

Access is not justice: but what can you do about it?



Findings from the Public Understanding of Law Survey (PULS) and Pilot Legal Understanding and Lawyer Use (LULU) Surveys

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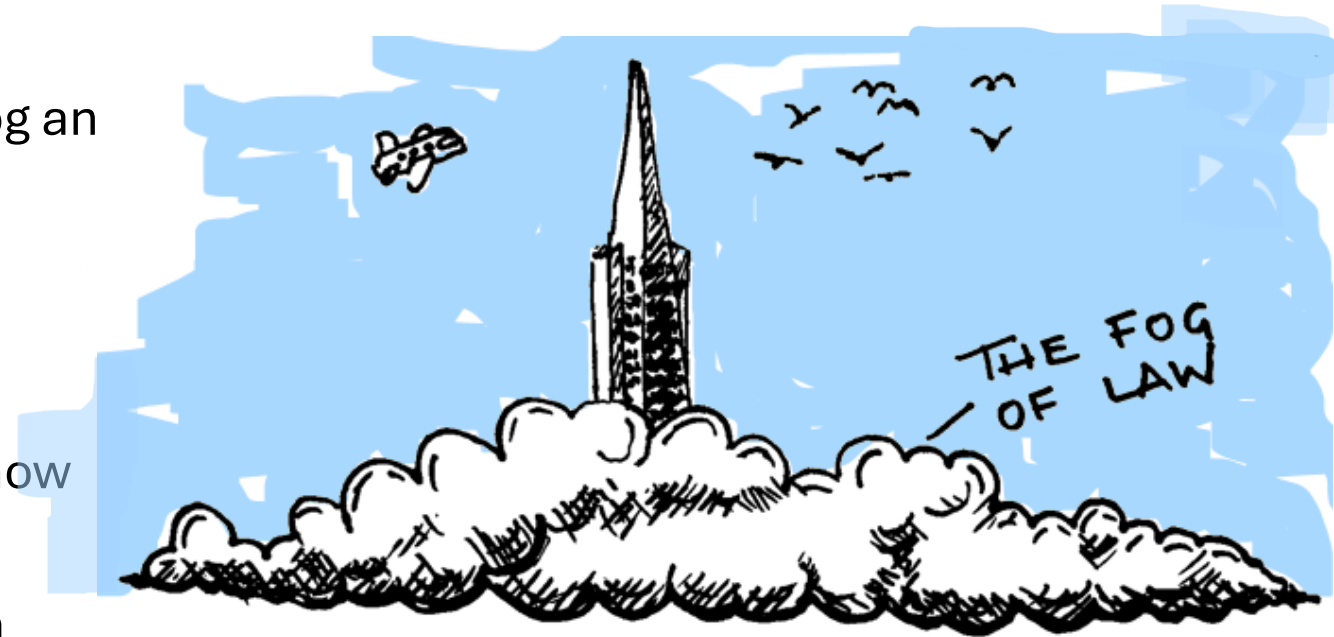
Why are we interested in a consumer perspective

Access to justice policy is shifting

- From a 'top-down' institutional perspective focused on the pointy bit where we see processes
- To a 'bottom-up' perspective focused on the fog and ability of individuals to resolve problems

It's a pretty obvious thing to do right?

- Services and systems should mirror needs
- But it's hard to respond to needs if you don't know what they are....
- So this is where consumer* research comes in



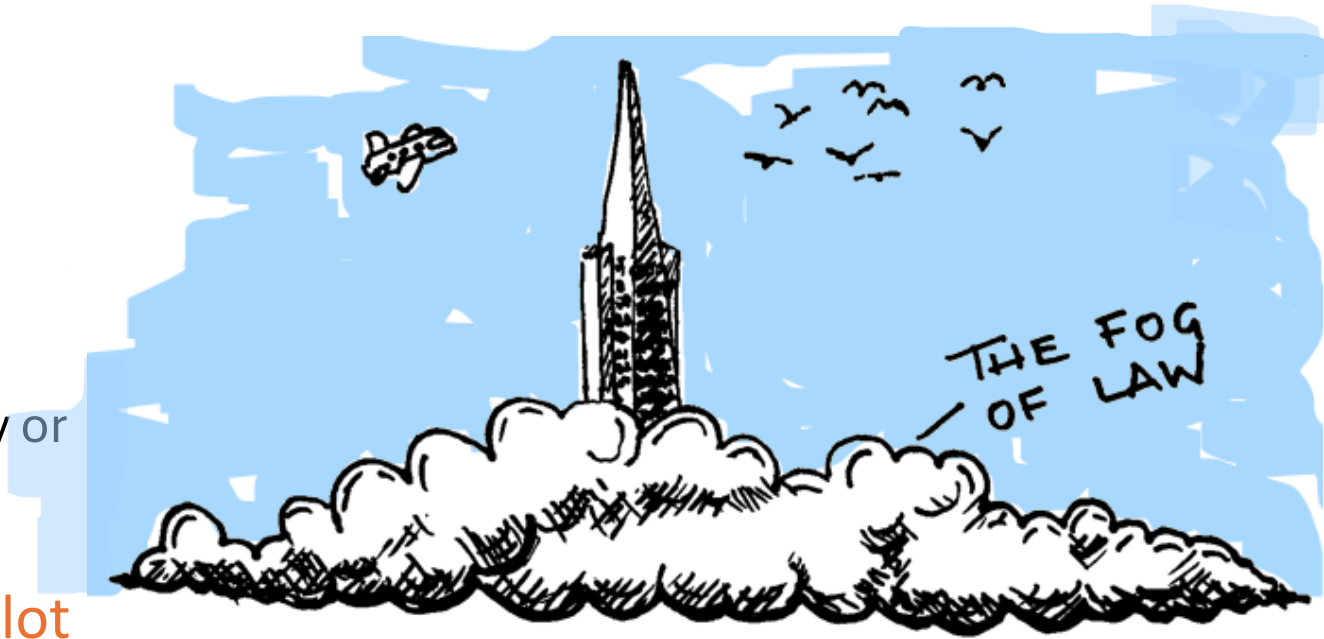
But wait, is it really about consumers?!

No, you need more

- You also need to know about people without problems or issues
- Otherwise, you don't know what is associated with experience
- You need to know about those who don't use services, or use non-legal services
- Otherwise, you don't know what drives strategy or how services interact

Surveying service/process users tells you a lot

- But if you want to make policy, reform, design or regulation that reflects needs and capabilities....
- You need everybody and that is where the legal needs survey comes in



