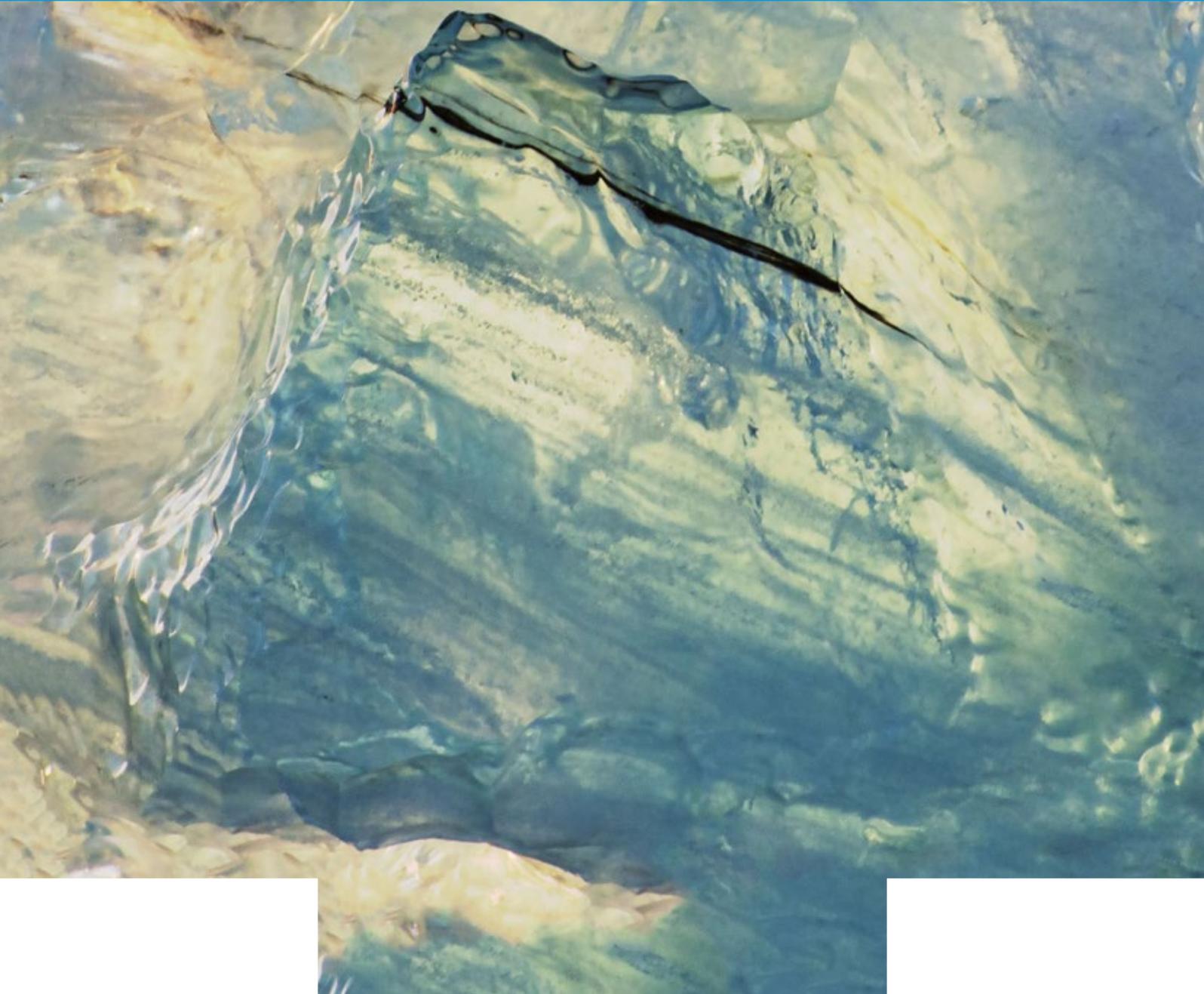# Law...What is it Good For?

How People see the Law, Lawyers and Courts in Australia

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Executive Summary

Victoria**Law** Foundation

Executive summary

We live in a 'law-thick' world,[1] where a complex legal framework arcs across almost all everyday activity.[2] Law defines our consumer rights. It regulates our employment conditions, pay and superannuation. It sets out the responsibilities of landlords, tenants, mortgagors and mortgagees. It specifies our eligibility for social security. It regulates our interactions with the environment. It reaches deep into family life, to protect the vulnerable and set principles for resolution of family disputes. Problems that raise legal issues – 'justiciable' problems – are a 'feature of life.'[3]

Against this backdrop, there is a global shift from 'top-down' access to justice policy focussed on formal processes, to a 'bottom-up' perspective with an onus on the needs and ability of individuals.[4] This means recognising "that the different needs of individual members of the community call for different responses," including "their capacity to engage with the justice system."[5]

Critical to this approach, and the delivery of effective legal education and assistance, is understanding how people see the law and the justice system. To help people navigate their 'law-thick' world, we need to understand what their starting point is. People won't seek legal assistance if they don't recognise that they have a legal problem.

This is particularly important in an environment where legal need is great, budgets are tight and there is an increasing reliance on citizens navigating parts of the justice system themselves, with little or no formal assistance.

