

Housing problems and why they matter —

Research Brief

Victorian Legal Services
BOARD + COMMISSIONER

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Much of my research is concerned with what we call ‘justiciable problems’. These are problems that raise legal issues,¹ but are not always recognised as ‘legal’ or addressed using legal services or processes. To those who face them, they are life problems, concerning the things we buy and sell, our work, finances, health, family and home.² And they are ubiquitous – we will all face them at some point, like it or not. My work explores how different types of justiciable problems, circumstances and life events interact and compete. Housing problems are a significant part of this landscape.

Interaction and competition are also at the heart of funding the initiatives that address justiciable problems, where housing must compete with other justiciable problems and wider priorities. Consequently, funding is not only tight but circles through the policy cycle, with an evolving emphasis meaning momentum gained or lost. This emphasis can be about chance, choice, anecdote and evidence, and hinges on the interplay of economic conditions, public opinion, advocacy, demographic shifts, politics, ideology and ideally, empirical research. So, from the perspective of legal needs³ (and related) research, why might we seek to prioritise housing problems?

Housing is explored in legal needs research in several ways. First, people’s housing circumstances form part of a multifaceted picture of who they are. Second, changes in housing circumstances are life events; they can be benign, but not always. Even positive change can leave you more susceptible to justiciable problems, while negative change can significantly increase susceptibility. Third, housing can be the subject of justiciable problems, where circumstances and issues transform into problems or disputes, and when they do, these rarely occur in isolation.

Parameters in prioritisation

Empirical research such as legal needs survey findings can be drawn upon to inform prioritisation in myriad ways. We might consider whether specific groups are more vulnerable to particular problems, or to more problems. We might look at problem severity, or the extent to which the impact of problems reaches into people’s lives. We might reflect on how specific issues relate or contribute to disadvantage. However, if we consider vulnerability, volume, severity, disadvantage and impact together, we find housing at the intersection.

¹ Hazel Genn, *Paths to Justice: What Do People Think About Going to Law*, (Hart Publishing, 1999).

² Nigel Balmer et al., *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need*, (Victoria Law Foundation, 2023).

³ This is research which looks at the experience of and response to justiciable problems, for more, see OECD/Open Society Foundations, *Legal Needs Surveys and Access to Justice*, (OECD, 2019).

Vulnerability

A person's housing circumstances relate to their experience of justiciable problems of all types. In the recent Public Understanding of Law Survey (PULS), those in rental accommodation reported the most problems relating to housing, family, employment, government payments, debt or money, injury, fines, and government and public services.⁴ Moreover, where housing ceases to be stable or appropriate, such as those living in temporary accommodation,⁵ we see acute vulnerability to problems, paired with greater inaction and fatalism regarding the utility of advice.⁶ Form, stability, safety and appropriateness of housing are critical elements in vulnerability to, and experience of, a broad array of justiciable problems.

Volume

Among all the different types of justiciable problems people face, housing problems are among the most common we see among our communities – housing circumstances too frequently transform into disputes. Simply converting prevalence of housing problems in the PULS to the frequency among the adult population of Victoria adds up to a million housing problems.⁷

Severity

A project I worked on around 15 years ago sought to quantify the perceived severity of a wide range of justiciable problems alongside other life events.⁸ It was designed to find 'anchor' problems⁹ to help us develop a simple scale of problem severity. We presented people with 100 issues and invited them to rank them from least to most severe. The exercise included a range of housing problems which varied in severity, though several were among the most severe problems – and one stood out. Becoming homeless and ending up living on the street was second only in perceived severity to having a child abducted and remains the severe problem 'anchor' for many legal needs surveys.¹⁰ While the study was designed to enhance our survey methodology, in doing so, it highlighted that housing problems can be among the most severe imaginable.

Disadvantage

It is not just about perceptions of severity; housing problems *are* severe. They are at the heart of a vicious cycle of vulnerability¹¹ – they persist, they cluster with other problems, they are more common among disadvantaged groups, they are infrequently recognised as legal, they routinely have legal needs which go unmet.¹² Housing problems are at the core of disadvantage – they are frequently the cause, they are frequently the consequence.

Impact

And it is not just that housing problems *relate* to other problems and circumstances. In the recent PULS, four in five *resulted* in adverse consequences.¹³ This is not limited to the PULS, it is a finding we see again and again.¹⁴ Consequences include huge volumes of stress; loss of confidence;

⁴ Balmer et al., *The Public Understanding of Law Survey (PULS) Volume 1*.

⁵ E.g. hostels, boarding houses, B&Bs and hotels.

⁶ Pascoe Pleasence et al., *Causes of Action: Civil Law and Social Justice*, (The Stationary Office, 2004); Pascoe Pleasence, *Causes of Action: Civil Law and Social Justice*, 2nd ed. (Legal Services Commission, 2006).

⁷ Over the survey reference period. Balmer et al., *The Public Understanding of Law Survey (PULS) Volume 1*.

⁸ Pascoe Pleasence et al., "Horses for Courses? Advice Seeking and the Stratification of Legal Services," in *The Future of Legal Services, Emerging Thinking*, (Legal Service Board, 2010).