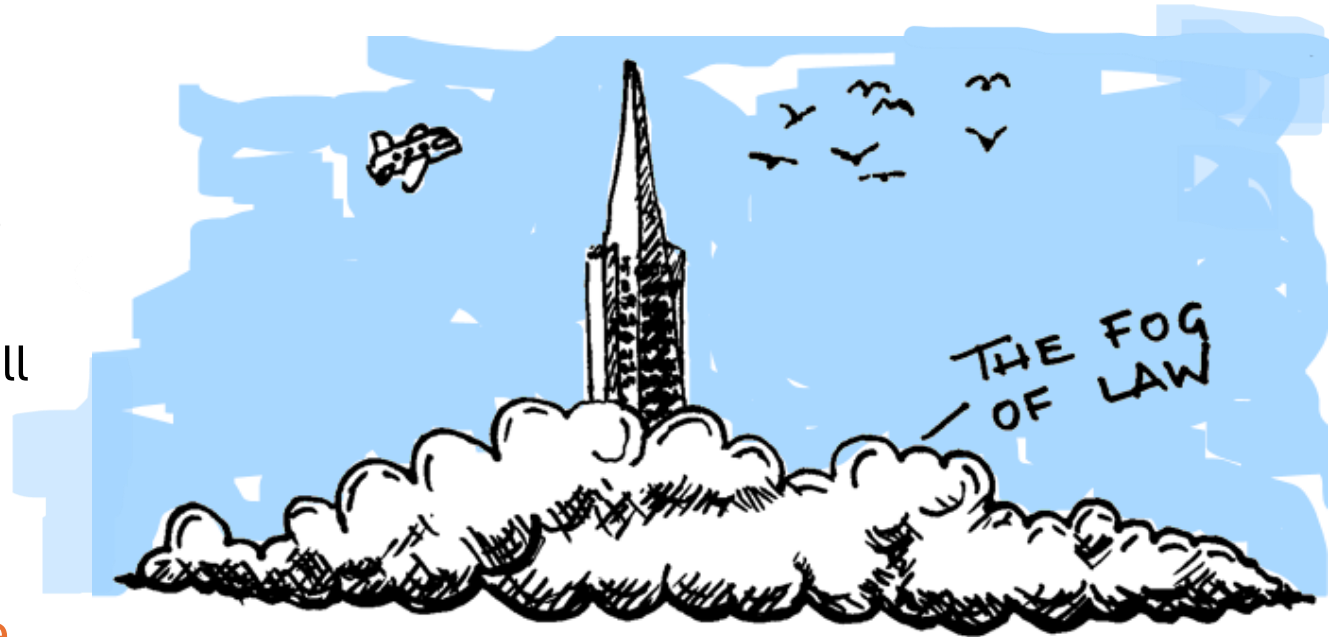
Legal needs surveys – the basic idea

Ask people about their experience of
justiciable problems

- Some people will not have had any, others will have had lots
- Some people will not see them as legal issues, others will
- Some people will have done nothing, others will have been through formal processes
- Some problems conclude, others don't

Asking all this is how we get the full picture

- This is not a new idea!!



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This is how we get the full picture

- Untapped legal business may be untapped because it does not need doing or because it needs doing but will not pay.... The first step, however, is to determine its existence



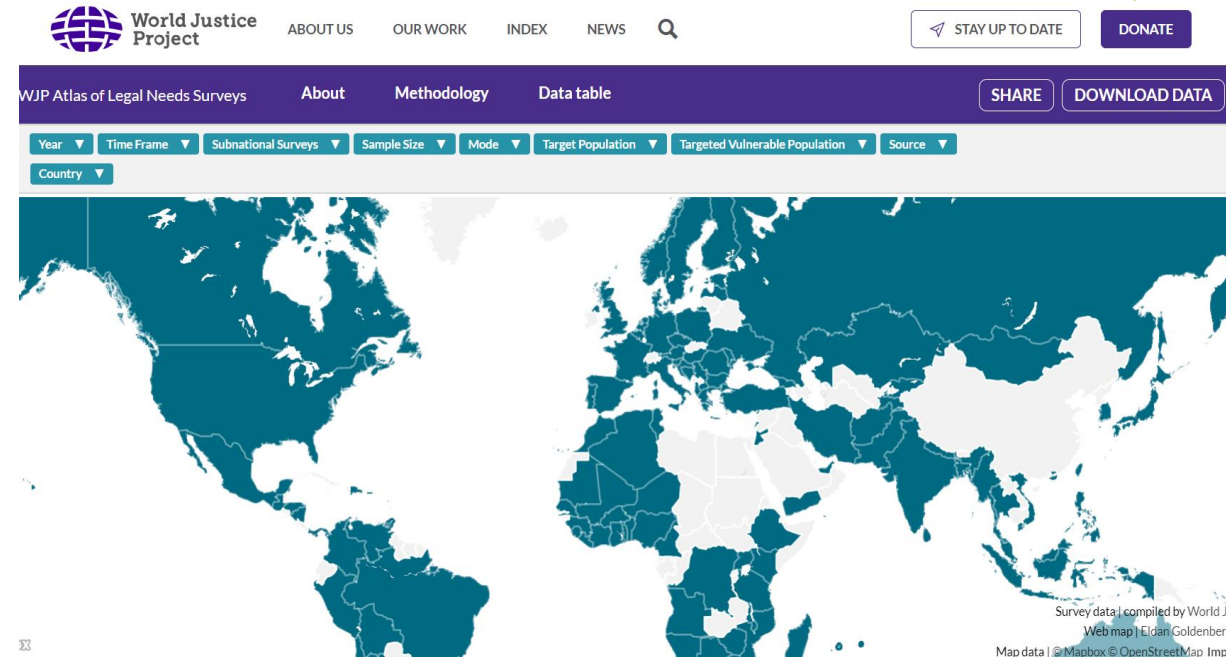
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- And now there is a lot of them!



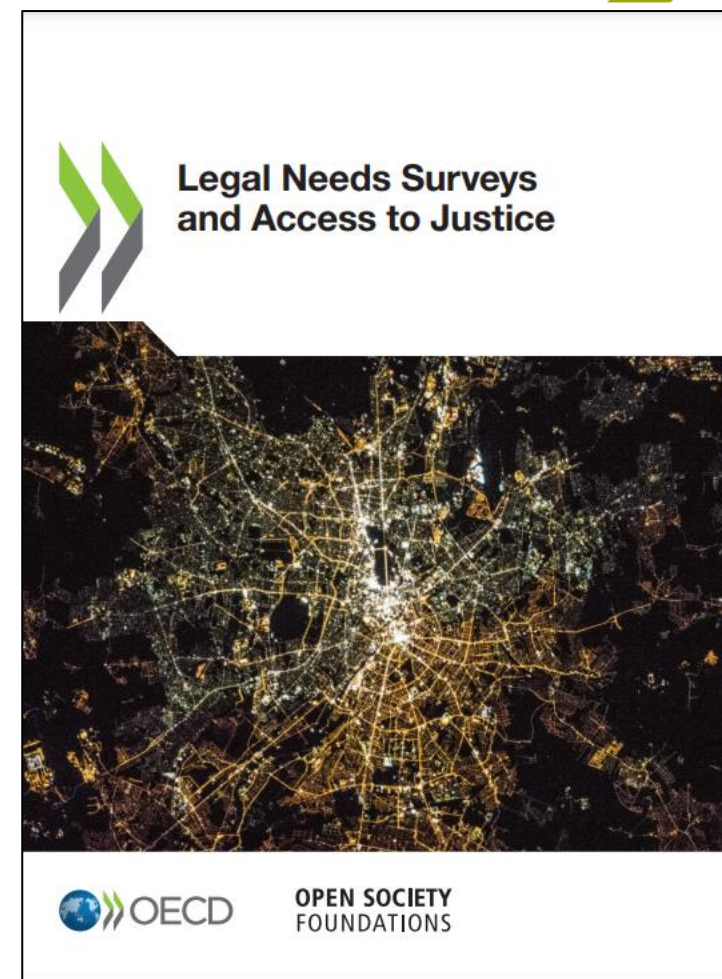
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What have these things told us



Inequality of experience

- Justiciable problems are not randomly distributed across populations
- Problems do not occur in isolation

Inequality of access

- Not everyone does or is able to do the same thing
- Strategy relates to who you are, the problem, how you perceive it, stakes, duration etc....

