

UNIVERSITY OF SOUTHERN QUEENSLAND



**THE PREVALENCE AND NATURE OF SUSTAINABLE
REGIONAL, RURAL AND REMOTE LEGAL PRACTICE**

A Dissertation Submitted by

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**For the award of
DOCTOR OF PHILOSOPHY
2014**

Certification of Dissertation

I certify that the ideas, results, analyses and conclusions reported in this dissertation are entirely my own effort, except where otherwise acknowledged. It is also certified that the work is original and has not been previously submitted for any other award except where otherwise acknowledged.

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Abstract

This thesis examines the question of ‘what is the prevalence and nature of sustainability practices in regional, rural and remote legal practice’, using identified criteria including location, longevity of practice, structure of the law practice, retention of legal staff, legal practice areas carried out, clientele, marketing and use of information technology.

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Abbreviations

ACSBD	Australian Centre for Sustainable Business and Development
ALS Index	Access to Legal Services Index
ARIA	Accessibility/Remoteness Index of Australia
CBD	Central Business District
DLA	District Law Association
FTE	Full Time Equivalent
GFC	Global Financial Crisis
GST	Goods and Sales Tax
ILP	Incorporated Legal Practice
IT	Information Technology
LCA	Law Council of Australia
LPAB	Legal Practitioners Admission Board
LSC	Legal Services Commissioner
MDP	Multi-Disciplinary Partnership
QLS	Queensland Law Society
RI	Research Issue
RQ	Research Question
RRR	Regional, Rural and Remote

Chapter 1

Introduction

1.1 Background

Access to legal services within regional, rural and remote (RRR) areas of Queensland is reliant upon the sustainability of law practices. In recent years a number of commissioned reports have been carried out to determine the critical issues impacting upon RRR Queensland which include difficulties in the recruitment and retention of legal staff.¹

Queensland has an estimated population of 4.47 million people with close to half of that population residing in Greater Brisbane. Over 2.33 million people live in areas outside of Brisbane.² Queensland covers 1,730,648 sq. km.³ Based on the Legal Services Commissioner's data there were 1589 legal practices in Queensland in 2012; 308 (or 19.38%) of those legal practices were in RRR Queensland.⁴

This chapter outlines the problem, states the research question, provides justification for the research, describes the contribution of the research, defines key terms, outlines the delimitations of the scope of the study and presents the structure of the study.

1.2 The Problem

The problem focuses on the absence of any detailed data on factors affecting the sustainability of legal practice that are within the control of the principal legal practitioner. Although research has been carried out into RRR Queensland legal practice, it has been based on short surveys and does not provide any in-depth data relating to the sustainability of legal practice in RRR areas. This is despite the importance of maintaining the viability of RRR legal practices for local communities in terms of providing pro bono work and carrying out broader voluntary work within their community.⁵

1.2.1 Research on RRR Queensland Legal Practitioners

The literature has consistently reported upon the issue of declining access to legal services in RRR Queensland due to increasing legal staff shortages. For example, the

¹ John Dewar, Jeff Giddings, Stephen Parker, Donna Cooper and Christine Michael, '*Griffith Legal Aid Report: The impact of changes in Legal Aid on Criminal and Family Law Practice in Queensland*' Research Report commissioned by the Queensland Law Society and the Family Law Practitioners' Association 1998; Jennifer Waterhouse and Neal Ryan, 'Retention of professional services in regional Queensland: Preliminary Research Component – Report to the Regional Communities Engagements', Department of the Premier and Cabinet, Queensland University of Technology (2004); Law Council of Australia and the Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey* (July 2009); Recruitment and Retention Working Group, Law Council of Australia, *Recruitment and retention of legal practitioners to rural, regional and remote areas strategy: Discussion Paper* (September 2009) and Senate Legal and Constitutional References Committee, *Inquiry into Legal Aid and Access to Justice*, June 2004, Senate Legal and Constitutional Affairs Committee, *Inquiry into the Australian Legal Aid System*, Third Report, 2009.

² Australian Bureau of Statistics, 3235.0 – Population by Age and Sex, Regions of Australia, 2011 <<http://www.abs.gov.au/ausstats/abs@nsf/Products/3235.0>> viewed on 05 October 2012.

³ Australian Bureau of Statistics, 2010.

⁴ Queensland Legal Services Commissioner, *Data on Legal Practitioners and Legal Practices*, 2012.

⁵ Law Council of Australia and the Law Institute of Victoria, Survey (July 2009) above n 1, 6.

Queensland Law Society identified a shortage of lawyers in RRR Queensland.⁶ A recent and more detailed study by the Law Council of Australia (July 2009) throughout Australia found that 43 percent of principals (managing practitioners) do not have sufficient lawyers to service the legal needs of their client base;⁷ and 36 percent of the respondents do not intend to be practising beyond the next five years.⁸ That study also found that demand for professional services to RRR Australia is generally greater than supply;⁹ that RRR legal practitioners carry out more legal aid work than city legal practitioners;¹⁰ and that the supply of legal practitioners providing legal aid services is also declining.¹¹ This is resulting in a constrained ability to provide justice services to RRR communities.¹²

Research has concluded ‘that professional services are difficult to attract and retain in non-metropolitan areas, irrespective of whether a region is in decline or growth’.¹³ Within five years, RRR Queensland is likely to continue to experience a significant decline in access to legal services.¹⁴

Although the issue of recruitment and retention into RRR legal practices has been identified, more detailed research in terms of how RRR legal practitioners manage their legal practices has not been carried out. Despite the absence of that data, some policies and approaches have been adopted to remedy the problem with only minimal success.¹⁵

⁶ Glenn Ferguson, ‘Bush Lawyers: The problem facing regional and rural Queensland’ (2004) 24(11) *Proctor* 8.

⁷ Law Council of Australia and the Law Institute of Victoria, above n 1, 5.

⁸ *Ibid.*

⁹ Human Rights and Equal Opportunity Commission, *National Inquiry into Rural and Remote Education (Australia): Emerging Themes* (2000); A Herrington and J Herrington, ‘Using the Internet for professional development: The experience of rural and remote professionals’ (2006) (Paper Presented at the 23rd Annual ASCILITE Conference: Who’s Learning? Whose Technology). Both sources cited in Recruitment and Retention Working Group, Law Council of Australia, Discussion Paper (September 2009), above n 1, 5.

¹⁰ Law Council of Australia, above n 1, 6.

¹¹ John Dewar, Jeff Giddings, Stephen Parker, Donna Cooper and Christine Michael, ‘*Griffith Legal Aid Report: The impact of changes in Legal Aid on Criminal and Family Law Practice in Queensland*’, Research Report commissioned by the Queensland Law Society and the Family Law Practitioners’ Association 1998 as cited in the Recruitment and Retention Working Group, Law Council of Australia, Discussion Paper (September 2009), above n 1, 90 – 91.

¹² *Ibid* 90 – 91.

¹³ Jennifer Waterhouse and Neal Ryan, ‘Retention of professional services in regional Queensland: Preliminary Research Component – Report to the Regional Communities Engagements’, Department of the Premier and Cabinet, Queensland University of Technology (2004).

¹⁴ Law Council of Australia and the Law Institute of Victoria, Survey (July 2009) above n 1, 5.

¹⁵ The Recruitment and Retention Working Group, Law Council of Australia, Discussion Paper (September 2009), above n 1, 29 refers to a range of initiatives of the legal profession to seek to remedy the issue of recruitment and retention including: The Rural/Regional Solicitor Scheme, 2004; The Legal Aid Services to Regional and Remote Areas of Queensland Strategy developed by Legal Aid Queensland, 1999; and the Queensland Public Interest Law Clearing House (QPILCH) receipt of funding to assist with the provision of pro bono legal services to RRR Queensland. The Discussion Paper notes that most of the initiatives have been developed by individual states rather than nationally. Despite these initiatives, the subsequent Law Council Survey, above n 1, 6, reported that recruitment and retention in RRR Queensland (and Australia) continues to be one of the most important issues identified by its participant RRR legal practitioners.

1.2.2 Research on Legal Practitioners in the UK and USA

There have been studies on both the shortage of legal practitioners in RRR areas and the nature of RRR legal practice in Britain¹⁶ and the USA.¹⁷ Landon – in a series of surveys carried out in 1982, 1985 and 1990 – investigated the practice of law in rural Missouri, in which he concluded that the practice of law is dependent on the context in which it is carried out. (The notion of ‘context’ is discussed in detail as part of the literature review and the theoretical perspective of the research in Chapter 2). However, there remains a gap in the research into sustainable legal practice in RRR Queensland. The academic and professional discipline of sustained management practices, while well-researched in some areas,¹⁸ remains embryonic when translated to RRR legal practices. Most published work on aspects of sustainability in law practices focuses on metropolitan law practices while there remains a dearth of research on RRR law practices.

1.3 The Research Question and Issues

1.3.1 The Question

The question examined in this thesis is: What is the prevalence and nature of sustainability practices in RRR law practices? The research focuses on exploring sustainability of RRR law practices in Queensland using identified criteria: including location, longevity of practice, structure of the law practice, retention of legal staff, legal practice areas carried out, clientele, marketing, and the use of information technology.

1.3.2 The Research Issues

A number of research issues were identified based on the literature (and discussed in more detail in Chapters 2 and 3). The following research issues (‘RI’) inform the research question:

RI 1 What is the prevalence and nature of connectedness to the profession by legal practices in RRR Queensland?

RI 2 What is the prevalence and nature of connectedness to the community by legal practices in RRR Queensland?

RI 3 What is the prevalence and nature of legal practice areas carried out by legal practices in RRR Queensland?

RI 4 What is the prevalence and nature of business planning carried out by legal practices in RRR Queensland?

¹⁶ Kim Economides and Mark Blacksell, ‘The spatial analysis of legal systems: Towards a geography of law?’ (1986) 13(2) *Journal of Law & Society* 161–181, and Alex Franklin, and Robert G Lee ‘The embedded nature of rural legal services: sustaining service provision in Wales’ (2007) 34(2) *Journal of Law & Society* 218.

¹⁷ Donald D. Landon, ‘Clients, Colleagues, and Community: The shaping of zealous advocacy in country law practice’ (1985) 4 *American Bar Foundation Research Journal* 81–111; Leslie C. Levin, ‘Preliminary reflections on the professional development of solo and small law firm practitioners’ (2002) 70 *Fordham Law Review* 847.

¹⁸ David H Maister, *Managing the Professional Service Firm* (The Free Press, 1993); Stephen Mayson, *Law Firm Strategy: Competitive Advantage & Valuation* (Oxford University Press, 2007), Laura Empson, (ed), *Managing the modern law firm* (Oxford University Press, 2007).

RI 5 What is the prevalence and nature of recruitment and retention used by legal practices in RRR Queensland?

RI 6 What is the prevalence and nature of marketing carried out by legal practices in RRR Queensland?

RI 7 What is the prevalence and nature of the use of information technology by legal practices in RRR Queensland?

1.4 Justification

The research has the potential to provide a deeper understanding of factors within the control of RRR legal practitioners that might lead to sustainable legal practice. A number of reports have acknowledged that particular problems (including recruitment and retention of legal staff) are peculiar to RRR legal practice.¹⁹ Academic research indicates that these differences and difficulties experienced by RRR legal practice vary between and among RRR locations.²⁰ This first in-depth academic research on sustainable legal practice in RRR Queensland will provide important and detailed data on the identified issues relating to the shortage of lawyers in RRR Queensland, and the resultant difficulties of access to justice. Also, this study will make several practical contributions in terms of benchmarking practice management. Finally, it will assist with the development of future policy options, particularly in the area of recruitment and retention of legal staff.

1.4.1 Increased Access to Justice

The research will add to the literature on improving access to justice including legal aid and pro bono work in helping to identify what enables law practices in RRR to be sustained. In particular, the research will contribute to qualitative data collection on law practice management relating to recruitment and retention that will assist with the key issue of adequate staff resourcing for the provision of legal services. The recent Law Council of Australia survey found that the matters of most concern about the future of legal practice for principals is about succession planning and being able to attract additional lawyers.²¹ The research will also contribute new knowledge with respect to the specific and unique issues experienced by law practices in RRR Queensland in terms of sustained legal practice.

¹⁹ Senate Legal and Constitutional References Committee, *Inquiry into Legal Aid*, June 2004 above n 1, and Senate Legal and Constitutional Affairs Committee, *Inquiry into the Australian Legal Aid System*, 2009 above n 1, and Law Council of Australia and the Law Institute of Victoria, above n 1.

²⁰ Kaz Eaton 'One size does not fit all: Legal needs of women in regional, rural and remote Australia' (2001) 26(2) *Alternative Law Journal*, 64; Jeff Giddings, Barbara Hook, Jennifer Nielsen, 'Legal services in rural communities: issues for clients and lawyers' (2001) 26(2) *Alternative Law Journal* 57; Mary Rose Liverani 'Rural Legal Services: Short on facts, but not on policy' (2000) 38(8) *Law Society Journal (New South Wales)* 16; Anita Rose-Innes 'Rural legal services under spotlight' (2001) 75(1) *Law Institute Journal* 50; Natalie Siegel 'Bush courts of remote Australia' (2002) 76(10) *Australian Law Journal* 640; Trish Mundy 'Recruiting and Retaining Lawyers: A Problem in Rural, Regional and Remote Communities' (2009) 34 *Alternative Law Journal* 34. See also Trish Mundy, 'Engendering 'rural' practice: Women's lived experience of legal practice in regional, rural and remote communities in Queensland' (2013) 22(2) *Griffith Law Review* (yet to be published).

