The complexities of child protection-related legal needs: Findings from the LAW Survey

JUSTICE ISSUES NO. 34

The Justice Issues series provides an evidence-informed perspective on legal and access-to-justice issues.

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JANUARY 2025

Key messages

- Families who have involvement with the child protection system are likely to experience a complex range of co-occurring legal and non-legal issues.
- The child protection matters reported to the LAW Survey were most likely to co-occur with legal issues related to housing, rights, health, credit and debt, and family violence.
- Child protection matters reported to the LAW Survey were more likely to have resulted in the respondent accessing professional assistance compared to problems overall, likely reflecting both the perceived seriousness of such matters and the availability of professional assistance for these types of problems.
- The child protection matters had a substantial impact on LAW survey respondents, and were more likely to involve the formal justice system, compared to legal problems in general.
- To prevent child welfare concerns from escalating, and enhance safety and wellbeing for families and children, legal support should be provided to families via collaboration with early intervention health and human service providers.
- Although the LAW Survey findings are limited by the relative rarity of child protection matters in the general population, they shine a light on the impact of child protection matters on families. This should be further explored through the greater use of linked administrative data and research targeted on these families.

The Australian child protection system

In Australia, the responsibility for child protection legislation and service provision sits primarily with state and territory governments. However, a range of Commonwealth Acts such as the *Family Law Act 1975*[1] and *Australian Human Rights Commission Act*[2], and national policies such

1 Attorney-General's Department, Department of Social Services. (1975) Family Law Act 1975. Australian Government.

2 Attorney-General's Department. (1986) Australian Human Rights Commission Act 1986. Australian Government.

as *Safe and Supported: The National Framework for Protecting Australia's Children 2021 – 2031*[3] and *Closing the Gap*[4] inform state and territory policies and legislation. Further, the principles of Australian child protection policies and laws are informed by international instruments, particularly the United Nations Convention on the Rights of the Child, which sets out key principles relating to the best interests of the child and the rights of children in relation to culture and family connection.[5,6] Accordingly, there are some fundamental principles shared across all Australian child protection legislation that stipulate the child protection system should:

- act in the best interest of the child
- prioritise early intervention and support for families
- provide culturally appropriate care and enact Aboriginal and Torres Strait Islander Placement Principles[7]
- facilitate the participation of children in the decisions that affect them.

There are some variations across state and territory legislation regarding the age at which a person is considered a child. The NSW *Children and Young Persons (Care and Protection) Act* 1998 distinguishes between a child under 16 years and a young person who is 16 to 18 years old, while the ACT *Children and Young People Act 2008* defines the age range for a child as under 12 years old and a young person 12 to 18 years. Other states and territories more commonly define a child as a person under 18 years old.

Broadly, child protection legislation is in place to prevent and/or respond to the risk of significant harm to a child, generally described in terms of abuse and neglect. Mandatory reporting legislation applies in all states and territories, with variations in details such as types of risks to be reported and who must report.[8] Mandatory reporting refers to the legislated requirement for certain categories of people who work closely with children (such as teachers and health workers) to formally report concerns of significant risk of harm to a child.[9] Non-mandatory reporters (any member of the public) are also able to report concerns. These reports are then assessed by the relevant departmental authority.

There is a wide spectrum of what might constitute a child protection legal issue. It might refer to unreported or non-statutory concerns about a child's safety and wellbeing and involve interactions with non-legal services such as family support services, schools or health providers. In terms of a more formal interaction with the legal system, this entails a report (mandatory or otherwise) to the state or territory child protective service. The report may or may not be

3 Department of Social Services. (2021) Safe and supported: The national framework for protection Australia's children 2021-2031. Australian Government.

4 Joint Council on Closing the Gap. (2020) National Agreement on Closing the Gap. Council of Australian Governments.

5 United Nations General Assembly. (1989) Convention on the Rights of the Child. United Nations Human Rights Office of the High Commissioner.

6 Australian Institute of Family Studies. (2022) Australian child protection legislation. Australian Government. https://aifs.gov.au/resources/resource-sheets/australian-child-protection-legislation

7 SNAICC National Voice for our Children. (2017) Understanding and applying the Aboriginal and Torres Strait Islander child placement principle: A resource for legislation, policy, and program development.

8 Australian Institute of Family Studies. (2023) Mandatory reporting of child abuse and neglect. Australian Government.

9 Mathews B, Bromfield L, Walsh K, Vimpani G. (2015) Child abuse and neglect: A socio-legal study of mandatory reporting in Australia. NSW Department of Family and Community Services.

investigated further depending on the assessed risk of significant harm. Typically, there are three levels of intervention via the child protection system, as follows:

- Intensive family support services are often outsourced for delivery by non-government agencies. They provide a period of intensive casework and other development activities for parents, families and children with the aim of keeping children safely at home.
- Care and protection orders are determined by the Children's Court and may transfer all, or a portion, of legal responsibility to the relevant child protection agency.
- Out-of-home care matters are decided by the Children's Court. The decision to remove a child from parental or family care is considered a last resort option. Children can be placed in settings such as foster care or kinship care.

As an indication of the numbers of families who may have some form of contact with the child protection legal system in Australia in 2022–23:

- 180,000 children interacted with the child protection system (as subjects of investigation, on a care and protection order or in out-of-home care).
- 293,000 children were subjects of notifications of alleged maltreatment (not counted as having received a child protection service unless investigation is undertaken).
- 121,000 children became subjects of investigations.
- 45,400 children were subjects of substantiations of maltreatment following investigation.
- 58,000 children were subjects of non-substantiated allegations of maltreatment following investigation.
- 71,300 children were on care and protection orders.
- 55,900 children were in out-of-home care.[10]

Jurisdictional legislation determines the arrangements for legal representation of children, parents/carers and – for Aboriginal and Torres Strait Islander families – other significant relationships within the kindship group. Providers of legal assistance include Legal Aid Commissions, Aboriginal Legal Services, Family Advocacy and Support Service, Community Legal Centres, and private lawyers.