Inequality of capability

- Not everyone can extract the same value from different forms of service
- (New) forms of service can bring (new) forms of marginalisation

Used to prioritise/target, and seek to better mirror need

- Though geographic provision, information, colocation, outreach, holism, integration, branding



Things that had been bothering me



This work does not and should not stay still

- Asking the same questions has utility, but we can do more

We say things like this

- **Legal need** arises whenever a deficit of **legal capability** necessitates legal support to enable a justiciable issue to be appropriately dealt with
- A **legal need** is unmet if a justiciable issue is inappropriately dealt with as a consequence of effective legal support not having been available when necessary to make good a deficit of **legal capability**
- If a legal need is unmet, there is no **access to justice**

We have not been good at measuring these things

- I'm going to show you two surveys that are better at this
- And show what happens when you measure legal need and legal capability



The Public Understanding of Law Survey (PULS) and Pilot Legal Understanding and Lawyer Use (LULU) Surveys

Are (actual) legal needs surveys

- About people's experience of and response to justiciable problems
- And they operationalise the idea of legal need

Are legal capability surveys

- About the knowledge, skills and attributes you need to make decisions about whether and how to use the justice system
- And they quantify legal capability

They are the voices of over 10,000 Australians



Legal need – measured



“Legal need arises whenever a deficit of legal capability necessitates legal support to enable a justiciable issue to be appropriately dealt with

Unmet if issue is inappropriately dealt with as a consequence of effective legal support not having been available when necessary to make good a deficit of legal capability.

Unmet means no access to justice”

(Plesence, Balmer & Chapman, 2019)

Duration	Seriousness	Legal awareness/ understanding	Legal confidence	Process fairness	Expert help	Adequacy of support	
Long	High/Moderate/Low	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	
Short/Moderate	High	Yes/No	Yes/No	Yes	Yes	Yes	
				Yes	No	No	
				No	Yes	No	
				No	No	N/A	
	Moderate	Yes	Yes	Yes	Yes/No	N/A	
				No	Yes	N/A	
				No	No	N/A	
				No	No	N/A	
		No	No	No	Yes	Yes	Yes
					Yes	No	No
					No	No	N/A
					No	No	N/A
Low	Yes/No	Yes/No	Yes/No	Yes	Yes	Yes	
				Yes	No	No	
				No	No	N/A	
				No	Yes	Yes	
Low	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No	N/A	

■ No legal need
 ■ Legal need
 ■ Met legal need
 ■ Unmet legal need

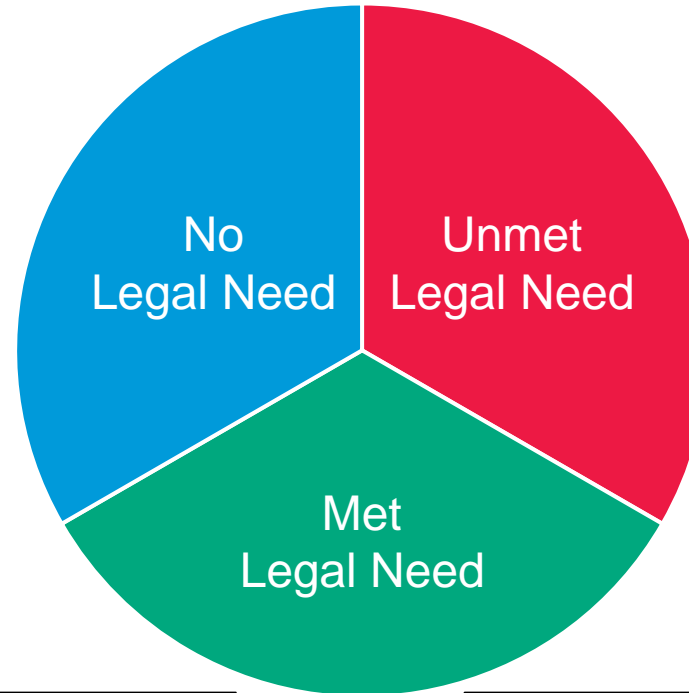


Legal need - measured



Short/moderate duration, moderate seriousness, had legal awareness/understanding, had legal confidence, fair process

Short/moderate duration that is not considered serious



Short/moderate duration, moderate seriousness, legal awareness, understanding and confidence, unfair process, no expert help

Short/moderate duration, very serious, expert help is obtained but considered inadequate

Short/moderate duration, very serious, expert help is obtained and is considered adequate

Short/moderate duration, moderate seriousness, legal awareness, understanding and confidence, unfair process, expert help



Legal capability - measured

“the freedom and ability to navigate and utilise the legal frameworks which regulate social behaviour to achieve fair resolution of justiciable issues” (Balmer et al., 2023)



Skills & confidence

Perceived relevance of law – 8 items
General legal knowledge – 15 items
Practical legal literacy – 6 items
Digital legal capability – 8 items
General legal confidence – 8 items



Composite skills – 4 groups

Attitudes

Narratives of law (Law as... Remote, to Resist, a Game, Practical) – 3 x 4 items
Inaccessibility of lawyers – 10 items
Trust in lawyers – 6 items



Composite attitudes – 4 groups



Legal capability - measured

It's multidimensional and we can't capture it all

- But these are the most ever constructed and captured together



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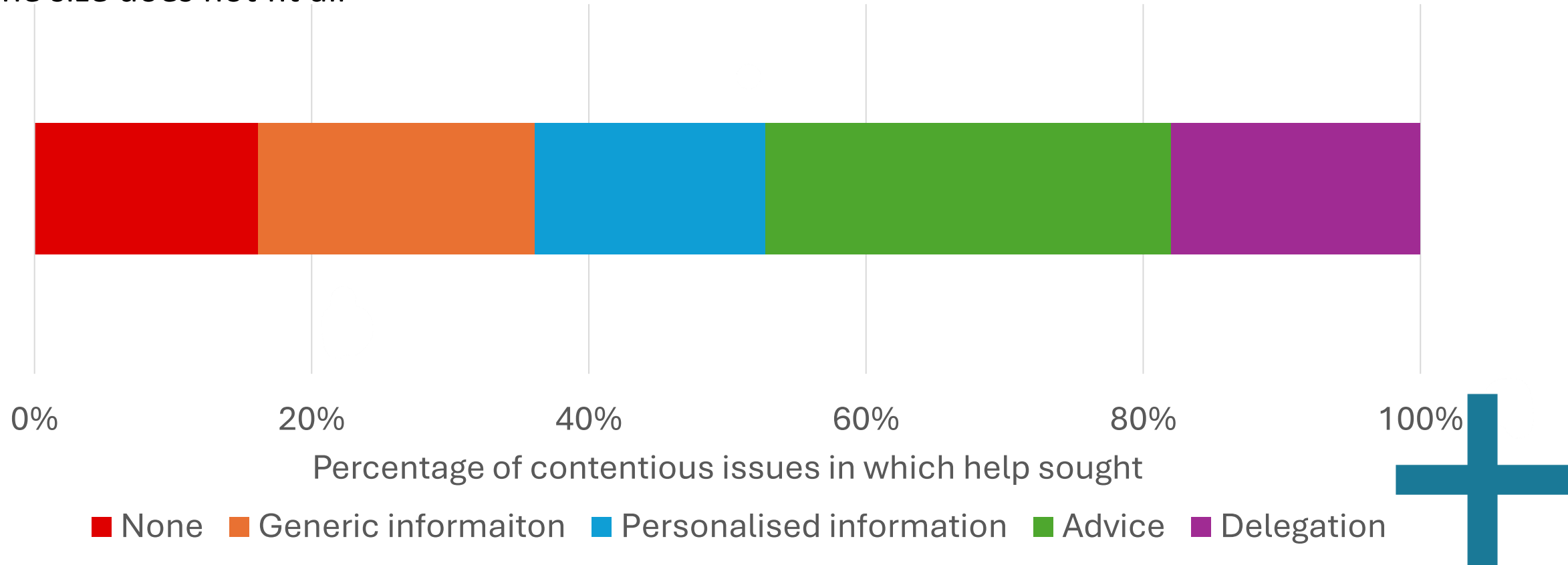
Composite attitudes – 4 groups