²¹ Law Council of Australia and the Law Institute of Victoria, above n 1, 19.

1.4.2 Benchmarking Legal Practice

The research will be a source of benchmarking qualitative data to law practices in terms of business planning and strategy. This is a practical contribution to the development and refinement of law practice management knowledge that is useful to legal practitioners.

1.4.3 Assist with Development of Future Policy Options

The research will be an additional source of qualitative data collection of legal practice management carried out by RRR legal practices in Queensland. This data will be a contribution to providing qualitative evidence to assist with developing evidence-based policies relating to a range of strategies for government, and to initiatives of the legal profession that may ensure continued access to justice in RRR Queensland.

1.5 Overview of Methodology

The research design uses a phenomenological research paradigm in the form of conducting 30 two-hour semi-structured interviews. The phenomenological paradigm is concerned with understanding behaviour in an organisation from the participant's own perspective. The use of interviews based on 30 cases was consistent with comparable studies of the legal profession. For example, Levin gained useful and reliable data concerning ethical legal practice by New York lawyers, by conducting 41 semi-structured interviews which lasted from 90 minutes to two hours.²²

The current research employed a mix of exploratory and descriptive research design. The research is exploratory because there is not a proliferation of subject material that exists in the research area of sustained RRR law practices; and it is descriptive in nature because there has been a paucity of research in relation to the research topic. Furthermore, the objective is to provide a systematic description that is as factual and accurate as possible.²³ Chapter 4 provides greater detail.

1.6 Delimitations of Scope and Key Assumptions

Delimitations of the thesis include that it is a study into RRR law practices only. The research does not include 'urban' law practices. Further, the study does not include 'risk management' or 'ethics'. Nor does the study encompass race or ethnicity issues in RRR law practices. All of such areas arguably are worthy of studies in their own right.

The research does not include discussions on external factors or social policy impacting on RRR Queensland (or Australia). The research focuses only on those factors within the control of the participant. The research methodology assumes that strategic decisions are made by the participants.

²² Leslie C. Levin, 'The ethical world of solo and small law firm practitioners' (2004-2005) 41 *Houston Law Review* 309.

²³ WG Zikmund, *Business Research Methods* (7th ed, South-Western, 2003).

1.7 Definitions

The thesis relies upon a number of definitions relating to the legal profession and to location.

1.7.1 Legal Profession Act 2007 (Qld) Definitions

Principal of a law practice (Legal Profession Act 2007 (Qld), s 7(4))

A principal of a law practice is an Australian legal practitioner who is either a sole practitioner if the law practice is constituted by the practitioners; or a partner in the law practice if the law practice is a law firm; or a legal practitioner director in the law practice if the law practice is an incorporated legal practice; or a legal practitioner partner in the law practice if the law practice is a multi-disciplinary partnership (MDP). However, no practice that was interviewed in this research was an MDP.

Sole practitioner (Legal Profession Act 2007 (Qld), Schedule 2)

A sole practitioner means an Australian lawyer who engages in legal practice on his or her own account.

Law firm (Legal Profession Act 2007 (Qld), Schedule 2)

Law firm means a partnership consisting only of Australian legal practitioners, or one or more Australian legal practitioners and one or more Australian-registered foreign lawyers.

Law practice (Legal Profession Act 2007 (Qld), Schedule 2)

Law practice means a sole practitioner or a law firm or an incorporated legal practice or a multi-disciplinary partnership.

1.7.2 Definition of ‘Regional, Rural and Remote’

The phrase ‘regional, rural and remote’ was used throughout the research. The definition of ‘regional’ was based on either Landon’s or the adapted ARIA definition²⁴ (referred to as the Access to Legal Services Index and discussed below and also in Chapter 4).

The literature review considered qualitative definitions of the phrase based on Landon.²⁵ The ‘rural setting’ was considered in terms of ‘a set of assumptions about rural, small-town life that distinguish it from urban, metropolitan experience’²⁶ and the listed characteristics about the rural environment.²⁷ Landon considered ‘rural’ and ‘urban’ as being points on a continuum.²⁸ He also relied upon the comments from lawyers who had worked in urban practice and suggested that the difference lay in the ‘content’ of the practice rather than in the manner of their practice.²⁹

²⁴ Refer to the discussion later in this Chapter, Justification for Developing an Adaptation of the ARIA Index.

²⁵ Landon (1985), above n 17, 84 – 84 discussing the rural setting.

²⁶ Ibid 84.

²⁷ Ibid 85.

²⁸ Ibid.

²⁹ Ibid.

1.7.3 Brief Comparison of Alternative Methods for Defining ‘Regional’, ‘Rural’ and ‘Remote’

The Accessibility/Remoteness Index of Australia

Initially the Accessibility/Remoteness Index of Australia (‘ARIA’) was considered to be a suitable index to be used for the research. It is an index of the accessibility of places to service centres.

*Geographical areas are given a score (continuous between zero to 15) based on the road distance to service towns of different sizes. ... The index scores can be classified into various categories, including ‘remoteness areas’ that are classified as being within one of the following: Major cities; inner regional, outer regional, remote, and very remote. Or: ‘remoteness classes’ that are classified as being: ‘highly accessible’; ‘accessible’; ‘moderately accessible’; ‘remote’; or ‘very remote’.*³⁰

The classification into each of the categories relies upon levels of access to a wide range of goods and services and levels of opportunities for social interaction.³¹

Justification for Developing an Adaptation of the ARIA Index

In terms of analysing the sustainability of RRR legal practice, the ARIA Index is unsatisfactory for providing a classification method. This is primarily because the ARIA Index does not take into account access to the types of services and infrastructure that are relevant to a legal practitioner. For example, it does not take into account access to the Queensland court system or access to a ‘legal fraternity’ that will support a legal practitioner in terms of ongoing professional education,; collegiality, and social interaction. Further, the ARIA Index does not take into account that a legal practitioner needs access to the profession to provide specialist legal services, including specialist practice areas (eg. intellectual property law), and specialist functions (eg. advocacy services from a barrister).

A number of other indices were considered, including the Rural, Remote and Metropolitan Areas classification, the Australian Standard Geographical Classification, the local government areas from the *Local Government Act 2009* (Qld), and the categorisation of the district law associations used by the Queensland Law Society. None of these methods of classification appropriately reflected either the access to legal services, or the sense of ‘rurality’ experienced by the resident population.

The following index, the Access to Legal Services Index (ALS Index) has been created to assist with that categorisation.

Basis of Access to Legal Services Index

The Access to Legal Services Index (ALS Index) is based on the following criteria: population, access to the Queensland court system, access to the Queensland Law Society district law associations and access to legal practitioners (both solicitors and barristers). Further details of the ALS Index are discussed as part of Chapter 4.

³⁰ <http://www.gisca.adelaide.edu.au>> viewed on 31 August 2010.

³¹ <http://www.gisca.adelaide.edu.au>> viewed on 31 August 2010.

1.7.4 The Definition of ‘Sustainability’

It has been difficult to find a clear and complete definition of what it is to be ‘sustainable’ within a business context. It is necessary to identify criteria relevant to the term so that some attempt at exploring whether or not a legal practice is ‘sustainable’ can occur. Chapter 3 provides a detailed discussion on the definition of ‘sustainability’ that draws from the business, economic and legal practice management literature. In short, ‘sustainability’ for this research is taken to include five elements: continuity (or longevity of the legal practice), profit (or solvency), access to resources (including legal staff and clients), controlled growth, and a consideration of the normative environment.

1.8 Outline of the Thesis

The thesis comprises ten chapters that have the following content. Chapter 1 provides an introduction to the research in terms of the research problem and the gap in the existing research, the contributions anticipated by the research, the justification for the research and an overview of the methodology. This chapter also provides details on the definitions of key terms used in the thesis.

Chapter 2 reviews the literature on the regulation of the legal profession, including methods of admission and regulatory restrictions on legal practitioners that may have a bearing on the sustainability of legal practice. This part also covers the range of law practice structures that are available to legal practitioners. It also deals with the literature on the legal profession within the context of RRR legal practice, with particular reference to the legal practitioners’ relationship with the community and the importance of that relationship and to the legal practice areas carried out. This chapter also provides an overview of the sociological literature of legal practice in RRR areas in the USA and the UK, and from that literature, the definition of ‘rural’ is explored. Finally, the chapter looks at RRR legal practitioners and approaches to business planning.

Chapter 3 provides an overview of the literature dealing with the theoretical perspectives underpinning RRR legal practice. In particular, it provides an overview of the three theories relied upon by the research: first, a theory of spatial (or geographical) location; secondly, the theory of ‘law as business’, and thirdly resource-based theory. The chapter then considers the legal practice management literature based on the management literature. The literature covers the identification of types of legal practices, strategic management, recruitment and retention, marketing and the use of information technology.

Chapter 4 provides the detail on the research methodology used. It provides detail on the research design that has been based on earlier survey instruments, and the scales that have been used. The chapter also provides the theory upon which the research design has been based. The chapter provides detail on how the data (both quantitative and qualitative data) has been obtained through the use of the survey instrument and the semi-structured interviews. The research question and hypothesis are articulated. Finally, the chapter provides an overview of how the quantitative and qualitative data have been analysed.

Chapter 5 is the first of three successive chapters that provides the detail of the results of the survey data. Chapter 5 focuses on the demographics of the legal practice and the participant in terms of the location of the practice, the governance structure and the

staffing structure. It then provides an overview of the participants in terms of their age, gender, legal and professional qualifications.

Chapter 6 continues the detail of the results of the survey data. This chapter focuses on the first four of the seven research issues that inform the research question. It provides details on first, the involvement of the legal practitioner in the profession and the community; secondly, the business carried out by the RRR legal practice; thirdly, the clients of the RRR legal practice; and fourthly, the strategic direction in the legal practice.

Chapter 7 provides the final detail of the results of the survey data with respect to the final three research issues that inform the research question. It focuses on people management in terms of recruitment and retention of human capital,; marketing and use of information technology.

Chapter 8 draws together the previous three chapters and discusses the results – both quantitative and qualitative – within the context of the literature. The chapter is structured so that it follows the format of the survey in providing that discussion. Chapter 8 discusses the results and the literature with respect to the following research issues: the prevalence and nature of connectedness to the profession and to the community by the legal practices in RRR Queensland; the prevalence and nature of business carried out by legal practices in RRR Queensland; and the prevalence and nature of business planning carried out by legal practices in RRR Queensland.

Chapter 9 continues the discussion of the results and the literature with respect to the remaining research issues: the prevalence and nature of recruitment and retention of human capital by legal practices in RRR Queensland; the prevalence and nature of marketing by legal practices in RRR Queensland; and the prevalence and nature of the use of information technology used by legal practices in RRR Queensland.

Chapter 10 draws the thesis together in terms of providing an overview of the practical implications, directions for future research and conclusions. The chapter focuses on the practical implications for RRR legal practitioners; the policy implications for professional law associations (eg the Queensland Law Society); and the curriculum implications for legal education.

In addition to the Bibliography, the thesis contains a number of appendices, including Appendix One, a detailed matrix that identifies the sources of the survey instrument (including the literature and the pilot survey), Appendix Two, the Semi-structured Interview Instrument, and Appendix Three, the draft letter sent to prospective participants.

1.9 Summary

This chapter acknowledges the important role of RRR legal practices in Queensland communities in terms of providing access to law and justice, and as part of community life. It also identifies the major issues associated with legal staff recruitment and retention, and the impact of this on sustainable RRR legal practice. Further it identifies the gap in the literature on RRR Queensland legal practice. Accordingly, the research problem and research question explored in this study are to explore the business

management practices of RRR Queensland legal practitioners in order to begin to bridge the gap in the literature.

This chapter also discussed the justification of this research in terms of increased access to justice, benchmarking legal practice, and assisting with the future development of evidence-based policy options. A brief overview of the methodology was described in the chapter, as well as a discussion on the key terms in the study, a delimitation of its scope and the key assumption was identified. Finally an outline of the chapters was presented.

Chapter 2

Literature Review on Regulation of the Profession

2.1 Introduction

The chapter provides an overview of the literature that supports the research question (RQ). It deals with the regulation of the legal profession including the institutions involved and the methods of admission to practise, as well as the business structures available to law practices in terms of sole practitioner, partnership, incorporated legal practice, and multi-disciplinary partnership. The chapter provides the literature on the legal profession as it practises in regional, rural and remote (RRR) locations in Australia, the US and the UK. In particular it deals with the demographics and statistics of RRR legal practitioners in terms of how they impact on the diversity of this practice, the interaction between legal practitioners and the community and their own profession, the legal practice areas, recruitment and retention, and the use of information technology by these practitioners. This informs the identification of research issues (RIs) one to seven.

Chapter 3 continues the literature review by providing the theoretical perspectives underpinning the research into sustainable RRR legal practice. It also reviews the legal practice management literature in terms of types of law practices, areas of legal practice, human capital, marketing and use of information technology. Finally the definition of sustainability developed from the literature is provided.