What we know about legal support needs and child protection

It has been well established that families involved with the child protection system experience disproportionately high rates of intersectional inequalities including:

- Intergenerational trauma
- Poverty
- Mental illness
- Disability
- Homelessness and housing insecurity

10 Australian Institute of Health and Welfare. (2024) Child protection in Australia 2022-23. Australian Government.

- Unemployment
- Alcohol and other drug issues
- Involvement with the criminal justice system
- Domestic and family violence.[11]

Structural inequalities, particularly the ongoing impacts of colonisation and cultural harm upon Aboriginal and Torres Strait Islander people, are also reflected in inequalities in child protection outcomes.[12,13] Most notable in Australia is the overrepresentation of Aboriginal and Torres Strait Islander families in the child protection system. For example, Aboriginal and Torres Strait Islander children account for 43.7% of children in out-of-home care, but only 6% of the total population of Australian children.[14]

International and Australian research consistently demonstrates correlations between families' experiences of socioeconomic challenges and child protection concerns.[15,16] However, there is little evidence on the nature of, or extent to which, families' experiences of child protection concerns correlate with legal issues specifically. It might be assumed that people with child protection related issues are more likely to have additional legal issues given that issues such as housing insecurity, domestic and family violence, and mental illness are known to correlate with higher rates of legal support needs.[17,18] However, there is little evidence to fully assess and understand co-occurring legal needs of people involved with the child protection system and where such evidence does exist it is largely qualitative.

Legal support may be a crucial mechanism for prevention and early intervention work, to help families in managing intersecting legal issues and in their efforts to keep children safely in their familial homes. However, legal support providers have reported that families are often in contact with child protection agencies for substantial periods of time before accessing legal support and often only when removal of a child from their care is imminent.[19,20]

The Indigenous Legal Needs Project found that Aboriginal and Torres Strait Islander community members considered child protection issues as one of their most significant legal issues, but many people reported feeling failed by the child protection legal system and unable to get the

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11 Higgins, DJ, Hunt, GR. (2024) Child, parent and contextual factors associated with child protection system involvement and child maltreatment in the family: A rapid evidence review. *Australian Journal of Social Issues, 59*, 358–400.

12 Menzies, K. (2019) Understanding the Australian Aboriginal experience of collective, historical and intergenerational trauma. *International Social Work, 17*(1), 1–13.

13 Newtown BJ. (2019) Understanding child neglect in Aboriginal families and communities in the context of trauma. *Child & Family Social Work, 24*(2), 218-226.

14 Productivity Commission. (2024) Closing the Gap Information Repository: Socio-economic outcome area 12: Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system. Australian Government.

15 Doidge JC, Higgins DJ, Delfabbro P, Segal, L. (2017) Risk factors for child maltreatment in an Australian population-based birth cohort. *Child Abuse & Neglect, 64*, 47-60.

16 Skinner GC, Bywaters PW, Kennedy, E. (2023) A review of the relationship between poverty and child abuse and neglect: Insights from scoping reviews, systematic reviews and meta-analyses. *Child Abuse Review*, *32*(2), e2795.

17 Bellerose D, Butler K, Mirrlees-Black C, Mulherin G. (2023) An assessment of legal needs in NSW. Sydney: Law and Justice Foundation of NSW.

18 Balmer NJ, Pleasence P, McDonald HM, Sandefur RL. (2023) The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need. Melbourne: Victoria Law Foundation

19 Kelso K, Dufty B. (2023) Early legal assistance in child protection. Sydney: Legal Aid NSW.

20 Victoria Legal Aid. (2017) Child protection Legal Aid services review. Melbourne: Victoria Legal Aid.

support they needed.[21,22] This is not only reflected in state or territory child protection legal systems. While there are disproportionately high numbers of Aboriginal and Torres Strait Islander families involved with child protection systems, historically there have been disproportionately low numbers of Aboriginal and Torres Strait Islander families involved with the Federal family law system. Insufficient capacity for Aboriginal and Torres Strait Islander people to resolve issues via family law processes has been proposed as one reason that family breakdown issues can escalate into criminal issues.[23] Recent initiatives of the Court, including specialised Indigenous Lists and Indigenous Family Liaison Officers, have sought to address this.

Interactions with child protection systems, particularly the removal of children from their families' care, have been shown to have negative impacts on the lifelong health and wellbeing outcomes for children. Sustaining children's relationships with their families, including when they are in out-of-home care, can improve their lifelong socio-economic and health outcomes.[24] Evidence-based policies to improve access to legal support and justice, are those that seek to support families, sustain children's relationships with their families, prevent harm to children, and intervene as early as possible in cases of risk to children.[25] Such early intervention approaches may also have economic benefits, given the substantial cost savings possible if numbers of children in out-of-home care (about $60,000 per child per year) can be reduced.[26] A lack of collaboration and integration between legal, health and human services sectors and across government and non-government agencies, as well as a lack of investment and professional development, have been identified as barriers to early intervention and family legal support.[27] Emerging examples of effective early intervention strategies in child protection include collaborations between health and child protective services with clear networks for cross referral and capacity to tap into casework supports, and specialised advocacy supports.[28,29,30,31]

Despite the significant needs, some qualitative evidence suggests that families involved with the child protection system may struggle to access adequate legal support. For some families, their interactions with the Children's Court can extend for many years, particularly where families seek restoration of a child to their care.[32] For parents without financial means to pay for private legal

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21 Allison F, Schwartz M, Cunneen C. (2014) The Civil and Family Law Needs of Indigenous People in Western Australia. Cairns: James Cook University.

22 Cunneen C, Allison F, Schwartz M. (2014) The Civil and Family Law Needs of Indigenous People in Queensland. Cairns: James Cook University.

23 Schwartz M, Cunneen C. (2009) From crisis to crime: The escalation of civil and family law issues to criminal matters in Aboriginal communities in NSW. *Indigenous Law Bulletin, 7*(15), 18-21.

24 Davies K, Ross N, Cocks J, Foote W. (2023) Family inclusion in child protection: Knowledge, power and resistance. *Children and Youth Services Review, 147*, 106860.

25 Devaney C. (2020) Prevention and early intervention with children, young people, and families. In Fernandez E, Delfabbro P. Child protection and the care continuum: Theoretical, empirical and practice insights. Taylor & Francis.

26 PwC. (2023) The benefits of providing access to justice. National Legal Aid.

27 Churchill H, Fawcett B. (2016) Refocusing on early intervention and family support: A review of child welfare reforms in New South Wales, Australia. *Social Policy and Society, 15*(2), 303-316.

28 Chia J (2023) Health justice partnership as early support for children and their families., Sydney: Health Justice Australia.

29 Coates D. (2017) Working with families with parental mental health and/or drug and alcohol issues where there are child protection concerns: Interagency collaboration. *Child & Family Social Work, 22(S4), 1-10.*

30 Collings S, Spencer M, Dew A, Dowse L. (2018) 'She was there if I needed to talk or to try and get my point across': Specialist advocacy for parents with intellectual disability in the Australian child protection system. *Australian Journal of Human Rights, 24*(2), 162-181.