This report draws on findings from our recently conducted *Community Perspectives of Law Survey*, an exploratory survey of 1,846 Australian adults[6] designed to investigate some of the foundational aspects of legal capability, specifically how people –

- recognise law as relevant to everyday justiciable problems

- assess the importance of legal advice in the context of such problems

- 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

- asking respondents the extent to which 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).

The survey also investigates aspects of digital as well as legal capability. These are not explored in this report, however the data will be analysed in future, adding another layer to our understanding of effective service provision. We also tested a general legal confidence scale which is not described here, but is foundational to future work.

1   Hadfield, 2010.
2   Pleasence & Balmer, 2019a.
3   Genn 1999, p.247.
4   Pleasence & Balmer, 2019a.
5   Victorian Government, 2016.
6   Conducted using the *Life in Australia*™ survey.

This research is the starting point for the Victoria Law Foundation work on legal capability, as part of a broader research program. While this project was primarily designed to inform the development of the larger *Victorian Public Understanding of Law Survey* (PULS), the findings are of immediate interest and value, shedding new light on legal capability.

What we found

Not all problems were seen as 'legal', and courts and lawyers were not always viewed as accessible.

- Even though all scenarios had a legal dimension, not all problems were identified that way by respondents. Some problems were almost universally viewed as legal or requiring a lawyer, and others were not.

- Courts were typically regarded as 'inaccessible' – complex, costly, slow and hard to understand. Lawyers were largely viewed as accessible, though less so where questions referred to cost, complexity or speed.

- As well as the type of problem, the severity of a problem had a bearing on whether law was seen as relevant and lawyers important. For example, a more severe workplace injury or a higher amount of money in dispute increased the likelihood that law and lawyers were perceived to be relevant for an otherwise identical scenario.

- Problems where the law was considered relevant were typically the same as those where a lawyer was considered important. However, in general the law was considered relevant more often than lawyers were considered important.

- For some typically less serious problems, lawyers were seen as far less important than the law. But in some more serious cases, lawyers were regarded as more important than law was relevant.

Demographics mattered

- The law was considered less relevant to problems for people who lived outside capital cities; among people with fewer educational qualifications; and for those who spoke a language other than English at home.

- Female respondents indicated the law was more relevant and lawyers more important for problems involving power imbalances and gender dynamics.

- Non-English speakers felt a lawyer was more important than others for problems dealing with a figure of authority. Respondents who spoke a language other than English at home, and those with limited digital capability both regarded lawyers as significantly less accessible.

- For people reporting a severe mental illness,[7] both courts and lawyers were seen as significantly less accessible than they were for other respondents. But these people were far more likely to see the law as relevant in addressing problems, particularly family violence, and lawyers as more important in addressing problems, even less serious ones.

Exposure to law related to your perceptions

- Personal experience of courts and lawyers was uncommon, but generally positive, while second-hand accounts (from friends, family or colleagues) were more common, but more negative. Both were strongly related to how people viewed the relevance of law, importance of lawyers, and the accessibility of both courts and lawyers.

- Across our problem scenarios, those with negative direct experience of lawyers saw the law as less relevant, but those who could recall positive second-hand accounts of lawyers saw the law as more relevant than others.

- If you have had a positive experience with a lawyer, you were more likely to see them as accessible, however the reverse was also true. Negative experience with lawyers related to a strong perception that they were less accessible. Similarly, those reporting experience of unfair court processes saw lawyers as significantly less accessible.

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7   Based on the K6 screening scale for serious mental illness, 228 respondents (12.4%) reported a serious mental illness.

- However, a negative view of courts did not diminish the importance of lawyers in our problem scenarios: those with first-hand experience of courts, and particularly those who felt the process was unfair, tended to feel lawyers were more important.

- Those who had personally attended/contacted court, and particularly those who felt the process was fair, perceived courts as more accessible. Similarly, those who had used lawyers and been satisfied with the help also saw courts as significantly more accessible.

- Those exposed to negative second-hand or anecdotal accounts of courts demonstrated a significantly lower perception of their accessibility, while exposure to positive anecdotal accounts were associated with particularly large increases in perceptions of accessibility.

- Positive second-hand accounts of lawyers related to an increase in the perceived accessibility of lawyers and negative accounts to a decrease.

Where next?

Findings on how problems are perceived offer valuable insights to improve public legal education, but most importantly, to help services respond to and harness people's capability. This might involve problem noticers (e.g. an intermediary in a non-legal setting), co-location, integrated services and outreach, all of which can negate the requirement of the individual to identify 'law' in problems in order to access justice.

Findings on accessibility of courts and lawyers show the potential for success with programs which increase transparency, enhance understanding, and address negative perceptions of fairness and accessibility.

For legal services, this might cover clear pricing, outreach, non-legal branding, well recognised entry points and integrating services. For courts, this could include education programs, transparent communication and in-court programs (e.g. navigator schemes), helping the public through a stressful process that they typically feel is inaccessible.

These findings reinforce the importance of 'bottom-up' access to justice policy: service design that starts and ends with the needs and capabilities of users.