2.2 Regulation of the Legal Profession

An analysis of the regulation of the legal profession is important for identifying the environment in which legal practitioners carry out the business of law. It reveals the constraints and costs in terms of gaining entry to the profession (important for considerations of staffing and RI 5 which deals with recruitment and retention), it provides the options available for business structures (important for limiting liability, raising finances, sharing profits and relating to RI 4), and it is important for the purpose of clarifying the work that can be carried out in a law practice by both legal practitioners and non-legal practitioners (relevant for RIs 3, 4 and 5 which deal with legal practice areas, business planning carried out and recruitment and retention, respectively).

The legal profession in Queensland is regulated by the *Legal Profession Act 2007* (Qld), an Act to provide for admission to, and the regulation of, the legal profession, and for entities involving members of the legal profession.³² Regulation of the legal profession has been significantly reformed during the last ten years,³³ with some of the more recent (and relevant for this thesis) reforms occurring in the form of business structures available to solicitors, including incorporated legal practices.³⁴

2.2.1 Institutions Involved in the Regulation of the Legal Profession and Admission to Practise

The Supreme Court is responsible for the admission of legal practitioners in Queensland. It is assisted by the Legal Practitioners Admissions Board (LPAB), which issues

³² Taken from the long title to the *Legal Profession Act 2007* (Qld).

³³ Reid Mortensen, 'Becoming a Lawyer: From Admission to Practice Under the *Legal Profession Act 2004* (Qld)' (2004) 23 *The University of Queensland Law Journal* 319.

³⁴ *Legal Profession Act 2007* (Qld) Part 2.7.

recommendations of suitability of applicants in the form of a certificate of compliance. Eligibility for admission to the legal profession requires that the person must be aged 18 years or more, have attained the approved (or corresponding) academic qualifications and have satisfactorily completed approved (or corresponding) practical legal training requirements.³⁵ Further, the LPAB requires an intended practitioner to satisfy the requirements of suitability for admission. This requires that admission to the legal profession under this Act occurs only if the person is a fit and proper person to be admitted.³⁶

Once a practitioner has been entered on the Supreme Court's Roll of Legal Practitioners, they must apply for a practising certificate from the Queensland Law Society (QLS) to practise as a solicitor (or the Bar Association of Queensland to practise as a barrister). A lawyer may apply for a practising certificate and membership of QLS at any time, providing their name remains on the Roll of Legal Practitioners (including rolls maintained in other Australian jurisdictions). Types of practising certificates are provided for under the *Legal Profession Act 2007* (Qld)³⁷ and the QLS's *Queensland Law Society Administration Rule 2005*.³⁸

2.2.2 Types of Practising Certificates

The following types of practising certificates can be issued under the *Queensland Law Society Administration Rule 2005*. Unrestricted principal practising certificates are issued to all principals in legal practices. Principals must satisfy the Practice Management Course requirements and must be covered by professional indemnity insurance.³⁹ Restricted principal practising certificates are issued to those principals who have not completed the required period of supervised legal practice. A restricted principal practising certificate cannot be issued to a sole practitioner.⁴⁰ Limited principal practising certificates are issued to some classes of principals with certain conditions attached (for example, the principal solicitor in a community legal service).⁴¹

2.2.3 Current Method of Admission to Practise

The current method of admission to practise requires eligibility and suitability under Division 2, *Legal Profession Act 2007* (Qld). The *Supreme Court (Admission) Rules 2004*, Part 2 provide the details of the 'approved academic qualifications'⁴² and the approved practical legal training requirements.⁴³

³⁵ *Legal Profession Act 2007* (Qld) s 30.

³⁶ *Legal Profession Act 2007* (Qld) s 31.

³⁷ *Legal Profession Act 2007* (Qld) s 231(2)(a).

³⁸ *Queensland Law Society Administration Rule 2005*, rr 9 and 13.

³⁹ *Queensland Law Society Administration Rule 2005*, r 16.

⁴⁰ *Queensland Law Society Administration Rule 2005*, r 13(2).

⁴¹ *Queensland Law Society Administration Rule 2005*, r 13(3).

⁴² *Supreme Court (Admission) Rules 2004*, ss 6 and 8.

⁴³ *Supreme Court (Admission) Rules 2004*, ss 7, 7A and 9.

2.2.4 History of Methods of Admission to Legal Practice

Admission to legal practice in Queensland has a detailed history in terms of the requirements necessary for admission.⁴⁴ The early legislation begins with the *Supreme Court Act 1861* (Qld) and the *Legal Practitioners Act 1881* (Qld). The regulation of admission to legal practice has become increasingly restrictive in terms of the qualifications required. The following historical methods of admission to practise have been removed through various legislative amendments: the admission to practise on the basis of 10 years' service in a government office together with passing the Solicitors' Board examinations⁴⁵ or with passing the Bar examinations; and the admission to practise on the basis of being a conveyancer being admitted as a solicitor.⁴⁶ They are discussed below.

Articles of Clerkship

The method of admission to practice as a solicitor in Queensland that is relevant for the purposes of this study was originally contained in the *Solicitors Admission Rules 1968* (Qld) (the Rules 1968). The Rules 1968 were administered by the Solicitors' Board, (the Board), made up of the Supreme Court Registrar, an officer of the Department of Justice and five solicitors.⁴⁷ Under r 17(2), of the Rules 1968, practical training requirements could be met by either service under articles of clerkship with a suitably qualified solicitor or partly under articles and partly as a law clerk or managing clerk, or, under r 17(2)(d) by completing a course of practical training. Before a clerk could obtain the permission of the Board to enter into articles of clerkship, under r 29(2)(a), the Rules 1968 the clerk needed to satisfy the Board that they were of good character and fit and suitable to serve under the articles. Once the articles were completed the applicant could then seek admission as a solicitor. The applicant had to satisfy the Board that they were fit to be admitted to practise, including⁴⁸ that they were of good fame and a fit and proper person. Once this occurred, then the Board, under r 69, the Rules 1968, issued a certificate of compliance.

Additionally, under Part III, the *Queensland Law Society Act Amendment Act 1930* (Qld), a solicitor was not entitled to practise as either a principal or an employee until a practising certificate had been obtained from the Law Society.⁴⁹

Trainee Solicitor and Practical Legal Training

The *Legal Profession Act 2007* (Qld)⁵⁰ (the Act, 2007) provides the current regime for eligibility and suitability for admissions to the legal profession. Section 30, of the Act, 2007, requires that for a person to be eligible for admission they must be a natural person

⁴⁴ For a full discussion on the history of admission to practice as a legal practitioner in Michael White, 'The Development of the Divided Legal Profession in Queensland' 23 (2004) *University of Queensland Law Journal* 296, 307 – 311.

⁴⁵ *Legal Practitioners Act Amendment Act 1968* (Qld) s 7(1).

⁴⁶ *Legal Practitioners Act Amendment Act 1938* (Qld) s 3(1).

⁴⁷ Refer to White, above n 44, 309.

⁴⁸ *Solicitors Admission Rules 1968* (Qld) rr 16, 70. See the discussion in White, above n 44.

⁴⁹ *Ibid* 311.

⁵⁰ *Legal Profession Act 2007* (Qld), Part 2.3, Division 2. See particularly section 30: Eligibility for admission to the legal profession under this Act in which the requirements are that a person is at least 18 years old, has attained the approved academic qualifications and has satisfactorily completed approved practical legal training.

aged 18 who has attained approved academic qualifications and who has satisfactorily completed approved practical legal training. In addition, s 31, of the Act requires that the person be a fit and proper person. In order to practice as a solicitor, the person must be both admitted to the roll of persons admitted, as kept by the Supreme Court⁵¹ (and assisted by the LPAB), and they must obtain a practising certificate.⁵²

10 years' Service in a Government Office

The *Legal Practitioners Acts Amendment Act 1968* (Qld), s 7 provided for admission to legal practice if the applicant had completed service for a period of 10 years in either one of the following offices: Solicitor-General's, Crown Solicitor's, Public Defender's, Parliamentary Counsel's, registry of the Supreme Court, registry of a District Court, Public Trust Office, office of a clerk of a Magistrates Court, office of the Director of Prosecutions, or the Legal Aid Commission, together with passing the Solicitors' Board examinations.⁵³

Mutual Recognition

Under the *Legal Profession Act 2007* (Qld)⁵⁴ lawyers moving to Queensland from another Australian state or from New Zealand are no longer required to apply for admission to the Queensland Roll of Lawyers. Through the mutual recognition process, lawyers wanting to practise law in Queensland must be currently admitted on the Roll of Lawyers in any Australian state or in New Zealand. They must also apply for a practising certificate from the QLS to practise as a solicitor. Eligibility for restricted and unrestricted principal practising certificate is provided for under Rule 9(4) of the *Queensland Law Society Administration Rule 2005*. Lawyers may still choose to apply for admission to the Queensland Roll of Lawyers under the *Mutual Recognition (Queensland) Act 1992* (Qld). That Act covers lawyers from other Australian states or the *Trans-Tasman Mutual Recognition (Queensland) Act 2003* (Qld).⁵⁵

Bar Examinations

The *Supreme Court Act 1921* (Qld)⁵⁶ enabled admission of barristers as solicitors under section 10A. The provision enabled barristers under certain circumstances to be admitted as a solicitor without being required to pass any examination. The barrister's name was then removed from the Roll of Barristers.

⁵¹ Section 37, *Legal Profession Act 2007* (Qld).

⁵² Required by s52, *Legal Profession Act 2007* (Qld) and issued by the Queensland Law Society.

⁵³ *Legal Practitioners Act Amendment Act 1968* (Qld) s 7(1). Also, Refer to Mark Byrne and Reid Mortensen, 'The Queensland Solicitors' Conveyancing Reservation: Past and Future Development – Part I', (2009) 28(2) *University of Queensland Law Journal*, 251 – 272 in which it was stated that there were very few conveyancers in Queensland. The last one left practice in 1987.

⁵⁴ *The Legal Profession Act 2007* (Qld), Part 2.4, Division 9.

⁵⁵ Admission under mutual recognition legislation is no longer required in Queensland because this state is now part of the national legal profession.

⁵⁶ *Supreme Court Act 1921* (Qld), s 10A. This Act was then consolidated in the *Legal Practitioners Act 1995* (Qld), s 42. Section 10 A, the *Supreme Court Act 1921* enabled barristers of good repute who had been admitted prior to 30 June 1939 or who had been three years in practice in Queensland, or who had served under articles of clerkship to a solicitor of the Supreme Court for a period of 3 years, or who shall subsequently to his or her enrolment as a barrister have for a period of 3 years served with a solicitor of the Supreme Court as a law clerk, or served as an associate to a judge of the High Court or Supreme Court or in the office of the solicitor-general or the Crown Solicitor or in the office in Queensland of the Australian Government Solicitor or in the office of a registrar of the Supreme Court, or in any office (including any branch office) of the Public Trustee to become admitted as solicitors.

2.2.5 Restrictive Provisions on the Legal Profession

Legal practitioners have been given monopoly protection so far as carrying out legal practice and giving legal advice are concerned. The leading case on the exclusive role of legal practitioners to give legal advice is *Cornall v Nagle*.⁵⁷ Phillips J, in that case, held that where the giving of legal advice was concerned, the public are to be protected from the untrained and the unqualified with the result that the task will ordinarily be regarded as the exclusive province of professionals who were trained and duly qualified.⁵⁸ It was considered in *Law Society of NSW v Seymour*⁵⁹ that the decision in *Cornall* may have been framed too broadly since there are activities regularly carried out by lawyers that are frequently and lawfully carried out by accountants, merchant bankers and financial advisers. Further, the decision in *Cornall* would put activities carried out by other legally qualified persons such as judges, legal academics and arbitrators within the sphere of prohibited work.⁶⁰

National Competition Policy Reviews⁶¹ have identified restrictive provisions relating to legal practice, and have assessed the impacts on competition of such provisions. The restrictions provide legal practitioners with the status of a 'profession' in terms of requisite qualifications, the requirement of a practising certificate, the reservation of legal work, conduct rules, control of trust accounts, regulation of fees, restrictions on advertising, mandatory professional indemnity insurance, fidelity guarantee funds and financial arrangements.⁶²

2.2.6 Other Regulatory Restrictions on Legal Practitioners

The legal practitioner operates within a regulatory environment in which a number of restrictions are placed upon how that practice can be carried out. The restrictions relate to representing entitlement to engage in legal practice,⁶³ continuing education,⁶⁴ definition of legal practice,⁶⁵ provision of cost disclosure and assessments through client agreements,⁶⁶ and false advertising.⁶⁷

The restriction on the entitlement to provide legal services is given additional support through section 25, which states that a person must not represent or advertise that the person is entitled to engage in legal practice unless the person is an Australian legal practitioner. The maximum penalty is two years imprisonment.⁶⁸

⁵⁷ [1995] VR 188.

⁵⁸ For a further analysis of the exclusive role of the provision of legal advice, see Byrne and Mortensen, Part I (2009), above n 53, 251 – 272, 263.

⁵⁹ [1999] NSWCA 117.

⁶⁰ *Law Society of NSW v Seymour* [1999] NSWCA 117.

