

Technical Paper: Defining Legal Need and Unmet Legal Need, 2006 National Survey
May 2006

1. Objective of the paper

One of the key objectives of the 2006 National Survey of Unmet Legal Needs and Access to Services is to measure the level(s) of unmet legal need across the country, to allow conclusions to be drawn as to the most appropriate forms of service delivery for different types of problems that require legal information, advice and/or representation.

In order to meet this objective, it is necessary to establish a quantifiable working definition of unmet legal need for use in the survey.

2. Statutory context

Section 90(1)(b) of the Legal Services Act 2000 provides that the Legal Services Agency (the Agency) may undertake or fund research into the unmet legal needs of communities and how they may be met.

3. Aims & objectives of the National Survey

Primary aim: To provide a consistent, comparable, and coordinated process to measure, manage and monitor the outcomes the Agency seeks.

Objectives: To measure the prevalence and types of legal problems in New Zealand over a 12 month period.

To measure the level(s) of met and unmet legal need.

To measure access to different types of legal services.

To identify the characteristics and locations of people both using legal services and people with unmet legal need.

To better understand the reasons why some people do not access legal services and the outcomes of that inaction.

To identify the barriers to legal information, advice and representation, to help develop better service design and delivery.

4. Background

In previous regional legal needs assessments, which the Agency undertook to inform Community Law Centres (CLCs), the definitions of unmet legal needs employed accommodated the specific service delivery aims and mechanisms of CLCs.

The purpose of the National Survey is to inform the Agency on a much broader range of areas, including information and education, community legal services and legal aid. The definition used in the survey also needs to be appropriately robust for a large scale national survey.

5. Legal need

The first stage in defining 'unmet legal need' is to establish what 'legal need' is, as this sets the parameters. Since it will form the basis for measuring unmet legal need, it is necessary for the definition of legal need employed in the National Survey to also be measurable. Legal need cannot be directly measured so the use of proxy indicators is required.

There is no universally agreed quantifiable definition of legal need, however two broad types of definition are commonly employed.¹

5.1 Supply or demand based definitions

Supply or demand based definitions focus on the "consequences that [legal] need has for the utilisation of services."²

There are three key difficulties in using supply or demand based definitions to measure legal need:³

1. They are dependent on a person:
 - a. Identifying that their problem has a legal solution.
 - b. Being aware of the routes they can pursue to resolve their problem using a legal solution.
 - c. Making a decision to pursue this course of action.
2. The range of legal services available to a person will vary depending upon their locality, as it is dependent upon the local supply of services.
3. The accessibility of services, in terms of both their availability (e.g. opening hours), and barriers to access further limits the range of legal services available to a person in a particular locality.

5.2 Problem based definitions

Problem based definitions define legal need as being the experience of a justiciable problem(s); a justiciable problem being a problem which raises legal issues, "whether or not it [is] recognised by the respondent as being 'legal', and whether or not any action taken by the respondent to deal with the event involved the uses of any part of the...justice system."⁴

This definition allows legal need to be measured by gathering information on the nature and extent of justiciable events for a given population, usually via a survey.

In Scotland, a review of both types of definition concluded that given the limitations of quantifying supply or demand based definitions, "attempting to measure the nature and extent of problems within a given population offers more potential as a basis for...measurement."⁵ As the limitations of supply or demand based definitions become more recognised, problem based definitions are being employed increasingly frequently in legal needs research.⁶

An examination of previous legal needs research undertaken by the Agency and its predecessor, the Legal Services Board, reveals that the early research in New Zealand did not attempt to define legal

¹ Law, J. et al. 2004. *Community Legal Service: Assessing Need for Legal Advice in Scotland*. Edinburgh: TSO.p.31.

² See note 1.

³ See note 1. p.32.

⁴ Genn, H. & Patterson, A. 2001. *Paths to Justice Scotland: What people in Scotland do and think about going to law*. Oxford: Hart Publishing. Cited in Dignan, T. 2004. *Legal Need in Northern Ireland: Literature Review*. Northern Ireland Legal Services Commission. p. 60.

⁵ See note 1. p.32.

