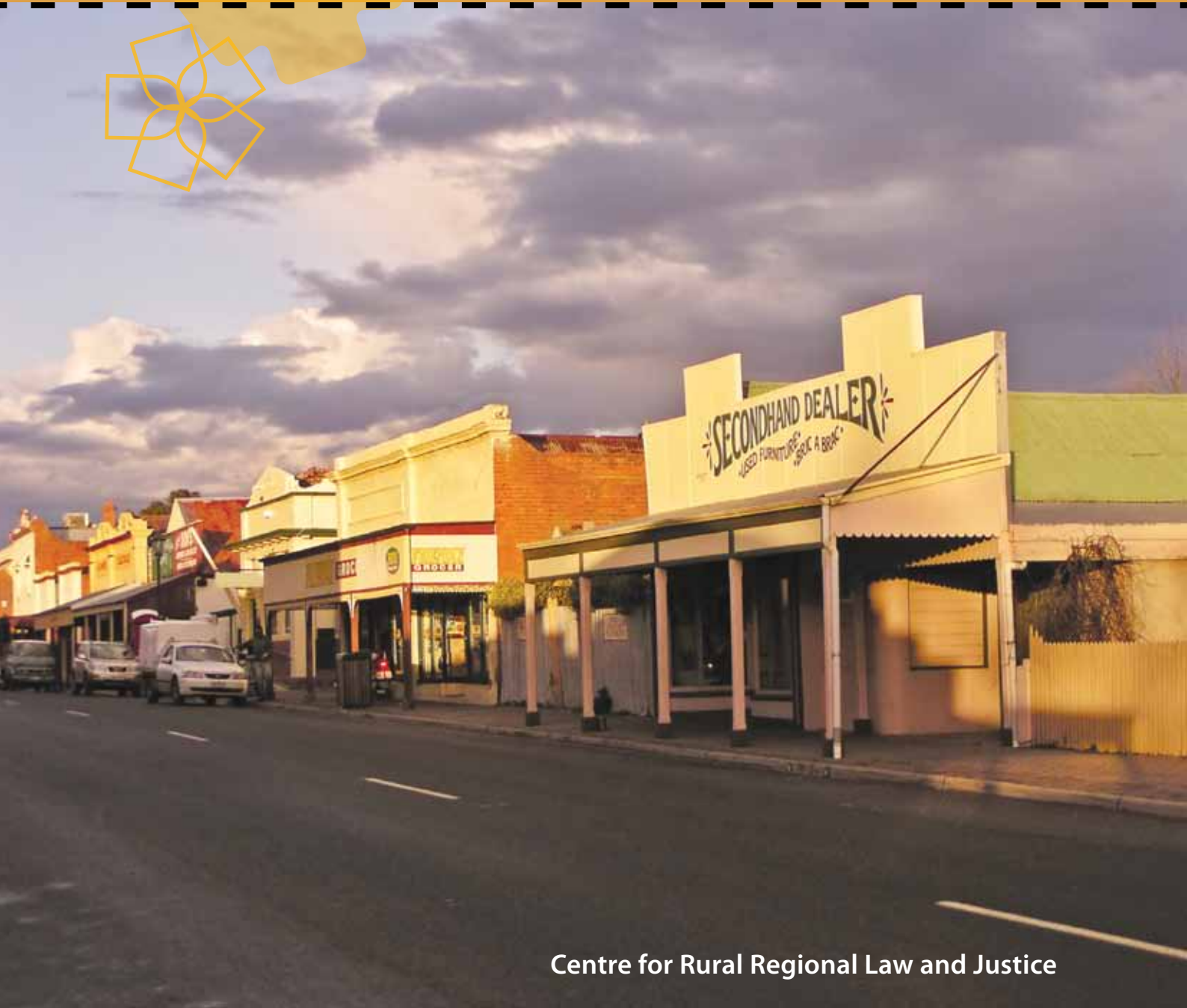


Providing Legal Services to Small Business in Regional Victoria

FINAL REPORT



Centre for Rural Regional Law and Justice



DEAKIN
UNIVERSITY AUSTRALIA

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Richard Coverdale, Lucinda Jordan and Jean du Plessis

March 2012

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The logo for the Legal Services Board, featuring the words "Legal Services" in a light blue, sans-serif font, followed by the word "BOARD" in a bold, dark blue, sans-serif font.

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Contents

Executive Summary	1
Recommendations	3
1. Introduction.....	5
1.1 Aims of the research.....	7
1.2 Definitions	7
2. Methodology	8
3. Findings	10
3.1 Participant demographics.....	10
3.1.1 Remoteness of survey participants	10
3.1.2 Age and gender of respondents	10
3.1.3 Main industry and business structure type of small business respondents.....	11
3.2 Seeking legal assistance.....	14
3.2.1 Frequency of accessing legal advice	14
3.2.2 Selecting a law firm	17
3.3 Gaps in legal service provision to regional small business	21
3.3.1 Small business use of accountants compared to lawyers	21
3.3.2 Additional gaps in service provision to small business by regional lawyers.....	25
3.3.3 The decision between local and non-local lawyers	26
3.4 Specialisation within regional law firms	28
3.4.1 Breadth of service provision amongst regional legal practices	28
3.4.2 Participant experience of regional lawyers	29
3.4.3 A referral culture amongst regional lawyers?	32
3.5 Future issues confronting regional small business.....	33
3.5.1 Carbon Trading	34
3.5.2 Succession Planning.....	35
3.5.3 Water Trading.....	35
3.5.4 Planning Laws	36
Appendix 1 - Survey Plain Language Statement	39
Appendix 2 - Consultations Plain Language Statement.....	41
Appendix 3 – Consent Form	44
Appendix 4 - Regional Small Business and Lawyer Surveys.....	45

Executive Summary

This research examines regional Victorian small business expectations of local legal practices, their degree of satisfaction with existing legal services and identifies current and potential demand and supply gaps. By doing so it seeks to determine potential areas in which regional law firms can improve, expand and refine their services in response to the current and emerging demands on them and the communities they serve. In total, 275 participants took part in the research, comprising 207 regional small businesses and 68 regional lawyers. A series of consultations was also conducted with peak small business organisations and lawyers to ascertain key concerns and to develop recommendations in response.

The survey findings revealed limited use of legal services by regional small business with over half of all small business participants responding that they rarely (either never or less than once a year) sought legal assistance (55%). Size and complexity of business structure influenced the frequency with which businesses accessed legal advice, with larger businesses and those with more complex structures accessing legal assistance more frequently. There was also a relationship by remoteness with participants in outer regional areas more likely to respond that they rarely or never sought legal assistance, compared to those in inner regional areas. Additionally, small business respondents were significantly more likely to have a regular business accountant (90%) who they used for their business affairs, rather than a law firm (67%). The findings indicated that a considerable portion of work is performed by accountants that could arguably be better dealt with by lawyers, including succession planning and business structure advice. Indeed, small business use of lawyers was primarily reactive rather than preventative. The survey results suggest that a lack of awareness by small business owners around what services and skills lawyers can provide and when a legal issue may arise were primary reasons for this trend. Confidentiality and conflict of interest concerns were also raised as major inhibitors for small businesses seeking to access timely legal advice in their local area.

Adding to these concerns was the perception by some participants of an inadequate level of specialist advice available particularly within smaller regional centres. Overall, a high level of satisfaction with legal practices was observed across the small business sample. However, where satisfaction with the skills and availability of local legal practitioners was analysed by remoteness, a consistent trend emerged, with a higher level of satisfaction in inner regional areas compared to outer regional and remote areas. Over a third (37%) of lawyer participants also indicated that the legal needs in their local area were not currently being met and the initial consultations for the

research revealed considerable concern amongst small business peak bodies around the level of expertise of regional lawyers. Despite findings that small business placed greatest importance on accessing specialist advice and expected law firms to understand the specialist needs of their industry, half of all lawyer respondents (48%) indicated that they rarely (never, once a year or less) refer small business clients to specialist lawyers. Instead, lawyer respondents understandably prioritised the importance of providing a breadth of services to small business clients, with findings indicating that lawyers practised in more areas than they considered they had expertise. In the areas of property law and business/commercial law this disparity was particularly marked. Lawyers in outer regional areas did, however, refer clients to specialist lawyers with greater frequency compared to their inner regional counterparts. The disparity between areas of practice and expertise, the expectations of small businesses, as well as conflict of interest and confidentiality concerns, arguably highlight the need for strengthening a referral culture amongst regional lawyers.

The report also raises a range of issues that small businesses in regional and remote areas are likely to encounter in the future, highlighting the potential for regional law firms to significantly expand the scope of their services. Key areas consistently raised by both lawyers and small businesses were carbon trading, water trading, succession planning, planning laws, and the increasing complexity in local, State and Federal regulations. The report argues that these areas offer the potential for regional law firms to firmly establish themselves as specialists in these areas and provide commercially valuable services to local industries. Furthermore, legal practitioners with local knowledge and mediation or collaborative practice skills, who foster a less adversarial approach, are vital in smaller communities where those in dispute need to continue to work and live together. In many instances, effective advice requires a local understanding of the unique circumstances of a particular region or industry, placing regional law firms in a prime position essential for providing small business with the capacity to optimise the commercial opportunities arising as a result of these evolving specialist areas.

Recommendations

Recommendation 1

That the Law Institute of Victoria investigates, develops and supports a more structured referral system that acknowledges and encourages referrals between regional lawyers to support generalist practice, maintain and foster local specialised practices, and in so doing encourage a 'best fit' between practice skills, expertise and client needs.

Recommendation 2

That further research is undertaken to examine the most effective ways of assisting regional firms to harness the potential of providing localised specialist advice on complex and emerging areas of law that have specific relevance for regional small business such as water trading, carbon trading, succession planning and planning law. This may include ensuring that university law schools which have a regional presence prioritise these emerging areas of law within their curriculum, and that bodies such as the Law Institute of Victoria explore training and professional development opportunities for regional firms to focus their practice expertise.

Recommendation 3

That an investigation be undertaken by the Law Council of Australia to examine the potential for the greater utilisation by regional legal practices of communication technologies, particularly as a result of the roll-out of the National Broadband Network, and that such an investigation assesses its potential for enhancing regional collaborative practice and referral processes, utilising 'freelance' legal expertise, and communicating with courts, regulators and remote clients.

Recommendation 4

That regional law firms and the Law Institute of Victoria identify and promote to regional small business the breadth of skills of regional lawyers, including the value of localised expertise and business knowledge and the importance of proactive business structure and succession planning advice, to redress the limited understanding by regional small businesses of the benefits of accessing timely local legal advice around these issues.

Recommendation 5

That regional law firms and the Law Institute of Victoria establish collaborations with the accountancy profession, in order to build strategic alliances and opportunities for both professions and to foster a continuity of quality professional services to regional small business.

Recommendation 6

That independent research is undertaken which examines and makes recommendations on the prevalence and implications of conflict of interest issues and strategies for regional legal practices to ensure regional small businesses and legal practices are not disadvantaged.

Recommendation 7

That the Legal Services Board, the Law Institute of Victoria and regional legal practitioners promote within regional communities the importance placed by the legal profession on client confidentiality and ethical legal practice, and promote the complaint mechanisms available to small businesses where they perceive a breach has occurred.

Recommendation 8

That the Law Institute of Victoria continues to strengthen its specialist accreditation program and encourage regional firms to participate, so that regional small business clients are able to make a more informed choice in relation to the expertise of prospective law firms.

1. Introduction

Regional Victoria is a substantial contributor to Victoria's export wealth through primary industry such as agriculture, mining and forestry, as well as processed and manufactured products. Service-based industries, such as tourism, have diversified the economic base of many areas, while building and construction continues to be driven by the increase in smaller households, the rise in second home ownership, especially in coastal areas, and the increasing population across regional Victoria.¹ At 30 June 2010, the population of Victoria was estimated to be 5.55 million, with 1.47 million estimated to be living in regional Victoria.² In the year 2009-2010, the population in regional Victoria grew by 1.4% from the previous year, with greatest growth occurring along the Bass Coast (4.6% increase), in Baw Baw (3.8%), along the Surf Coast (2.7%), and in Mitchell (2.6%). Greater Geelong experienced the largest increase in population (3,603 people), followed by Ballarat (1,950 people) and Greater Bendigo (1,754 people).³ Within this context, approximately 138,600 regional small businesses are currently operating, representing 28% of all Victorian small business, and statistics indicate that this number is also steadily growing.⁴

However, recent environmental events of floods, drought and fire, the 'debt crisis' and the spectre of climate change, together with the challenges to primary industry and subsidiary industries created by increasingly competitive local and export markets, have impacted significantly on Victoria's rural and smaller regional centres.⁵ Additionally, more innovative business structures have been required to respond to changing business needs as a result of: larger-scale production and emerging niche industries; increasingly sophisticated contractual arrangements between suppliers and processors; traditional succession structures that are increasingly seen as inadequate; and environmental and planning laws that are having a greater impact on resource management and production activities.⁶ The steady growth of legal regulation of business activity nationwide adds further complexity to the flux of change under way.

¹ McKenzie, F. & Frieden, J. (2010). *Regional Victoria: Trends and Prospects*. Spatial Analysis and Research Branch, Victorian Government: Melbourne.

² Department of Planning and Community Development (2011). *Victorian Population Bulletin 2011*. Department of Planning and Community Development: Melbourne.

³ Ibid

⁴ See small business statistics on Business Victoria website:
http://www.business.vic.gov.au/BUSVIC/STANDARD/PC_50004.html

⁵ For a more detailed summary see - Municipal Association of Victoria (2009). *Submission: Inquiry into the Impact of the Global Financial Crisis on Regional Australia*. Available at:
<http://www.aph.gov.au/house/committee/itrdlg/financialcrisis/subs/sub26.pdf>

⁶ Coverdale, R. (2009). *Law and Legal Compliance Training Needs of Primary Producers*. RIRDC: Kingston, ACT.