People are looking for a diverse range of assistance

At the outset, LULU shows people are searching for a wide range of things

- Different elements, by different means
- Different levels or intensities of service
- One size does not fit all

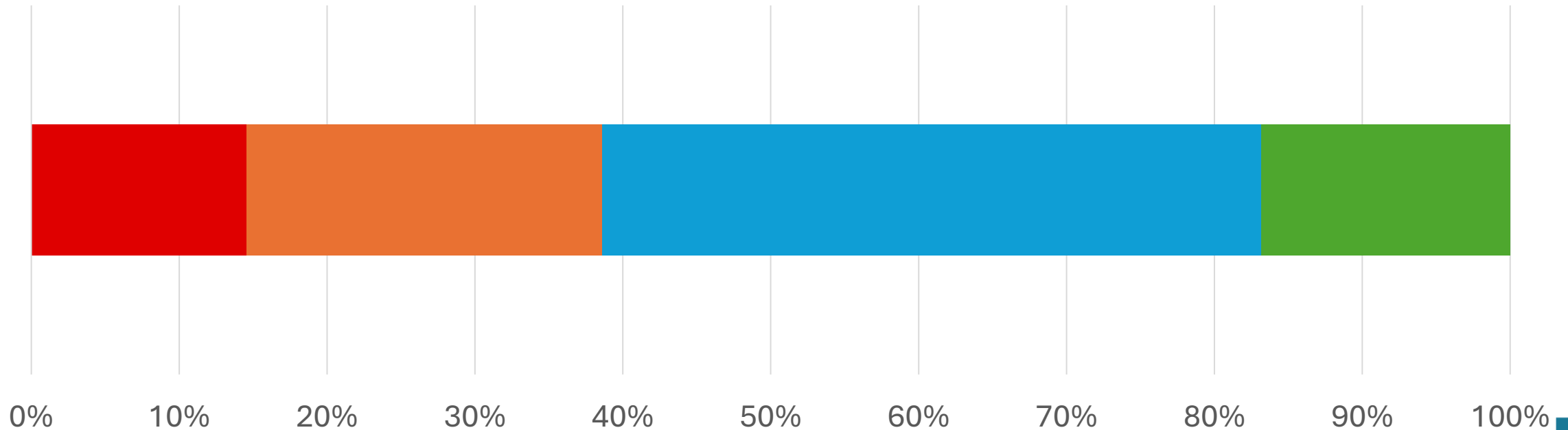


However, you can't always get what you want



People frequently don't get what they were searching for

- LULU shows the mismatch between what you seek and the level of service you get
- And this goes beyond preference



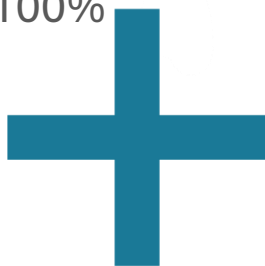
Percentage of contentious issues in which help sought

■ Obtained nothing

■ Obtained less than sought

■ Obtained what sought

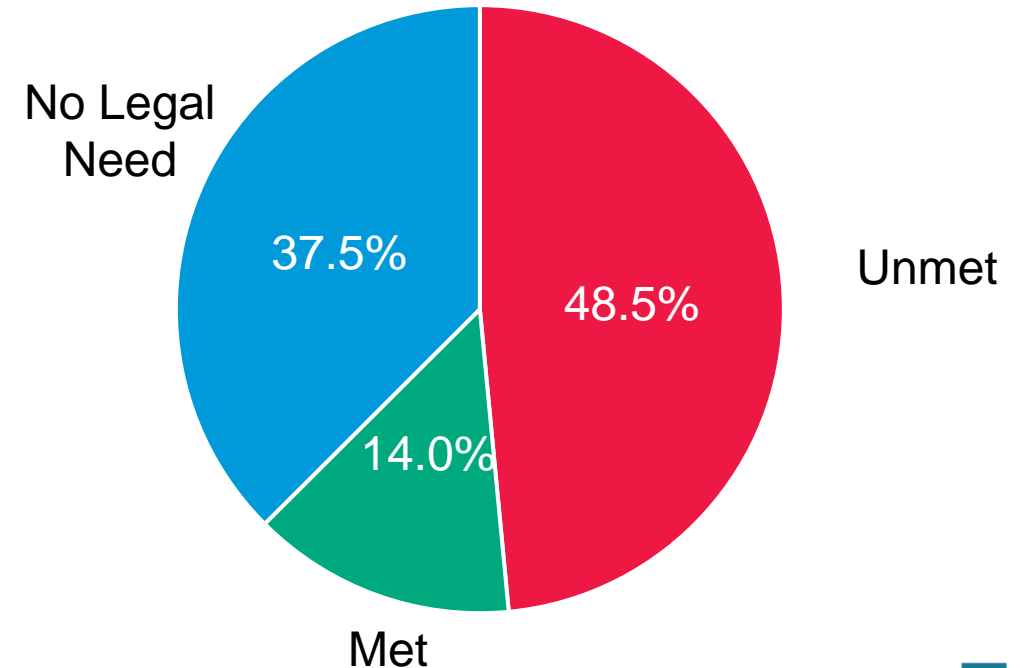
■ Obtained more than sought



But if you try sometimes, you'll find you rarely get what you need

Since as the PULS shows mismatches
contribute to unmet need

- Capturing legal need seemed like a good idea
- But it's a bleak picture, unmet legal need is routine
- Removing 'no legal need' left almost 80% of need unmet
- Where legal need goes unmet there is no access to justice
- And it gets worse still



But if you try sometimes, you'll find you rarely get what you need

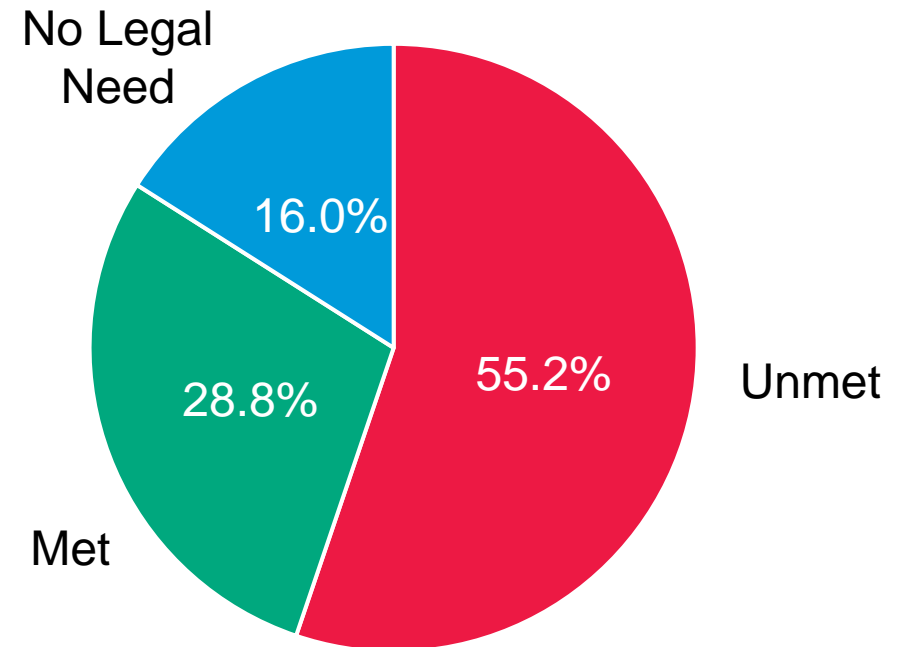
This is where legal advice was obtained

- More legal need, but most was unmet
- This was due to not getting all the help needed, problems persisting, or both