31 Community Legal Centres NSW. (no date) Reforming the child protection system.

32 Ross N, Cocks J, Foote W, Davies K. (2022) "Just work as a team": Reconstructing family inclusion from parent, carer and practitioner perspectives. Newcastle: University of Newcastle.

services, their access to free legal support may be inadequate in meeting the complex, drawn out nature of their case.[33] Barriers to parents accessing legal support have also been associated with a lack of information and understanding about legal processes and limited capacities of many parents to advocate for themselves or to access other forms of advocacy.[34] Parents may have limited access to resources to challenge determinations made by child protection authorities and the child protection system can be difficult for families to navigate.[35]

Given the breadth and complexity of child protection related legal issues, the diversity of legal assistance and other service providers who might be involved, and the lack of a linked administrative data set across all providers, a comprehensive analysis of families' child protection legal needs and access to support in Australia is constrained. As such, LAW Survey data offers unique insights into the legal needs associated with child protection concerns.

Child protection matters in the LAW Survey

The Foundation's 2012 LAW survey[36] asked a representative sample of over 20,000 Australians aged 15 and over about their experience of a large range of legal problems and disputes and any actions they had taken in response, including, accessing legal and other types of assistance. While other legal needs surveys have been conducted more recently, most notably Victoria Law Foundation's PULS legal needs survey,[37] no Australian survey has subsequently had the coverage or size of sample of the LAW Survey. Victoria Law Foundation's The LAW Survey is particularly insightful in relation to the co-occurrence of child protection matters with other legal problems and the range of professionals from whom advice is sought. By focusing on the broader experiences and circumstances of the family, legal needs survey findings complement the administrative data held by the care and protection system on children and young people.

Respondents to the LAW Survey who were parents or grandparents,[38] were asked about legal problem types related to children and grandchildren. For parents, this included a specific question asking whether they had experienced problems or disputes about a care and protection order or an assessment by a child welfare authority. These are henceforth referred to as child protection matters, though it isn't feasible to assess whether they meet the statutory definition of a care and protection matter.

The unweighted number of parents reporting a child protection matter to the survey was 69, which is too small a sample to have full confidence in the findings. Therefore, to provide contextual verification, the same analysis was conducted on the larger sample (n=753) of those

33 Harrison C, Bahemia C, Henderson D. (2020) Infant removal and the lack of representation for parents. *Children Australia, 45*(4), 215–221.

34 Douglas H, Walsh T. (2009) Mothers and the child protection system. *International Journal of Law, Policy and the Family*, *23*(2), 211-229.

35 Hamilton SL, Maslen S. (2022) Redressing 'unwinnable battles': Towards institutional justice capital in Australian child protection. *Journal of Sociology*, *58*(4), 535-553.

36 The main report (Coumarelos, et al. (2012) Legal Australia-Wide Survey: Legal need in Australia. Sydney: Law and Justice Foundation of NSW) was published in 2012. The survey itself was conducted in 2008.

37 Balmer N J, Pleasence P, McDonald H M, Sandefur R L. (2023) The PULS volume 1: Everyday problems and legal need. Melbourne: Victoria Law Foundation.

38 Parents were respondents with biological, adopted, foster or stepchildren under the age of 18, whether or not they were living with them (n=7,097). Grandparents were respondents with at least one grandchild under 18 (n = 4,495). There were 11,001 respondents who were either a parent or grandparent. Note that this routing means that these questions were not asked of respondents who may have experienced a pre-birth report, unless they already had children. Pre-birth reports were not explicitly included or excluded from the count.

reporting any child-related matter. This broader group included parents and grandparents reporting issues relating to child support payments, and residence, contact, access or custody issues. For grandparents, these types of child-related issue were combined into one question, so it isn't possible to separately identify any child protection matters they may have experienced. This means that the broader child-related category may include some child protection matters not included in the child protection count.

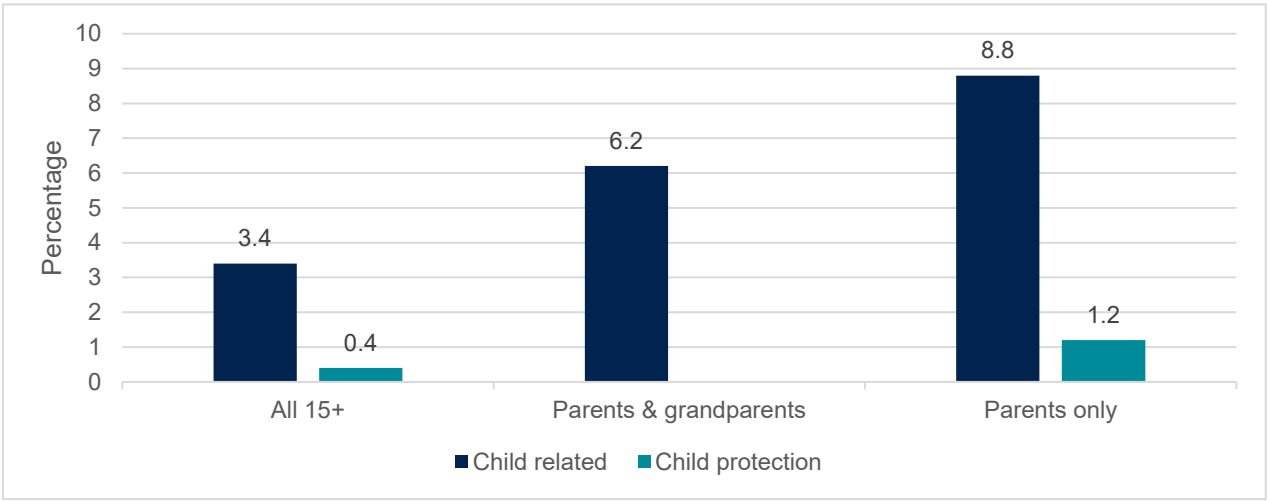
The analysis of respondents to the LAW Survey, identifies the proportion of parents that had experienced a child protection matter, and with what frequency. For comparison, these are set alongside findings for respondents experiencing any child-related and/or any legal problem, of whatever type. This is for validation purposes only and it is recognised that child protection related legal issues are distinct from many other forms of child-related legal problems.

Problem based analysis describes the impact on respondents of child protection matters, and actions taken in response, including accessing assistance from professional advisors. As the number of matters is too small for robust analysis, only findings that appear plausible alongside those for the broader group of child-related problems are reported here.