The continuing provision of effective legal services to regional Victoria is of strategic importance to the future of these communities and the State and National economies. Yet, recent studies point towards a growing gap in the local availability of legal services for regional communities and commerce.⁷ Legal Services Board statistics, for example, indicate that while there are 13,953 registered solicitors practising in Victoria, 1167 practice in 'country' Victoria, equating to 8.3% of the total number of registered practitioners.⁸ This represents a ratio of 1:1243 lawyers to citizens in regional Victoria, compared to 1:252 lawyers to citizens in metropolitan Melbourne. In March 2009, the Law Council of Australia and the Law Institute of Victoria undertook a survey of legal practitioners in rural, regional and remote areas of Australia.⁹ Approximately 40% of Victorian regional legal practitioners surveyed stated that they currently had insufficient staff to serve the needs of their community, and 38% indicated they would no longer be practising in regional Victoria in the next five years. Compounding this is the significant difficulty regional legal firms encounter attracting graduates and experienced lawyers to regional communities.¹⁰ An inequity in the provision of justice system services and processes (courts and court services programs) between regional and metropolitan areas is a further inhibitor to the effective provision of legal services to regional small business.¹¹

As in the communities and small businesses they serve, regional law firms are also confronted with a challenging and changing commercial environment, requiring them to keep pace with the increasing complexity of business legal regulations, a changing industry landscape and client demands. Furthermore, regional practitioners are increasingly competing against the cost-driven competition of non lawyer/paralegal services. It is critical, consequently, that practitioners ensure their services are well-targeted, efficient and sustainable. However, in the absence of research, little is known of the nature of legal services provided and how effectively regional legal practices meet the needs or expectations of their clients. Indeed, no research to date has focussed on the legal needs of regional small business in Victoria.

⁷ Law Council of Australia & Law Institute of Victoria. (2009). *Report into the Rural, Regional and Remote Areas Lawyer Survey*. Law Council of Australia: Braddon, ACT. See, also, Coverdale, R. (2011). *Postcode Justice: Rural and regional disadvantage in the administration of the law in Victoria*. Deakin University: Waurnd Ponds.

⁸ Legal Services Board of Victoria. (2011). *Practitioner Statistics*. Available at: <http://www.lsb.vic.gov.au/PractitionerStatistics.htm>.

⁹ Law Council of Australia & Law Institute of Victoria. (2009). *Report into the Rural, Regional and Remote Areas Lawyer Survey*. Law Council of Australia: Braddon, ACT.

¹⁰ Coverdale, R. (2011). *Postcode Justice: Rural and regional disadvantage in the administration of the law in Victoria*. Deakin University: Waurnd Ponds.

¹¹ *Ibid.*

1.1 Aims of the research

This research assesses the nature and extent of legal service provision to small businesses operating in regional Victoria, by:

- reviewing the range of services currently provided by regional law firms, highlighting emerging needs and potential areas of growth;
- assessing regional client expectations of legal services, the degree of satisfaction with existing services and potential areas of expansion;
- providing recommendations and strategies in response to current and potential demand and supply gaps in the services provided by regional law practices for broad distribution to legal professional bodies, the business community, educational institutions and government.

By doing so, this study seeks to promote the long-term viability of regional law firms and the small businesses that rely on their services.

1.2 Definitions

For the purposes of this research, the term **regional** refers to the areas defined in the *Regional Development Victoria Act 2002* (Vic) comprised of the Council areas outside metropolitan Melbourne.¹² The Australian Bureau of Statistics' (ABS) definition of **small business** was used which defines small business as private sector businesses employing 20 people or fewer. Categories of small business include:

- non-employing businesses - sole proprietorships and partnerships without employees;
- micro businesses - businesses employing fewer than 5 people, including non-employing businesses;
- other small businesses - businesses employing 5 or more people, but fewer than 20 people.

There are, however, limitations associated with this definition, specifically in relation to regional small business. For example, potential problems occur in assessing agricultural businesses that can have large-scale operations with relatively few or no permanent employees, while using large numbers of seasonal and itinerant workers to satisfy short-term labour needs.

¹² For a full list of Council areas see: <http://www.dpcd.vic.gov.au/localgovernment/find-your-local-council>.

2. Methodology

This research was approved by the Human Research Ethics Committee of Deakin University on 21 July 2010, approval number BL-EC 28/10, and complies with the *National Statement on Ethical Conduct in Research Involving Humans* (2007). The study was conducted in three distinct phases to ensure stakeholder consultation throughout the research process:

i. Initial consultation on research objectives and survey design

A series of interviews was conducted with peak state and regional small business organisations and lawyers to ascertain key concerns in relation to regional small business access to legal services. Stakeholders included representatives from the Australian Competition and Consumer Commission (ACCC), the Victorian Employers' Chamber of Commerce and Industry (VECCI), the Victorian Farmers Federation (VFF), Small Business Victoria, the Office of the Small Business Commissioner and the Law Institute of Victoria's Regional Law Associations. Interviewees were provided with a plain language statement explaining the research and were asked to sign a consent form prior to involvement (see Appendices 2 and 3).

These consultations informed the design of two surveys to explore the legal needs and experiences of Victorian regional small businesses and the experiences of lawyers assisting regional small businesses (see Appendix 4). The survey design was also broadly informed by research conducted with accounting firms in regional Australia¹³, as well as the Law Council of Australia's survey of rural and regional lawyers.¹⁴ Draft surveys were piloted with small business peak bodies, regional law associations, regional legal practitioners, and academics from the disciplines of business and law, for feedback before being finalised and distributed to participants.

ii. Distribution of surveys and data analysis

Lawyers practising in regional Victoria were randomly selected from the Law Institute of Victoria's legal referral list. In total, 250 surveys were mailed to regional lawyers, each addressed to the Principal Lawyer within the practice, and included a letter of invitation and a plain language statement which explained the research (see Appendix 1). Small business survey recipients were targeted in regional centres and surrounding rural communities. ABS data from the *Count of Australian Businesses, including Entries and Exits, June 2003 to June 2007*, were used to select the

¹³ Carr, R., Cooper, B., Ferguson, C. et al. (2010). *Public Accounting Firm Services in Rural and Regional Australia*. University of Melbourne: Melbourne, Australia.

¹⁴ Law Council of Australia & Law Institute of Victoria. (2009). *Report into the Rural, Regional and Remote Areas Lawyer Survey*. Law Council of Australia: Braddon, ACT.

proportion of surveys to be sent out according to industry division.¹⁵ This data set shows counts of businesses sourced from the ABS's Business Register (ABSBR), and businesses are coded to industries based on the Australian and New Zealand Standard Industrial Classification 1993 (ANZSIC93). ANZSIC is comprised of four levels ranging from industry division (broadest level) to the industry class (finest level). For the purposes of this study, data relating to industry division were used. Small businesses were randomly selected using the Yellow Pages and True Local business directories, according to the proportion of Victorian regional small businesses in each industry division within the ABS data set. Overall, 1200 surveys were mailed out to regional small businesses, and each included a letter of invitation and a plain language statement which explained the research to participants (see Appendix 1).

In total, 275 participants took part in the Regional Small Business and the Law Survey, comprising 207 regional small businesses and 68 regional lawyers. This represented an overall survey return rate of 21%, with a 29% return rate for lawyer surveys and a 19% return rate for small business surveys.¹⁶ All survey responses were entered into an SPSS Edition 18 data spreadsheet for analysis. Qualitative responses were coded according to central themes prior to being added to the data set.

iii. Consultation with stakeholders regarding key findings and recommendations

A final series of consultations with regional lawyer and small business peak bodies was conducted to provide feedback on the research findings and to develop recommendations.

¹⁵ ABS (2007). *Businesses by Industry Division by Statistical Local Area by Employment Size Ranges, 2007 - Data Set 8165.0*. ABS: Canberra. This can be accessed at:

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8165.0Jun%202003%20to%20Jun%202007?OpenDocument>

¹⁶ To calculate survey return rates, the final number of small business surveys was adjusted to 1068, after 132 surveys were returned due to incorrect mailing or business details. Similarly, the final number of lawyer surveys was adjusted to 239, as 11 surveys were returned due to incorrect mailing details.

3. Findings

3.1 Participant demographics

3.1.1 Remoteness of survey participants

The Australian Standard Geographical Classification (ASGC) was used as a measure of remoteness for this research, which distinguishes between five categories of remoteness, based on an area's distance from major services. These five categories are: major cities, inner-regional, outer-regional, remote and very remote.¹⁷ Australia's population falls proportionally within each category as follows:

- Major cities – 65.97%
- Inner-regional – 20.55%
- Outer-regional – 10.59%
- Remote – 1.80%
- Very remote – 1.09%¹⁸

In Victoria, the major cities category encompasses Melbourne and Geelong. In this study, most survey participants were based in inner-regional areas (72%), with 23% working in outer-regional and remote areas. This distribution was broadly reflected across both lawyer and small business respondents (see Table 1).

Table 1. Respondents by remoteness

	Major Cities	Inner-Regional	Outer-Regional	Remote	Missing*	Total
Lawyers	4 (5.9%)	49 (72.1%)	14 (20.6%)	0 (0.0%)	1 (1.5%)	68 (100%)
Small Business	10 (4.8%)	149 (72.0%)	46 (22.2%)	2 (1.0%)	0 (0%)	207 (100%)
Total	14 (5.1%)	198 (72.0%)	60 (21.8%)	2 (0.7%)	1 (0.4%)*	275 (100%)

*One lawyer participant did not indicate their postcode/region.

3.1.2 Age and gender of respondents

There were proportionally less female respondents, with only 20% of lawyers and 32% of small business participants being female. Lawyer respondents were also marginally older, with two-thirds aged over 50 years and almost a third aged over 60 years, compared to 56% of small business respondents aged over 50 years and 18% aged over 60 years (see Table 2).

¹⁷ For further information on the ASGC, including methodological strengths and weaknesses, see Australian Institute of Health & Welfare (2004). *Rural, regional & remote health: A guide to remoteness classifications*. AIHW: Canberra.

¹⁸ Australian Bureau of Statistics. (2003). *ASGC Remoteness Classification: Purpose and Use*. ABS: Canberra. (p. 19).

Table 2. Participants by age

	20-29 years	30-39 years	40-49 years	50-59 years	60-69 years	70+	Total
Lawyers	1 (1.5%)	8 (11.8%)	15 (22.1%)	24 (35.3%)	14 (20.6%)	6 (8.8%)	68
Small business	8 (4.0%)	25 (12.4%)	55 (27.4%)	76 (37.8%)	27 (13.4%)	10 (5%)	201
Total	9 (3.3%)	33 (12.3%)	70 (26.0%)	100 (37.2%)	41 (15.2%)	16 (5.9%)	269*

*Six respondents did not indicate their age.

The majority of lawyer respondents worked in small firms of 1-2 lawyers (60%). Of these participants, 71% were aged over 50 years, and over a third (36%) was aged over 60 years (see Table 3). These demographics are comparable with previous reports which have raised concerns regarding the ongoing supply of legal services in regional areas, given the ageing population of lawyers and the tendency for practitioners to be based in small practices with only one or two principals.¹⁹

Table 3: Lawyer age by size of law firm

		Number of lawyers in firm				Total
		1-2	3-5	6-15	16-35	
Age	20-29	0 0%	0 0%	1 13%	0 0%	1 1.5%
	30-39	3 7.5%	4 22%	0 0%	1 100%	8 11.9%
	40-49	9 23%	3 17%	3 38%	0 0%	15 22.4%
	50-59	14 35%	6 33%	4 50%	0 0%	24 35.8%
	60-69	9 23%	4 22%	0 0%	0 0%	13 19.4%
	70+	5 13%	1 6%	0 0%	0 0%	6 9%
Total		40 100%	18 100%	8 100%	1 100%	67* 100%

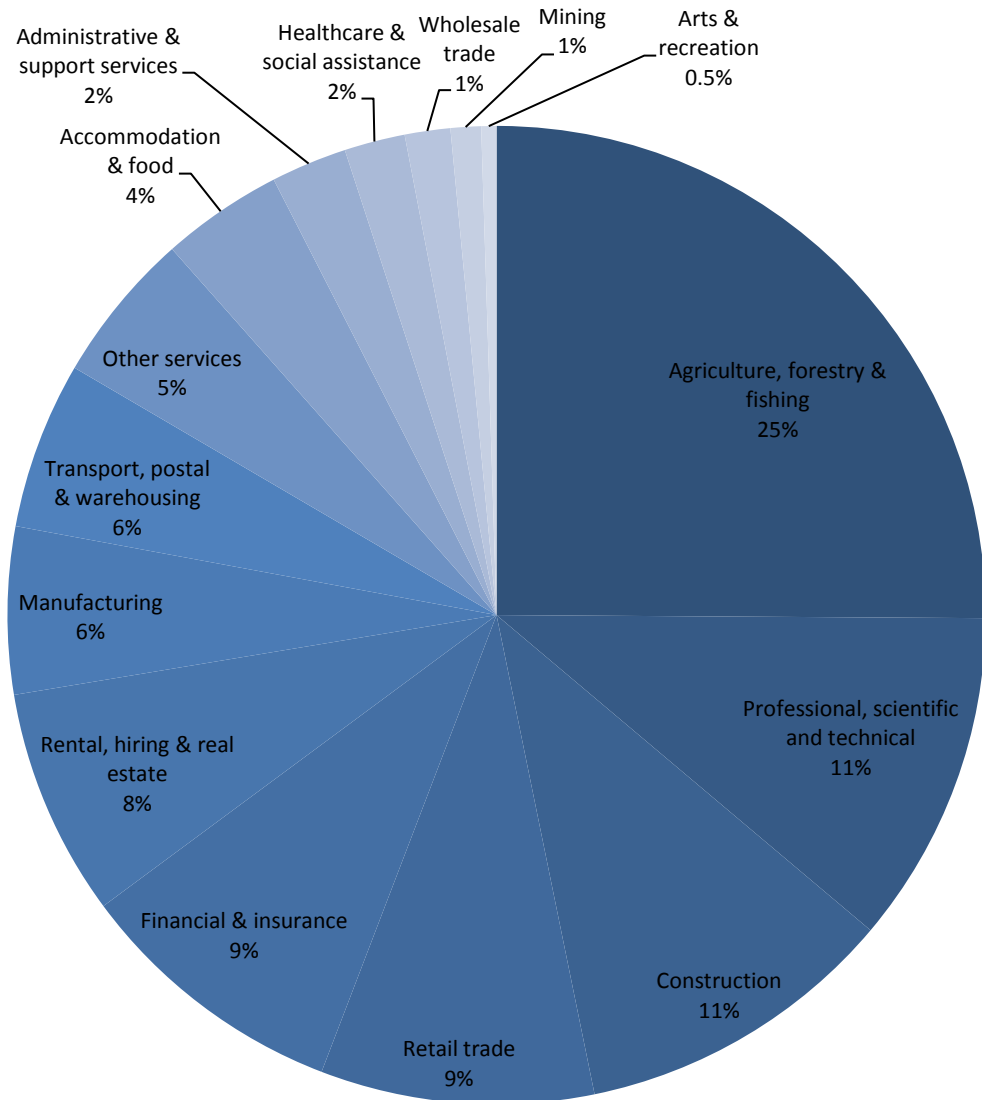
*One respondent did not indicate their age.

3.1.3 Main industry and business structure type of small business respondents

As Figure 1 illustrates below, one quarter of all small businesses were involved in agriculture, forestry and fishing (25%). This was the most common industry type amongst respondents, followed by professional, scientific and technical (11%), and construction (11%).