⁶¹ *National Competition Policy Review Legal Practice Legislation Competition Impact Statement* (June 2003) <<http://ncp.ncc.gov.au/docs/Qld%20legal%20practice%20-%20Competition%20impactstatement.pdf>> viewed on 03 October 2011.

⁶² *Ibid* 2.

⁶³ *Legal Profession Act 2007* (Qld), s 25.

⁶⁴ *Legal Profession Act 2007* (Qld), s 53.

⁶⁵ *Legal Profession Act 2007* (Qld), s 24.

⁶⁶ *Legal Profession Act 2007* (Qld), Part 3.4.

⁶⁷ *Legal Profession Act 2007* (Qld), s 126.

⁶⁸ *Legal Profession Act 2007* (Qld), s 25.

2.2.7 Reforms of the Restrictions on Legal Practitioners – Areas of Legal Practice

There are currently two areas of legal reform for the profession that has relevance for this study. First, the regulatory ability for legal practices to incorporate under the *Legal Profession Act 2007* (Qld)⁶⁹ under which legal practitioners can now decide whether or not to incorporate their legal practices. This reform is discussed in considerable detail later in this chapter.

The second area of reform relates to the areas of legal work carried out by legal practitioners. A number of points can be made about this changing environment in which legal practitioners find themselves in terms of the type and kind of work they can carry out.

First, to some extent the areas that are the sole reserve of legal practitioners are protected through legislation, for example, the *Legal Profession Act 2007* (Qld) reserves certain work to be carried out by legal practitioners.⁷⁰ Queensland solicitors are currently shielded from the deregulation of conveyancing (unlike the situation in other states).⁷¹ The issue for legal practitioners in terms of ‘legal work’ being subject to regulation is that the loss of that work may also have a significant impact. The areas of legal work carried out by a legal practice will be the subject of this research.

Secondly, the shift in the work available to legal practitioners is also subject to more subtle changes that have been the result of dynamic, societal⁷² and technological changes.⁷³ Areas of legal practice are opening up to competition from other areas. The impact of this changing regulatory and evolutionary environment was identified as early as 1992 by Stephen Mayson in his comments:

[T]hese private clients that most lawyers were content to confine to domestic conveyancing were becoming better educated, more sophisticated, richer and more mobile. They needed and looked for advice on personal tax, estate planning, investment, pensions and insurance. Most lawyers were too busy transferring property to realise that this work was going to accountants, banks and other parts of the financial services industry. It was only when new financial services regulation drew attention to these activities, and coincided with more competition for conveyancing work, that lawyers started thinking about regaining lost ground. But they were too late. Not surprisingly, clients no longer think of lawyers as their

⁶⁹ *Legal Profession Act 2007* (Qld), Part 2.7.

⁷⁰ *Legal Profession Act 2007* (Qld), Part 2.2 – Reservation of legal work, including conveyancing.

⁷¹ Byrne and Mortensen, Part I, above n 53, and Mark Byrne and Reid Mortensen, ‘The Queensland Solicitors’ Conveyancing Reservation: Past and Future Development – Part II’ (2010) 29(2) *University of Queensland Law Journal* 245, 262.

⁷² Thomas D Morgan, *The vanishing American lawyer* (Oxford University Press, 2010); Stephen Mayson, *Law firm strategy: Competitive advantage and valuation* (Oxford University Press, 2007); and Laura Empson (ed) *Managing the modern law firm: New challenges, new perspectives* (Oxford University Press, 2007); and Marc Galanter and Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (University of Chicago Press, 1991).

⁷³ Richard Susskind, *The future of law: Facing the challenges of information technology* (Oxford University Press, 1996); Richard Susskind, *The end of lawyers: Rethinking the nature of legal services* (Oxford University Press, 2008).

*first port-of-call for general financial advice. ... Most of the work that lawyers do is not, in truth, legal, and could be done by someone else.*⁷⁴

Legal practitioners who are able to anticipate changes to the regulatory environment may be more likely to be able to sustain their practice. Conversely, legal practitioners who lament possible regulatory change, or who do not consider it, may be more likely to be adversely affected by it. Again, these approaches will be considered in this research.

Mayson⁷⁵ comments that:

What is then left is real work for real lawyers: work that adds value to clients' activities and can only be performed by lawyers. ... Clients will not value only technical expertise in the law. They need that expertise tailored to their particular business or personal circumstances. That requires experience more than technical ability; it means understanding the client's business operations and industry; it means being able to communicate with the client about practical decisions rather than legal analysis. I am talking about a level and a type of seniority and know-how that takes some years to develop, and that adds value in the client's eyes.

A third point relates to the staff structuring put in place by legal practitioners that delegates 'non-legal work' to non-lawyers, therefore freeing up the time and resources of legal staff to pursue either 'legal work' or development of the business. Mayson,⁷⁶ however, notes the twin responsibilities of legal practice:

By adopting business techniques and outlook, a law firm does not cease to carry on a professional activity... The most consistent and successful firms in the 1990s will be those which remember that the practice of law is both a business and a profession, keeping an eye on the economics and supply of legal services but never losing sight of the ethics and values that underpin a strong and independent profession.

This leads on then to the second area of regulatory reform that has impacted on the legal profession in terms of being positioned for sustainable legal practice.

2.3 Business Structures of Law Practices

The current regulatory options available to legal practitioner in terms of how they can structure the legal practice is relevant as part of the research into RI 4. They are also relevant to compare the current situation with the more limited options that have been available to legal practitioners in the past.

2.3.1 The Current Options for Business Structures of Law Practices

In Queensland, the *Legal Profession Act 2007* (Qld) enables legal practitioners to form incorporated legal practices or multi-disciplinary partnerships.⁷⁷ The philosophy behind

⁷⁴ Mayson, 'The Future of the Legal Profession' (1992) 1 *Nottingham Law Journal* 1, 2.

⁷⁵ *Ibid* 5.

⁷⁶ *Ibid* 4.

⁷⁷ *Legal Profession Act 2007* (Qld), Chapter 2, Part 2.7 – Incorporated legal practices and multi-disciplinary partnerships.

‘partnership’ is complex and a more detailed discussion on the dynamics and ethos of partnership is further explored in this chapter.⁷⁸

Law Practice

Under the *Legal Profession Act 2007* (Qld) a ‘law practice’ may now be a sole practitioner,⁷⁹ a partnership firm,⁸⁰ an Incorporated Legal Practice (ILP) or a Multidisciplinary Partnership (MDP). Partnership has been the traditional governance structure through which legal services have been provided.⁸¹ However, with the greater choice available for governance structures, including ILP⁸², limited liability partnerships,⁸³ and MDP, partnerships are in decline.⁸⁴

The reforms now allow lawyers greater flexibility in choosing and developing a management and business structure for their practices. The benefits to be gained from an ILP are discussed at greater length later in this chapter that, in summary, include taxation benefits, the ability to raise equity capital, and the ability to avoid personal and vicarious liability for some breaches made by their partners.⁸⁵

Practice Structures

The *Legal Profession Act 2007* (Qld) came into effect on 1 July 2007 enabling a law practice to structure as an ILP or MDP.⁸⁶ Prior to 1 July 2007, it was necessary for a practitioner who wanted to share the receipts of the practice with an unqualified person to obtain the Society’s approval under the now repealed rule 78 of the *Queensland Law Society Rules 1987* (Qld).

The sharing of receipts, without the Society’s approval, did occur among legal practitioners, however, it was a practice that the Society did not tolerate. For example, in

⁷⁸ Empson, above n 72.

⁷⁹ *Legal Profession Act 2007* (Qld), schedule 2 provides that a *sole practitioner* means an Australian lawyer who engages in legal practice on his or her own account.

⁸⁰ Partnerships are regulated by the *Partnerships Act 1891* (Qld). ‘A partnership is not a legal entity distinct from its members. It is an association of persons who have agreed to pursue a business objective for their mutual benefit. The legal relationship arising out of a partnership is similar to the relationship between principal and agent, except that a partner is both a principal to and agent for the other partners. It is a fiduciary relationship...’ Clive Turner, *Australian Commercial Law* (LawBook Co, 25th ed, 2005) 629. The *Partnership Act 1891*, Chapter 4 also provides for incorporated limited partnerships. ‘This category of limited partnership wraps an unlimited company around the basic limited partnership structure. In consequence, the general partner manages the business on behalf of the company and there is no risk that the limited partners will be vicariously liable for tortious or other breaches of duty by the general partner.’ Clive Turner, *Australian Commercial Law* (LawBook Co, 25th ed, 2005) 658.

⁸¹ Partnerships are regulated in Queensland by the *Partnership Act 1891* (Qld).

⁸² Incorporated legal practices and Multi-disciplinary partnerships are defined and regulated by the *Legal Profession Act 2007* (Qld).

⁸³ Limited liability partnerships are regulated under the *Partnership Act 1891* (Qld), as amended by the *Partnership (Limited Liability) Act 1988* (Qld).

⁸⁴ Laura Empson, ‘Your partnership: Surviving and thriving in a changing world: the special nature of partnership’ in Laura Empson (ed), *Managing the modern law firm: New challenges, new perspectives* (2007) 10. Mayson, above n 23, 322 puts forward the rationale for the movement into limited liability partnerships by legal practices in which the number of partners is increasing, on the basis that such structures can provide a degree of limited liability ‘within a hybrid that allows the benefits of an incorporated body but with the retained feel... of partnership.’ The additional argument for movement towards incorporation is the appeal of ‘attracting new external ownership or investment...’

⁸⁵ Stephen Corones, Nigel Stobbs and Mark Thomas, *Professional Responsibility and Legal Ethics in Queensland* (Thomson Reuters, 2008) 95.

⁸⁶ *Legal Profession Act 2007* (Qld), Part 2.7.

*Adamson v Queensland Law Society*⁸⁷ a solicitor who shared a fixed 75 percent of professional fees with his conveyancing clerk was suspended from practice for one year. In *Legal Services Commissioner v McClelland*⁸⁸ a solicitor was suspended from practice for four months where the solicitor provided a fixed \$1000 fee to a conveyancer who referred contracts to the solicitor.

Following the new business structures available under the *Legal Profession Act 2007* (Qld), if a solicitor were to incorporate, then it would be possible for the ILP to share the profits with a non-lawyer similar to the arrangements put forward by *Adamson* and *McClelland*.⁸⁹ The rationale underpinning that prohibition was that if people who were not lawyers were entitled to some payment or benefit from the work done by lawyers, then the lawyers could be subject to influence and pressure from these lay people, in conflict with their duties to the client. If it is accepted that private legal practice has always been largely a business undertaking (albeit one with paramount duties to the court) it can seem somewhat naive to suggest that lawyers would be free from feeling any financial pressure and obligations to various creditors when conducting their business. It is worth noting that almost all lawyers split their income by Everett assignments⁹⁰ of their partnership interests.⁹¹

There are also a number of situations in which the court has sanctioned the sharing of receipts (profits) as acceptable. In *Harper v Eyjolfsson*,⁹² Bankes J held that there was no objection, for example, to a solicitor's clerk being remunerated by receiving a share of the profits arising from any business that was directed towards the solicitor by the clerk.⁹³

Incorporated Legal Practice

Since 1 July 2007, law practices in Queensland have been permitted to incorporate pursuant to the *Legal Profession Act 2007* (Qld), Part 2.7.⁹⁴ The provisions for ILPs⁹⁵ now mean that a law firm can become a private or public company and can take advantage of the benefits of limited liability of directors and shareholders (who may be legal practitioners within the new company), along with a number of other potential financial and organisational benefits (including the sharing of receipts with non-lawyers).⁹⁶

⁸⁷ [1990] 1 Qd R 498.

⁸⁸ [2006] LPT 013.

⁸⁹ Byrne and Mortensen, Part II (2010), above n 71, 258.

⁹⁰ An Everett assignment is a transfer, either voluntary or for consideration, of the whole or part of a partner's interest in the partnership from the transferor (or the assignor) to the transferee (the assignee). Although the partner has no title to a specific property owned by the partnership, it is recognised that they have an equitable interest in the partnership assets. See Ford and Lee, *Principles of the Law of Trusts* (Law Book Co, 1983) 136 – 137. See also the case of *FCT v Everett* (1980) 80 ATC 4279. See also Kwai-Lian Liew, 'The Everett-Assignment' Reconsidered: *Hadlee v Commissioner of Inland Revenue* (1990) 1(1) *Revenue Law Journal* 112 – 123, 112.

⁹¹ The recently commenced (01 June, 2012) Australian Solicitors Conduct Rules (ASCR), Rule 40, expressly prohibits a solicitor from sharing (or entering into arrangements for the sharing) of receipts arising from the provision of legal services by the solicitor with disqualified persons or any person convicted of an indictable offence that involved dishonest conduct whether or not a conviction was recorded.

⁹² [1914] 2 KB 411, 419.

⁹³ Corones, above n 85, 110.

⁹⁴ See also Part 2.7, *Legal Profession Regulation 2007* (Qld).

⁹⁵ *Legal Profession Act 2007* (Qld), ss 109 – 116.