Severity funnels towards law

- More complex, intractable problems
- But it remains a lot of unmet need

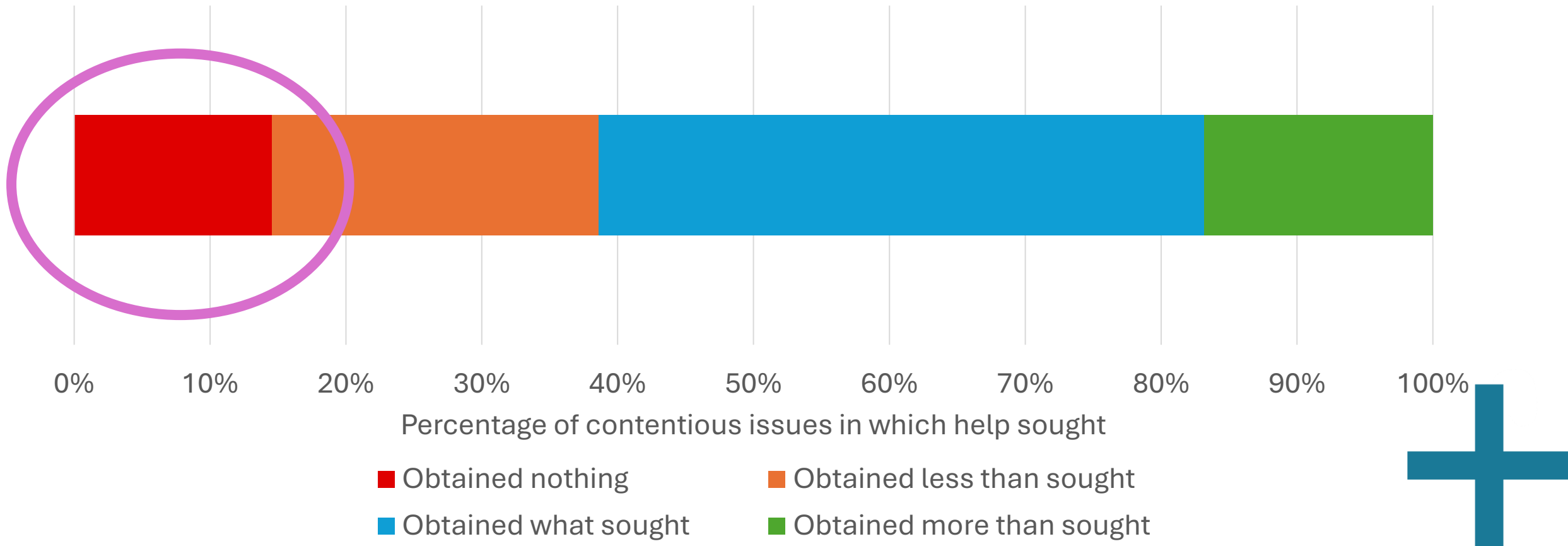
What sits behind this?



Legal capability defines what you do and what you get

Searching should yield stuff, but LULU shows that too often it doesn't

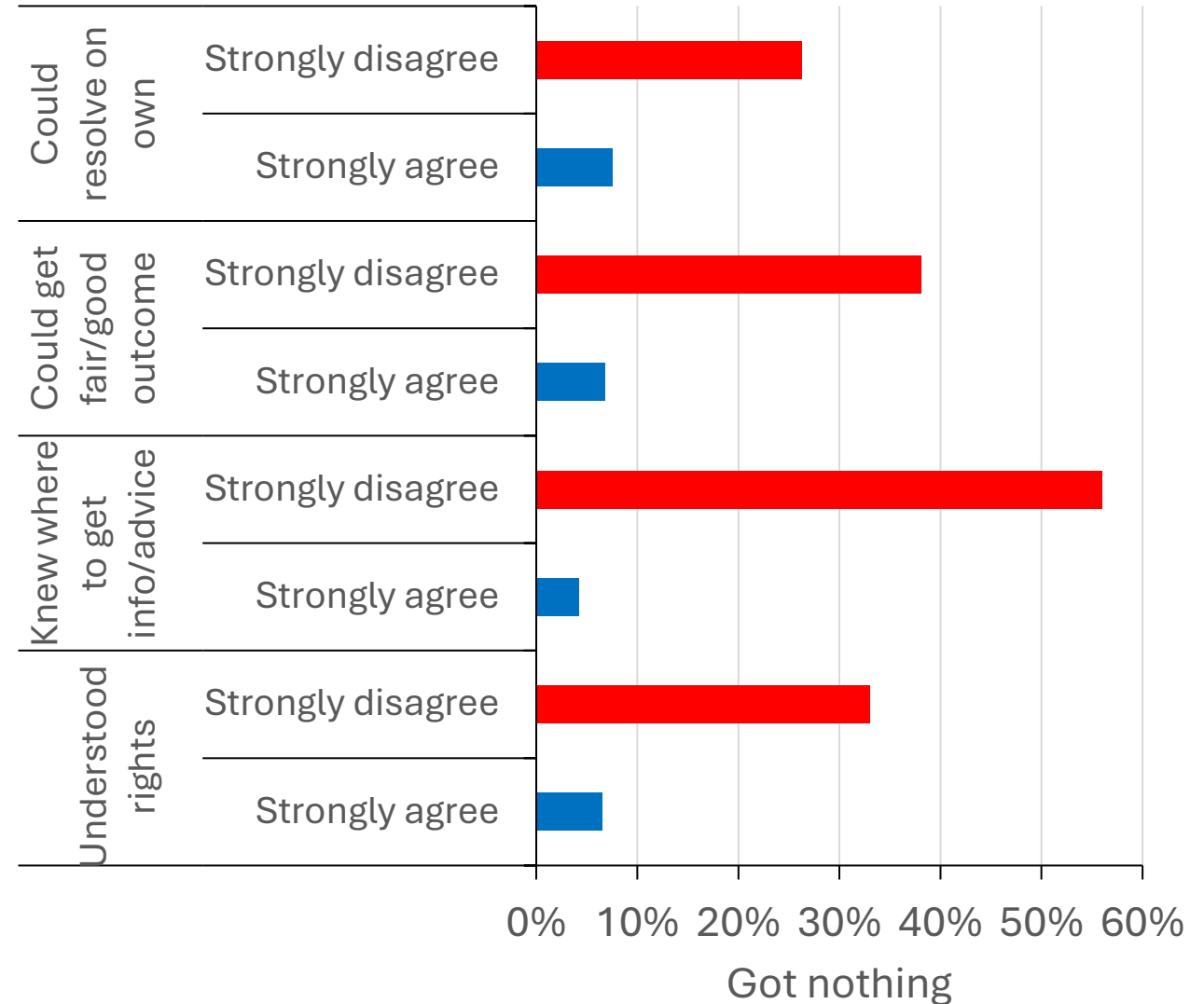
- If we focus on this bit, what lies behind the mismatch?