¹⁹ Law Council of Australia & Law Institute of Victoria. (2009). *Report into the Rural, Regional and Remote Areas Lawyer Survey*. Law Council of Australia: Braddon, ACT. See, also, Forell, S., Cain, M. & Gray, A. (2010). *Recruitment and retention of lawyers in regional, rural and remote New South Wales*. Law and Justice Foundation of NSW: Sydney.

Figure 1. Main industry of small business participants

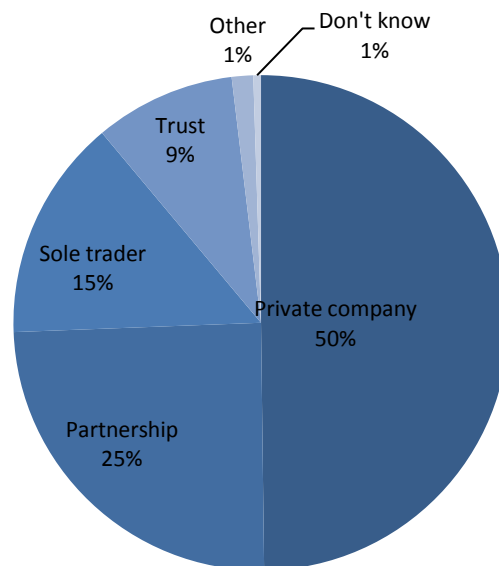


The survey sample reflects the distribution of industry categories for small businesses in regional Victoria as calculated by the ABS, with each industry category within 2% of ABS data for agriculture, forestry and fishing (27% in regional Victoria); rental, hiring and real estate (8%); retail (7%); transport, postal & warehousing (6%); other services (4%); and accommodation and food (4%). The sample differed only marginally (within 5%) to Victorian regional data for the areas of construction

(16% in regional Victoria), professional, scientific and technical services (7%), and financial services (5%).²⁰

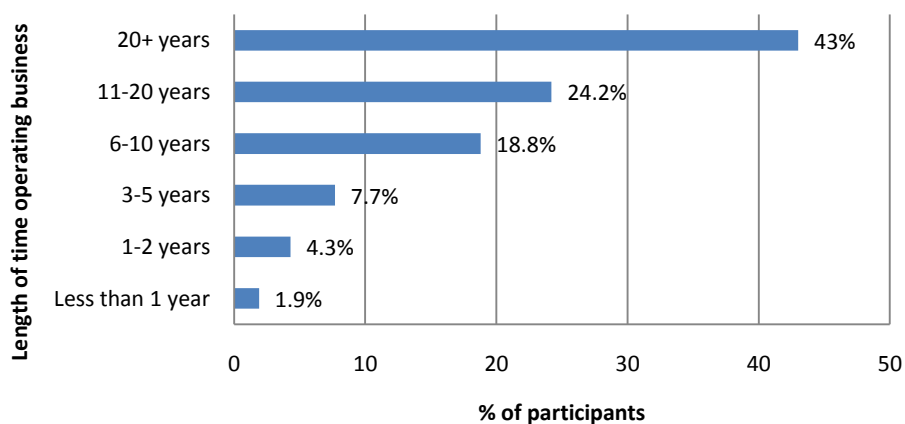
Half of the small businesses in this study were private companies (50%), one quarter were partnerships (25%), 15% were sole traders and 9% were trusts (see Figure 2 below).

Figure 2. Business structure



Almost half had four or fewer employees (48%), one quarter (25%) had 5-10 employees, and 27% had more than 11 employees. The majority of small business respondents had operated their business for over 10 years (67%), with 43% of respondents having been in operation for 20+ years (see Figure 3 below).

Figure 3. Length of time operating business



²⁰ Australian Bureau of Statistics. (2011). *Count of Australian Businesses, including entries and exits, June 2007-June 2009*. ABS: Canberra. Available at: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8165.0>.

3.2 Seeking legal assistance

3.2.1 Frequency of accessing legal advice

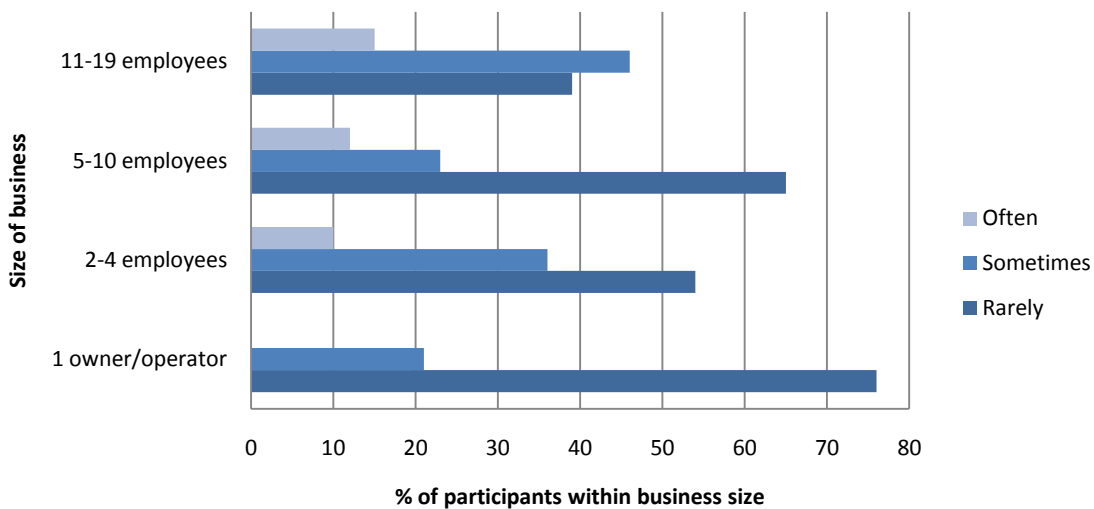
Half of all small business participants responded that they rarely (either never or less than once a year) sought legal assistance (55%). Sole traders were the least likely to seek legal assistance, with 70% responding that they rarely or never accessed legal advice (see Table 4 below). This is perhaps not surprising given that business structures such as partnerships and private companies have additional legal requirements to comply with and tend to have a larger number of employees, increasing the likelihood of requiring legal advice (for further discussion, see Section 3.3.1 later in the report).

Table 4. Frequency of seeking legal assistance by business structure

	Rarely (never or less than once a year)	Sometimes (1-3 times a year)	Often (more than 4 times a year)	Total %
Sole trader	70%	23%	7%	100% (n=30)
Partnership	52%	38%	10%	100% (n=50)
Private company	51%	33%	16%	100% (n=103)
Trust	63%	32%	5%	100% (n=19)
Other	40%	20%	40%	100% (n=5)
Total %	55% (n=113)	32% (n=67)	13% (n=27)	100% (n=207)

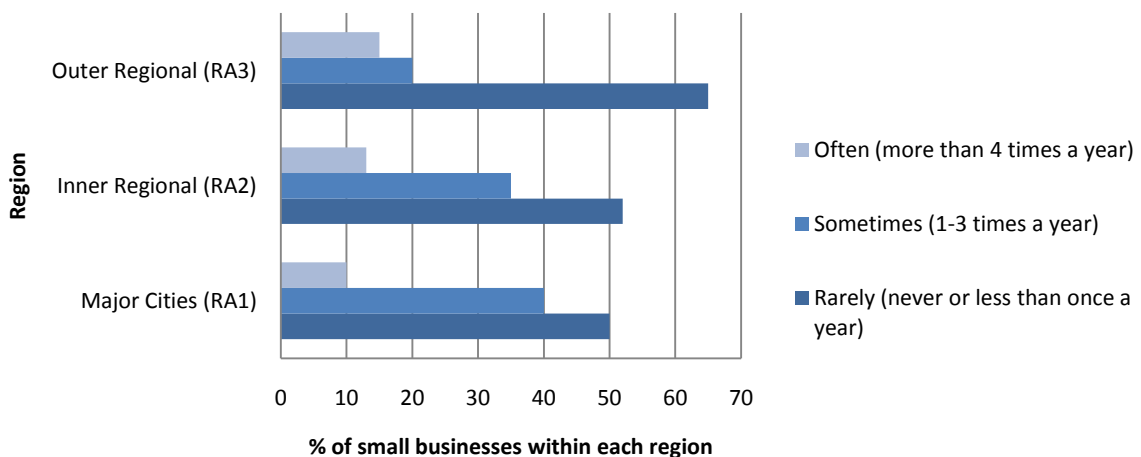
As Figure 4 demonstrates below, the size of the business was also broadly related to the frequency with which they accessed legal advice. Specifically, the larger the number of employees, the more likely businesses responded that they 'often' accessed legal advice. Likewise, smaller owner/operators were, on the whole, more likely to indicate that they rarely sought legal advice.

Figure 4. Size of business by frequency of accessing legal advice



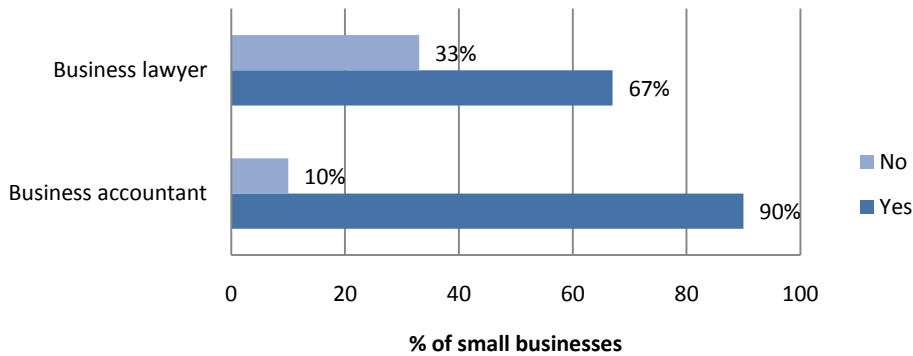
There was also a relationship by remoteness, with 65% of participants in outer-regional areas responding that they rarely or never sought legal assistance, compared to 50% in major cities and 52% in inner-regional areas (see Figure 5). Importantly, this relationship was not attributable to business size which was evenly distributed across regions, with a similar proportion of larger businesses (11+ employees) based in inner-regional (27%) and outer-regional areas (24%), and a comparable portion of medium-sized businesses (5-10 employees) in inner-regional (24%) and outer-regional (22%) areas.

Figure 5: Frequency of accessing legal advice by remoteness



Small business participants were also asked whether they engaged a particular law firm or accountancy firm in relation to their business affairs. As Figure 6 illustrates below, small business respondents were significantly more likely to have a specific business accountant (90%), rather than a law firm (67%).

Figure 6. Percentage of small business respondents that use a specific business law firm rather than an accountant

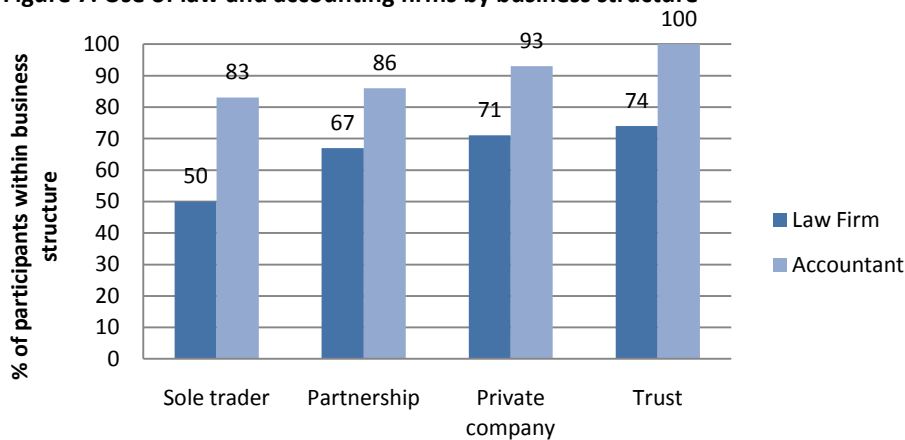


This would partially reflect the difference in the nature of the small business/lawyer relationship compared to the small business/accountant relationship, in which small business has cause to meet more regularly with accountants (at least annually), to attend to general taxation matters. This was also a factor raised during the consultations with small business peak bodies and stakeholders, with one interviewee explaining:

[Our research] shows that most SMEs go to their accountants first, rather than a lawyer. This is because accountants are the one source of business advice that the law mandates you to use, for your tax returns every year. (Stakeholder consultations)

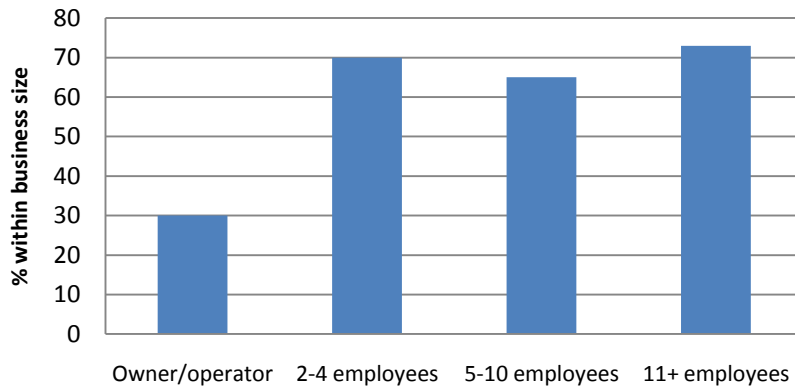
While no relationship existed between the remoteness of small businesses and their likelihood of having a specific business lawyer or accountant, there was a trend within business structure type. Trusts, for example, were marginally more likely to have a business lawyer (74%) than other business structures (see Figure 7). Sole traders were the least likely to have a business lawyer (only half – 50%).

Figure 7. Use of law and accounting firms by business structure



Similarly, as Figure 8 shows, there was also a relationship between the size of the business and the likelihood of having a lawyer, with larger businesses more likely to indicate that they utilised a specific business law firm. This concurs with the previous findings, that the larger the number of employees, the more frequently small businesses accessed legal advice.

Figure 8. Use of law firm by size of business



These findings suggest that the greater the complexity of the business, the more likely small businesses will use a specific law firm. For example, trusts are relatively more complex than partnerships and proprietary companies, increasing the likelihood that a specific firm would be used when trusts are involved. This complexity is enhanced by the use of trusts for taxation purposes, requiring specialist legal taxation advice, again making it more likely that such businesses would use a specific law firm. Furthermore, the greater the number of employees, the more likely it is that legal issues may arise, between employers and employees (such as employment contractual issues and occupational health and safety matters), between the business and its clients, as well as broader statutory obligations.