⁹⁶ For more detailed discussions on ILPs see also Steve Mark and Tahlia Gordon, 'Innovations in Regulation – Responding to a Changing Legal Services Market' (2009) 22 *Georgetown Journal of Legal*

For hundreds of years in the common law jurisdictions, law practices consisted of either sole practitioners or partnerships. Although law practices have always been businesses and have existed primarily to make a profit through the selling of the lawyers' time within a protected market, this has always been done in the context of each individual lawyer owing paramount duties to the court and to the administration of justice. The availability of the sort of limited liability enjoyed by company directors has, until recently been considered unsuitable for lawyers, whose accountability for their own professional responsibility and for that of their partners was always viewed as the best mechanism to deter fraud and malpractice. Lawyers tend to be more vigilant about ethics, so the argument goes, when their personal assets can be at risk either from their own or their partners' poor conduct.⁹⁷

As discussed earlier, the decision to allow law practices to operate as private and public companies was made in response to a perceived need for competition and to make the management structures of law practices more efficient and transparent (both for the sake of the lawyers and their clients). Mark and Cowdroy identified three reasons why partnerships were viewed as inefficient and not conducive to the creation of a competitive market.⁹⁸

First, due to the horizontal management structure of a partnership, decisions are made equally by all partners but, with large multi-jurisdiction legal partnerships, meetings are infrequent and the decision making process is therefore fragmented and cumbersome. Secondly, partnerships cannot raise equity capital to fund expansion and the development of new components of the business in the same way that companies can. This prevents partnership practices from funding the growth that is needed to compete at a national and international level. And thirdly, a partnership structure is not subject to the same level of public scrutiny as other business entities – such as that which a company can expect from its creditors, its employees and a range of public agencies.⁹⁹

Ethics 501; and J Briton and S McLean, 'Incorporated Legal Practices: Dragging the Regulation of the Legal Profession into the Modern Era' (2008) 11(2) *Legal Ethics* 241; and C Parker, A Evans, L Haller, S LeMire and R Mortensen, 'The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy & Behaviour' (2008) 31 *University of New South Wales Law Journal* 158.

⁹⁷ Corones, above n 85, 101. See also the discussion on the traditional prohibition on incorporated legal practice as discussed in Christine Parker, 'Law Firms Incorporated: How Incorporation Could and Should Make Firms More Ethically Responsible' (2004) 23 *University of Queensland Law Journal* 347, 349. Christine Parker has written extensively on Incorporated Legal Practices, including Christine Parker and Linda Haller, 'Inside Running: Internal Complaints Management Practice and Regulation in the Legal Profession' (2010) 36 *Monash University Law Review* 466, Christine Parker, Thalia Gordon and Steve Mark, 'Regulating Law Firm Ethics Management: An Empirical Assessment of the Regulation of Incorporated Legal Practices in NSW' (Legal Studies Research Paper No. 453), Melbourne Law School, and Christine E. Parker, Robert Eli Rosen and Vibeke Lehmann Nielsen, 'The Two Faces of Lawyers: Professional Ethics and Business Compliance with Regulation' (2009) 22 *Georgetown Journal of Legal Ethics* 201. Refer also to Corones discussion that similarly, disallowing incorporation prevents law practices from taking on non-lawyers as directors (who do not owe the same ethical duties as lawyers) and from issuing shares in the firm and thereby creating potentially conflicting duties to shareholders whose primary concern is profit (unhampered by a concern for the administration of justice), at above n 85, 101.

⁹⁸ S Mark and G Cowdroy, 'Incorporated Legal Practices – A New Era in the Provision of Legal Services in the State of New South Wales' (2004) 22(4) *Penn State International Law Review* 671, 675.

⁹⁹ *Ibid* 102. Refer also to the discussion in Laura Empson (ed), *Managing the modern law firm: New challenges new perspectives* (Oxford University Press, 2007) xviii, in which Empson discusses the

In a company, capital may be obtained from shareholders, but the assets belong to the company and any liabilities are generally the responsibility of the company.¹⁰⁰

Features of incorporation

There are a number of features relating to incorporation. First, companies are abstract, artificial entities recognised by the law as legal persons with rights and liabilities separate from their shareholders or members.¹⁰¹ Under section 119, the *Corporations Act 2001*, a company comes into existence as a body corporate at the beginning of the day on which it is registered with the name specified in its certificate of registration. The powers and liabilities of a company are the direct consequence of its creation as a distinct legal entity.¹⁰² The powers of a company as a body corporate are provided for under s 124(1) of the *Corporations Act 2001* and include the power to issue shares and debentures, grant options over unissued shares, distribute the company's property among its members, grant a floating charge or give security over uncalled capital, and do anything it is lawfully authorised to do.¹⁰³

Secondly, a company is a separate legal entity, therefore it may sue and be sued. A company has limited liability, meaning that shareholders of a company are not personally liable for their company's debts. The extent of a shareholder's liability depends on the type of company as provided by s 112, *Corporations Act 2001*.¹⁰⁴

The company, as a separate legal entity distinct from its shareholders, has been expressed as 'the veil of incorporation'; once a company is incorporated, the courts do not tend to look behind the 'veil' in order to know the reason for forming the company or who is controlling it. The dual aspects of the company being a separate entity together with limited liability, ensures that shareholders are not personally liable to creditors for their company's debts.¹⁰⁵ Section 516, the *Corporations Act* provides that, for a company limited by shares, the shareholder's liability is limited to the amount, if any, unpaid on the nominal value of their shares. Despite the 'veil of incorporation', both statute law¹⁰⁶ and common law¹⁰⁷ can, in some circumstances, make directors personally liable for debts incurred by the company.

Directors' duties

Directors and legal practitioner directors are subject to a number of duties both under the *Corporations Act 2001* and the *Legal Profession Act 2007* (Qld). Directors are under

increasing use of non-equity (or salaried) partners to maximise profit, where such partners do not participate in the profits of the law practice in the same way equity partner do.

¹⁰⁰ Ibid.

¹⁰¹ Ibid 24. The leading case on the company as a separate legal entity is *Salomon v Salomon & Co Ltd* [1897] AC 22.

¹⁰² Ibid.

¹⁰³ Ibid 25.

¹⁰⁴ Ibid 26.

¹⁰⁵ Ibid 35.

¹⁰⁶ For statutory lifting of 'the veil' refer to ss 588G, 588J, 588K and 588M, *Corporations Act 2001*.

¹⁰⁷ The common law on lifting 'the veil' is more limited and requires circumstances of fraud, for example *Re Darby* [1911] 1 KB 95; avoidance of legal obligations for example *Gilford Motor Co Ltd v Horne* [1933] Ch 935; involvement in directors' breach of duty, for example *Green v Bestobell Industries Ltd* [1982] WAR 1. For a discussion on 'lifting the veil', refer to Phillip Lipton and Abe Herzberg, *Understanding Company Law* (Law Book Co, 13th ed, 2006) 35.

both a fiduciary¹⁰⁸ and a statutory duty to act in good faith and in the best interests of the company.¹⁰⁹ The duty means that directors must act in the interests of the general body of shareholders, not simply for some shareholders.¹¹⁰ Also, directors are under a duty to exercise powers for proper purposes. Certain powers are conferred on directors by the board of directors which generally include broad powers of management including the power to issue shares. The fiduciary duty of directors requires them to exercise their powers for proper purposes. Directors may not breach the duty even if they honestly believe their actions are in the best interests of the company as a whole. In considering an ‘improper purpose’, the courts will look to two matters; the first, the objective purpose for which the power was granted and the second, the purpose which actually motivated the exercise of the power.¹¹¹ However, the courts are generally unwilling to interfere in the internal management of a company unless improper purposes are clearly demonstrated.¹¹²

The *Corporations Act*, s 181 provides for the statutory duty to act in good faith in the interests of the corporation and for a proper purpose. Breach of the duty attracts a civil penalty and possibly criminal liability.

Directors are also under a fiduciary duty to retain their discretionary powers. For example, a director will breach this duty if they agree with an outsider to the company to vote in a particular way.¹¹³ The legal practitioner director then bears considerable responsibility.

‘Appropriate management systems’

As part of the status of being an ILP, legal practitioner directors must ensure that ‘appropriate management systems’ are put in place.¹¹⁴ After incorporation, the systems must be ‘kept’¹¹⁵ (or maintained) to ensure that the professional and ethical responsibilities of lawyers in an ILP are not compromised by the activities of the incorporated body or by the actions of non-practitioner employees of the practice.¹¹⁶ Each of the legal practitioner directors of an ILP are responsible for ensuring that ‘appropriate

¹⁰⁸ ‘A fiduciary duty is an equitable duty to act in good faith for the benefit of another. Persons subject to a fiduciary duty are not permitted to profit from their positions (other than where expressly permitted) or to put themselves in a position where the fiduciary duty and personal interest may conflict: *Hospital Products Ltd v United States Surgical Corp* (1984) 156 CLR 41’; the definition is taken from *Butterworths Concise Australian Legal Dictionary* (LexisNexis Butterworths, 3rd ed, 2004) 173.

¹⁰⁹ Section 181(1)(a), *Corporations Act 2001* requires a director to exercise their powers and discharge their duties in good faith and in the best interests of the corporation.

¹¹⁰ The case law on ‘acting in the best interests of the company’ is considerable and takes into account acting in the best interest of the company can include present and future shareholders (*Greenhalgh v Arderne Cinemas Ltd* [1951] Ch 286; it also does not mean directors owe a duty to particular shareholders (*Percival v Wright* [1902] 2 Ch 421). For a discussion on the duties, refer to Lipton, above n 107, 13.2.

¹¹¹ Lipton, above n 107, 304.

¹¹² *Ibid.*

¹¹³ *Ibid* 311.

¹¹⁴ *Legal Profession Act* (Qld), s 117(3).

¹¹⁵ *Legal Profession Act* (Qld), s 2 provides that the meaning of ‘kept’ includes ‘maintains’.

¹¹⁶ *Legal Profession Act 2007* (Qld), s 117(3). Further, Section 118(3) then provides that a legal practitioner director of an ILP could be guilty of unsatisfactory professional conduct or professional misconduct on the basis of conduct of another director, not being an Australian legal practitioner, of the incorporated legal practice that adversely affects the provision of legal services by the practice.

management systems' are implemented to that end. Section 117(3) provides for the requirements.¹¹⁷

The *Legal Profession Act 2007* (Qld) does not provide a definition of 'appropriate management systems', but in the interests of consistency with the approach of New South Wales – the State responsible for the development of the system – Queensland has applied a similar approach to that state. Lawyers who are new to the role of legal practitioner director need to think carefully about what systems to put in place to comply with this seemingly onerous responsibility. There is considerable criticism in the literature on how the 'systems' will be executed. First, there is no explanation on the meaning of 'appropriate management systems' for the purposes of these provisions therefore lawyers need to take care in constructing systems needed to comply with this responsibility.¹¹⁸ Secondly, the regulators (ie. the Legal Services Commissioner, 'LSC', and the QLS) lack the resources and expertise to ensure compliance.¹¹⁹

The ten criteria for 'appropriate management systems' relate to the following: competent work practices to avoid negligence, effective, timely and courteous communication, timely delivery, review and follow up of legal services to avoid delay, acceptable processes for liens and file transfers, shared understanding and appropriate documentation of retainer, covering costs disclosure, billing practices and termination of retainer, timely identification and resolution of conflicts of interests, records management, compliance with regulatory authorities such as the LSC, the QLS, courts and costs assessors, supervision of the practice and staff, and avoiding failure to account for trust monies.¹²⁰ Further, there are significant burdens and responsibilities placed upon lawyers within these new entities by the *Legal Profession Act 2007* (Qld) and the *Corporations Act 2001*, as well as the general law¹²¹ and discussed above.

Both the LSC and the QLS have roles in assisting with 'appropriate management systems'. The LSC has the primary regulatory responsibility by undertaking both 'compliance audits' and 'ILP investigation'. The Commission requires every corporation that notifies the QLS of its intention to commence legal practice in Queensland to undertake a 'self-assessment' audit of its management systems and to report the findings to the Commission. The QLS undertakes a membership service role, by supporting ILPs and law practices considering incorporation to comply with their obligations to have appropriate management systems. This is achieved by advising and assisting them

¹¹⁷ Corones, above n 85, 105.

¹¹⁸ Ibid 106.

¹¹⁹ Parker (2004), above n 97, 376.

¹²⁰ These are taken from the *QLS Guide to Appropriate Management Systems* March 2009, Queensland Law Society 2008, 2, available from the Queensland Law Society website <https://www.qls.com.au/content/lwp/wcm/connect/resources/file/ebfe674b5616c06/AMS%20Guide%20WEB.pdf?MOD=AJPERES> viewed on 03 October 2011. The Queensland Law Society also includes information on ILPs in a document titled, *Information Kit: Incorporated Legal Practices ('ILPs') Practice Support Version 7.0* 07.07.2010, Queensland Law Society (2010) and available from the Queensland Law Society website at www.qls.com.au/.../lwp/wcm/resources/file/ebc41904ec70fc3/QLS_Guides%20-%20ILP%20Information%20Kit.pdf, viewed on 03 October 2011.

¹²¹ Corones, above n 85, 24.

throughout the self-assessment stage on how to design and implement the kinds of management systems and arrangements that best suit their particular practice.¹²²

Christine Parker proposes that the ability for law practices to now incorporate, challenges the assumption ‘that since the practice of law is a profession, it cannot also be a business.’¹²³ The requirements of an ILP are consistent with management practices of business organisations. The theory of ‘law as business’ is further examined in Chapter 3.