Prevalence of problem experience

Child protection matters are relatively rare compared to other types of legal problem. Overall, 0.4% of Australian adults reported experiencing a **child protection matter** in the previous year, increasing to 1.2% when looking at parents only (Figure 1). The absolute number of respondents experiencing a child protection matter is therefore small (unweighted n=69), so the findings for this group will lack precision. For context, 3.4% of Australian adults reported experiencing any type of **child-related legal problem or dispute** in the previous year. Restricting the sample to just those explicitly asked about this type of problem, that is parents and grandparents, increases the prevalence to 6.2% of parents and grandparents combined, and to 8.8% of parents alone.

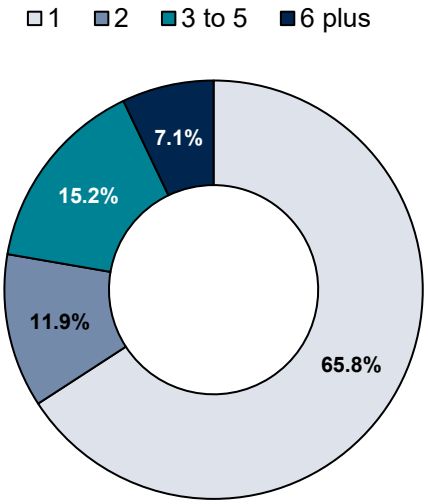
Figure 1 Prevalence of child-related matters and child protection matters[39]



39 Annual rate for Australians aged 15+. Prevalence of child protection for parents and grandparents combined is not reported because it isn't possible to separately identify these matters for grandparents.

Most parents who reported child protection matters to the survey had experienced only one such issue in the previous year (65.8%), but about a third had experienced more than one, and a small minority (7.1%) reported six or more such issues (Figure 2). Given the small sample, these findings should be considered indicative only.

Figure 2 Number of child protection matters experienced in a year (n=69)



Who experiences child protection matters?

The LAW Survey indicates the likely over-representation in the care and protection system of parents with specific static and dynamic characteristics (see Annex Table A.1). However, it isn't possible to draw conclusions about causation, and it should also be noted that many of these characteristics are those that the care and protection system explicitly target.[40] In summary, the groups that accounted for a greater proportion of child protection matters than would be expected by their underlying distribution in the population, were:

- Women
- Middle-aged
- Single parents
- Those experiencing long-term disability or illness
- Those who left school prior to Year 12
- English speakers
- Living in disadvantaged housing
- Government benefits are main source of income.

40 According to the Productivity Commission Report on Government Services, governments provide child protection services that "are targeted to children and young people who are experiencing disadvantage and/or are vulnerable, particularly priority groups such as Aboriginal and Torres Strait Islander children, children and families with multiple and complex needs, and children with disability". https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/child-protection

Findings on geographic concentration of child protection matters were inconclusive, probably due to the small count. However, those families experiencing child protection matters may be concentrated in more disadvantaged geographic areas.[41] People experiencing child protection matters had a greater number of indicators of disadvantage, with about a quarter having four or more, compared to one in twenty of all Australian parents (Table A.1).

It is also important to acknowledge the over-representation of Aboriginal and Torres Strait Islander families in the child protection system, but without the benefit of Aboriginal and Torres Strait Islander people's expert input, we have chosen not to report these findings from the LAW Survey. The survey findings confirm the imperative of addressing the drivers of inequitable contact with the system for Aboriginal and Torres Strait Islander families.

Increased risk of experiencing *any* legal problem

Most people who experience a legal problem of some type only experience a small number in any year: overall, just a third of respondents who experienced a problem, reported more than three to the LAW Survey. This contrasts with the experience of those parents who reported a child protection matter to the survey: they experienced far more problems overall, with nearly nine in ten reporting more than three problems of some type. To some extent this is because child-related problems are themselves experienced with relatively high frequency. But even taking these out of the equation, people experiencing a child protection related legal issue also experienced a very high number of other types of legal issues: removing child-related problems from the frequency count only reduces the above percentage slightly.[42]

The unequal burden of legal problems experienced by those with child protection matters is evident (Table 1). The average number of problems for all Australians who had experienced any legal problem is about five a year. But for those with a child protection matter, this multiplies by five, to about 25. While this is based on a small sample size, it is validated when looking at the broader child-related matter group, where the average number of problems of any type experienced was also high, at 14.3.

Table 1 Average number of legal problems of *any* type for all respondents and those experiencing a legal problem, a child-related matter and a child protection matter

	Australians 15+		Parent or grandparent		Parent	
	All	1+ problem of any type	All	Child-related matter	All	Child protection matter
Unweighted	n=20,716	n=10,322	n=11,001	n=753	n=7,097	n=69
Average (mean) number of problems of <u>any</u> type	2.6	5.2	2.7	14.3	3.5	25.1

41 An analysis of respondents experiencing a child protection matter by SEIFA returns inconclusive findings. This is probably attributable to the small sample size, as a relationship to area disadvantage is evident when looking at all child-related matters.