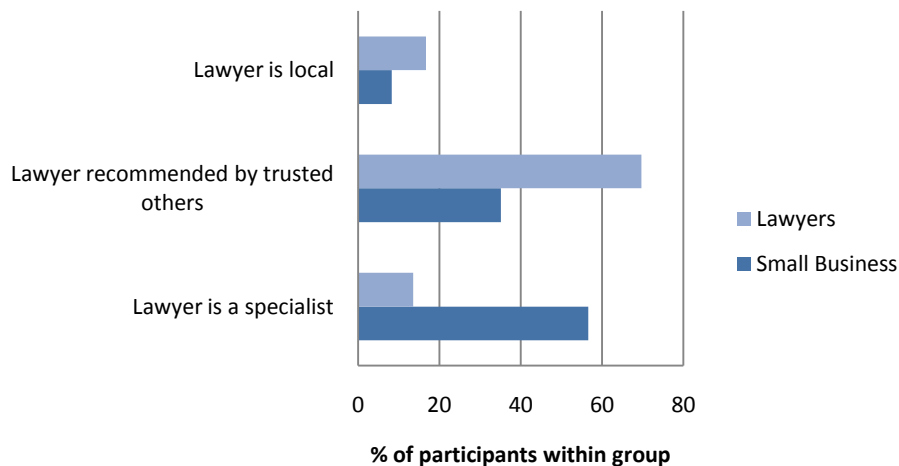
3.2.2 Selecting a law firm

The most important consideration for small business respondents when selecting a lawyer was that the lawyer is a specialist in the area in which they require assistance, with 57% of small businesses rating this as their primary concern (see Figure 9 below). That the lawyer is local was the least important consideration for small business respondents, which is of interest given recent concerns regarding the ongoing survival and viability of local rural and regional firms.²¹ The factors small

²¹ Law Council of Australia & Law Institute of Victoria. (2009). *Report into the Rural, Regional and Remote Areas Lawyer Survey*. Law Council of Australia: Braddon, ACT. See, also, Forell, S., Cain, M. & Gray, A. (2010). *Recruitment and retention of lawyers in regional, rural and remote New South Wales*. Law and Justice Foundation of NSW: Sydney.

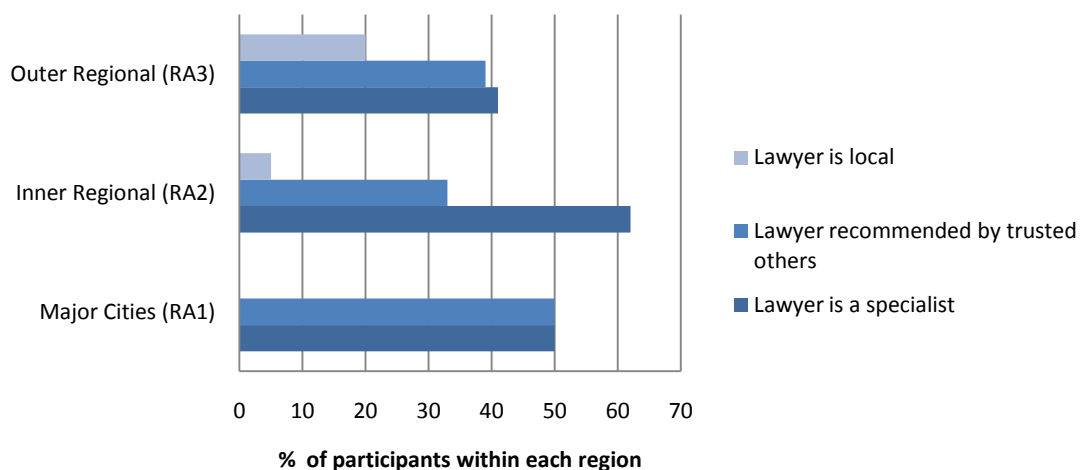
businesses take into account when deciding between local and non-local legal firms and the level of specialisation in regional firms will be discussed later in this report (see Sections 3.3.3 and 3.4).

Figure 9. Most important consideration when selecting a lawyer



In comparison to small business respondents, the lawyers that participated in this research underestimated the importance of being a specialist in the areas in which small business clients required assistance, with fewer lawyer respondents rating this as the most important consideration (see Figure 9 above). Rather, 70% of lawyers believed that a recommendation by someone small business owners trusted would be the most important consideration. However, where small business responses were analysed by remoteness, results indicated that it was less important that the lawyer is a specialist for those based in outer-regional areas compared to those in inner-regional and major cities (see Figure 10 below).

Figure 10. Most important consideration when selecting a lawyer for small businesses by remoteness

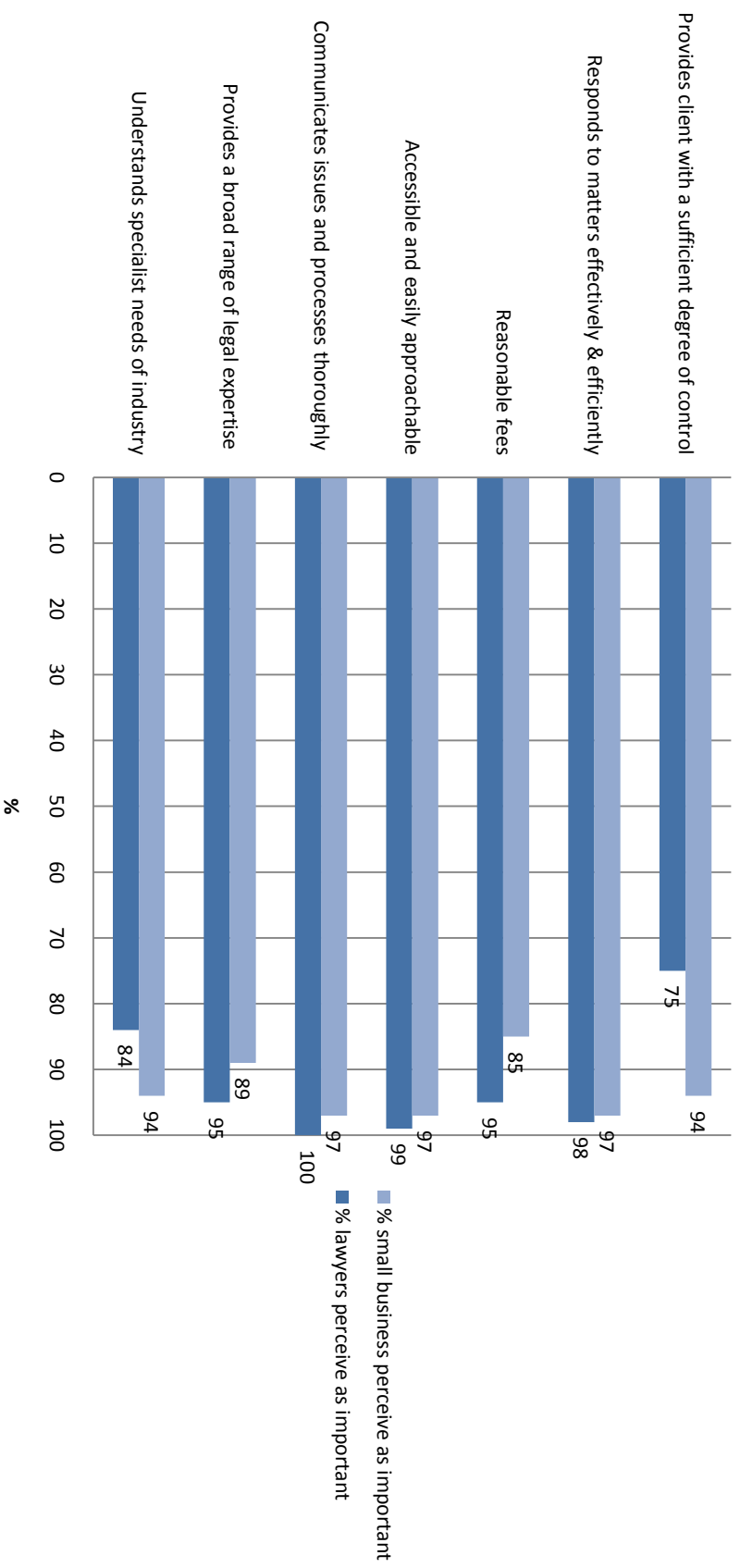


This may suggest that the expectations of small businesses in more remote areas are lower in relation to accessing specialist advice. A lower level of availability in regional and remote areas may also lead to less awareness of specialist choices and the need for accessing such advice. As Figure 10 demonstrates, the locality of legal advice was marginally more important for those participants based further away from major cities, possibly due to the inconvenience of distance. However, the reasons for such a preference for local advice amongst outer-regional participants require further exploration. In particular, it would be useful to understand when it is important for rural and regional small businesses to access local firms, for example, to access local knowledge and expertise, as a result of convenience or due to parochial sentiments.

Participants were also asked to rate the importance of a range of additional factors that may be taken into account by small businesses selecting a lawyer. Overall, there was a high level of agreement between both the lawyers and small business survey groups on most variables, including the importance of lawyers responding to matters effectively and efficiently, being accessible and approachable, and clearly communicating legal issues and processes to clients (see Figure 11). The most marked difference between the groups was on the importance of providing clients with a sufficient degree of control over their legal affairs, with 75% of lawyers rating this as important compared to 94% of small business respondents. It would be of interest to examine these differing expectations in further detail, including the key elements small businesses perceive as important to enable a greater sense of control over their legal affairs, as well as some of the reasons lawyers may be more reluctant to facilitate a greater sense of ownership and control for their clients. Indeed, the literature highlights the benefits of a more collaborative client-lawyer relationship, including enabling clients to feel a greater sense of responsibility and acceptance of case outcomes.²²

²² See, for example, Macfarlane, J. (2008). The evolution of the new lawyer: How lawyers are reshaping the practice of law. *Journal of Dispute Resolution*, 73(1), 61-81.

Figure 11. The importance of specific lawyer skills & attributes



Surprisingly in this study, a slightly greater proportion of lawyers rated reasonable fees as important (95%) compared to small business respondents (85%). This is of particular interest given research which suggests that the cost of legal advice is a major barrier for clients, particularly in rural and regional areas.²³ Indeed, the cost of legal services was raised as a major barrier for small businesses accessing legal advice by stakeholders interviewed during the course of the initial consultations for this research. The importance given to this by lawyer respondents may simply reflect an acute awareness of the necessity for regional law firms to provide an affordable and accessible service to clients, in order to remain competitive in an environment which includes paralegals and specialist non-local firms.

A greater proportion of lawyers (95%) in this study also rated offering a broad range of expertise as important compared to understanding the specialist needs of small business industry (84%). This is in contrast to 94% of small businesses rating a specialist understanding of their industry as being important. These findings suggest that while lawyers in regional areas may be more focussed on providing a breadth of services to a wide variety of small business clients, small businesses place greater emphasis on the importance of accessing more specialist advice. This highlights the considerable dilemma regional law firms encounter, where it is an economic necessity to accept a wide range of clients and provide a breadth of services²⁴, yet also provide the specialist expertise small business owners require and expect.

3.3 Gaps in legal service provision to regional small business

3.3.1 Small business use of accountants compared to lawyers

The majority of lawyers (70%) who participated in this research stated that small businesses sought advice from other professionals on matters that could be better dealt with by a lawyer. Of these respondents, all (100%) indicated that small businesses were likely to access accountants for such matters, and half (49%) nominated financial advisors. To further explore these issues, small business participants were asked to indicate which professional service they would access for advice on a range of issues. These results are summarised in Figure 12, which shows that small businesses were **most likely to seek a lawyer's assistance** for: drafting contracts (87% of small business respondents); workplace accident claims (83%); disputes over payment, quality and terms (82%); employment

²³ See, for example, Giddings, J., Hook, B. & Nielsen, J. (2001). Legal services in rural communities: Issues for clients and lawyers. *Alternative Law Journal*, 26(2), 57-63.

²⁴ TNS Social Research. (2006). *Study of the Participation of Private Legal Practitioners in the Provision of Legal Aid Services in Australia*. TNS Social Research: Manuka, ACT.

contracts and disputes (76%); and buying or selling property (70%). In contrast, small businesses were more likely to engage an **accountant rather than a lawyer** for: taxation advice and superannuation; business structure advice; and succession planning.

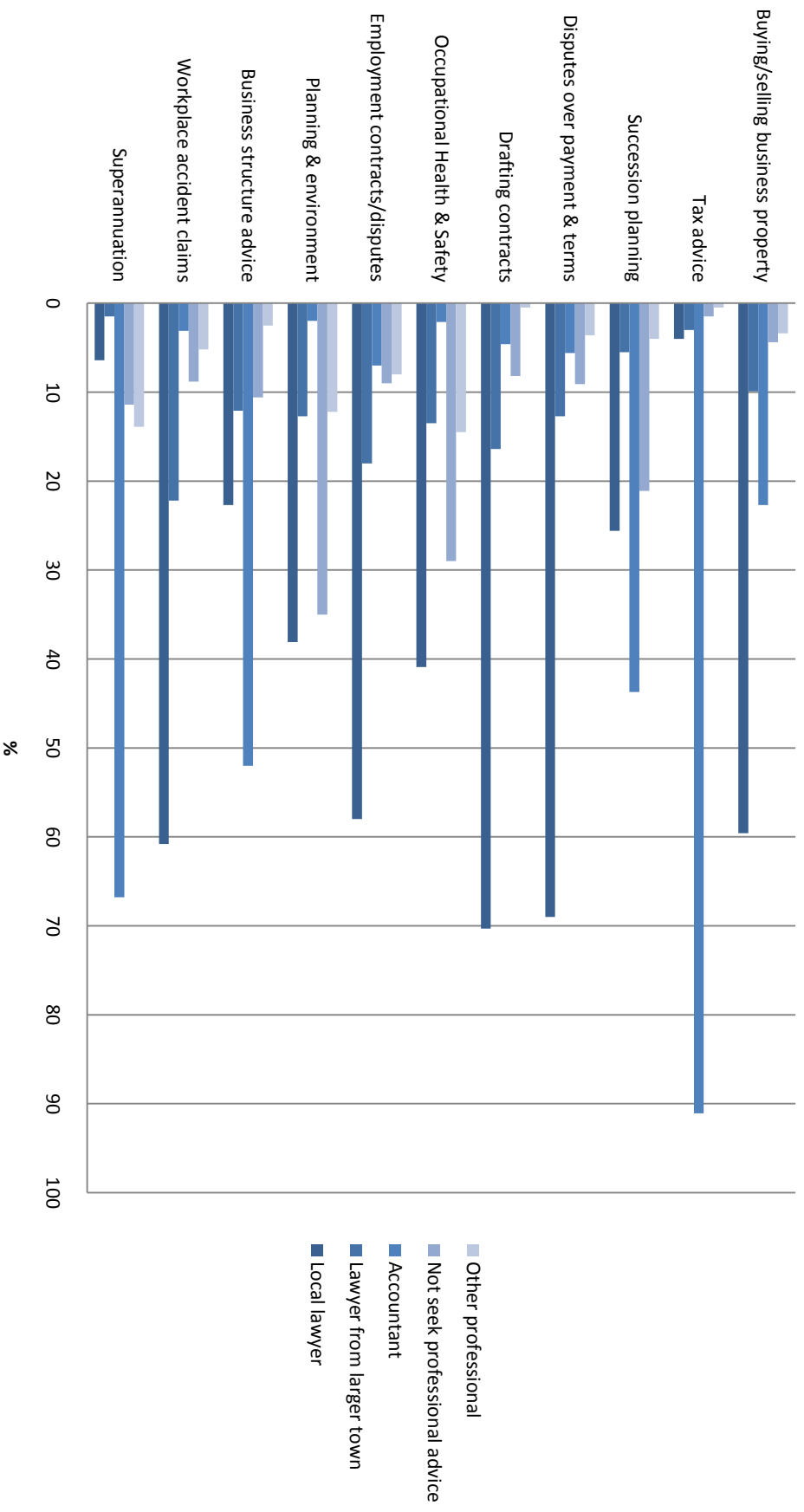
(i) Taxation and superannuation

Almost all small business survey respondents (91%) indicated that they would most likely seek an accountant's advice for taxation matters, compared to 7% that would engage a lawyer (see Figure 12 below). Similarly, the majority (67%) stated they would seek advice for superannuation from an accountant, with only 8% nominating a lawyer. The provision of taxation and superannuation advice is clearly and understandably considered the domain of accountants. However, in some instances, lawyers may be better placed to provide such advice, particularly where, for example, there may be complex taxation rulings or where decisions may have broader legal implications for clients in their personal and business activities.