The recognition that law as a profession and law as a business is one that contrasts with long-standing perceptions of what it is to operate a legal practice. Parker cites a 1910 New York Court of Appeals judgment:

*The practice of law is not a business open to all, but a personal right, limited to a few persons of good moral character, with special qualifications ascertained and certified after a long course of study. ... As these conditions cannot be performed by a corporation, it follows that the practice of law is not a lawful business for a corporation to engage in.*¹²⁴

Use of Incorporated Legal Practices in Queensland

The statistical data on incorporation of legal practices in Queensland¹²⁵ shows an increasing trend towards incorporation. For example, in 2008, out of a total of 1347 legal practices, only 29 were incorporated (ie. 2%), four of which were from RRR Queensland (0.3%). In 2008, there were 258 RRR legal practices, therefore 1.5 percent of those RRR practices had incorporated.

By mid-2012, out of a total of 1589 legal practices in Queensland, 421 practices had incorporated (26%), of which 75 were RRR legal practices (5%). The total number of RRR legal practices in 2012 was 308, therefore 24 percent of RRR legal practices had incorporated.

Multi-Disciplinary Partnership

Since 1 July 2007, solicitors in Queensland have been permitted to form partnerships with non-lawyers.¹²⁶ Two prerequisites are required: first, one of the partners must be an Australian legal practitioner,¹²⁷ and secondly, the partnership business must include both legal and non-legal services.¹²⁸

The provisions in relation to MDPs¹²⁹ allow traditional partnership practices the opportunity to share receipts with non-lawyers without the need to incorporate.¹³⁰ The MDP allows practices to retain a partnership business structure (rather than to incorporate as an ILP) and to share receipts with professionals who are not Australian legal

¹²²Taken from the Legal Services Factsheet, ‘Regulating Incorporated Legal Practices’ at www.lsc.qld.gov.au/39.htm, viewed on 03 October 2011.

¹²³ Parker (2004), above n 97, 348.

¹²⁴ Ibid 350, citing *In re Cooperative Law Co* 198 NY 479, 483; 92 N E 15, 16 (1910).

¹²⁵ The statistical data on legal practices in Queensland has been taken from statistics maintained by the Queensland Legal Services Commissioner. It is based on data from 2008 and 2012.

¹²⁶ *Legal Profession Act 2007* (Qld), Part 2.7.

¹²⁷ Defined by the *Legal Profession Act 2007* (Qld), s 6(1).

¹²⁸ *Legal Profession Act 2007* (Qld), s 144.

¹²⁹ *Legal Profession Act 2007* (Qld), ss 145 – 159.

¹³⁰ Corones, above n 85, 23.

practitioners, for example, with accountants to provide an integrated business service for client. This structure does not carry with it the onus of responsibilities under the *Corporations Act 2001* on legal practitioner directors that include reporting, disclosure and obligations to shareholders.¹³¹

Conclusions about the New Business Structures

The limited liability of company directors was considered unsuitable for lawyers, whose accountability for their own professional responsibility and their partners was viewed as the best means to prevent fraud and malpractice.¹³² Disallowing incorporation prevented 'law firms from taking on non-lawyers as directors (who do not owe the same ethical duties as lawyers and from issuing shares in the firm and thereby creating potentially conflicting duties to shareholders whose primary concern is profit (unhampered by a concern for the administration of justice)).'¹³³

The decision to allow law firms to operate as private and public companies was made from a perceived need to promote competition and to make the management structures of law firms more efficient and transparent.¹³⁴

The traditional view, that it is inappropriate to allow lawyers to take advantage of the corporate veil to limit their liability on the grounds that this is inconsistent with the potential gravity of the detriment suffered by clients when their lawyers act unethically or unprofessionally, now seems to be somewhat dated. Rather than insisting on unlimited and joint liability to ensure compliance with professional standards and provide for consumer protection, there is now greater emphasis being placed on the adoption of appropriate administrative and management practices within practices as the most important tools for bolstering consumer protection.¹³⁵ ILPs and MDPs are now subject to the same compliance audits required to be carried out by other businesses to ensure effective practice management.¹³⁶

2.4 The Legal Profession and Regional, Rural and Remote Practice

This part of the chapter focuses on the literature and relates it to the research issues (one to seven). The chapter considers the Australian literature on RRR legal practice, and the literature of RRR legal practice in the USA and the UK.

2.4.1 The Legal Practitioners and the Law Practice – Australian Demographics and Statistics

There is considerable data on RRR legal practitioners in terms of demographics (ie. background, legal qualifications, method of admission and gender) from various sources. These include professional legal organisations (whose purpose includes the collection of

¹³¹ Ibid 109.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Mark and Cowdroy, (2004), above n 671, 675.

¹³⁵ Corones, above n 85, 115.

¹³⁶ Ibid 115.

such data), the LSC, Law Societies,¹³⁷ academic researchers conducting quantitative research (the latter typically on a small scale), and the Australian Bureau of Statistics.¹³⁸

The key national source of data on the demographics of RRR legal practitioners was carried out in 2009 by the Law Council of Australia and the Law Institute of Victoria.¹³⁹ This involved a survey across RRR Australia using a survey instrument of 23 questions dealing with participant demographics, education, legal practice, practice in RRR areas, legal aid, pro bono and voluntary work, and matters of concern to principals of RRR law practices. The key findings from the report included:¹⁴⁰ 43 percent of principals indicated that they did not have enough lawyers to service their client base, sole practitioners made up 46 percent of all responses to the survey, and principals stated that succession planning was their biggest concern (71%), followed by attraction of lawyers to the firm (58%).¹⁴¹ This survey is looked at in more detail in Chapter 8 to provide a source of comparison and triangulation with the results of the current research.

The key recommendations from the LCA Discussion Paper 2009 included reduction of tertiary graduates higher education load debts through voluntary or paid employment in RRR areas and a skills audit of RRR areas to identify where there is a labour and skills shortage.¹⁴² The LCA Survey response rate from Queensland was 16%, compared with 24 percent for the national response rate. The findings for Queensland RRR legal practitioners were that close to 56 percent (55.8%) of Queensland respondents were born in a RRR area, with the Report drawing the conclusion that 'Queensland RRR legal practitioners appear more likely to remain in these areas'.¹⁴³

The majority of respondents completed their university degree on-campus (73.2%), the remainder as distance students. The majority of respondents (87%) were private law firm practitioners. The most common areas of practice included commercial/business law (65.8%), then wills and probate (63.2%) followed by conveyancing (61.5%). The most commonly noted income range of participants was \$40,001 - \$50,000 at 15%, followed by \$80,001 - \$90,000 at 11.2%. Queensland participants registered the highest percentage of income at the top end with 4.2 percent indicating an income of more than \$250,000. Tasmania registered second to this, with 3.7 percent indicating the same income range.

The Survey was in response to concerns of the Law Council for the recruitment and retention of legal practitioners in country Australia. Both the Survey and the ensuing

¹³⁷ This thesis does not include any discussion about any information privacy issues relating to the collection, use and disclosure of data collected by such organisations. This thesis, however, did obtain ethical approval regarding the collection, use and disclosure of data provided by participants.

¹³⁸ Australian Bureau of Statistics, 8667.0 – Legal Practices, Australia, 2001 – 02; and Australian Bureau of Statistics, 8667.0 – Legal Services, Australia, 2007 – 08.

¹³⁹ Law Council of Australia and the Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey*, July 2009.

¹⁴⁰ Ibid.

¹⁴¹ Law Council of Australia, *Recruitment and Retention of Legal Practitioners to Rural, Regional and Remote Areas Strategy*: Discussion Paper: Recruitment and Retention Working Group Working Draft, September 2009, 5. The LCA had earlier carried out a report: Law Council of Australia, 2010: A Discussion Paper: *Challenges for the Legal Profession*, September 2001. That report dealt with the challenges to lawyers based on data from law societies and the Australian Bureau of Statistics.

¹⁴² LCA Discussion Paper (September 2009), above n 141, 6.

¹⁴³ Ibid.

recommendations from that Survey¹⁴⁴ will be discussed in more detail in Chapter 3 dealing with recruitment and retention.

A growing body of demographics in relation to RRR legal practitioners is relevant to ensure that there is accuracy in describing 'RRR legal practitioners' and defining the problems relating to access to justice in RRR Australia to provide evidence-based policies/solutions. The need for 'evidence' or data is strongly proposed by Simon Rice.¹⁴⁵ He stated that it assists with not simply knowing about the issue, but also understanding the issues.¹⁴⁶ Rice proposed that the problem of limited access to legal services in RRR Australia requires being clear about what kind of lawyers are currently located there.¹⁴⁷ Rice draws extensively from data derived from the Australian Bureau of Statistics and local government areas in New South Wales.

More recently, data on the demographics of RRR legal practitioners has been gathered through the use of online surveys. Paul Martin, Jacqueline Williams and Amanda Kennedy¹⁴⁸ relied upon data from an online survey and a 'Rural Professionals Summit' to gain data on 'recruitment and retention, innovation in rural services, networked services delivery, training and education, lifestyle and family, isolation, economic issues, risk issues, gender issues, and opportunities for innovation'¹⁴⁹ across these areas.

The recognition of the need for more longitudinal studies of RRR legal practitioners was made by Kevin McDougall and Reid Mortensen.¹⁵⁰ This analysis again relied upon information provided by the Law Society of New South Wales, the QLS and LSC and the Australian Bureau of Statistics to compare access to legal services across highly accessible, accessible, moderately accessible, remote and very remote¹⁵¹ locations in Queensland and New South Wales.

The importance of the use of data in this way is that it provides a clear analysis of the issue of maintaining legal services as it relates (in this case, the issue as it related to the conveyancing protection) to not being as critical as other social considerations such as professional development, gender, salary, family and lifestyle.¹⁵²

Other comments about the need for more data to assist with addressing the issues of recruitment and retention have been made by Trish Mundy, who recommended that we 'need more specific and comprehensive research into the dimensions of generational change issues facing the legal profession and how these might be best addressed to ensure

¹⁴⁴ Ibid.

¹⁴⁵ 'Access to a Lawyer in Rural Australia: Thoughts on the Evidence we Need' (2011) 16(1) *Deakin Law Review* 13, 14.

¹⁴⁶ Ibid 13.

¹⁴⁷ Ibid 15. Later in his article, Rice used the ABS data to show an increasing rural population with a declining local law firm presence.

¹⁴⁸ Paul Martin, Jacqueline Williams and Amanda Kennedy, 'Professional Services and Rural Services Poverty' (2011) 16(1) *Deakin Law Review* 57.

¹⁴⁹ Ibid 67.

¹⁵⁰ Kevin McDougall and Reid Mortensen, 'Bush Lawyers in New South Wales and Queensland: A Spatial Analysis' (2011) 16(1) *Deakin Law Review* 75.

¹⁵¹ The Accessibility/Remoteness Index of Australia, <<http://www.abs.gov.au/Ausstats/abs@.nsf/0/0D204FD3DCD90564CA256F19001303A2?opendocument>>.

¹⁵² McDougall and Mortensen, above n 150, 109.

the continued viability of RRR practice.¹⁵³ Similar reflections on the lack of data gathering in terms of considering input from ‘young lawyers’, have also been made by Rachael Castles¹⁵⁴ and Kim Cull.¹⁵⁵

2.4.2 Australian Legal Practitioners, the Community and the Profession

The literature considered here relates to RIs 1 and 2. It is concerned with how the RRR legal practitioner relates to their immediate environment,¹⁵⁶ interactions with other legal professions, (including their professional bodies), and what it is to practise in a RRR location.

Reports into RRR Legal Practice

The Law Council of Australia’s 2009 Report¹⁵⁷ provides data in terms of how RRR legal practitioners relate to the community in which they practise. Questions were framed that related to the topic of the community, including practice in RRR areas, community legal services provided, and matters of concern to principals of RRR practices. Results from the survey revealed that lawyers are an integral part of RRR communities, particularly given the pro bono (64%) and voluntary work (71%) that they are involved in.¹⁵⁸

The Law Council of Australia’s study was quickly picked up by the media with respect to the negative impacts of the findings in terms of the declining numbers of legal practitioners in the regions,¹⁵⁹ and the stresses associated with RRR legal practice.¹⁶⁰

Much has been written about life in country practice¹⁶¹ that is anecdotal and reflecting on individual legal practitioner’s experiences – both positive and negative. *In the Regions’*

¹⁵³ Trish Mundy, *Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW: A Literature Review* (Northern Rivers Community Legal Centre, 2008) 29.

¹⁵⁴ Rachael Castles, ‘Recruitment and retention of young lawyers in remote, rural and regional Queensland’ (2003) 23(3) *Proctor* 32.

¹⁵⁵ Kim Cull, ‘Young rural solicitors in decline: New blood needed in bush’ *Law Society of New South Wales* 8 (February) 2002.