⁶ See for example Pleasence, P. et al. (2006) *Causes of Action: Civil Law and Social Justice*. Norwich: TSO.

needs or unmet legal needs or, where it did, the legislative framework was so different as to make it irrelevant in the current context.⁷

A problem based definition of legal need was applied in the Agency's most recent research; the Wellington Regional Needs Assessment. It was also used in the 2001 and 2004 English and Welsh Civil and Social Justice surveys,⁸ which were used as key reference sources in the design of the Agency's National Survey, particularly the questionnaire.

From this consideration of legal need it can be concluded that a problem based definition is the most accurate and appropriate definition of legal need for the Agency's National Survey.

6. Consideration of an appropriate definition of unmet legal need

In considering a new definition of unmet legal need for use in the National Survey, it is useful to first review definitions of unmet legal need that already exist. If no suitable quantifiable working definition already exists, the review provide valuable structure and guidance for the development of a new definition for use in the National Survey.

6.1 Review of other existing definitions

Not surprisingly, since there is no universally agreed quantifiable definition of legal need, there is also no commonly accepted definition of unmet legal need. Indeed many international studies have not attempted to define it at all.

A notable exception is a recent literature review of legal needs research.⁹ One of the primary aims of the review was to propose a working definition of legal need for use in Northern Ireland, this included defining unmet legal need. The study reviewed all of the approaches, including definitions, taken for legal needs research in the United States, England and Wales, Scotland, Australia, New Zealand and Ontario, Canada. It concluded that "the best practical definition of 'unmet need' arises where a citizen is unaware that he or she has a legal right or where the citizen would prefer to assert or define a right but is constrained from going to do so for want of effective access to appropriate legal services of adequate quality and supply."¹⁰ It took the view that unmet need "is projected as a gap between the legal problems and the person's capacity for solving that problem."¹¹

In 1999 the Agency's predecessor, the Legal Services Board, commissioned a national needs assessment in New Zealand. The research employed the following definition of unmet legal need:

- "A problem [that] had not been resolved and people reported a remediable barrier (i.e. not knowing who to contact, cost, language difficulties etc).
- Those saying the help of an agency or lawyer would be considered in the future.
- Although considered serious the problem had not been pursued."¹²

Neither of these two definitions are suitable for the National Survey in their entirety, since each contains an element(s) that are not relevant or appropriate for the National Survey.

⁷ See section 6.1 of this paper.

⁸ Pleasence, P. et al. (2004) *Causes of Action: Civil Law and Social Justice*. Norwich: TSO. See also note 6.

⁹ Dignan, T. 2004. *Legal Need in Northern Ireland: Literature Review*. Northern Ireland Legal Services Commission.

¹⁰ See note 9. p.113.

¹¹ See note 9. p.114.

¹² Maxwell, G. et al. (1999) *Meeting Legal Service Needs*. Wellington: Legal Services Board. As summarised in Dignan, T. 2004. *Legal Need in Northern Ireland: Literature review*. Northern Ireland Legal Services Commission. p. 99.

Prior to the National Survey of Unmet Legal Needs and Access to Services, the Legal Services Agency had commissioned three regional needs assessments; in Auckland,¹³ Canterbury,¹⁴ and Wellington.¹⁵ Two of the needs assessments, for Auckland and Wellington, defined unmet legal need.

The Auckland needs assessment took a broad approach, defining unmet legal need as "...the absence of appropriate legal services, whatever the cause – legal, social or economic."¹⁶ The unmet need would be identified by "a gap in the provision of legal services when and where such legal services are appropriate or called for."¹⁷ This definition is appropriate for use with a supply or demand based definition of legal need, but not a problem based definition, such as that which will be employed in the National Survey.

In the Wellington Regional Needs Assessment unmet legal need was quantified as the number of "people who were either prevented from seeking advice because of a specific barrier (not including those who solved the problem themselves or considered the problem was not serious enough) or who sought advice but found that advice to be unhelpful."¹⁸ This represented the first attempt by the Agency to define unmet legal need in a practicable, quantifiable way. However, it was used in a much smaller regional survey and is not robust enough for a national survey.

This brief review of other existing definitions of unmet legal need indicates that it would be beneficial to consider the definition for use in the National Survey afresh, giving due consideration to the nature and purpose of the Survey, elements of the questionnaire design and how a definition could be employed as a measurement.