(ii) Business structure advice

Half of all small business survey respondents (52%) indicated that they would seek an accountant's advice for business structure matters, compared to a third (35%) who indicated they would access a lawyer's advice for such matters. While the type of business structure will impact on taxation implications and the advice of an accountant on such matters is important, there are various other considerations which also need to be taken into account when establishing an appropriate structure to meet the particular circumstances of each business. In particular, the range of regulatory and legislative requirements associated with setting up and managing a business, suggests that business structure advice is an area in which legal expertise would be essential. For example, the drafting of a trust deed or constitution for a trust or a company, can be of vital importance for the smooth operation of small business enterprises. Additionally, management and governance issues, risk management, reporting requirements, succession arrangements, supply and employment contracts, are all important considerations where expert legal advice is invaluable. While many experienced accountants will be able to draw on their knowledge across those considerations additional to taxation implications, the prevalence with which small businesses seek advice from accountants on business structure is somewhat surprising.

Figure 12. Small business use of professional services



Furthermore, it is interesting to note that almost 50% of small businesses surveyed did not use private companies as a business vehicle. This structure offers a number of protections for shareholders and directors against personal liability, in contrast with the sole proprietor and partnership structures, which offer little individual protection or taxation advantage. This, in particular, was an issue raised during the course of stakeholder interviews, as one farming representative remarked:

We recently ran a workshop with 30 farmers. They were all running their farming businesses as sole traders. These are significant business with potential legal risks and (tax) costs which could be better dealt with through other business structures. (Stakeholder consultations)

Again, the reliance on accountants as a 'first port of call' in relation to business structure advice may, in part, be a result of small businesses consulting accountants on a more regular basis, which may then potentially lead to the client deferring to their accountant for the provision of advice that sits more appropriately within the realm of legal expertise.

(iii) Succession planning

The survey findings revealed that a higher proportion of small business participants would engage an accountant for succession planning advice (44% of respondents), compared to a lawyer (31% of respondents) (see Figure 12). A further 21% indicated that they would not seek any professional advice for succession planning issues. These findings are of particular concern given succession planning is a complex process involving several areas of law including, for example, business structure, taxation, superannuation, property, family law, and wills and estate planning.²⁵ Couple this with the often intergenerational nature of business succession and the importance of an understanding of the industry context, and the skill sets required are both broad and specialised. However, given the majority of survey respondents refer to accountants for tax advice (91%), superannuation (67%), and business structure advice (52%), all of which are integral to succession planning, it is perhaps not surprising that they give preference to the services of an accountant for assistance in this area.

In the case of either a lawyer or accountant being the first contact point, there remains reliance by clients on trust that the appropriate expertise is provided and, if required, the first point of contact will appropriately refer them on. Where there exists limited opportunities to refer locally, or the professional service approached by clients chooses to provide their limited knowledge rather than refer, the client's best interests will not necessarily be served. Developing a more effective means by

²⁵ For a comprehensive guide to the principal areas of law, see: Perkins, M. & Monahan, R. (2011). *Estate planning: A practical guide for estate and financial service professionals*. LexisNexis Butterworths.

which legal and accounting professional services can be delineated, and establishing an effective referral system between the two professions and within each, deserves further consideration by peak bodies. This issue is discussed later in this report.

3.3.2 Additional gaps in service provision to small business by regional lawyers

Approximately a third of small business respondents indicated that they would not seek any professional advice for planning and environment issues (35%) (see Figure 12). This is particularly perplexing given planning and environment issues were identified by survey respondents as key issues facing regional small businesses in the future, which will be discussed later in this report. Similarly, almost a third of participants indicated that they would not seek any professional advice for occupational health and safety issues (29%). While the majority of these respondents worked in arguably 'low-risk' sectors, such as professional services, retail and real estate (54%), 16% worked in primary production and 11% worked in the building and construction sectors. Research shows that legal issues are a major concern in the context of accidents in primary industry and construction.²⁶ Major legislative changes are also afoot with OH&S regulatory frameworks becoming incorporated under national legislation.²⁷ It is vital that small businesses comply with and keep abreast of this changing legislative environment.

The limited level of engagement with lawyers across the range of issues discussed in this section suggests that the use of lawyers by small businesses in this research was primarily reactive rather than preventative. In fact, over two-thirds of small business participants (69%) responded that they would only access legal assistance when a significant legal problem had arisen. As one stakeholder noted:

²⁶ See, for example, Australian farm safety statistics available at: http://www.betterhealth.vic.gov.au/bhcv2/bhcarticles.nsf/pages/Farm_machinery_and_safety_issues?open; also Herde, E. & Lower, T. (2011). *Farm Injury-Related Deaths in Australia*. Australian Centre for Agricultural Health & Safety: NSW.

In regard to the construction industry, WorkSafe estimates that each week 50 Victorian construction workers are seriously injured, see: http://www.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/WorkSafe/Home/Safety+and+Prevention/You+Industry/Construction/?zz=1&a=Construction&p=Popular&utm_source=SHORT_URL&utm_medium=redirect&utm_campaign=SURL_construction#.

²⁷ New 'harmonised' national work health and safety laws commenced in New South Wales, Queensland, the Australian Capital Territory, and the Northern Territory on 1 January 2012. An additional review has been requested by the Victorian government which will see a delay of approximately twelve months before implementation in this state. See: <http://safeworkaustralia.gov.au/Legislation/Pages/ModelWHSLegislation.aspx>.

The role lawyers play in risk minimisation is not well understood – this requires education and marketing. But to be proactive is much cheaper [for small business clients] than just being reactive.

These findings combined with the overall low frequency with which small businesses accessed legal advice across the study (see Section 3.2.1), highlight the narrow understanding by small business participants of the value of accessing legal advice regarding the operation of their business. This was a major concern raised in the stakeholder interviews and by lawyer survey respondents. In particular, interviewees and lawyers identified a lack of awareness regarding when a legal problem had actually arisen, or may potentially arise, as well as limited awareness of the services and skills offered by lawyers, as key inhibitors for small businesses accessing legal services in regional areas. While this is not exclusively an issue for regional areas, distance from services and resources clearly has an impact. As one small business stakeholder explained:

The further from Melbourne you get, the more roles the business owner takes on, for example, human resources, accountant, CEO. The further you get from Melbourne, the less likely people will know what information it is that they need. Information is available but those who access it are often the ones who need it the least. It is hard to get to the people who actually need the information. (Stakeholder consultations)

3.3.3 The decision between local and non-local lawyers

While Figure 12 illustrates that, overall, small businesses would prefer to engage local lawyers rather than lawyers in larger regional centres or major cities such as Melbourne, a significant proportion of small business respondents indicated that they would access legal services outside of their local area. For example, of those respondents who stated that they would consult a lawyer for business structure advice, over a third indicated that they would access a non-local lawyer. This is an important finding, since relationships are often formed at the initial point of advising on the structure of a business and the opportunity to build upon this relationship is consequently lost for local lawyers. One-in-four small business respondents also indicated that they would seek legal advice from a firm in a larger regional centre or major city over a local firm, for planning and environment issues, workplace accidents, occupational health and safety, and employment contracts and disputes (see Figure 12 previously).

The survey findings revealed a number of reasons why some small businesses choose non-local lawyers over local lawyers. In particular, confidentiality and conflict of interest concerns were identified as a major inhibitor for small businesses attempting to access legal advice in their local area. These concerns were echoed in the interviews held with representatives from small business peak bodies and stakeholders, and concur with previous research that has highlighted conflict of

interest issues as impeding the effective provision of legal services in rural and regional communities.²⁸ Indeed, areas where complaints to the then Legal Ombudsman by regional Victorians represent the highest levels include breaches of confidentiality (27% of complaints) and conflict of interest concerns (30% of complaints), with these issues consistently recognised as a potential problem in small towns with only one or two law firms, despite the best efforts of regional lawyers.²⁹

A client was asked to sign a trust ledger following the sale of a property, which included a list of other clients of that law firm – many who the client knew – with details of their property sales. (Stakeholder consultations)

Furthermore, two-thirds of small business survey respondents indicated that they currently use the same lawyer for personal and business matters (67%), and 90% of surveyed lawyers responded that the majority (75-100%) of their small business clients used their firm for both personal and business matters. The likelihood of small businesses using the same law firm for personal and business matters also increased marginally by participant remoteness, with 66% of participants in inner-regional areas indicating that they used the same firm, compared to 71% in outer regional areas. It would be valuable to compare these findings with the experience of small businesses in metropolitan areas. While utilising the same lawyer for personal and business matters does not represent a conflict of interest per se, should a conflict of interest arise, rural and regional small businesses do not have the same level of choice in relation to engaging alternative lawyers with a comparable level of expertise.

Compounding these concerns is the perception that regional legal firms do not provide adequate specialised advice:

There is a perception that country law firms are not as good as big city firms. (Lawyer survey respondent)

They [small businesses] just want to associate with the 'big boys in town'. (Lawyer survey respondent)

I feel more comfortable to refer clients out of town because I know they will get the services they need. (Stakeholder consultations)

These views are reflected in the 2001 Parliamentary Committee review of legal services in rural and regional Victoria.³⁰ Various submissions noted how highly-specialised legal work continued to be

²⁸ Giddings, J., Hook, B. & Nielsen, J. (2001). Legal services in rural communities: Issues for clients and lawyers. *Alternative Law Journal*, 26(2), 57-63. See, also, Parliament of Victoria Law Reform Committee (2001). *Review of legal services in rural and regional Victoria*. Parliament of Victoria: Melbourne; and Coverdale, R. (2011). *Postcode Justice: Rural and regional disadvantage in the administration of the law in Victoria*. Deakin University: Waurn Ponds, p.85.

²⁹ Parliament of Victoria Law Reform Committee (2001). *Review of legal services in rural and regional Victoria*. Parliament of Victoria: Melbourne.

³⁰ Parliament of Victoria Law Reform Committee (2001). *Review of legal services in rural and regional Victoria*. Parliament of Victoria: Melbourne.

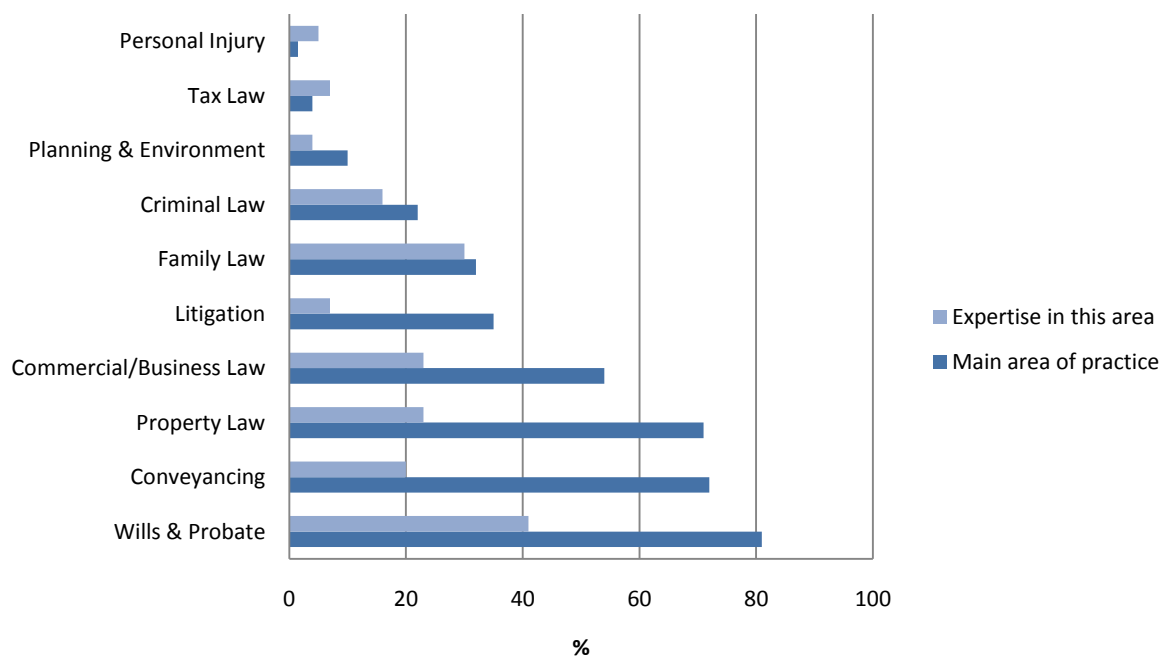
taken up by Melbourne-based firms, bypassing regional practices. This issue of specialisation within rural and regional law firms will be explored in further detail in the following section.

3.4 Specialisation within regional law firms

3.4.1 Breadth of service provision amongst regional legal practices

Lawyer survey participants were asked to indicate the main areas of law that they practise as well as any specific areas in which they considered they had particular expertise. As Figure 13 below demonstrates, respondents practised in a breadth of areas, with the proportional distribution of practice areas broadly reflecting those indicated by the ABS Legal Services Australia data.³¹ However, as Figure 13 also shows, areas of practice significantly exceeded the areas in which lawyer respondents considered they had expertise. Personal injury and taxation law was the only exception to this trend.