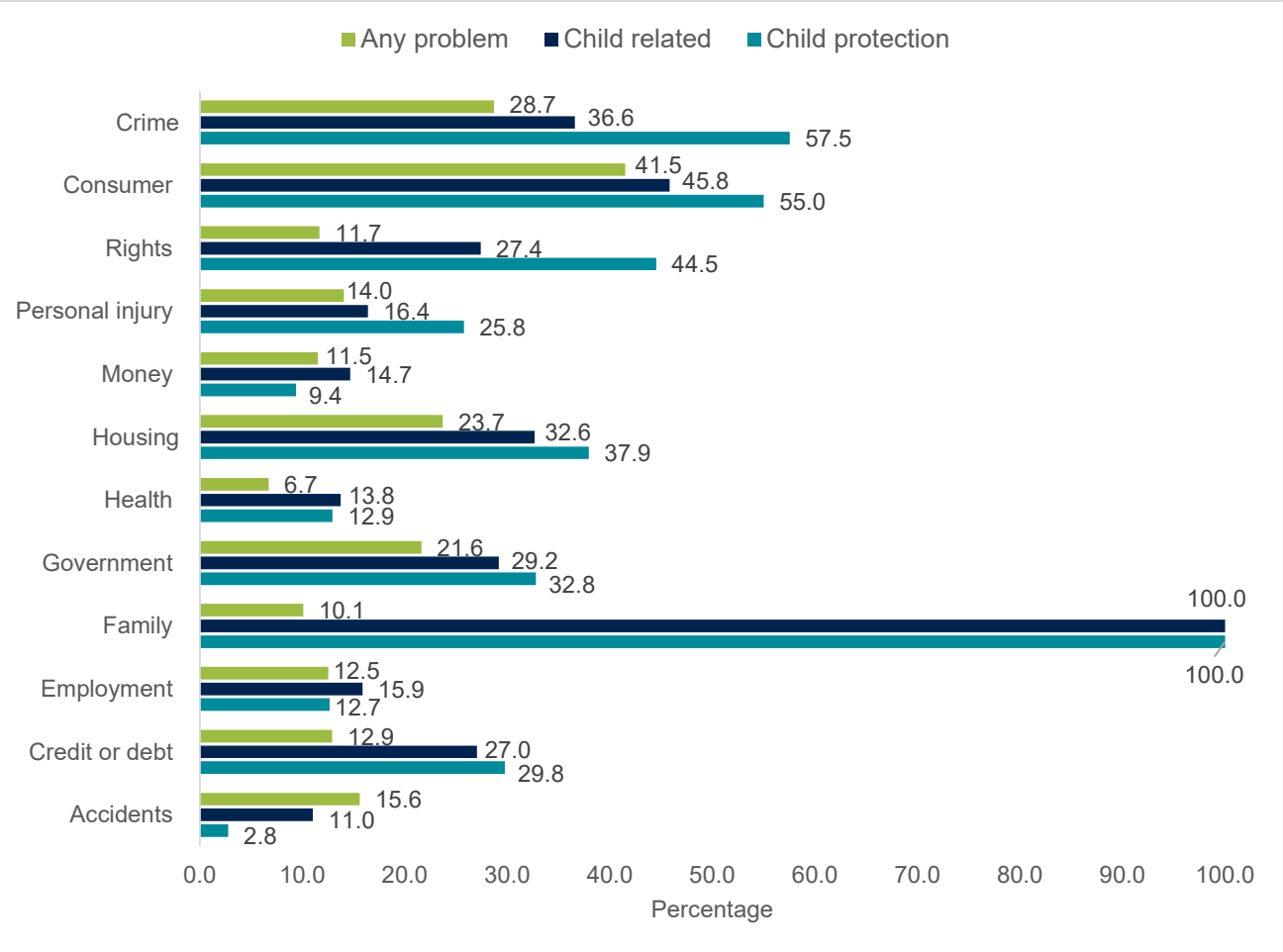
42 From 88.4% to 78.9%, though there are large margins of error associated with these estimates.

Co-occurrence with other types of legal problem

Overall, according to the LAW Survey, 49.0% of all Australians experienced a legal problem other than a child-related matter. This increased to 55.8% of parents and grandparents. Amongst the small number of parents experiencing a child protection matter, 88.6% had also had a legal matter that was not child-related in the previous year.

The types of legal issues experienced by people with a child protection matter are shown in Figure 3. Child protection and child-related matters are included in the Family category, hence the 100% prevalence for these two groups. Cautioning that it is a small sample, and taking into account the pattern for all child-related matters, it would appear that child protection matters are particularly likely to co-occur with crime, rights, housing, health and credit or debt problems. Crime in this context includes both offender and victim related matters, with the latter far more prevalent for this group. Family violence is particularly likely to co-occur with child-related matters, and even more so for child protection issues, predominantly amongst women (see further below).

Figure 3 Prevalence of legal issues for all Australians (*n=20,716*), and those experiencing any child-related matter (*n=753*) or a child protection matter (*n=69*)



Co-occurrence with other child-related matters

Table 2 shows the co-occurrence of child protection matters with other types of child-related matters, indicating a significant degree of overlap with private family law matters. However, given the very small number of LAW Survey respondents reporting some of these, and that it wasn't feasible to confirm that reported child protection matters met the statutory definition, these findings should be considered indicative only.

Table 2 Percentage of respondents experiencing a child protection matter who also experienced another type of child-related matter

	Fostering, adoption, guardian-ship	Child support payments	Custody and contact	Divorce and separation	Separation never married	Division of assets	Maintenance
	%	%	%	%	%	%	%
Child protection (n=69)	25.6	50.8	60.1	25.4	18.9	10.4	13.6

Source: LAW Survey. All Australia. Respondents with one or more children only. Weighted percentages. Unweighted sample sizes.

Note: Due to the small sample sizes, these findings should be considered indicative only.

Inter-relationship with family violence

As previously noted, child protection matters were particularly likely to co-occur with family violence.[43] As family violence is primarily experienced by women, when considering women alone, 1.4% of those with children reported experiencing a child protection matter. This proportion increases to 14.2% for women who also reported experiencing family violence. This finding is given contextual validity by the even stronger relationship with experiencing any child-related matter.[44] As the LAW Survey did not assess the temporal relationship between legal matter experiences, it is not feasible to comment on the inter-relationship between family violence and child-related or child protection matters, but the complexity of legal and broader needs is evident.

43 It should be noted that the analysis reported here is potentially restricted to only a subset of those people experiencing family violence. Overall, 0.8% of LAW Survey respondents, women and men, reported experiencing family violence. This included a threatened or actual assault or sexual assault from any family member. As expected, the prevalence amongst women is far higher than that amongst men (1.3% compared to 0.3%), but this is lower than contemporaneous estimates. This is likely because the LAW Survey was not designed with methodological requirements such as privacy and self-reporting necessary to support the reliable reporting of this type of experience (UN Department of Economic and Social Affairs. (2014). Guidelines for producing statistics on violence against women: Statistical surveys. United Nations. https://unstats.un.org/unsd/gender/docs/guidelines_statistics_vaw.pdf).

44 The unweighted sample of women with dependent children is n=3,655 and for those also experiencing family violence is n=72. 11.3% of women with children reported any child-related matter to the survey, increasing to 58.4% of those who also reported experiencing family violence. There were insufficient men with dependent children who had experienced family violence for this analysis.

Seriousness and impact of problems

LAW Survey respondents who had experienced a problem were asked whether it had a severe, moderate, slight or no impact on their everyday life.[45] The LAW Survey analysis combines 'severe' and 'moderate' into 'substantial'. Overall, 27.2% of legal problems were described as having a substantial impact.[46] The impact of child protection matters was far greater, with over nine in ten described as having a substantial impact. The magnitude of this was supported by the finding that eight in ten of all child-related matters were said to have had a substantial impact.[47]

Legal problems can have consequences for those experiencing them, beyond those of the original matter. The survey asked "at any time, did the problem .... cause you to experience the following" for five impact types: stress-related and physical illness, relationship breakdown, having to move home and financial related impacts.[48]

Overall, 45.1% of LAW Survey respondents who had experienced a legal problem of some type reported at least one of these adverse impacts, with income loss or financial strain the most frequently mentioned. The impact of child protection matters, though, is far greater, with about three-quarters said to have had at least one adverse impact.[49] Financial impacts remained the most mentioned, but health related impacts were also notably higher than for problems generally (Figure 4, next page).