6.2 Relevant elements of the National Survey questionnaire design

The questionnaire identifies whether a person has experienced a problem with a legal aspect (a justiciable problem) in two ways:

- Asking only about specific categories of problems and then providing a series of examples of problems or situations that could give rise to a qualifying problem (this is clearly evident in the National Survey questionnaire in question 1, which sets the scene for the whole questionnaire).
- Employing "threshold language"¹⁹ when posing questions to respondents, by emphasising phrases such as 'problems that were difficult to resolve' and 'most serious' (this is most clearly evident in question 3). The purpose of this is to attempt to filter out trivial problems, which technically have a legal aspect but in reality are so minor as to not warrant pursuing a legal remedy.

When at least one problem is reported in question 1 the respondent will be asked a series of in-depth questions on their most serious problem. The questions are sufficiently comprehensive and detailed to facilitate an accurate measurement of the level of unmet legal needs.

6.3 How the definition could be employed as a measurement

There are two ways in which unmet legal need can be measured. However both have drawbacks:

¹³ NFO New Zealand. (2001). *Review of Unmet Legal Needs in the Auckland Area Qualitative and Quantitative Research Report*. Wellington: Legal Services Agency.

¹⁴ ACNielsen. (2004). *Unmet Legal Need in Canterbury*. Wellington: Legal Services Agency.

¹⁵ Ignite Research. (2005). *Wellington Regional Legal Needs Assessment*. Wellington: Legal Services Agency.

¹⁶ Definition was taken from Davis and Ludbrook (NZLJ, Nov. 1978).

¹⁷ NFO New Zealand. (2001). *Review of Unmet Legal Needs in the Auckland Area Qualitative and Quantitative Research Report*. Wellington: Legal Services Agency. p.66.

¹⁸ See note 15. p.40.

¹⁹ See note 9. p.45.

1. Number of people with an unmet legal need – people have multiple problems, some of which may be met, others of which might not be. It may also under-represent the level of unmet need by not taking into account situations where a person has multiple problems with an unmet legal need.
2. Number of problems people have experienced with an unmet legal need – this may over-represent the level of unmet level need and it also removes the “human element” from the calculation.

It is clear that the measurement of unmet legal need for the National Survey must take a twin approach and measure both the number of people with unmet legal needs and the number of unmet problems. This provides the most accurate measurement and allows an analysis of problem types, multiple unmet problems and the characteristics of people with unmet legal need.

A further measurement issue that needs to be considered is precisely how the level of unmet legal need would be calculated. If the level was measured on the basis of a person having complete success or complete failure to obtain advice for a problem with a legal aspect, the level of unmet legal need could be measured in either a positive or negative way:

- A positive measurement would only count those people and problems whose legal needs were clearly unmet.
- A negative definition would only remove from the calculation those people and problems whose legal needs were clearly met.

The level of unmet legal need would therefore be smaller or larger depending on which approach was adopted. This would result in the measurement being weak in terms of its reliability, credibility and accuracy.

The difficulty with these approaches is that they are too simplistic and cannot reflect the wide range and complexity of advice-seeking behaviour, e.g. a need may be partially met (or partially unmet depending on the perspective taken) where a person has successfully obtained some of the advice or help they require. Equally a need may or may not have been met, in its entirety, depending on the individual situation.

A reliable and accurate measurable definition of unmet legal need must therefore be able to reflect a complex and diverse range of problems, advice-seeking behaviour and individuals' circumstances. Consequently the most appropriate approach would be to divide legal need into three measurable segments:

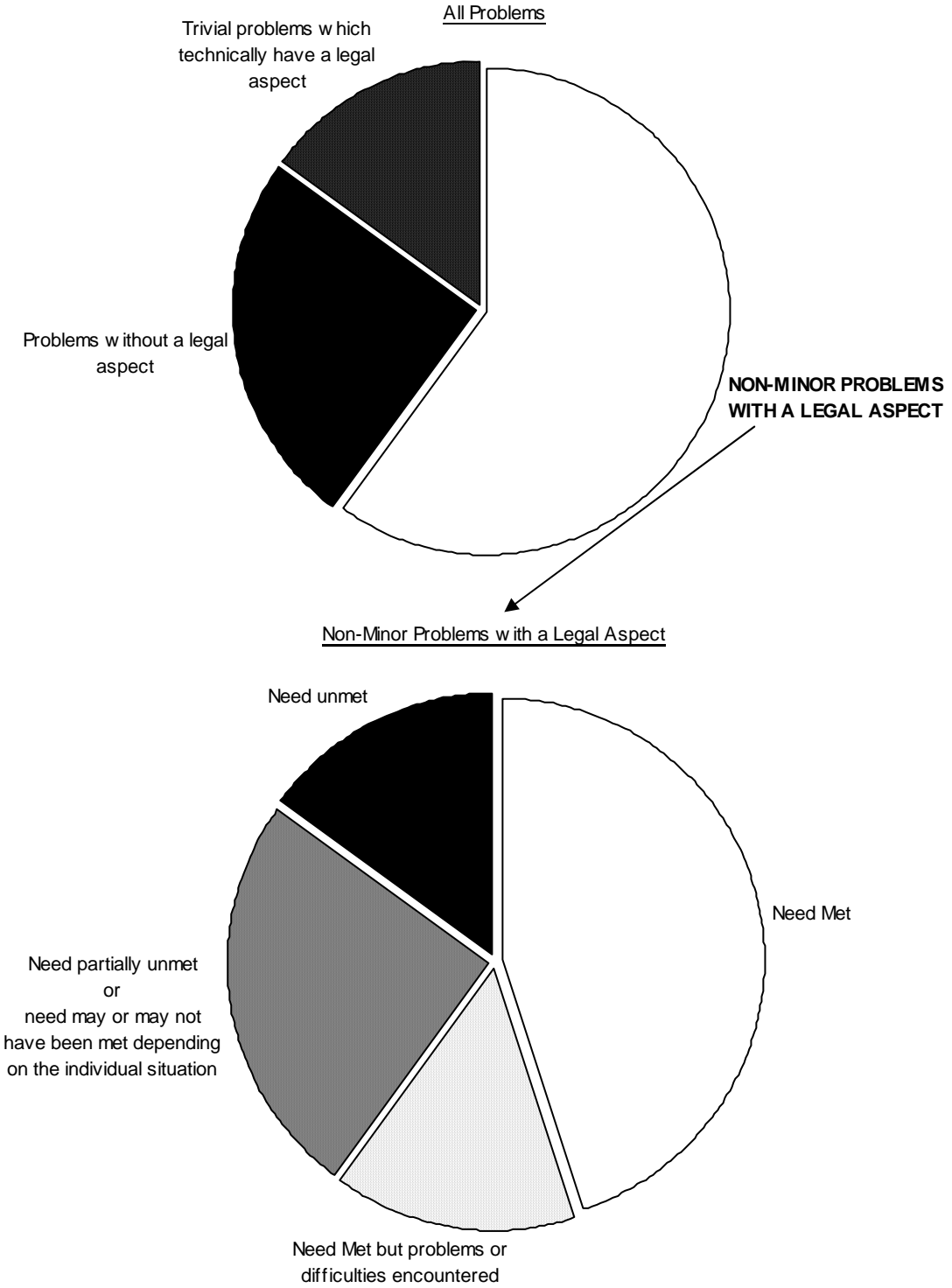
- Need met - need which can be ascertained as definitely having been met.
- Need unmet - need which can be ascertained as definitely having been unmet.
- Not established - need which cannot be ascertained as definitely being either met or unmet e.g. it may be partially unmet or it may or may not have been met depending on the individual situation.

The need met segment should be subdivided into two categories; need met satisfactorily and need met, but the person encountered problems or difficulties in trying to secure help or advice. This distinction is important because it will allow instances where the end outcome was the successful resolution of the problem, but the path to resolution may not have been satisfactory, to be identified and measured separately. In addition it will also enable the identification of practices most likely to meet need in a smooth satisfactory manner.

Dividing legal need into three measurable segments and subdividing the “need met” segment ensures that the measurement employed by the National Survey is as reliable, credible and as accurate as possible, thus ensuring that it is suitable for basing decisions on the desirable quantity, location and structure of publicly funded legal services throughout New Zealand.

7. A new definition

Drawing together the elements discussed in section 6, the context for a definition of unmet legal need can be represented as:



In addition to employing threshold language, trivial problems should be removed from the measurement by applying the following filter:

The total number of people who have experienced a problem.