Figure 13. Main areas of legal practice & expertise



It is important to note, however, that there may have been differing interpretations of specialisation, with some areas considered by respondents as part of the skill set necessary for general practice which, while requiring a degree of competence, do not require specialised skills to perform tasks adequately. The survey design may also account for some difference, as participants were asked to provide their areas of expertise in an open-ended question format, which they may

³¹ Australian Bureau of Statistics. (2009). *Legal Services Australia – 8667.0 – Other legal services*. Available at: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/8667.0Main+Features52007-08>.

not have responded to fully, compared to a simple tick box response for areas of practice. Notwithstanding these design limitations, in the areas of wills and probate, conveyancing, property law and business/commercial law, the disparities were particularly marked. Furthermore, it is of interest that only 7% of lawyers indicated they had particular expertise in taxation law and 4% actually practised in this area. As noted earlier, this was a major area for which small business respondents indicated they accessed advice from accountants, with 91% of small businesses engaging an accountant for such assistance. These findings, once again, highlight the potential for greater involvement by regional lawyers in this specialist area, particularly given the complexity of legal taxation regulation.

The need for regional solicitors to respond to a wider range of legal matters than their metropolitan counterparts is acknowledged.³² Understandably, smaller regional law firms are more likely to be generalists rather than specialists, both in response to community needs and to ensure they accommodate the diversity of work necessary to sustain their practice. Indeed, the findings from the current survey revealed that lawyers placed more emphasis on the importance of providing a breadth of services to a wide variety of small business clients, rather than the provision of more specialist advice (see Section 3.2.2). Given the proportion of regional legal practitioners to regional communities is expected to continue to decline,³³ this issue will be further exacerbated in the future. Yet, expertise may not just equate to an understanding of specialist areas of law, but also to an understanding of specific industry and local area needs. In these cases, a regional knowledge of industry is important. For example, an understanding and application of water rights within predominantly fruit-growing irrigation areas may differ significantly to cropping or cattle production areas that rely on artesian water. Likewise, the variables and critical considerations in drafting or reviewing a supplier contract for grain may differ significantly to that for milk production. A specialised and local understanding of industry will, consequently, be lost if regional firms continue to decline.

3.4.2 Participant experience of regional lawyers

Two-thirds of small businesses indicated that businesses in their local area were either very satisfied or satisfied with the skills of local lawyers (66%). Almost a third (28%) responded 'neutral' on this variable, with various respondents indicating on the survey form that they were unwilling to make a

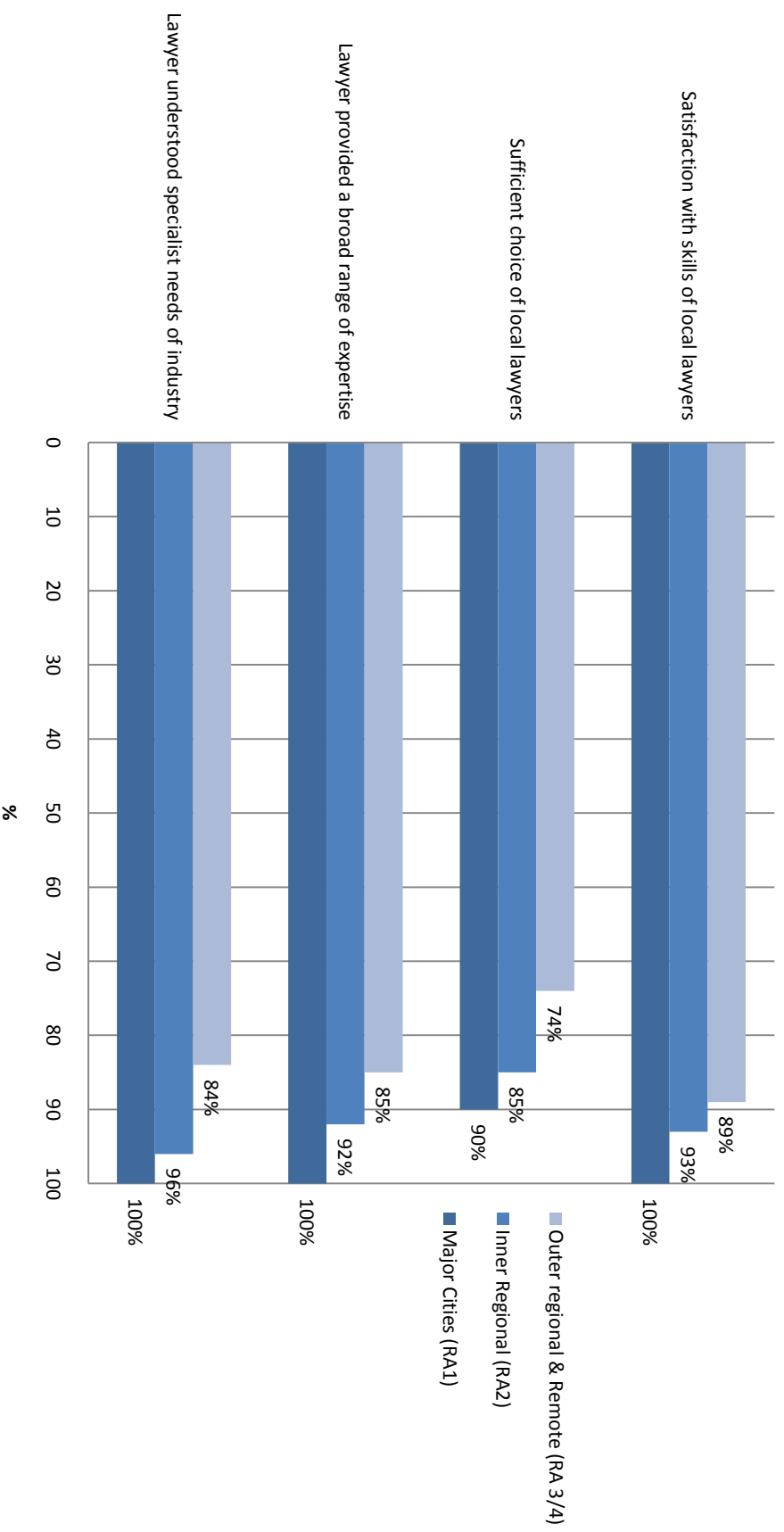
³² TNS Social Research. (2006). *Study of the Participation of Private Legal Practitioners in the Provision of Legal Aid Services in Australia*. TNS Social Research: Manuka, ACT.

³³ Law Council of Australia & Law Institute of Victoria. (2009). *Report into the Rural, Regional and Remote Areas Lawyer Survey*. Law Council of Australia: Braddon, ACT. See, also, Forell, S., Cain, M. & Gray, A. (2010). *Recruitment and retention of lawyers in regional, rural and remote New South Wales*. Law and Justice Foundation of NSW: Sydney.

judgement regarding others' opinions. When 'neutral' responses were treated as a non-answer and omitted from the sample, the satisfaction rate rose to 92%, which was on par with lawyer participants' perceptions of small business satisfaction (91%). Additionally, the majority of small businesses either agreed or strongly agreed that the lawyers they had consulted in the past provided a broad range of expertise (91%), charged reasonable fees (87%), understood the specialist needs of their industry (96%), and that they had sufficient choice of lawyers in their local area (83%).

However, lawyer survey respondents raised the lack of specialised expertise within regional law firms and a general lack of regional practitioners as major inhibitors for small businesses in their local area attempting to access legal assistance. Over a third (37%) of lawyer participants also indicated that the legal needs in their local area were not currently being met. Similarly, the initial consultations for the research revealed considerable concern amongst stakeholders around the level of expertise of regional and rural lawyers. Where small business satisfaction was analysed by remoteness a consistent trend emerged, with a higher overall level of satisfaction in inner-regional areas compared to outer-regional and remote areas on most variables (see Figure 14 below). Perhaps not surprisingly, participants' satisfaction with the choice of lawyers in their local area decreased with remoteness, with over a quarter of outer-regional and remote participants indicating that there was insufficient choice in their area.

Figure 14. Small business satisfaction with local legal services by remoteness



Note: Calculations are based on omitting 'neutral' responses, as participants tended to provide a 'neutral' response where they had limited experience accessing legal services, and these responses were skewed heavily by remoteness.

3.4.3 A referral culture amongst regional lawyers?

Despite earlier findings (see Section 3.2.1 earlier) that small businesses placed greatest importance on accessing specialist advice and expected law firms to understand the specialist needs of their industry, half of all lawyer respondents (48%) indicated that they rarely (never, once a year or less) refer small business clients to specialist lawyers. However, where respondents were based in outer-regional areas, it was evident that they refer clients to specialist lawyers with greater frequency, compared to their inner-regional counterparts (see Table 5 below), although this association was limited due to the small number of lawyers in the sample.

Table 5. Lawyer referrals to specialist lawyers

	How often do you refer work to specialist lawyers?			
	Rarely (never, once a year or less)	Sometimes (2-6 times a year)	Often (more than 6 times a year)	Total
Inner-regional lawyer participants	52% (n=24)	30% (n=14)	18% (n=8)	100% (n=46)
Outer-regional lawyer participants	36% (n=5)	43% (n=6)	21% (n=3)	100% (n=14)

While in many instances accountants were identified as the first point of contact by the small businesses in this research (see Section 3.3.1), the survey findings also indicated that accountants do refer a significant proportion of clients to lawyers. Indeed, 59% of lawyers stated that a quarter of their work is referred to them by accountants. A further 26% indicated that over half of their work is referred to them by accountants. The survey did not ask lawyer participants how often they referred clients to accountants. Anecdotal evidence from interviews suggests that this was perhaps limited, as one accountant remarked:

There is not enough collaboration between lawyers and accountants. Accountants tend to refer to lawyers but there is less reciprocity. (Stakeholder consultations)

While the number of lawyers in this sample was relatively small, a cross-tabulation between the proportion of work referred to them by accountants, by how often they referred clients to specialist lawyers, also shows a slight, although not significant relationship. Specifically, the survey findings indicate that the greater the proportion of referrals lawyers receive from accountants, the more likely they were to also refer clients to specialist lawyers, suggesting a culture of referral amongst some lawyers. Unfortunately, the survey did not ask lawyer participants to indicate the type of work usually referred to them by accountants, and limited responses were provided in relation to the type of work they referred on to specialist lawyers. Clearly, the lawyer/accountant relationship is an important one, at least within regional areas, and deserves further discussion and investigation.

Future research could examine these issues in greater detail, as well as comparing these findings to a metropolitan context.

Research with law firms in regional rural and remote areas of Queensland has found that many regional firms have “alliances” with other regional firms, and with specialist legal practices such as patent attorneys.³⁴ The primary reasons given for this behaviour were to broaden practice areas, to source and retain clients, to reduce risk of inaccurate advice and for reasons of collegiality.³⁵ A limited body of literature has similarly raised the potential of multidisciplinary collaborations between accountants and lawyers, for cases requiring specific expertise.³⁶ The potential benefits for regional practices and small business alike, of such collaborations between lawyers, as well as with other professionals, require further exploration. Specifically, future investigations could examine how referral processes could be improved to better respond to both small business and lawyer needs, and the implications of more formalised and transparent referral processes between lawyers and other professionals. Given the continued limitations associated with distance in regional Victoria, the expanded use of technologies, particularly the National Broadband Network, is also an important consideration in improving collaborations and communication between regional lawyers, across professions and with court and regulatory bodies. The emerging opportunities for different forms of legal practice such as collaborative law³⁷ and ‘freelance lawyering’³⁸ can also be enhanced through developing communication technologies.

3.5 Future issues confronting regional small business

Survey participants were invited to elaborate on whether there were particular issues confronting small businesses in regional areas which would require additional legal support into the future. Interestingly, there was a high level of agreement between small business and lawyer participant

³⁴ Hart, C. (2011). Sustainable regional, rural and remote legal practice in Queensland: The importance of innovation in alliances and the use of information technology. *Deakin Law Review*, 16(1), 225-263.

³⁵ Ibid.

³⁶ Castles, M. (2008). Possibilities for multidisciplinary collaboration in clinical practice: Practical ethical implications for lawyers and clients. *Monash University Law Review*, Vol. 34 (1). See, also, Alwin, A. & Eckerly, P. (2003). Raising the tax bar: Redefining the roles of accountants and lawyers for a practical solution to the multidisciplinary practice debate. *DePaul Business & Commercial Law Journal*, Vol. 1.

³⁷ Collaborative law uses an interest-based negotiation model. It is a non-adversarial dispute resolution process facilitated by lawyers with the objective of achieving an ethical and enduring settlement for the clients. For further details see the Law Institute of Victoria website <http://www.liv.asn.au/Collaborative-Professionals>.

³⁸ See article published in the Australian Financial Review on 7/10/11 titled ‘At home, at work and half the price’, which describes an emerging system where freelance lawyers (described as ‘law firm refugees’) are supplied to legal practices and directly to businesses to undertake both ‘routine’ and specialist legal services: <http://www.plexusgroup.com.au/pdf/AFR%20Article.pdf>.

responses, which could be grouped into the following key areas of concern: carbon trading; succession planning; water trading; planning laws and the increasing complexity in local, State and Federal regulations.

3.5.1 Carbon Trading

In November 2012, the Clean Energy legislative package³⁹ was passed by the Senate, which introduced new laws relating to the management of carbon emissions. Emissions trading commences on 1st July 2012 with a \$23 per tonne carbon price. The Clean Energy package has a direct impact on the top 500 or so emitters and will result in both potential costs and incentives for regional small business. Regional law firms have a significant role to play in advising and assisting clients in relation to this scheme. For some regions with industries involved in carbon intensive activities, significant changes will be imposed, including major restructuring of their activities. New industries will also be established as a result of the carbon trading legislation.⁴⁰ Advice on matters such as regulatory compliance obligations, including reporting obligations, business and financial structures for optimising taxation incentives, the ability of the emitters to pass on costs of the carbon price through supply contracts, as well as the applicability of offsets and incentive schemes, will be valuable areas of advice and guidance for regional small business.

For the agricultural sector, the Carbon Farming Initiative⁴¹ enables farmers to generate carbon credits through reducing emissions or storing carbon on their land, which they can then sell to industries wishing to offset their emissions. This initiative, potentially, offers significant income generation opportunities for primary producers, if implemented effectively. The legislation does, however, involve some complexity and requires an informed interpretation of the relevant Act.⁴² Building expertise in advising the agricultural sector and other areas of small business offers the potential for regional law firms to establish themselves as specialists in this area and to provide commercially valuable services to local industries. The legal and regulatory issues around carbon capture and storage, more generally, also provide opportunities for regional law firms.⁴³ In broader

³⁹ See <http://www.climatechange.gov.au/en/government/clean-energy-future/legislation.aspx>.