¹⁵⁶ Donald D Landon has written on country lawyers and the ‘containing community’ in a number of works including: *Country lawyers: The impact of context on professional practice* (Praeger, 1990); ‘Clients, Colleagues, and Community: The shaping of zealous advocacy in country law practice’ (1985) 4 *American Bar Foundation Research Journal* 81; and ‘Lawyers and localities: The interaction of community context and professionalism’ (1982) 2 *American Bar Foundation Research Journal* 459.

¹⁵⁷ LCA Survey July 2009, above n 139.

¹⁵⁸ LCA Discussion Paper September 2009, above n 141. See also the earlier report by the LCA (2001) above n 141.

¹⁵⁹ Kate Dennehy, ‘Lawyers Steering Clear of Rural Work’, *Sun-Herald* (Sydney) 19 July 2001, 16; Sean Fewster, ‘Rural Law Services Collapse Feared’, *The Advertiser* (Adelaide), 10 July 2009, 15; ‘Rural Lawyer Shortage to Get Worse: Survey’, *AAP Australian National News Wire* (Australia and New Zealand), 9 July 2009; ABC Radio Nation, ‘Lawyer Drought’, *Law Report*, 14 July 2009 (Danny Barlow, President of the Law Institute of Victoria and Co-Chair, Law Council of Australia’s Working Group on Lawyers in Regional, Rural and Remote Australia).

¹⁶⁰ ‘Regional Lawyers Feel Like ‘Failed Lawyers’, *The New Lawyer* (Australia) 17 July 2009; Kate Gibbs and Olivia Collings, ‘Profession Under Stress in Regional Areas’, *The New Lawyer* (Australia) 17 July 2009.

¹⁶¹ Bill Chesnutt, ‘A country practice’ (1999) 26(4) *Brief* 5; Simon Creek, ‘An articles year in the South-West’, (1999) 26(4) *Brief* 11; Peter Marks, ‘Establishing a country practice from the city’ (1999) 26(4) *Brief* 12; Josephine Pepe, ‘An articles year in Northam’ (1999) 26(4) *Brief* 9; John Corker, ‘Regional, rural

was the feature topic in the August 2011 edition of *Proctor* (published by the QLS). The breadth of issues was diverse including: the professional and lifestyle rewards and challenges available to young lawyers,¹⁶² as well as the rewards and challenges for older practitioners who are returning to regions in which they grew up.¹⁶³

The 2004 Senate Report on *Legal Aid and Access to Justice*¹⁶⁴ recognised that particular issues faced people in RRR areas: ‘while the Committee noted that many of the problems experienced by such people were similar to those experienced by people in metropolitan areas [there were] additional problems prevalent in RRR areas.’¹⁶⁵ Some of these difficulties relate to ‘barriers in RRR areas [including] the geographic constraints in accessing legal assistance (for example, tyranny of distance, community and social isolation, limited or no public transport, lack of reliable private transport or dangerous roads) and the high costs of accessing services, including transport costs and STD telephone costs.’¹⁶⁶ Other difficulties include ‘lack of private lawyers in RRR areas willing to undertake legal aid work, due to restrictions imposed by... (preferred supplier regimes) and the well-documented departure of private practitioners from legal aid work in these areas.’¹⁶⁷

Similar recognition of these issues that are peculiar to life in RRR Australia, were acknowledged in the Senate’s *Access to Justice Report* (2009).¹⁶⁸ The committee accepted that RRR legal practitioners face ‘a number of issues affecting people living in RRR communities, which are beyond the legal needs they share with people in metropolitan areas’.¹⁶⁹ Only one recommendation, however, was made exclusively about RRR legal practice – that ‘incentives be considered to encourage lawyers to practise in rural, regional and remote areas.’¹⁷⁰

Diversity of Issues Associated with RRR Legal Practice

The identification of issues for RRR legal practitioners occurred as early as 1979.¹⁷¹ In the early 2000s some of the issues associated with practising as a RRR legal practitioner were identified through a series of journal articles.¹⁷²

and remote pro bono: models and opportunities (2006) 33(6) *Brief* 14; Teresa Russell, ‘Across the great divide’ (2008) (386) *Lawyers Weekly* 26; QLS President Glenn Ferguson, ‘Bush Lawyers: The problem facing regional and rural Queensland’ (2004) *Proctor* 8.

¹⁶² Josh Fox, ‘Enjoying the Rocky Road: Benefits in Practice Outshine the Big City Lights’ (2011) 31(7) *Proctor* 20; Kristy Crabb, ‘Go West (Or North), Young Graduate’ (2011) 31(7) *Proctor* 22; Sonia McIntosh, ‘Outside the Practice ‘Box’: How to Become More Than a Solicitor’ (2011) 31(7) *Proctor* 23; and Tim Rivett, ‘How I Became a Lifestyle Lawyer: Your ‘Gap Year’ Could Last a Lifetime’ (2011) 31(7) *Proctor* 24.

¹⁶³ Laura Neil, ‘The Home Ground Advantage: A Cairns Lifestyle and Big-Firm Partnership’ (2011) 31(7) *Proctor* 21.

¹⁶⁴ Senate Legal and Constitutional References Committee, *Inquiry into Legal Aid and Access to Justice*, June 2004.

¹⁶⁵ Ibid 113 citing Senate Legal and Constitutional Affairs Committee, *Inquiry into the Australian Legal Aid System*, Third Report, June 1998, 164-165.

¹⁶⁶ Senate Report 2004, above n 164, 116.

¹⁶⁷ Ibid 116.

¹⁶⁸ Senate Legal and Constitutional Affairs Committee, *Inquiry into the Australian Legal Aid System*, Third Report, 2009.

¹⁶⁹ Ibid 24.

¹⁷⁰ Recommendation 7, Senate Report 2009, above n 168, xxii.

¹⁷¹ I Macdonald, ‘Country Lawyers and Their Problems’ (1979) 53 *Australian Law Journal* 385.

The key issues concerning RRR practice included the diversity of regional legal needs and the marked differences between and within communities.¹⁷³ One of the most important assertions from these articles is that there are ‘marked differences between and within communities and this is of itself important in developing an understanding of the needs of rural communities. Just as city-based communities are not homogenous, so too rural communities are unique from one another and contain enormous diversity. This diversity is too often overlooked in the methods of policy makers and city-based service providers.’¹⁷⁴

Richard Coverdale noted the importance of ‘...diversity of law and justice issues which impact on rural and regional communities. The insights and innovations ... alert us to the uniqueness of ‘rurality’ and the importance of taking it into account when we consider the equal provision of justice for all Australians.’¹⁷⁵ Chief Justice Robert French similarly noted the diversity amongst regions: ‘I have been fortunate in my legal career to have seen some of the different faces of rural Australia, to appreciate its diversity, and with that to appreciate the dangers of over-generalising about issues such as law and justice in this context. Rural, regional and remote Australia is not homogenous.’¹⁷⁶ Coverdale highlighted the need for more information relating to the ‘diversity’ to ensure appropriate policies are implemented: ‘... a disparity in resource allocation and a lack of awareness or acknowledgement of the differing circumstances faced by regional communities compared to metropolitan communities, impact on policy and legislative decisions.’¹⁷⁷

Other issues identified through recent research related to the closeness of communities that require additional care to ensure confidentiality is maintained, as well as a lack of court services.¹⁷⁸

2.4.3 The Business of the Legal Practice – Legal Practice Areas

This part considers the areas of legal practice carried out by RRR legal practice and relates to RI 1. The LCA 2009 Survey indicates that the *amount* of work is, if anything, too much. The findings of that report were ‘overall 43 percent of principals surveyed indicated that their practice currently does not have enough lawyers to serve their client

¹⁷² Kaz Eaton, ‘One size does not fit all: Legal needs of women in regional, rural and remote Australia’ (2001) 26(2) *Alternative Law Journal* 64; Jeff Giddings, Barbara Hook and Jennifer Nielsen, ‘Legal services in rural communities: issues for clients and lawyers’ (2001) 26(2) *Alternative Law Journal* 57; Mary Rose Liverani, ‘Rural Legal Services: Short on facts, but not on policy’ (2000) 38(8) *Law Society Journal (New South Wales)* 16; Anita Rose-Innes, ‘Rural legal services under spotlight’ (2001) 75(1) *Law Institute Journal* 50; Natalie Siegel, ‘Bush courts of remote Australia’ (2002) 76(10) *Australian Law Journal* 640; Mundy, above n 153; and Trish Mundy ‘Recruiting and Retaining Lawyers: A Problem in Rural, Regional and Remote Communities’ (2009) 34 *Alternative Law Journal* 34.

¹⁷³ Eaton, above n 172, 64; Giddings et al, above n 172, 57; Mundy (2008), above n 153; Mundy (2009), above n 172, 34; and Richard Coverdale, ‘Postcode justice: Rural and regional disadvantage in the administration of the law’ (2011) 16(1) *Deakin Law Review* 155, 187.

¹⁷⁴ Giddings et al, above n 172, 57.

¹⁷⁵ Richard Coverdale, National Rural Regional Law and Justice Conference Preface, Special Issue: Essays from the First National Rural Regional Law and Justice Conference 2010 (2011) 16(1) *Deakin Law Review* ii.

¹⁷⁶ Robert French, ‘Law and justice outside the CBD’ (2011) 16(1) *Deakin Law Review* 3.

¹⁷⁷ Coverdale, above n 173, 187.

¹⁷⁸ Jeff Giddings, Barbara Hook, Jennifer Nielsen, ‘Legal services in rural communities: issues for clients and lawyers’ (2001) 26(2) *Alternative Law Journal* 57.

base.’¹⁷⁹ The LCA Survey¹⁸⁰ investigated the ‘business of RRR legal practices’ and found that the most common areas of practice for RRR Queensland legal practitioners were commercial/business law (65.8%), then wills and probate (63.2%), followed by conveyancing (61.5%). In its earlier 2001 Discussion Paper: *Challenges for the Legal Profession*,¹⁸¹ the Law Council saw that potential growth areas of practice were listed as e-commerce and cyberlaw.¹⁸² Unfortunately such potential areas of practice were not investigated by the subsequent LCA Survey 2009. That survey did not include an option for responses regarding e-commerce or cyberlaw.¹⁸³

In an earlier investigation into legal practice areas by the Senate Legal and Constitutional Affairs Committee, Inquiry into the Australian Legal Aid System, Third Report (2009),¹⁸⁴ it was submitted by the Law Council of Australia, that ‘governments could purchase legal services from RRR law practices rather than their metropolitan counterparts, thereby bolstering the need for legal practitioners in RRR areas [and that] government purchase of legal work that should be done out in regional and rural areas has been centralised in capital cities; it has not been afforded to the legal practices that are perfectly capable of doing it out there in regional and remote locations.’¹⁸⁵ The present research explores the legal practice areas carried out by legal practitioners including ‘government work’.

There is a considerable amount of the literature that deals with practice areas.¹⁸⁶ The present research is based on ‘private law practices’ and not community legal services. The literature, however, is more focused on the provision of legal services (and areas of legal practice) to disadvantaged groups through community legal practice and legal aid rather than legal practitioners in private practice.¹⁸⁷ This indicates that there is a gap in the literature in terms of the type and kind of work carried out by legal practitioners in private practice. The present research may assist with providing some exploratory data in this area.

¹⁷⁹ LCA Survey (2009), above n 139, 5.

¹⁸⁰ Ibid 30.

¹⁸¹ LCA Discussion Paper (2001), above n 141, 202.

¹⁸² Ibid 71.

¹⁸³ LCA Survey (2009), above n 139, 25.

¹⁸⁴ Senate Report (2009), above n 168.

¹⁸⁵ Ibid 28 – 29.

¹⁸⁶ Stephen Lynn, ‘Mediation and ADR: a regional view from Western Australia’ (2003) 6(2) *Australian Dispute Resolution Bulletin* 37.

¹⁸⁷ John Dewar, Jeff Giddings, Stephen Parker, Donna Cooper and Christine Michael, ‘Griffith Legal Aid Report: The impact of changes in Legal Aid on Criminal and Family Law Practice in Queensland’, Research Report commissioned by the Queensland Law Society and the Family Law Practitioners’ Association 1998; Senate Legal and Constitutional References Committee Report, *Legal Aid and Access to Justice Report* (2004); Coverdale, above n 172, 155 – 187; and Peter Huxtable and Vicki Platt, ‘Legal Aid practice in the country’ (1999) 26(4) *Brief* 16.