Actions taken in response to problems

Formal advice was sought or received for eight in ten of the child protection matters reported to the survey (Figure 5, next page). This likely reflects the perceived seriousness of such problems and the accessibility of professional advisors. Given that contact with the system is generally initiated by mandatory reporting requirements, prior and continuing contact with human services professionals is extremely likely.

45 As respondents could experience more than one child protection matter, the sample of problems for this analysis is larger than the number of respondents, at 198 (unweighted).

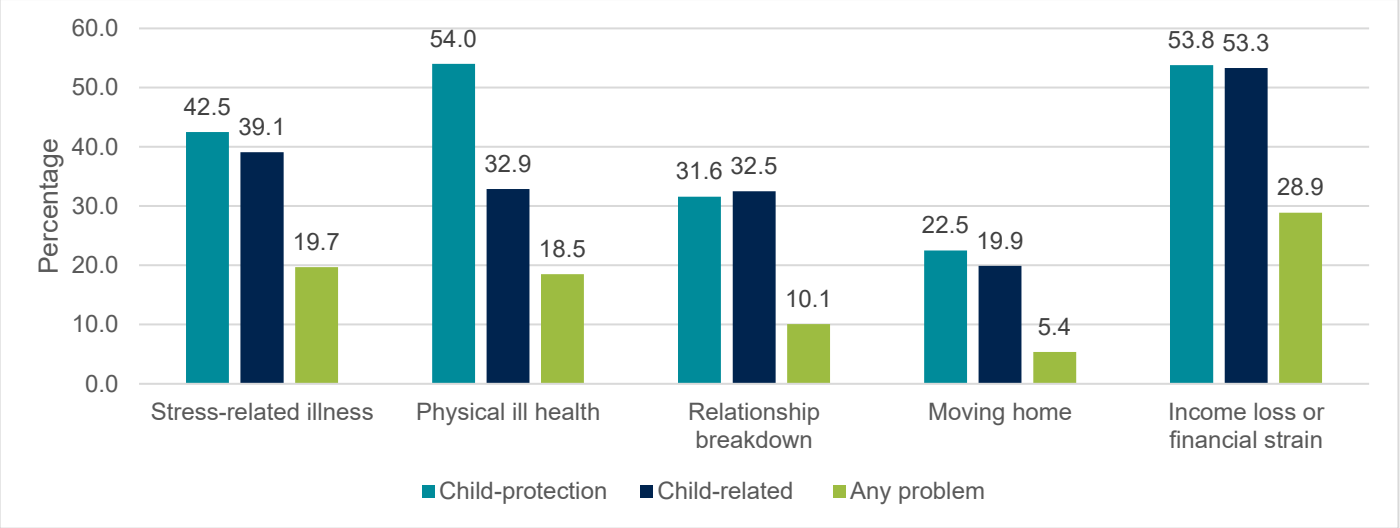
46 Coumarelos et al. (2012) Legal Australia-Wide Survey: Legal need in Australia. Figure 3.2.

47 This picture is supported by the more recent PULS survey, which included the broader category of 'family problems'. These received the highest average seriousness ratings of all problem types covered by PULS, with 35% of them attracting the highest possible severity score. Balmer N J, Pleasence P, McDonald H M, Sandefur R L. (2023) The Public Understanding of Law Survey (PULS) Volume 1: Everyday problems and legal need. Melbourne: Victoria Law Foundation.

48 For up to three of their most serious legal problems, LAW Survey respondents were asked about its impact, the actions they had taken in response, if any, and the outcome of the matter. Due to the method of selection of problems for follow-up, the sample for these analyses is limited to 40 child protection matters and should be considered indicative only.

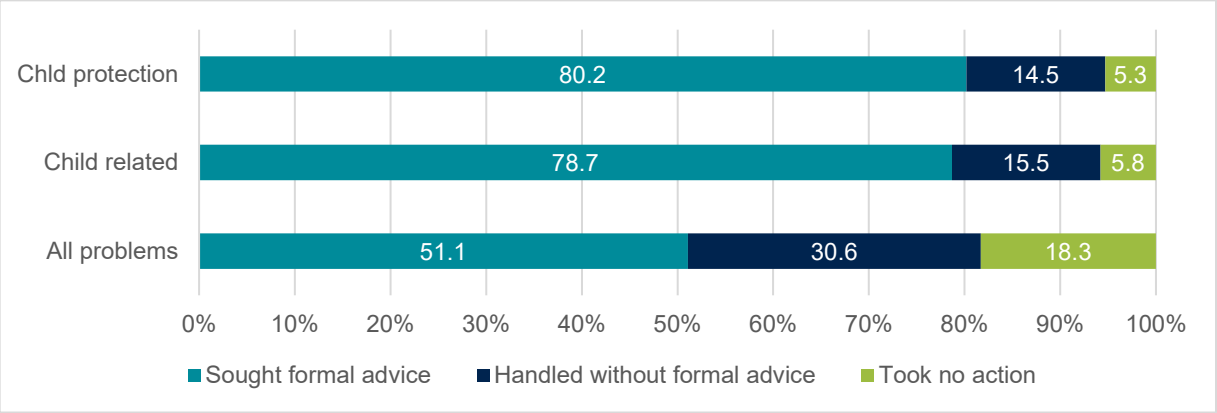
49 For child protection matters (n=40), 78.4% had at least one adverse impact. For all child-related matters (n=721), the percentage was 76.9%.

Figure 4 Adverse consequences of child protection and child-related matters, compared to all legal problems



Although a minority did not appear to have accessed professional support, subsequent changes to policies on the provision of legal assistance may have impacted these figures.[50] Families experiencing child protection matters are now highly likely to qualify for public legal assistance.