Legal capability defines what you do and what you get

Legal capability defines success

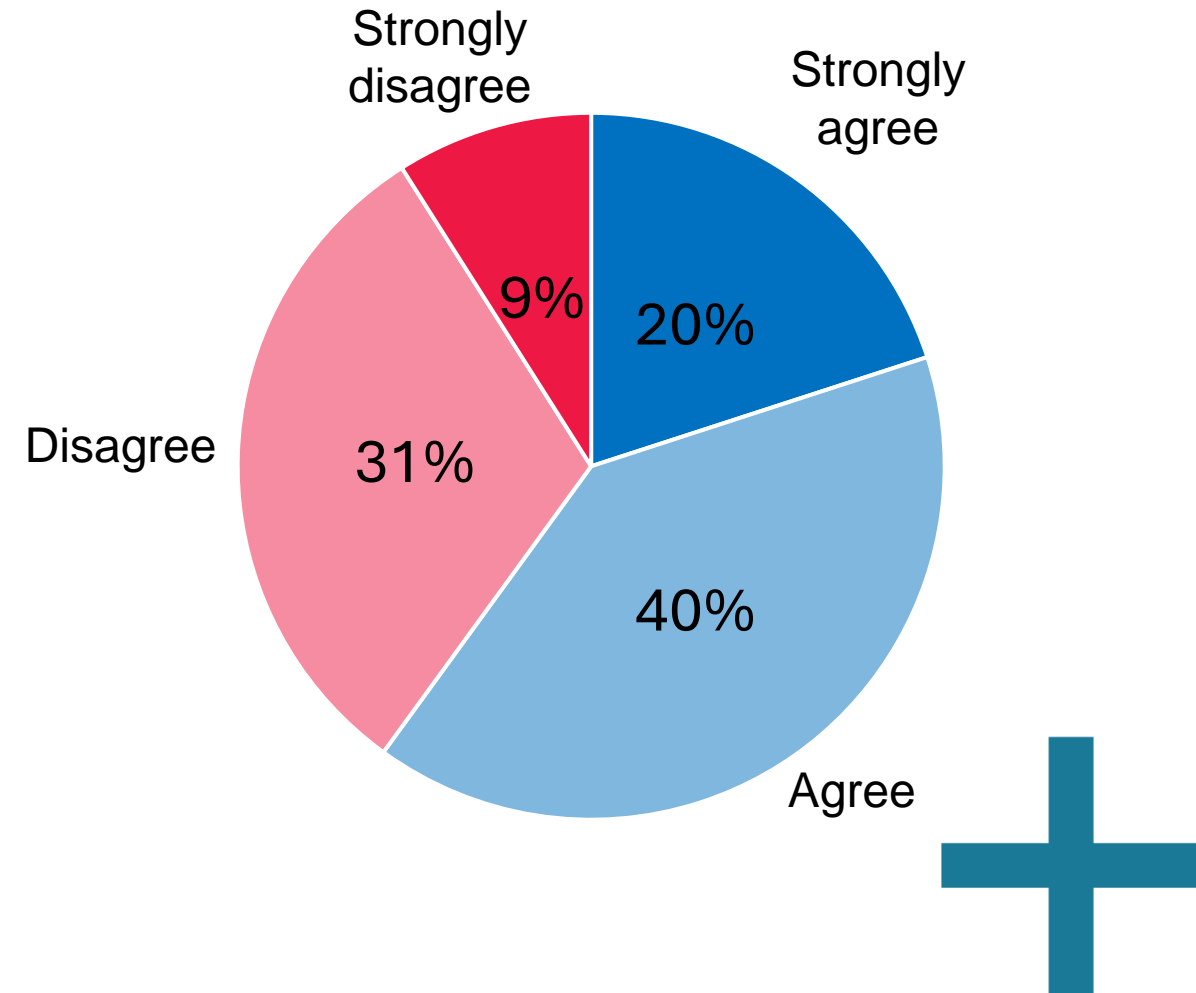
- In getting the level or intensity of service you sought
- High capability meant getting what was sought or even more
- Low capability meant a huge increase in getting nothing
- Across knowledge of rights, knowledge of services, self-efficacy and confidence



Legal capability defines what you do and what you get

And the PULS reinforces this

- Regardless of what you sought, this is the extent to which people got the expert help they needed
- Problems don't always require help
- Core element of legal need (OECD/OSF)



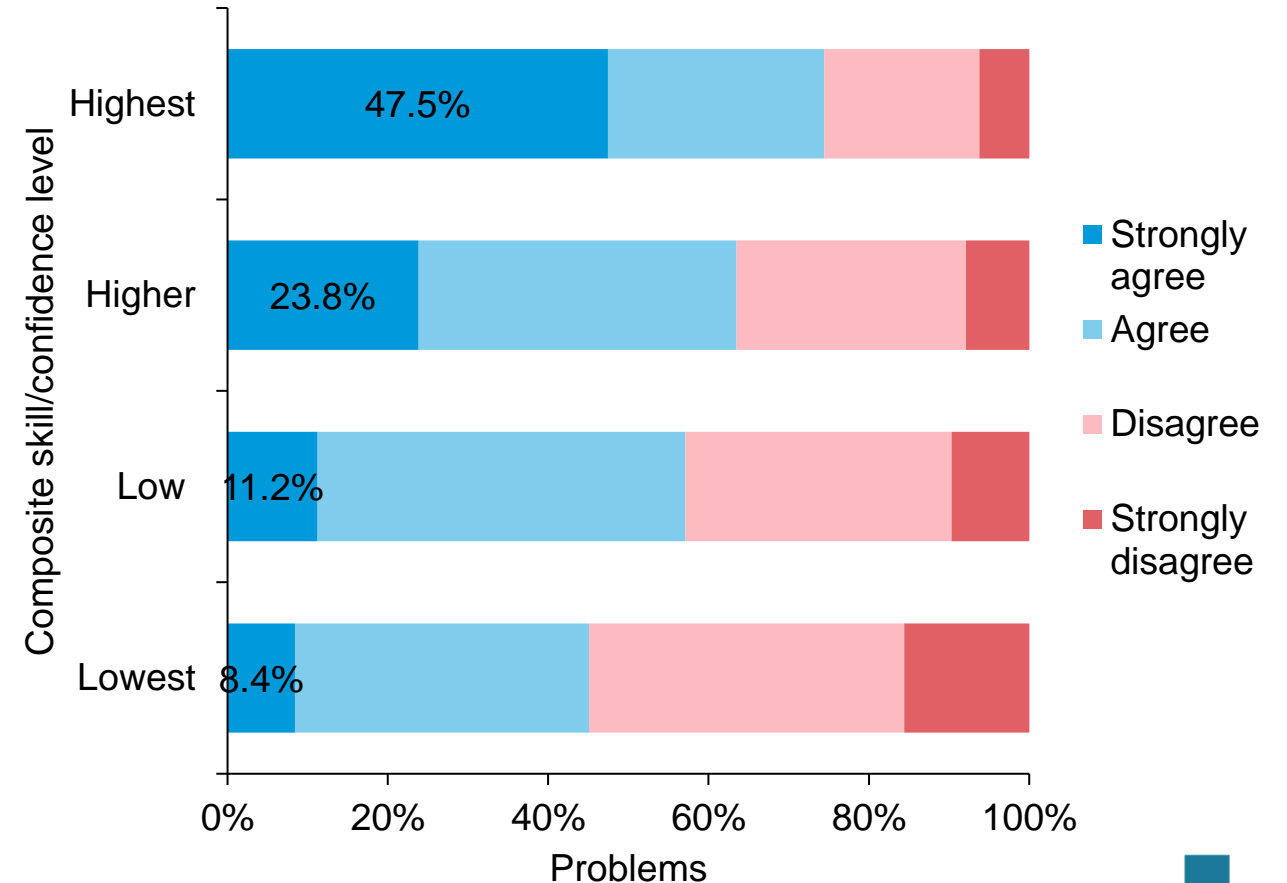
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Legal capability was also pivotal to meeting needs