Minus

Anyone whose problem was over because it had sorted itself out.

Further deducting

Anyone who didn't seek help or advice because either the problem sorted itself out before they got around to seeking help, or they couldn't be bothered seeking help.

7.1 Detailed breakdown of the definition

The definition for the National Survey should be broken down as follows:

Need met

- The problem was solved through agreement being reached between the two parties or they are currently trying to reach an agreement.
- The problem was solved through mediation or mediation is currently being pursued to resolve the problem (if mediation is currently being pursued then we can conclude that legal need has not yet arisen).
- The problem was solved with the help of someone other than a mediator or friends or family, or they are currently trying to solve the problem with the help of someone other than a mediator or friends or family and they did not experience any problems or difficulties in trying to access or get advice or help with their problem and found the advice or help received "very helpful" or "fairly helpful."
- The problem was solved by the respondent on their own without help and they did not seek any help or advice because either they were dealing with it themselves or because they thought that it would resolve itself.
- The problem was resolved after court or tribunal action occurred and no problems or difficulties were reported with trying to get access to help with their problems.
- The problem was resolved with the help of family and friends and no problems or difficulties were reported with trying to get access to help with their problems.

Need met but problems or difficulties were encountered in trying to secure help or advice

- The problem was solved with the help of someone other than a mediator or friends or family, or they are currently trying to solve the problem with the help of someone other than a mediator or friends or family and problems or difficulties were reported in trying to access or get advice or help with their problem and they found the advice or help received "very helpful" or "fairly helpful."
- The problem was solved with the help of family and friends but problems or difficulties were reported in trying to access or get advice or help with their problem.
- The problem was solved after court or tribunal action occurred but problems or difficulties were reported in trying to access or get advice or help with their problem.

- Anyone who sought advice from multiple sources and can fit into “need met” for one source but “need unmet” for another should be counted in this segment.

Need partially unmet OR need may or may not have been met depending on the individual situation

- Where people did not or are not seeking help or advice because:
 - They dealt with or are attempting to deal with it themselves – this may be as a result of the problem being minor or the person being capable of or choosing to deal with it themselves. However it could also be because they were not able to find a suitable advice provider so they did not choose to deal with the problem themselves, but rather were forced to by a lack of supply.
 - They think or thought that the problem would resolve itself – this may be as a result of the problem being minor, although it may be that people either through choice or a lack of knowledge ignore(d) or fail(ed) to recognise or acknowledge the seriousness of the problem.
 - They did not think that it would make much difference – this may be as a result of the problem being minor, however it could be as a result of a person’s sense of fatalism towards the problem.²⁰
 - They thought that the other party was right – this may lead to a person taking no action because they thought that the problem was minor, but it may also be as a result of a person being misguided regarding the other party being in the ‘right’ or not being aware of their own rights or ability to defend an action or accusation.

- Where the problem ended but they did nothing to resolve the problem
- Where the problem is ongoing and the person is not currently trying to do anything to resolve it because they think that it will resolve itself.
- Where the problem is ongoing and they are currently trying to solve it on their own without the help of anyone else.

- These may all be as a result of the problem being minor, although it may be that people either through choice or a lack of knowledge ignore(d) or fail(ed) to recognise or acknowledge the seriousness of the problem, or they did/do not know how to go about seeking help or advice.

- The help or advice received was “not very helpful” or “not at all helpful” – the advice or help may not have been helpful. However it could also be that the advice provided was correct but it was not what the person receiving it wanted to hear or that the outcome was not what the person was seeking. Asking members of the public about the helpfulness of advice or help they received is extremely subjective and the definition employed in the survey needs to be objective, or risk jeopardising its credibility and reliability.

Need unmet

- No help or advice sought for the problem (except where the need may have been met depending on the individual situation - above).

²⁰A study in Scotland attributed a lower incidence rate of justiciable problems to a “greater sense of fatalism” and “more community orientation.” See Genn, H. & Paterson, A. 2001. *Paths to Justice: What People Do and Think About Going to Law*. Oxford: Hart Publishing. p.251.

- A problem is currently being experienced but the person is not trying to do anything to solve it because they don't know what to do.
- The problem ended because the person gave up trying to solve the problem.
- Problems or difficulties were experienced in trying to access or get advice or help with their problem.