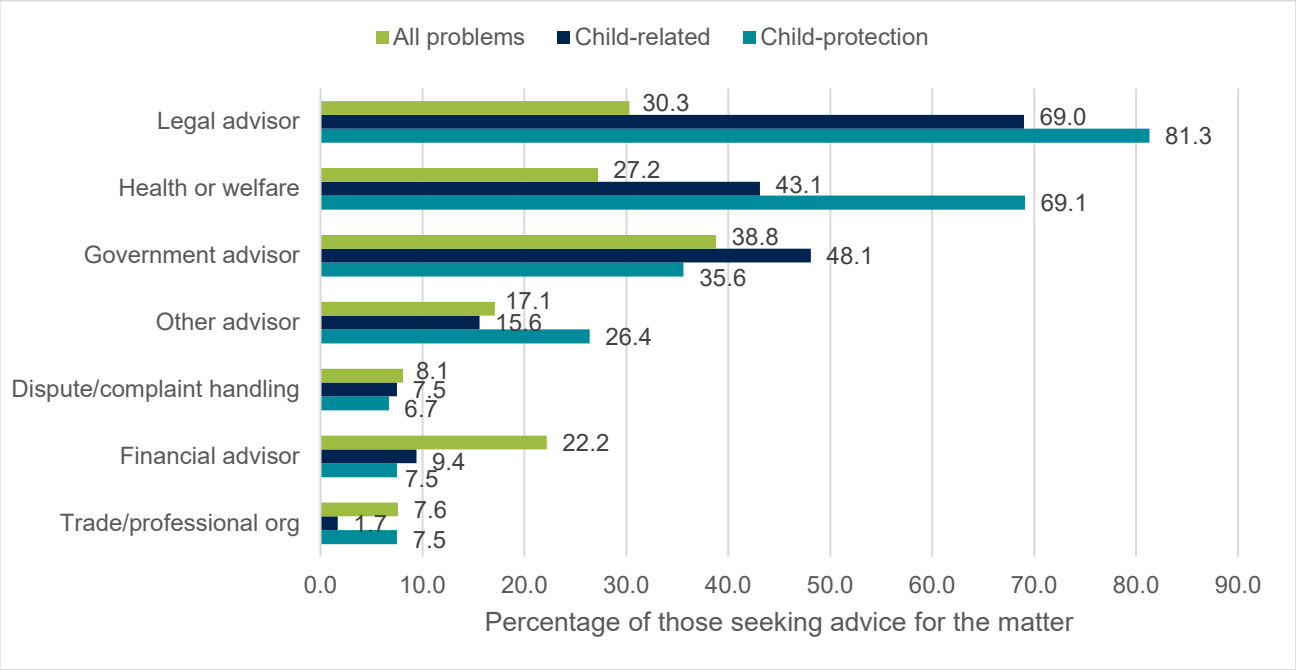
Figure 5 Strategy in response to legal problems



Compared to legal problems in general, the formal advice for child protection matters was likely to include legal assistance, whether from a public or private legal advisor. The second most common source of assistance was a health or welfare provider (Figure 6).

50 For example, in 2022 the NSW government amended the Children and Young Persons (Care and Protection) Act 1998 and other legislation to facilitate timely support for children and families.

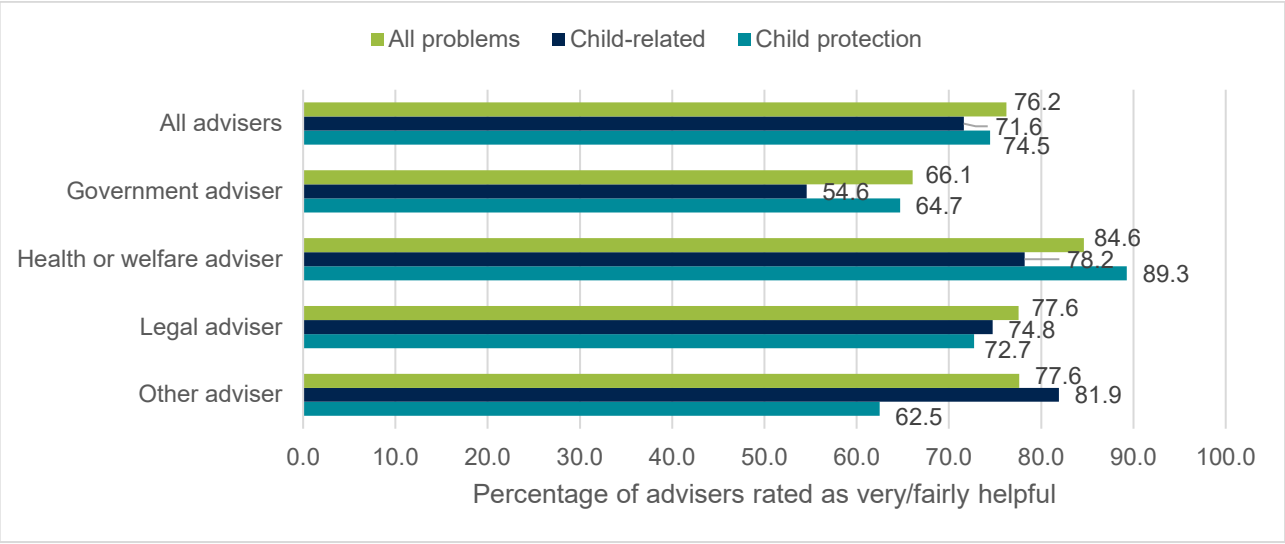
Figure 6 Advisor type for those problems for which advice was sought[51]



Helpfulness of advisers

Respondents were asked to rate the helpfulness of up to four advisers. Overall, satisfaction was as high for child protection as other matters, with about three-quarters of advisers said to have been very or fairly helpful, and health and welfare advisers receiving the highest rating (Figure 7).

Figure 7 Helpfulness of advisers by adviser type[52]



51 More than one type of assistance could be sought: up to three types of assistance are included per problem. Percentages do not, therefore, add to 100%.

52 'Other adviser' includes dispute handling, trade/professional associations, financial and other non-legal organisations.

Outcome of matters

Child-related matters, including child protection, were almost twice as likely to remain ongoing and unresolved at the time the respondent was interviewed for the LAW Survey compared to problems overall (about two-thirds, compared to one third of all problems). For the small number of resolved child protection matters, a majority of the survey respondents were satisfied with the outcome, and considered it was at least somewhat favourable to them, in line with the findings for child-related problems generally.[53]

About half of the resolved child protection matters had finalised in a court or tribunal, compared to a fifth of all child-related matters and a small fraction of legal problems generally.[54] Another fifth were said to have involved formal mediation of some kind – again, far higher than for problems generally. Although the sample is too small to generalise, higher levels of formal justice involvement is plausible given the involvement of the state in such matters. In contrast, agreement with the other party was the most common method of finalisation for child-related matters as a whole, reflecting their predominantly private nature.