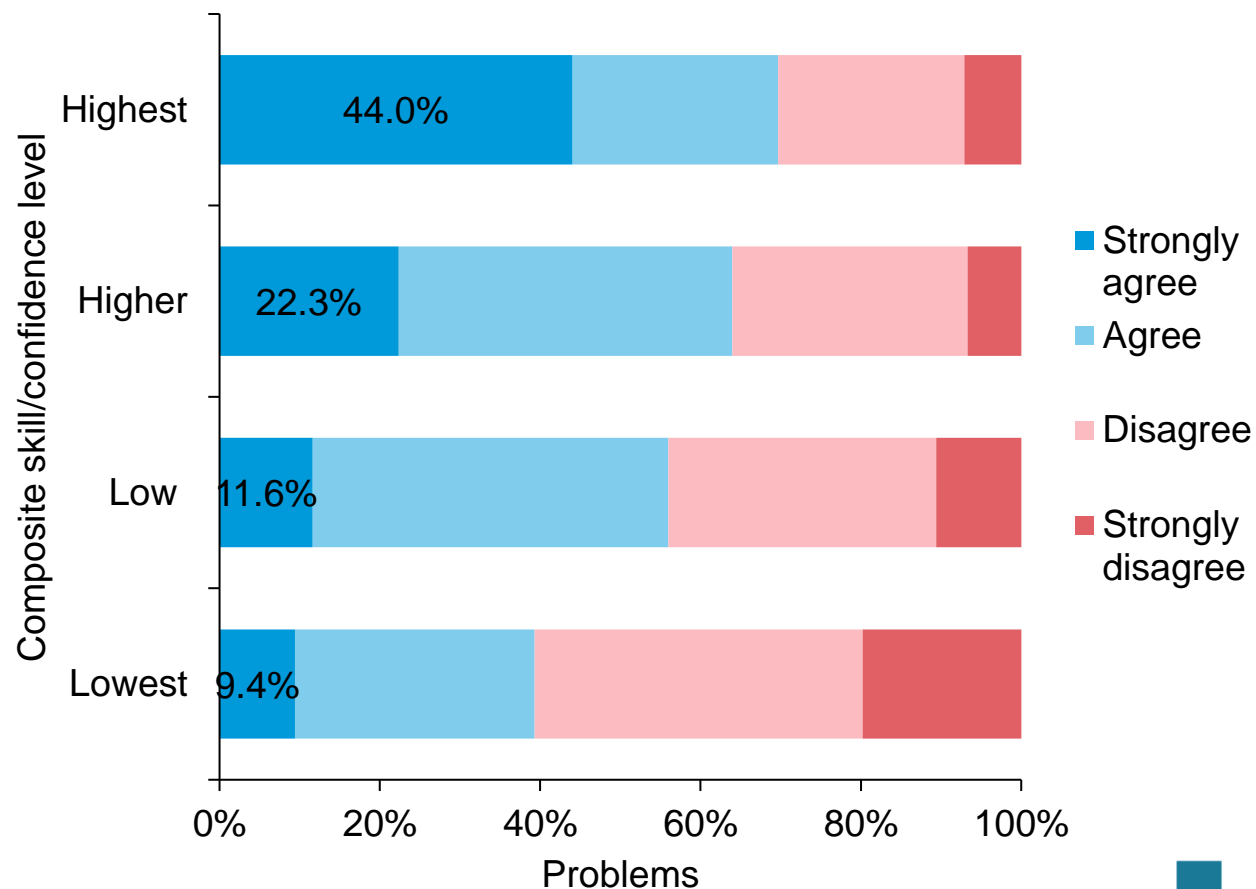
- Across measures
- Low skill/confidence was a powerful barrier to getting suitable assistance
- Now things get interesting...



Legal capability defines what you do and what you get

These are people who did not get legal advice

- Skills and attitudes powerfully related to whether or not you got the help needed
- They relate to your success in handling your problems without legal advice



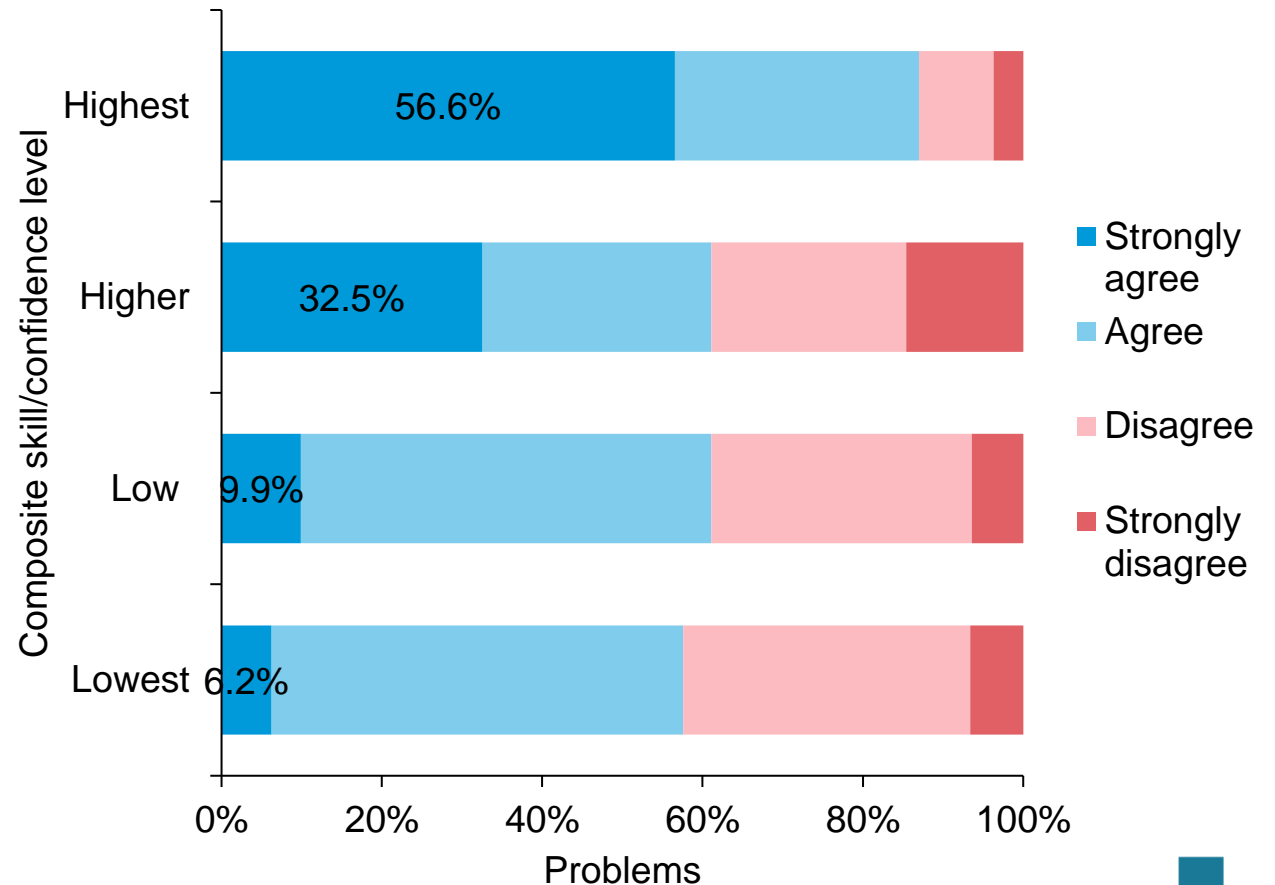
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- Skills and attitudes powerfully related to whether or not you got the help needed
- They relate to your success in handling your problems without legal advice

And these are people who got legal advice

- Skills and attitudes even more powerfully related to whether or not you got the help needed
- They relate to your success in extracting what you need from legal advice



