawyers as more important in responding to problems.

References

- Balmer, N.J., Pleasence, P., & Buck, A. (2010) Psychiatric morbidity and people’s experience of and response to social problems involving rights. *Health and Social Care in the Community*, 18(6), 588-597.
- Balmer, N.J., Pleasence, P., Hagland, T., & McRae, C. (2019) *Law...What is it Good For? How People see the Law, Lawyers and Courts in Australia*. Melbourne: Victoria Law Foundation.
- Coumarelos, C., Pleasence, P. & Wei, Z. (2013) Law and disorders: illness/disability and the experience of everyday problems involving the law. *Updating Justice*, 22, 1-3.
- Kessler, R. C., Barker, P. R., Colpe, L. J., Epstein, J. F., Gfroerer, J. C., Hiripi, E., Howes, M. J., Normand, S. L., Manderscheid, R. W., Walters, E. E., & Zaslavsky, A. M. (2003) Screening for serious mental illness in the general population. *Archives of General Psychiatry*, 60(2), 184–189.
- Kessler, R. C., Green, J. G., Gruber, M. J., Sampson, N. A., Bromet, E., Cuitan, M., Furukawa, T. A., Gureje, O., Hinkov, H., Hu, C., Lara, C., Lee, S., Mneimneh, Z., Myer, L., Oakley-Browne, M., Posada-Villa, J., Sagar, R., Viana, M. C., & Zaslavsky, A. M. (2010) Screening for Serious Mental Illness in the General Population with the K6 screening scale: Results from the WHO World Mental Health (WMH) Survey Initiative. *International Journal of Methods in Psychiatric Research*, 19(S1), 4-22.
- OECD/Open Society Foundations. (2019). *Legal Needs Surveys and Access to Justice*. Paris: OECD Publishing.
- Pleasence, P. & Balmer, N. J. (2019). Justice and the capability to function in society. *Dædalus, Journal of the American Academy of Arts and Sciences*. 148(1), 140-149.
- Pleasence, P., Coumarelos, C., Forell, S. & McDonald, H.M. (2014) *Reshaping legal assistance services: building on the evidence base*, Law and Justice Foundation of NSW, Sydney.

¹⁴ Pleasence & Balmer (2019).