Conclusions

The LAW Survey findings provide unique insights to the nature and impact of child protection related issues and the ways that they intersect with other legal issues. The findings contribute quantitative evidence to substantiate issues identified in qualitative research regarding the co-occurring inequalities experienced by families involved with the child protection system and the significant impacts of child protection issues that can exacerbate these inequalities.

The LAW Survey demonstrates the burden of frequent, serious and substantial legal problems on those having contact with the child protection system, indicating the potential benefit to children of effective early intervention with families. As previously noted, child protection systems tend to target families experiencing various forms of socioeconomic disadvantage, so experiencing these types of issue may in themselves be drivers of interactions with the system.

While the evidence on the legal complexities for people who experience child protection related issues is concerning, it illuminates opportunities for strengthening policy and practice interventions. People who experience child protection related legal issues are more likely than others to get formal help, whether from legal-specific advisors or from other parts of the health and welfare system. The earlier that this support can be provided, the more likely the chance for positive outcomes for children and families. Legal information, advice and support should be targeted to families to address the complexity of their legal needs. Given that the families most in need of such support are often already connected to various health and human service providers, there are clear opportunities for intersectoral collaboration and integrating legal support into other types of support. A shift is needed away from crisis responses, towards early, coordinated

53 The LAW Survey found that respondents reported being satisfied with the outcome of 66.4% of resolved problems, and said the outcome was somewhat or mostly favourable for 66.6% (Coumarelos et al. op cit.). The equivalent percentages for all child-related matters were 73.3% and 77.1%, and for child protection matters were 77.0% and 86.3%. However, no reliance should be placed on the latter given the small number of resolved child protection matters in the survey.

54 Just 3.4% of all resolved LAW Survey problems involved a court or tribunal.

and comprehensive legal assistance for both children, and their families,[55] [56] and collaboration with other health and human services.[57]

Given that families experiencing child protection related legal issues are likely to be connected with a range of government services, there are untapped opportunities to link administrative datasets across multiple human services sources to better understand the needs and access points, and in doing so plan and design evidence-informed services. Government administrative sources such as the NSW Human Services database,[58] are the most appropriate sources of information about child protection matters, though reported data tends to have a focus on the children rather than their families and carers. Further, although the NSW dataset includes Legal Aid data, it does not yet include data from the full range of legal assistance providers.

Administrative child protection data collection systems are relatively well developed, and could be a more robust source of information on legal issues and risks. However, there is also a need for bespoke surveys of parents and carers that explore their legal needs and any barriers to accessing services, to inform the evidence base on how legal and non-legal assistance can contribute to prevention and intervention.

55 Kelso, Duffy. (2023) Op cit.

56 Community Legal Centres NSW. (no date) Op cit.

57 Chia. (2023) Op cit.

58 Human Services Dataset (HSDS) | Communities and Justice (nsw.gov.au)

ANNEX A - TABLES

Table A.1 Socio-demographic profile of LAW Survey respondents reporting any problem, a child-related matter, and a child protection matter

	Australians 15+		Parent or grandparent		Parent	
	All	1+ problem of any type	All	Child-related matter	All	Child protection matter[1]
Unweighted	n=20,716	n=10,322	n=11,001	n=753	n=7,097	n=69
	%	%	%	%	%	%
Gender						
Female	50.6	49.3	52.6	64.9	50.8	59.2
Male	49.4	50.7	47.4	35.1	49.2	40.8
Age						
15 to 34	34.1	36.9	19.2	35.8	30.5	33.6
35 to 44	17.9	21.0	25.8	35.4	40.5	40.0
45 to 54	17.1	18.4	18.5	14.8	22.6	17.8
55 to 64	14.1	13.4	14.7	8.4	4.4	2.6
65 and over	16.8	10.4	21.7	5.6	2.0	6.0
Single parent						
Yes	7.2	10.0	13.6	51.7	21.6	66.6
No	92.8	90.0	86.4	48.3	78.4	33.4
Non-English speaking[2]						
Yes	6.7	5.8	6.2	2.7	7.5	2.2
No	93.3	94.2	93.8	97.3	92.5	97.8
Long term disability or illness						

Yes	19.4	23.9	20.3	31.0	13.7	37.1
Mental only	3.1	4.8	2.9	8.8	3.3	8.7
Physical only	14.7	16.6	15.6	16.7	8.9	19.9
Both mental & physical	1.6	2.5	1.8	5.5	1.5	8.5
No	80.6	76.2	79.8	69.1	86.1	62.9
Educational status						
Year 11 or below	31.5	27.4	33.3	36.3	26.0	41.3
Year 12	20.1	19.4	17.7	16.5	18.9	19.2
Post-school qualification	48.3	53.2	49.0	47.2	55.2	39.4
Disadvantaged housing						
Yes	6.0	7.3	6.0	15.8	5.8	25.9
No	94.0	92.7	94.0	84.2	94.2	74.1
Government payments main income source						
Yes	26.5	24.4	30.1	43.2	17.8	62.9
No	73.5	75.6	69.9	56.8	82.2	37.1
Number of disadvantages[3]						
0	34.8	34.7	34.2	14.6	39.1	14.2
1	31.6	31.5	32.0	30.6	31.7	19.0
2	19.6	18.4	19.5	22.4	16.4	12.6
3	9.7	10.1	9.5	19.0	7.6	26.4
4	3.3	4.0	3.7	8.2	3.5	15.6
5	0.7	0.9	0.8	3.3	1.1	10.0
6+	0.2	0.4	0.4	2.0	0.6	2.1

Residential area						
Remote	2.4	2.4	2.7	2.9	3.2	1.5
Regional	30.9	29.4	34.7	36.4	31.8	30.9
Major city	66.8	68.2	62.6	60.8	65.0	67.7
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

Source: 2012 LAW Survey. Respondents. Weighted percentages. Percentages add to 100.0 across each characteristic (i.e. these are not the percentages within each category experiencing a problem).

Notes:

1. A sample of the more prominent findings for child protection matters were tested using a complex sample plan and not found to reach statistical significance. In a similar analysis of child-related matters the sampled findings did reach statistical significance. Given the similar patterns of findings, it is reasonable to conclude that the lack of statistical significance reflects the small sample of child protection matters.
2. Respondents who specified they speak a language other than English as their main language at home.
3. Indicators of disadvantage counted in this LAW Survey measure are: having a disability, having lived in disadvantaged housing, being Aboriginal or Torres Strait Islander, having a low educational attainment, having a low income, having a non-English main language, living in a remote or outer regional area, being a single parent, and having been unemployed in the previous twelve months.

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Justice Issues No. 34

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ISSN 1834-7266

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