⁴⁰ See ABC Radio *Truckers, coal miners, aluminium producers and farmers: Victoria's reaction to the carbon tax*: <http://www.abc.net.au/local/stories/2011/07/11/3266677.htm>.

See, also, Australian Government Clean Energy Future website - *New Opportunities in our regions*: <http://www.cleanenergyfuture.gov.au/clean-energy-future/an-overview-of-the-clean-energy-legislative-package/new-opportunities-in-our-regions/>.

⁴¹ *Carbon Credits (Carbon Farming Initiative) Act 2011*
<http://www.comlaw.gov.au/Series/C2011A00101/Amendments>.

See also http://www.weeklytimesnow.com.au/article/2011/10/27/398431_on-farm.html.

⁴² *Carbon Credits (Carbon Farming Initiative) Act 2011*.

⁴³ Havercroft, I., Macrory, R. & Stewart, R. (2011). *Carbon Capture and Storage – Emerging Legal Issues and Regulatory Issues*. Hart Publishing: Oxford.

terms, regional communities and small business will be particularly affected by climate change and clean energy laws.⁴⁴ Increasing transportation and power costs, the use of renewable energy such as wind-power and alternative energy sources such as natural gas and ethanol, food security and the increasing management of natural resources such as water, will have a particular impact on regional communities, which will all require, to a growing degree, independent, expert, industry-relevant legal advice.

3.5.2 Succession Planning

The ability to facilitate and, potentially, mediate intergenerational succession where there may be competing family member interests, together with knowledge of the range of laws which may come into play, and local industry knowledge, positions local lawyers well in their capacity to provide succession planning services. In some regional industries, for example primary production, where there is an ageing proprietor population,⁴⁵ the opportunity to build a specialised succession planning expertise remains significant. However, the opportunities to a large extent are not being taken up by regional law firms, as reflected in the findings of this study and previous research, and many family-owned businesses remain without a plan.⁴⁶ This can have a significant impact on their survival and growth in the future:

SMEs that engage in strategic planning (which includes documented succession planning) are more likely to be those that achieve higher sales growth, higher returns on assets, higher margins on profit and higher employee growth.⁴⁷

The importance of law firms building relationships with small business early in their development, or, conversely, the lost opportunities for both small businesses and regional law firms when legal services are not provided at the foundation stages of a business, are well demonstrated by the succession planning data.

3.5.3 Water Trading

Growing and competing demands for water and the uncertainty of supply, have brought about significant legislative reforms in the management and trade of water. Laws pertaining to water entitlements/ownership, water trading, drainage, easements, fees and charges have rapidly

⁴⁴ Durant, N. (2010). *Legal Response to Climate Change*. The Federation Press: Annandale, NSW.

⁴⁵ The average age of Australian farmers has grown from 40 years in 1990 to 57 in 2007 and increasing. See Agrifood Australia web page *How profitable is farming business in Australia 2009*: http://www.agrifood.info/connections/2009/Laoura_Ronan.html.

⁴⁶ While figures vary, a Cameron Research Group report, 2006, suggests that 94% of small business owners don't have a documented succession plan at all. See, Australian Businesswoman's network: <http://blog.abn.org.au/grow-your-business/why-your-business-needs-a-succession-plan>.

⁴⁷ Wang, C., Walker, E. & Redmond, J. (2007). Explaining the lack of strategic planning in SMEs: The importance of owner motivation. *International Journal of Organisational Behaviour*, 12(1), 1-16.

developed and evolved since the *Water Act 1989* (Vic). The introduction of the Commonwealth *Water Act 2007*, further establishes a regulatory environment for water management within the Murray Darling Basin. Water reform continues to evolve with the recent introduction of the Murray Darling Basin Plan⁴⁸ and the ongoing National Water Initiative.⁴⁹ Water rights issues will also vary regionally, and by industry, depending on the reliance on either surface or ground water supplies – for example, water right issues will vary for an irrigation farmer near Kyabram and a dairy farmer in western Victoria using a deep bore aquifer. Amendments to the *Water Act 1989* (Vic) provided a legislative structure for water trading, including buying and selling high and low reliability water shares, and buying and leasing water entitlements. Water trading is now a major industry across regional Australia. Australia’s water markets have consistently increased in value over the last few years – from \$2.8 billion in 2008–09 to \$3.0 billion in 2009–10.⁵⁰ The Murray Darling Basin constituted 92% of all water trade allocations nationally.⁵¹

Water trading brings with it the requirement for specialised legal expertise in providing advice to industry and water catchment authorities, the preparation of contracts for the sale of water, and advising clients on government water entitlement contracts and water shares. The emergence of Water Brokers, whose role it is to facilitate trade between those who hold water rights and have excess water they wish to sell and those who require additional water, provides an additional potential client group for regional lawyers interested in specializing in this area of law. The growth in regulation of water usage and the expanding water market indicate increases in future demand for the services of regional law firms in water law, and opportunities to build expertise in this area.

3.5.4 Planning Laws

As a consequence of the increasing need to control and manage human impacts on the environment and land use, greater regulation is occurring at all levels of government. Population movement as a result of ‘sea changes’ and ‘tree changes’ and changing land use activities, also bring urban-based and agriculture-based populations closer together, creating potential tensions. Environmental management and land use issues are further exacerbated by climate change, requiring a more strategic approach to settlement planning, through both mitigation and adaptation measures. In addition to the capital cities, major regional growth centres are likely to be particularly affected by

⁴⁸ Murray Darling Basin Authority Draft Basin Plan - <http://www.mdba.gov.au/draft-basin-plan>.

⁴⁹ National Water Commission, *National Water Initiative*, <http://www.nwc.gov.au/water-reform/national-water-initiative>.

⁵⁰ National Water Commission, *Australian Water Markets Report, 2009 – 2010* http://www.nwc.gov.au/_data/assets/pdf_file/0009/11340/Sec1.pdf p6.

⁵¹ *Ibid* p5.

planning regulations in response to climate change, with “some communities particularly affected by regional adjustment challenges.”⁵²

A discussion paper on an *Integrated Approach to Planning for Climate Change* indicates “a range of measures (which) have already been identified, such as:

- revising, renewing and enforcing building codes to take account of changing climatic conditions;
- introducing more consistent planning measures (e.g., planned retreat, dune management, building designs, regulation of new structures);
- managing urban growth in climate sensitive areas through zoning and regulation”.⁵³

These measures all imply a greater degree of regulation which will affect a range of small businesses including agriculture, developers, trades and the construction industry, as well as the regulators - primarily local government authorities. Again, the demand for specialist legal advice in regional areas has the potential to grow significantly. Demand for expertise in planning and subdivision, land acquisition and compensation, environmental and conservation controls, and administrative law in relation to jurisdictional powers and procedures, is likely to increase. Further, legal practitioners with local knowledge and mediation or collaborative law skills, which foster a less adversarial and less costly approach and which are more appropriate to smaller communities where those in dispute need to be able to continue to work together, may hold particular relevance.

The above topics highlighted by survey respondents as areas in which regional small business will require legal support into the future, reflect a changing environment. Physical changes such as climate change and greater competition for natural resources are predicted, as are changing markets influenced by international trade and labour markets, and demographic changes across communities as a consequence of aging regional populations and population movements. Hence, the need for local law firms to provide advice and assistance to guide regional small business through the maze of local, State and Federal regulations which impact on their business activities is critical. Indeed, the findings highlighted throughout this report demonstrate an array of service gaps and potential opportunities for regional legal practitioners to more effectively engage with small businesses. Importantly, in many instances, effective advice requires a local understanding of the unique circumstances of a particular region or industry. Thus, regional law firms are in an enviable position

⁵² Victorian Climate Change Green Paper June 2009, available at: <http://apo.org.au/sites/default/files/Climate%2BChange%2BGreen%2BPaper.pdf> p.59.

⁵³ Norman, B. (2010). *A Low Carbon and Resilient Urban Future - A Discussion Paper on an Integrated Approach to Planning for Climate Change*. University of Canberra, p.7. Available at: <http://www.climatechange.gov.au/~media/publications/local-govt/low-carbon-resilient-urban-future.pdf>.

essential to providing small business with the capacity to optimise the commercial opportunities arising as a result of these service gaps and the emerging areas well into the future.

Appendix 1 - Survey Plain Language Statement



Dear Sir/Madam,

Re: A request for your participation in a research project survey on 'Legal Service Needs of Small Business in Rural and Regional Victoria'

You are invited to take part in a survey (attached) which is part of a research project being undertaken by Professor Anne Rees, Professor Jean du Plessis, Richard Coverdale and John Hannagan, from Deakin University School of Law.

This project aims to assess the nature and extent of gaps in legal service provision to small business in rural and regional Victoria and potential areas of innovation. (Small business is defined as a commercial private sector operation with fewer than twenty employees.) This letter contains information about the research project. It explains the background and procedures involved in this project so that you can decide whether you wish to participate. Feel free to ask questions about any information in the document – our contact details are at the end of this letter.

Background to the project

The continuing provision of effective legal services to rural and regional Victorian small business is of strategic importance to the future of those businesses, the communities in which they are based and the Victorian economy. It is also critical for legal practitioners themselves to ensure their services are well-targeted, efficient, affordable and sustainable.

The research project, which was funded by the Legal Services Board, will undertake consultations and a survey of a sample of small businesses, lawyers, and peak industry organisations in rural/regional Victoria.

You have been selected to participate in this research project either as a result of random selection from a public directory or because of the particular relevance of your organisation to this project. The results of this research will be published and distributed broadly in the form of a report; however, individual participants in the consultations and surveys will remain anonymous.

What is involved?

Participation in the survey will involve responding to the questions attached.

The research project will be overseen by a Reference Group comprised of Deakin University academic staff, a lawyer practising in rural and regional Victoria and a representative of Regional Development Victoria. The reference group will review the progress of the research, consultation/survey findings and the analysis of data.

Privacy, confidentiality and risk associated with this research

There is no foreseeable risk associated with participating in the survey. You are not required to provide any personal details which would identify you in the survey. Any information you nominate in the survey which may identify you will remain confidential, subject to legal requirements.

All data, whether identifiable as that of a research participant or not, will be stored in a secure place at Deakin University for 6 years after final publication and then destroyed.

Your Participation

Participation in any research project is voluntary. If you do not wish to take part you are not obliged to.

If you agree to participate, please complete the enclosed survey and return in the reply-paid, self-addressed envelope, also enclosed. By doing so, you indicate that you understand the information provided here and you give your consent to participate in the research project.

There will be no remuneration provided for your participation in the research and it is unlikely that there will be a direct benefit to you or your organisation in participating in this research. However, by participating in the project, you will be assisting in ensuring regional/rural law firms are aware of the current and emerging legal needs of small businesses in rural/regional Victoria and in more effectively targeting the services law firms provide to small business.

As a token of our thanks, participants will go into a random draw for a one-off gift prize of \$200.

Ethical Guidelines

This project will be carried out according to the *National Statement on Ethical Conduct in Human Research* (2007) produced by the National Health and Medical Research Council of Australia. The ethics aspects of this research project have been approved by the Human Research Ethics Committee of Deakin University.

If you have any complaints about any aspect of the project, the way it is being conducted or any questions about your rights as a research participant, then you may contact:

The Manager, Office of Research Integrity, Deakin University, 221 Burwood Highway, Burwood Victoria 3125, Telephone: 9251 7129, Facsimile: 9244 6581; research-ethics@deakin.edu.au.

Project number: BL-EC 28/10

If you require further information, wish to withdraw your participation or if you have any problems concerning this project you can contact the researchers:

Yours sincerely,

Professor Anne Rees
Head of School
School of Law
Deakin University
Pigdons Road
Waurm Ponds 3217
Email: [hoslaw@deakin.edu.au](mailto:hosl@deakin.edu.au)

Richard Coverdale
School of Law
Deakin University
Pigdons Road
Waurm Ponds 3217
Email:
richardc@deakin.edu.au

Appendix 2 - Consultations Plain Language Statement



Dear Sir/Madam,

Re: A request for your participation in a research project survey on 'Legal Service Needs of Small Business in Rural and Regional Victoria'

You are invited to take part in consultations which are part of a research project being undertaken by Professor Anne Rees, Professor Jean du Plessis, Richard Coverdale and John Hannagan, from Deakin University School of Law.

This project aims to assess the nature and extent of gaps in legal service provision to small business in rural and regional Victoria. (Small business is defined as a commercial private sector operation with fewer than twenty employees.) This letter contains information about the research project. It explains the background and procedures involved in this project so that you can decide whether you wish to participate. Feel free to ask questions about any information in the document – our contact details are at the end of this letter.

Background to the project

The continuing provision of effective legal services to rural and regional Victorian small business is of strategic importance to the future of those businesses, the communities in which they are based and the Victorian economy. It is also critical for legal practitioners themselves to ensure their services are well-targeted, efficient, affordable and sustainable.

The research project, which was funded by the Legal Services Board, will undertake consultations and a survey of a sample of small businesses, lawyers, and peak industry organisations in rural/regional Victoria.

You have been selected to participate in this research project either as a result of your organisation being selected from a public directory or because you or your organisations has been nominated as having particular relevance to this project. The results of this research will be published and distributed broadly in the form of a report; however, individual participants in the consultations and surveys will remain anonymous.

What is involved?

Participation in the consultation activities of this project will involve an interview of a maximum of one hour. Questions will seek information in the following areas:

For Small Businesses

- *The nature of your business*
 - o *Number of employees, product/services provided, business structure (sole trader, partnership etc.), duration of business.*
- *Current and past relationships/experience with legal practices. Include both positive/negative experiences.*
- *Considerations when determining when to seek the assistance of a legal practitioner and criteria for selection of a practitioner.*
- *Current perceived gaps in service provision by law firms.*
- *New/Emerging issues where the services of a legal practitioner would/may be of assistance.*
- *What changes in circumstances will affect your business requirement for legal and allied services? Are there likely to be increases or decreases in demand?*

For Legal Practitioners

- *The nature of your practice*
 - o *Number of partner and employee solicitors, range of legal services provided, office locations/geographic extent of catchment, targeted industries/services, duration of practice.*
- *Is your law firm able to respond to the current needs of small business clients in your area?*
- *Are you aware of emerging legal service needs of small business in the near future?*
- *Are you able to identify innovative legal practices and services currently provided by your firm or other regional/rural law firms to small businesses?*
- *What are the limitations/blockers to improving/expanding legal services to rural and regional small businesses?*

Responses to the consultations will form the basis of survey questions which will then be distributed to small business and law firms in rural and regional Victoria.

