It is well established that legal practices in rural and regional areas experience a unique set of challenges that differ from those of their urban counterparts. These include greater pressure to provide a breadth of services to sustain a client base, difficulties attracting graduates and a steadily retiring workforce.

The inequitable spread of justice system services across rural and regional Victoria adds further pressures for regional legal practitioners. However, little is known of the nature of the legal services provided and how effectively regional legal practices meet the needs or expectations of their local communities. More specifically, there has been limited research into regional Victorian small business expectations of local legal practices or their degree of satisfaction with existing legal services.

To address this gap, Deakin University’s Centre for Rural Regional Law and Justice recently undertook research funded by the Legal Services Board. The research included a survey of 207 regional small businesses and 68 regional lawyers, examining their experiences of legal practice in rural and regional Victoria. A series of consultations was also conducted with peak small business organisations and lawyers. This article briefly summarises some of the key findings from this research, which have been published in more detail elsewhere, and goes on to suggest a series of recommendations developed in response to these findings.

Research findings

Overall, a high level of satisfaction with legal practices in regional and rural areas was observed across the small business survey sample. Yet the study also revealed limited use of legal services, with over half of all small business participants responding that they rarely (either never or less than once a year) sought legal advice. Participants in outer regional areas were more likely than those in inner regional areas to respond that they rarely or never sought legal advice. Instead, small business respondents were significantly more likely to have a regular business accountant whom they used for their business affairs, including for matters that arguably may require legal expertise, such as succession planning and business structure advice. Indeed, small business use of lawyers was primarily reactive rather than preventative. A lack of awareness by small business owners of the services and skills lawyers can provide and when an issue can effectively be resolved using the expertise of a lawyer were primary reasons for this trend. As two legal practitioners explained:

“Education is the key. Until small businesses know more about their rights and obligations, they do not know what to ask lawyers or if/when they actually should seek a lawyer’s assistance.

“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”.

Confidentiality and conflict of interest concerns were also raised as major inhibitors for small businesses seeking to access legal advice in their local area. For example, one interviewee recounted how, following the sale of a property, a client was asked by a firm to...
Greater promotion and community education by the sector regarding the role and unique expertise of the legal profession is also required in regional communities.

Recommendations

While this research revealed limited engagement with legal practitioners by regional small business, there remains substantial scope for regional lawyers to firmly establish themselves as specialists on specific regional issues and to provide commercially valuable services to local industries. Indeed, regional law firms are placed in an enviable position, as in many instances effective advice requires a local understanding of the unique circumstances of a particular region and industry. Furthermore, significant opportunities exist to build a regional network of specialist lawyers to support more generalist practitioners. Greater promotion and community education by the sector regarding the role and unique expertise of the legal profession is also required in regional communities. In particular, the following eight recommendations have been developed through a series of consultations with small business stakeholders and legal practitioners in response to the research findings.

Recommendation 1: Formalise referral systems

The research highlights an expanding role for the LIV to develop and maintain a more formal and structured referral system that encourages referrals between regional lawyers to support generalist practice and maintain and foster local specialised practices, and in so doing encourage a “best fit” between practice skills, expertise and client needs. A formalised referral system would also go some way to addressing the greater propensity for conflict of interest issues to arise in regional legal practice. The recommendation is proposed that further research be undertaken to examine the most effective ways to assist regional law firms to harness their potential to provide localised specialist advice. This may also include ensuring that university law schools which have regional presence prioritise these emerging areas of law within their curriculum, and that bodies such as the LIV explore training and professional development opportunities for regional firms to focus their practice expertise.

Recommendation 3: Bridge distance and build added value through communication technology

The roll-out of the National Broadband Network (NBN) provides particular opportunities for regional legal practices. It is recommended that an investigation be undertaken by the Law Council of Australia (LCA) to examine the potential for the greater utilisation by regional legal practices of communication technologies, and that such an investigation assess the NBN’s potential for enhancing regional “collaborative practice” and referral processes, utilising “freelance” legal expertise, and improving communication with remote clients, regulators and the courts. The LCA is considering the recommendation.

Recommendation 4: Promote the virtues of regional legal practice to small business

Local law firms have a breadth of skills, experience and local knowledge not reflected in the larger metropolitan law firms. However, regional small businesses have a limited understanding of the benefits of accessing timely local legal expertise. A greater emphasis on these aspects by both regional law firms and the LIV is necessary to identify and promote to regional small business the breadth of skills of regional lawyers, the value of localised expertise and business knowledge and the importance of proactive business structure and succession planning advice.

Recommendation 5: Build stronger collaborations and strategic alliances

The research findings suggest a significant relationship between regional legal practices and local accountants, with a large proportion of referrals to law firms from accountants. While in most cases these appear to be informal relationships, it is suggested that more formal collaborative arrangements have the potential to strengthen the positioning of regional law firms. Such strategic alliances would also create continuity of local, high quality and professional services to regional small business.
Recommendation 6: Address conflict of interest concerns within regional practices

Conflict of interest and confidentiality concerns were raised by both small business and lawyer participants. The true nature and extent of these issues and how they are dealt with by regional legal practices is unknown, with only anecdotal evidence currently available. Our research suggests that rural and regional legal practices are more prone to conflict of interest issues. Further independent research is needed in this area to determine the prevalence and implications of conflict of interest issues and to develop strategies to ensure regional small businesses and legal practitioners are not disadvantaged. The LIV has started consultations with key stakeholders.

Recommendation 7: Promote ethical legal practice

When asked to indicate major inhibitors to seeking legal advice in their local area, a number of small business participants stated concerns that their matter may be divulged to others locally if they used a local law firm, while others stated that they would get more independent advice further afield. The potential loss of business opportunities for regional law firms as a consequence of this attitude by local small businesses may be significant. The findings highlight a need for regional legal practitioners, in partnership with the Legal Services Board (LSB) and the LIV, to promote the complaints mechanisms available to small businesses when they perceive that a breach has occurred.

Recommendation 8: Encourage greater uptake of specialist accreditation

The growing complexity of laws and the increasing need for businesses to access legal expertise highlights the need to encourage specialist accreditation among legal practitioners. Such accreditation also instills confidence among small business operators regarding the quality of advice and assistance provided. In acknowledging this, it is recommended that the LIV continue to strengthen its specialist accreditation program and encourage regional firms to participate, so that regional small business clients are confident in making informed choices in relation to the expertise of prospective law firms, and have a fairer measure of the level of legal expertise available locally, compared to that offered by larger regional and metropolitan firms.

Concluding remarks

Many practitioners surveyed demonstrated a strong commitment to their small business clients and their communities. There remain, however, a significant gap between the narrow expectations by small business of the services available from legal practitioners and the real potential of lawyers to provide a diverse range of services which add value to small businesses.

Within an environment of declining availability of rural and regional legal practitioners, growing complexity of business demands for legal expertise and an increasingly complex legislative framework, innovation and evolution of legal practice is key. At the grass roots regional legal practice level, innovation is essential in responding to the changing needs of the small business client. At a state-wide professional body level, it is recommended the LIV continue to take a role in both supporting and leading regional legal practice to bring into effect processes which reflect the paradigm shift necessary to foster a culture of innovation.

Guiding the implementation of the recommendations listed above is just one way in which the LIV can support the many small regional legal practices which otherwise do not have the resources available individually to bring about a coordinated response to the changing needs of their small business clients.

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2. Coverdale, see Note 1 above.