⁹ These anchors needed to be justiciable problems that the public uniformly perceived as being among the most and least severe, see OECD/Open Society Foundations, *Legal Needs Surveys and Access to Justice*.

¹⁰ Including the PULS, see the annotated questionnaire (Nigel Balmer et al., *The Public Understanding of Law Survey (PULS) Annotated Questionnaire*, (Victoria Law Foundation, 2022).

¹¹ Elizabeth Tobin Tyler et al., "Housing: the intersection of affordability, safety and health," in *Poverty, health and law*, eds. Elizabeth Tobin Tyler, Ellen Lawton, Kathleen Conroy, Megan Sandel and Barry Zuckerman (Carolina Academic Press, 2011).

¹² Balmer et al., *The Public Understanding of Law Survey (PULS) Volume 1*; Pascoe Pleasence and Nigel Balmer, *The Legal Problems of Renters*, (The Legal Education Foundation, 2015).

¹³ Balmer et al., *The Public Understanding of Law Survey (PULS) Volume 1*.

¹⁴ See any legal needs survey that includes questions on adverse consequences (OECD/Open Society Foundations, *Legal Needs Surveys and Access to Justice*).

having to move home; damage to relationships; being harassed, threatened and assaulted; ill-health and injury; and loss of employment. This is impact that extends beyond individuals to health and other public services, with significant downstream costs.¹⁵ Housing problems have a direct and profound negative impact on lives and on society as a whole.

Bringing it together

A small-scale study I was involved in explored the experiences of 188 young people in youth advice settings.¹⁶ These were young people who typically no longer lived with parents and were not in education, employment or training. Their circumstances made them susceptible to problems, with around two-thirds reporting problems with housing or homelessness – an incredibly high volume. Their justiciable problems also had a profound impact on lives, with two-thirds also reporting a likely mental illness.¹⁷ This is staggeringly high and comparable to mental illness rates found in those going through family legal proceedings¹⁸ or those who have recently lost a partner.¹⁹ While small, the study powerfully illustrated the position of housing and housing problems at the intersection of vulnerability, volume, severity, disadvantage and impact.²⁰

To summarise, your housing situation relates to your susceptibility to justiciable problems. Housing problems are routinely experienced, but often far from routine – they can be among the worst problems imaginable. They are tied to disadvantage, they can be both the cause and the consequence. Their impact can be acute, with a profound impact on health, wealth and relationships. Each of these findings could be used to make a case for a focus on programs designed to address housing problems. In combination the case is compelling.

The idea that safe, secure, affordable and appropriate housing is important is not controversial.²¹ Stable housing is associated with benefits across domains, extending, but not limited to, quality of life, health, wellbeing, criminal justice system interaction and mortality.²² Legal needs survey research reinforces the important role that law and legal services have in ensuring stability.

We live in a ‘law-thick world’²³ and regardless of your circumstances, housing puts you in the thick of it. Housing comes with rights and obligations, and where circumstances transform into problems or disputes, rights and obligations frequently need to be acted upon. Law is not the only game in town, and in some cases, legal services or processes may be inefficient or inappropriate means of resolution.²⁴ However, in others, they provide a critical means to make good deficits of legal capability, meet unmet needs,²⁵ and progress towards a just resolution. Housing problems are justiciable problems, and research findings make it evident that legal services and processes have a key role in joined-up responses to multifaceted problems - responses which better mirror needs and capabilities.

¹⁵ Pascoe Pleasence et al., “Mounting Problems: Further Evidence of the Social, Economic and Health Consequences of Civil Justice Problems,” in *Transforming Lives: Law and Social Process*, eds. Pascoe Pleasence, Nigel J Balmer and Alexy Buck (TSO, 2007).

¹⁶ Nigel J Balmer and Pascoe Pleasence, *The Legal Problems and Mental Health Needs of Young Advice Service Users: The Case for Advice* (Youth Access, 2012).

¹⁷ A GHQ-12 score of four or more.

¹⁸ Liz Trinder et al., *Making Contact Happen or Making Contact Work? The Process and Outcomes of In-Court Conciliation*, (Department for Constitutional Affairs, 2006).

¹⁹ Andrew J Oswald and Nattavudh Powdthavee, “Death, Happiness, and the Calculation of Compensatory Damages,” *The Journal of Legal Studies* 37, no. S2 (2008): S217-S251.

²⁰ And in doing so made a strong case for tailored, integrated service provision.

²¹ Stable, affordable and appropriate housing for Victoria is a key outcome in the Department of Families, Fairness and Housing, 2024-2028 strategic plan (<https://www.dffh.vic.gov.au/publications/dffh-strategic-plan>).

²² E.g. Baumstarck et al., (2015); Carnemolla & Skinner (2021).

²³ Hadfield (2010).

²⁴ Lewis (1973).

²⁵ i.e., where there is a ‘legal need’, which arises whenever a deficit of legal capability requires legal support to appropriately address a justiciable problem to be appropriately dealt with (OECD/Open Society Foundations, 2019).

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