Legal capability defines what you do and what you get

This relationship is incredibly stable

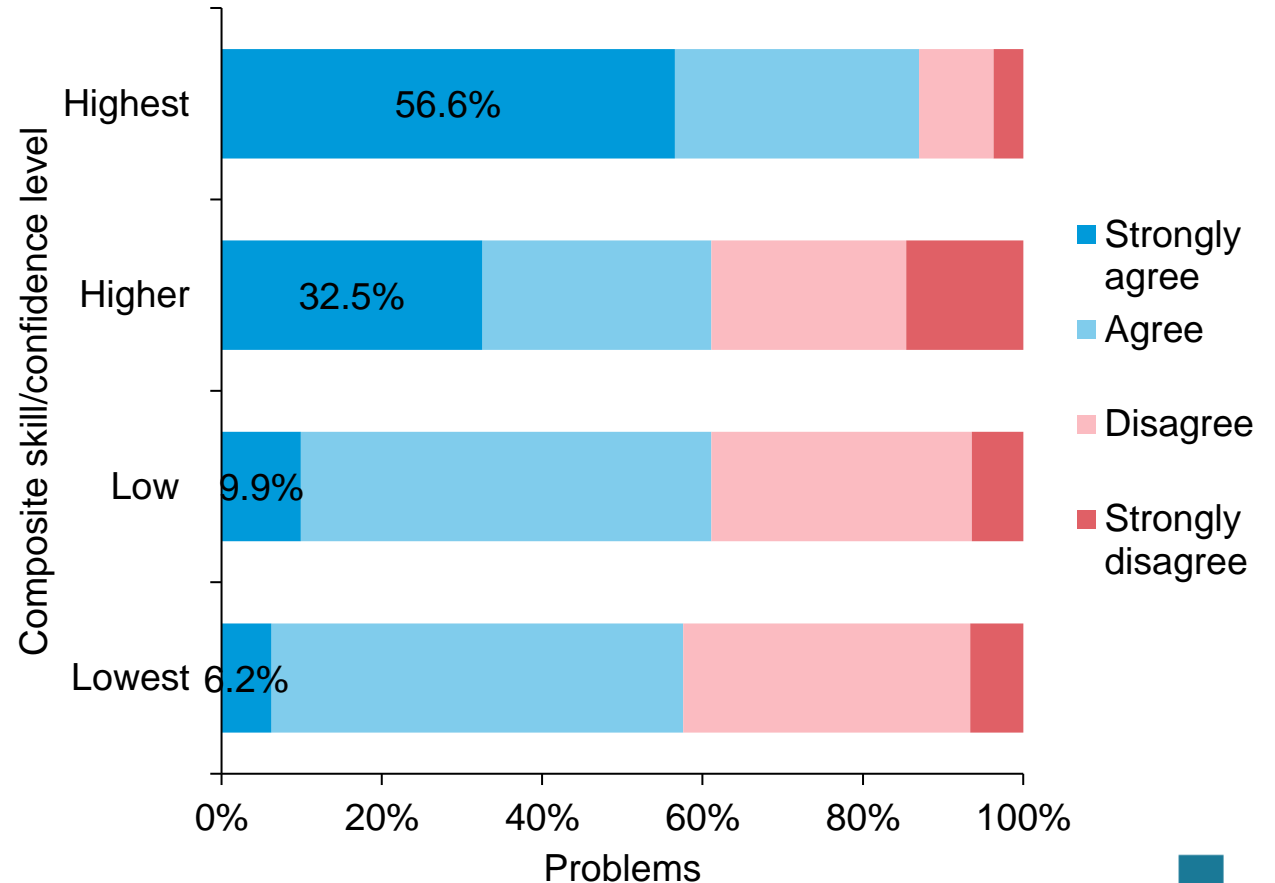
- It applies to private lawyers
- It applies to publicly funded services
- It applies to non-legal services

Deficit of skills/confidence

- Limit your ability to handle issues without assistance
- And limit your ability to extract value from assistance

The result was negative attitudes

- Which in turn limit your propensity to seek services - a vicious cycle



Legal needs/consumer research has told us a lot

Since the 1930s

- It has told us about the reach of the law and legal services, what people experience, how legal problems interact with their lives, what they do or don't do, what they get
- It has helped make policy, design services, and regulate from the 'bottom-up'

Right now

- It is telling us that if you properly measure it, you find that unmet legal need is routine
- And access does not equate to justice
- It indicates that legal capability is critical to understanding and addressing this

Capability asymmetry leads people down very different paths to justice

- Many inequalities in experience and resolution of legal problems are best understood in capability terms
- Taking it seriously is a route to democratizing law
- Ensure the justice system does not simply amplify capability and advantage, this means...



Matching to needs

Low levels of capability meant difficulty extracting value

- From legal services and the legal system more broadly
- It impacted your success in getting the parts needed and the level of assistance required to put those parts together

So legal capability can help get things just right

- Uniform services focused where its easiest to provide won't do it
- Dissatisfaction and disempowerment stem from the mismatch
- To impart best value and ensure accessibility across communities, the system must mirror capabilities to meet diverse needs

It means measuring capability, tailoring and refining

- In what is offered offered, in mode, in level, in forms of communication, in location, in presentation



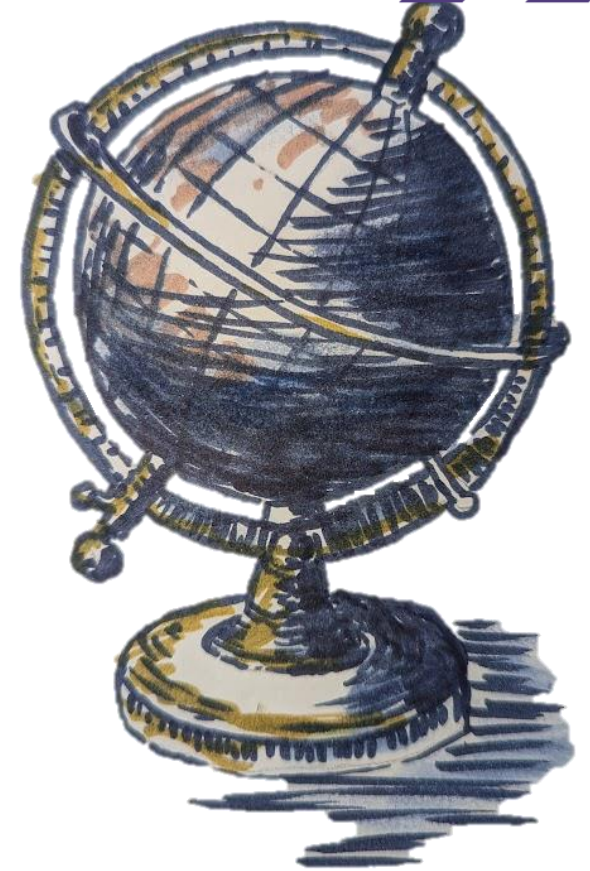
But it is not (just) a story about disadvantage

Legal capability relates to who you are

- But it extends further, transcending social and economic disadvantage
- Legal capability matters regardless of characteristics or means
- We are all at risk of handling justiciable problems badly, having unmet needs and getting poor outcomes

Imperative to respond applies to all regardless of who you serve

- An imperative to encourage appropriate levels of support to all that need it
- An imperative that extends to public legal assistance, private practice, process, and beyond the justice sector



If change that benefits all has capability at its heart...



....It will take a village

Policymakers

- Can encourage innovation and diversity of service provision, tailoring of form and intensity of service to be sensitive to needs and capabilities
- May mean difficult/costly provision, but huge need shows untapped potential

Legal services and processes

- Can capture capability, respond, and collect data to appraise the response and make refinements

Regulators

- Set stage for who provides types / levels of support, set standards
- Deregulation and reregulation
- Core role in encouraging better practice
- Practice that aids communication, enhances accessibility, addresses appropriateness, helps understand and leverage technology, personalises engagement
- And responds to capability