The research project will be overseen by a Reference Group comprised of Deakin University academic staff, a lawyer practising in rural and regional Victoria and a representative of Business Victoria. The reference group will review the progress of the research, consultation/survey findings and the analysis of data.

There will be no remuneration provided for your participation in the research and it is unlikely that there will be a direct benefit to you or your organisation in participating in this research. However, by participating in the project, you will be assisting in ensuring regional/rural law firms are aware of the current and emerging legal needs of small businesses in rural/ regional Victoria and in more effectively targeting the services law firms provide to small business.

Privacy, confidentiality and risk associated with this research

There is no foreseeable risk associated with participating in this project. Any information obtained as part of the individual consultations that can identify you will remain confidential, subject to any legal requirements. *If you are participating in a focus group discussion, confidentiality cannot be guaranteed, however, focus group members will be asked to respect the confidentiality of other members of the group.*

If you give us your permission by signing the Consent Form, your contribution to the project will be included in the *published* report. Where we may wish to include identifiable content which is attributed to you, this will only be done where you have viewed the attributed content and provide your written permission for use in the public report.

All data, whether identifiable as that of a research participant or not, will be stored in a secure place at Deakin University for 6 years after final publication and then destroyed.

Your Participation

Participation in any research project is voluntary. If you do not wish to take part you are not obliged to. If you decide to take part and later change your mind, you are free to withdraw from the project prior to the point at which *the data is processed*.

If you decide to withdraw from this project, please notify a member of the research team immediately.

Your decision whether to take part or not, or withdraw, will not affect whatever existing relationship you may have with Deakin University.

Ethical Guidelines

This project will be carried out according to the *National Statement on Ethical Conduct in Human Research* (2007) produced by the National Health and Medical Research Council of Australia. The ethics aspects of this research project have been approved by the Human Research Ethics Committee of Deakin University.

If you have any complaints about any aspect of the project, the way it is being conducted or any questions about your rights as a research participant, then you may contact:

The Manager, Office of Research Integrity, Deakin University, 221 Burwood Highway, Burwood Victoria 3125, Telephone: 9251 7129, Facsimile: 9244 6581; research-ethics@deakin.edu.au.

Project number BL-EC 28/10

If you require further information, wish to withdraw your participation or if you have any problems concerning this project you can contact the researchers:

Yours sincerely,

Professor Anne Rees
Head of School
School of Law
Deakin University
Pigdons Road
Warn Ponds 3217
Email: hoslaw@deakin.edu.au

Richard Coverdale
School of Law
Deakin University
Pigdons Road
Warn Ponds 3217
Email:
richardc@deakin.edu.au



Appendix 3 – Consent Form

TO: *Consultation Participants*

Consent Form

Date:

Legal Service Needs of Small Business in Rural and Regional Victoria.

I have read and I understand the attached Plain Language Statement.

I freely agree to participate in this project according to the conditions in the Plain Language Statement.

I have been given a copy of the Plain Language Statement and Consent Form to keep.

The researcher has agreed not to reveal my identity and personal details, including where information about this project is published, or presented in any public form unless by prior written agreement by me.

Participant's Name (printed)

Signature Date

If you agree to participate, please return the signed consent form by either mail or email to:

*Richard Coverdale
School of Law
Deakin University
Pigdons Road
Warn Ponds 3217
Email: richardc@deakin.edu.au
Ph: 03 52272245*



Regional Small Business and the Law Survey

lawyers

On completion of this survey you will be eligible to enter a draw to win an iPod touch 8GB valued at \$239! Entry details at end of survey. Survey completion time approximately 10 minutes

This survey forms part of a research project that aims to assess the nature and extent of gaps in legal services provision to small businesses (less than 20 employees) in rural and regional Victoria. Effective legal services are important to the future of small businesses, rural and regional communities and the Victorian economy. It is also critical for lawyers to ensure your services are well-targeted, efficient and affordable.

The results of this research will be published and distributed broadly in the form of a report; however your individual response to this survey will remain **confidential**.

It would be greatly appreciated if this questionnaire could be completed by a principal or senior lawyer in your firm and returned in the enclosed return-address envelope by **2 September 2011**.

19 Which other services do small business clients in your town most often go to for legal matters?

Please tick ✓ as many boxes as apply.

Accountant Financial planner Other (please specify)

20 In relation to what type of matters would this most often occur?

Please indicate

21 What percentage of your work with small business clients result from referrals from accountants?

Please circle the approximate percentage on the scale below.

0% 25% 50% 75% 100%

22 Are there other professions that frequently refer small business clients to you?

Please indicate which professions and approximate percentage.

23 How often do you refer your small business clients to specialist lawyers? (please tick /only one box)

Never (go to Q25) Less than once a year Once a year
 2 to 6 times a year More than 6 times a year

24 What are the main types of small business issues/matters you refer to other specialist lawyers?

Please indicate

25 Please indicate what you think are the main 'inhibitors' for small businesses in using the services of law firms in your region/town?

26 What future issues confronting your small business clients may require additional legal support in the future? (for example, Succession planning, Carbon Tax, Genetically Modified Crops, Planning laws, Water trading, etc)

Please indicate

Additional comments

Thank you for taking the time to complete this survey!

Please return no later than **2 September 2011**.
 If you wish to enter the competition to win an iPod, please provide a contact phone or mobile number (This phone number is strictly for contacting winner and will not be retained with your responses)
Winner will be contacted by phone!

Post this form in the postage paid return addressed envelope to:
 R. Coverdale, Deakin University, School of Law, Waurn Ponds, Victoria, 3216

1 The postcode of my principal office is

Please tick ✓ one box only for each of the following questions.

2 My gender Male Female
 3 My age range 20-29 30-39 40-49 50-59 60-69 70+

4 I have been practising law for the following length of time

Less than 1 year 1-2 years 3-5 years
 6-10 years 11-20 years 21+ years

5 Including yourself, how many practicing lawyers are in your firm?

1-2 3-5 6-15
 16-35 More than 35

6 My role is best described as

Principal Employee solicitor
 Other, please indicate

7 I mainly practice in

Please tick ✓ as many boxes as apply.

Wills and probate Conveyancing Commercial/Business law
 Property law Litigation Planning and environment
 Family law Personal injury Criminal law
 Tax law General practice Other, please indicate

8 I consider I have particular expertise in. Please indicate as many areas of law you wish.

9 For my small business clients, the main assistance that I provide is/are in relation to:

Please tick ✓ as many boxes as apply.

- Superannuation
- Occupational health and safety
- Business structure
- Planning and environmental issues
- Tax advice
- Employment contracts/disputes
- Succession planning
- Disputes over payment, quality or terms for goods or services
- Buying or selling a business
- Leasing or selling a business property
- Drafting contracts
- Intellectual property
- Competition and consumer law
- Other, please indicate

10 Which are the top 3 categories of your small business clients? Top 3 means the industry categories from which your firm generates the most business income.

Please put 1,2 or 3 against the top 3 categories.

1 = most business income, 2= second most business income, 3 = third most business income.

- Agriculture, Forestry, Fishing
- Building/Construction
- Manufacturing
- Utilities – Electricity, Gas, Water
- Food Processing services
- Transport service
- Retail trade
- Accommodation and Food Services
- Government/Public Administration
- Health and Community services
- Education and Training services
- Rental, Hiring, Real Estate
- Finance, insurance
- Auto/Machinery/Electronic repair services
- Other – Please specify

11 How important are the following characteristics for your small business clients when choosing a lawyer?

For each statement, please tick ✓ the level of importance which best reflects what you think are the views of your small business clients.

	Very Important	Important	Neutral	Unimportant
Understanding the specialist needs of their industry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Providing a broad range of legal expertise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Communicating issues and processes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Being accessible and easily approachable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Reasonable professional fees and charges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Responding to their legal matters in an effective and efficient manner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ensuring that the client has a sufficient degree of control over their legal matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments/other important characteristics?

12 Overall, how satisfied do you think local small business clients are with the skills of lawyers in your local area? Please circle the level of satisfaction which best reflects your views.

Very satisfied	satisfied	neutral	not satisfied	very dissatisfied
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13 In order of priority, which of the following do you think are the most important considerations for your clients when selecting a lawyer for their business?

Please place a 1, 2 or 3 in each box. 1 = highest priority, 3 = lowest priority.

- The lawyer has been recommended by others they trust The lawyer is local
- The lawyer is a specialist in the area they need legal assistance

14 Approximately what percentage of your small business clients also use your firm for their personal legal matters?

Please circle the approximate percentage on the scale below.

0%	25%	50%	75%	100%
----	-----	-----	-----	------

15 When are your small business clients most likely to seek your services?

Please rank in order of frequency from 1 to 4, with 1 being the most frequent reason for seeking legal assistance

- For general business advice Before they sign major agreements/contracts
- Only when they have a significant legal problem Other (please specify)

16 Are there specific legal service needs of small businesses in your town not currently being met? This can include particular areas of practice, or court processes/facilities, referral arrangements, additional government or industry services, etc.

- Yes No

If 'Yes', please indicate areas where you think there are gaps in legal services which could be provided to small business in your town.

17 Do you have suggestions as to how these gaps could be responded to?

Please indicate

18 Do you believe small business clients in your town frequently go to other professionals (eg accountants, financial planners, other advisors) for legal matters which would be better responded to by a lawyer?

- Yes No (If 'No', go to Q21)

Regional Small Business and the Law Survey

small business

On completion of this survey you will be eligible to enter a draw to win an iPod touch 8GB valued at \$239!
 Entry details at end of survey. Survey completion time approximately 10 minutes

This survey forms part of a research project that aims to assess the nature and extent of gaps in legal service provision to small businesses (less than 20 employees) in rural and regional Victoria. Effective legal services are important to the future of your business, your community and the Victorian economy. It is also critical for lawyers themselves to ensure their services are well targeted, efficient and affordable.

The results of this research will be published and distributed broadly in the form of a report; however your individual response to this survey will remain **confidential**.

It would be greatly appreciated if this questionnaire could be completed by an owner, director or senior manager of your business and returned in the enclosed return-address envelope by **2 September 2011**.

1 The postcode of my business office is

Please tick ✓ one box only for each of the following questions.

- 2 My gender Male Female
- 3 My age range 20–29 30–39 40–49 50–59 60–69 70+

4 What is the principle activity of your business? (for example, primary production/mixed farming, domestic electrician, haulage company, manufacturer – agricultural machinery, milk bar owner)

5 Which of the following best describes your business structure?

Sole trader Partnership Private company (Pty Ltd)

Trust Don't know Other (please indicate)

6 In the past 12 months, how many people, including yourself, worked in your business – include permanent and casual?

- 1 owner/operator 2–4 5–10
- 11–19 20+

7 How long have you been operating this business?

- Less than one year 1–2 years 3–5 years
- 6–10 years 11–20 years 20 years +

8 Do you have an accountant you regard as your business accountant?

Yes No If 'Yes', please indicate their postcode

19 In this section we seek your views on which professional services, if any, you would approach for assistance. Please tick ✓ one box only for each issue.

	A local lawyer	A lawyer in Melbourne or larger town	An accountant	I would not seek professional advice	Other – please indicate what other type of service or profession you would use
Superannuation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Workplace accident claims	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Business structure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Planning and environmental issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Employment Contracts /disputes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Tax advice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Succession planning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Dispute over payment, quality or terms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Buying or selling a business	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Occupational Health and Safety	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Leasing or selling a business property	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Intellectual property – eg trademarks /patents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Drafting Contracts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Add other issues:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Add other issues:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>

20 Are there areas of your business that you think a lawyer could further assist with? For example mediation of disputes, negotiating issues with regulators/government, providing advice on business development strategies, seminars on relevant new legal developments.

Please indicate

21 What future issues confronting your industry may require additional legal support in the future? (for example, Succession Planning, Carbon Tax, Genetically Modified Crops, Planning laws, Water trading, etc)

Comments

Additional comments

Thank you for taking the time to complete this survey!

Please return no later than 2 September 2011.

If you wish to enter the competition to win an iPod, please provide a contact phone or mobile number (This phone number is strictly for contacting winner and will not be retained with your responses)
 Winner will be contacted by phone

Post this form in the postage paid return addressed envelope to:

R. Coverdale, Deakin University, School of Law, Waurn Ponds, Victoria, 3216

9 Do you have a law firm you regard as your business lawyers?

Yes No
(If 'No', go to question 12) If 'Yes', please indicate their postcode

How long have you been a client of your current lawyer?

Less than 1 year 1-5 years 6-10 years 11 years +

10 How did you select your business lawyer? (eg recommendation by others, Yellow Pages, internet search)

Please indicate

11 Do you use the same lawyer for your business dealings and your personal dealings?

Yes No

Have you used the services of more than one law firm in the past 5 years?

Yes No

If 'Yes', why?

12 When would you normally seek legal assistance for your business?

Please tick **✓** as many boxes as appropriate.

For general business advice Before I sign major agreements/contracts
 Only when I have a significant legal problem Other (please specify)

13 Do you have a sufficient choice of lawyers in your local area with the relevant skills to deal with your businesses legal issues.

Yes No

If 'No', please indicate gaps in relevant skills/experience

14 Are you confident in your ability to choose a lawyer with the relevant skills to deal with your businesses legal issues?

Yes No

If 'No', why not?

15 In order of priority, which of the following do you think are the most important considerations when selecting a lawyer for your business?

Please place a 1, 2 or 3 in each box. 1 = highest priority, 3 = lowest priority.

The lawyer has been recommended by others I trust
 The lawyer is local
 The lawyer is a specialist in the area I need legal assistance

16 In relation to business matters, I seek legal assistance from a lawyer:

Please tick **✓** one box only

Less than once a year Once a year
 2 or 3 times a year 4 to 6 times a year
 More than 6 times a year I never seek legal assistance from a lawyer

17 We would like to know about your general experience with lawyers and the characteristics you regard as important when choosing a lawyer. Please respond to both part 1) and 2) of each statement if you have not used the services of a lawyer for your business, please answer part 2) of each statement only. For each statement, please tick **✓** the option which best reflects your views on the following.

	Part 1					Part 2				
	What has been your general experience of lawyers?					How important is this when choosing a lawyer?				
	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	Very important	Important	Neutral	Unimportant	
The lawyer understood the specialist needs of my industry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The lawyer provided a broad range of legal expertise	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The lawyer communicated issues and processes well	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The lawyer was open and approachable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The lawyer's fees and charges were reasonable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The lawyer responded to my case in the most effective and efficient way	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The lawyer ensured I had a sufficient degree of control over my legal matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments/other important characteristics?

18 Overall, how satisfied do you think local small business clients are with the skills of lawyers in your local area? Please circle the level of satisfaction which best reflects your views.

very satisfied satisfied neutral not satisfied very dissatisfied

Comments