2.4.4 Recruitment and Retention in Australia: People Management Practices

The literature in this part relates to RI 5. The issue most consistently raised by the academic literature¹⁸⁸ and the legal profession literature is the geographical impacts of RRR legal practice on recruitment and retention.¹⁸⁹

Having said that, the Law Council of Australia in its 2001 Discussion Paper¹⁹⁰ only noted the issue in passing: ‘The type of lawyer who is attracted to the “people to people” law practised in small practices is also attracted by these factors. However, despite these positive comments, difficulties remain in recruiting practitioners in some regional areas.’¹⁹¹

Again, in the Senate Report 2004, the issue was noted but not acted upon, as acknowledged later in the Senate Report 2009:

*Five years ago, the committee expressed concern about the apparent shortage of lawyers in RRR areas, recommending that federal, state and territory governments, in conjunction with state/territory law societies and the Law Council: ...fully investigate the viability of providing a subsidy (or any other relevant incentives), and developing a coordinated national approach, aimed at attracting and retaining lawyers to live and work in rural, regional and remote areas of Australia.*¹⁹²

This recommendation was not supported by the Australian Government, which told Parliament that subsidies and other incentives would be costly and ineffective to administer at the national level. The response suggested that the matter would be best addressed by the states and territories taking into account local considerations.¹⁹³

Despite the apparent rejection of the use of subsidies, the LCA Discussion Paper 2009 included a recommendation that the Federal Government should consider a range of subsidies for new and experienced lawyers working in RRR Australia.¹⁹⁴

The issue of recruitment and retention of legal practitioners in RRR Queensland has also been investigated by academics. Jennifer Waterhouse and Neal Ryan in their 2004 Report concluded that:

The main responses to these trends appear to have centred mostly on finding new ways of delivery services such as through the use of technology, regional networks

¹⁸⁸Mundy (2008), above n 153; Mundy (2009), above n 172; F McKenzie, ‘Regional Skills Shortages: An Overview of Demographic, Economic and Social Change’ (2003) 3(1) *Sustaining Regions* 5; and RL Miles, C Marshall, J Rolfe and S Noonan, ‘The Attraction and Retention of Professionals to Regional Areas’ (2006) 12(2) *Australasian Journal of Regional Studies* 129.

¹⁸⁹Castles, above n 154.

¹⁹⁰ LCA Discussion Paper (2001), above n 141.

¹⁹¹ Ibid 155.

¹⁹² The Senate Report (2009), above n 168, acknowledged the Senate Legal and Constitutional References Committee, *Legal aid and access to justice*, June 2004, Recommendation 37, p. xxviii.

¹⁹³ The Senate 2009 Report acknowledged the Government Response, *Senate Hansard*, 7 February 2009, (76). This statement is from the Senate 2009 Report, above n 168, 26.

¹⁹⁴ LCA Discussion Paper (2009), above n 141, 20. Refer to Recommendation 2 of the LCA Discussion Paper (2009) in which it was proposed that the Federal Government consider waiving FBT liabilities on Employer Payments, monetary allowances and bonuses for relocation, and assistance with repaying HECS liabilities.

*or professional networks ... While these policy instruments attempt to address problems associated with access to services, they do not deal with the economic and social consequences associated with professionals not fully participating in regional communities, as residents. ... [T]here are still important issues relating to the impact of this decline on the economic and social viability of regions, as professionals become part-time or even casuals within towns.*¹⁹⁵

Their comments emphasise the expanded role of the RRR legal practitioner.

Researchers, Suzie Forell and Michael Cain¹⁹⁶ drew conclusions about the issue of recruitment and retention within RRR New South Wales within the context of the theme of ‘diversity’ in RRR Australia. They stated that there are realities to the recruitment, retention and availability of lawyers in RRR areas that need to be acknowledged. Different RRR areas have their own unique characteristics. Some RRR areas have recruitment and retention difficulties and others do not. The difficulties experienced vary from region to region. Some RRR areas tend only to attract relatively inexperienced solicitors or solicitors prepared to stay for a fixed and relatively short period of time. However, having a more senior solicitor in more remote areas may be preferable given the nature of the work and the work conditions.¹⁹⁷

In the LCA Survey 2009, the extent of the problem of a lack of legal practitioners in RRR Queensland was identified by 65 percent of participants as being the second most important concern (second only to succession planning and obviously closely allied to that concern).¹⁹⁸ In terms of developing evidence-based policies to address the issue, the academic literature has clearly identified that RRR Australia is diverse; yet the solutions being proposed at the peak body level have focused on the single solution of subsidies. More detailed data is needed prior to the development of potential solutions. That investigation should include existing strategies being used by RRR legal practitioners for legal staff recruitment and retention.

2.4.5 Use of Information Technology

The literature in this part supports RI 7 (use of information technology). The impact of information technology on lawyers, in terms of the type and kind of work they will do, and the way in which they will deliver that work, has been well-documented.¹⁹⁹

¹⁹⁵ Jennifer Waterhouse and Professor Neal Ryan, *Retention of professional services in regional Queensland: Preliminary Research Component – Report to the Regional Communities Engagements*, Department of the Premier and Cabinet, Queensland University of Technology (2004).

¹⁹⁶ Suzie Forell and Michael Cain, *Recruitment and Retention of Lawyers in Regional, Rural and Remote New South Wales: Summary Report*, Justice Issues Paper 13 September 2010, Law and Justice Foundation of NSW. The full report is by Suzie Forell, Michael Cain and Abigail Gray, *Recruitment and retention of lawyers in regional, rural and remote New South Wales* (2010) <<http://www.lawfoundation.net.au/publications>> viewed on 10 November 2012. See also Michael Cain and Suzie Forell, ‘Recruitment and Retention of Community Sector Lawyers: Regional Differences within New South Wales’, (2011) 16(1) *Deakin Law Review* 265.

¹⁹⁷ *Ibid* 11.

¹⁹⁸ LCA Survey 2009, Table B23, above n 139, 38.

¹⁹⁹ Richard Susskind, *The future of law: Facing the challenges of information technology* (1996); Richard Susskind, *The end of lawyers: Rethinking the nature of legal services* (2008); Thomas D Morgan, *The vanishing American lawyer* (2010); and David Wilkins, David Wilkins on Globalisation, Technology and the Legal Profession (12 August 2010) David Wilkins Blog

Discussion on that detailed literature occurs in Chapter 3. Much of that literature was relied upon by the LCA Discussion Paper 2001.²⁰⁰

One criticism of the LCA Survey 2009²⁰¹ is that it is silent on the use of information technology by RRR legal practitioners. The LCA itself had identified the importance of information technology in its own *Discussion Paper 2010* written in 2001²⁰² in which the challenges of information technology were the substance of much of the Report. Further it was seen that potential growth areas of practice were listed as e-commerce and cyberlaw.²⁰³ The Law Council of Australia's Survey did not include any questions about the use of information technology.²⁰⁴

The literature has clearly identified issues with the infrastructure to support the use of information technology: 'Regional and remote areas lag behind urban areas largely because of lower average incomes and higher connection charges. Forty-seven percent of adults in capital cities accessed the internet compared to 37 percent in other areas.'²⁰⁵ And: 'Although in theory country and regional practices would benefit most from on-line services, it is the large city law practices that have the resources to facilitate on-line learning.'²⁰⁶ RRR legal practitioners, through professional journals, have identified the importance of the use of information technology.²⁰⁷

2.5 The UK and US Literature on RRR Legal Practice

2.5.1 A Sociological Approach

The US and UK literature has tended to use a sociological approach to researching the provision of legal services, with the notion of developing a profile on 'the country lawyer'.²⁰⁸ In this part of the chapter, the literature will be examined in terms of the demographics of legal practitioners and the context of legal practice chiefly because this has been researched in such detail by UK and US academics. The literature informs RIs 1, 2 and 3 (connectedness to the profession, to the community, and legal practice areas).

Demographics and Statistics

The US Research

<http://lawprofessors.typepad.com/mass_tort_litigation/2010/08/david-wilkins-on-globalization-technology-and-the-legal-profession.html> viewed on 13 October 2010.

²⁰⁰ LCA Discussion Paper 2001, above n 141.

²⁰¹ LCA Survey (July 2009), above n 139.

²⁰² LCA Discussion Paper (2001), above n 141, 71.

²⁰³ Ibid 71. A similar research report conducted by the School of Law, Swansea University for the Law Society in 2005 included research into the use of information technology Iwan Davies and Lynn Mainwaring, *Supply of Private Practice Legal Skills in Wales* (Law Society, 2005) Law Society Research Report.

²⁰⁴ Ibid.

²⁰⁵ LCA Discussion Paper 2001, above n 141, 56, citing Barker, Garry, "Digital Divide Widening", *Sunday Age*, 10 December 2000, 61.

²⁰⁶ LCA Discussion Paper 2001 above n 141, 92 citing Mary Byrne, 'Net popular for ongoing education', *Australian Financial Review*, 16 February 2000, 44.

²⁰⁷ Graham Ballard, 'Growth areas of practice and IT – the relationship' (2002) 22(8) *Proctor* 14; e-Law Practice, 'Have Justice – Will Travel' (2002) 13 *e-Law Practice* 46.

²⁰⁸ Landon (1990), above n 156.

Earliest investigations into the demographics of legal practitioners in the US occurred with Heinz and Laumann.²⁰⁹ This study was described by Landon²¹⁰ as ‘profound’. Landon begins his own investigations with recognition of the importance of Heinz and Laumann’s work in this way: ‘The evidence has been building that the legal profession is a highly fragmented professional community.’²¹¹

Heinz and Laumann’s study of the Chicago Bar found attorneys living in different worlds, practising with such different clients, colleagues and concerns as to bifurcate the profession into a least two separate hemispheres that comprised one hemisphere

*recruited from more privileged origins and the other from less prestigious backgrounds... The first kind of lawyer service corporate clients that are quite wealthy and powerful, and the other serves individuals and small businesses that are far less powerful.*²¹²

Their study was concerned with ‘the Chicago Bar’.²¹³ Landon then asked the question; ‘is there an ecology of law practice; and if so what are the salient factors that shape the practice characteristics of attorneys in small settings?’²¹⁴ Landon’s studies²¹⁵ focused on the rural bar, specifically in Missouri.

The approach of the US researchers was to gather detailed statistical and empirical data in order to identify who the US legal practitioner was, their clients and their legal practice areas.

As early as 1910, Hensel (an attorney-general of Pennsylvania) spoke of the differing areas of practice available to country lawyers and to city lawyers. In his speech before the Sharswood Club of the Law School of the University of Pennsylvania, he stated:

*The fact that it was argued by Pittsburgh counsel, and not by what might be strictly classed as ‘country lawyers’ suggests that as to what were once rural interests, the development of the soil or the unlocking of its treasures came to require vast corporate consolidations of capital and their legal direction shifted to the large cities – Pittsburgh especially centralizing much of the coal, coke, oil and natural gas litigation.*²¹⁶

Hensel’s address related the exploitation of natural resources – coal, gas and oil rights, water rights, law of the farm and original land titles – and concluded that they raised ‘novel questions for litigation.’²¹⁷ The ‘[m]any curious lawsuits engaged the mingled services of the keenest intellects of the country, as well as the city bar.’²¹⁸ As the financial

²⁰⁹ John P Heinz and Edward O Laumann, *Chicago Lawyers: The Social Structure of the Bar* (1982, Russell Sage Foundation).

²¹⁰ Landon (1990), above n 156, xvii.

²¹¹ Ibid.

²¹² Landon (1990), above n 156, 36 citing Heinz and Laumann above n 209, 385.

²¹³ Ibid.

²¹⁴ Ibid xviii.

²¹⁵ Landon (1982), above n 156; Landon (1985), above n 156; and Landon (1990), above n 156.

²¹⁶ W U Hensel, ‘The Country Lawyer’ (1909 – 1910) 58 *University of Pennsylvania Law Review and American Law Register* 521, 526.

²¹⁷ Ibid 527.

²¹⁸ Ibid 529.

interests involved escalated, Hensel remarked that the various areas of law involved, 'were practically unknown to the country lawyer'.²¹⁹

*Of course the questions that arise peculiarly in regions mainly agricultural have always been characteristic of the country lawyer's practice. Notwithstanding they often involve comparatively trifling amounts of money, they have been urged with a fervour that is sometimes lacking in the colder conflict of large commercial and corporate interests.*²²⁰

Hensel's view gives an indication of the approach of the RRR legal practitioner being aware of the ability to exploit local areas of law and their potential impact on legal practices as businesses. Hensel's romantic picture of the 'typical country lawyer'²²¹ is that he has local knowledge²²² and that this is potentially an advantage in terms of developing areas of law. The picture put forward by Hensel is possibly justified based by anecdotal evidence. What Landon (and Heinz and Laumann, and Curran) subsequently and importantly brought to the description of the 'country lawyer' were statistics and details on the demographics.

UK Research

In the UK in 1973, Foster²²³ carried out a statistical analysis of the distribution of legal practitioners. The impetus for the research (carried out by other professions) was for 'territorial justice' in terms of resources, and this approach is not so different to that of the RRR legal practitioners rudimentarily surveyed by the LCA.

Foster's work followed from the work of Davies²²⁴ in which it was argued that the just allocation of resources required information detailing what the needs 'both met and unmet'²²⁵ were. Foster's research looked solely into legal needs.

To determine the geographical distribution of solicitors in private practice, Foster relied upon the Law List which included information collected from solicitors themselves when applying for their annual certificates.²²⁶ Foster acknowledged that the Law List was not entirely accurate; it included errors, incompleteness, some information that was unusable due to illegible writing, and poor editing of the information.²²⁷ Foster's findings showed 'the strong gravitational pull of London'²²⁸ for solicitors.

Foster tested a number of social factors to determine the cause of the distribution including an attractive social class structure²²⁹ and high density occupier-owner to improve conveyancing work.²³⁰ Foster found that the strongest correlation of social factors influencing legal practitioner distribution related to 'the amount of retail sales per

²¹⁹ Ibid 533.

²²⁰ Ibid.

²²¹ Ibid 537.

²²² Ibid 536.

²²³ Ken Foster, 'The Location of Solicitors' (1973) 36 *Modern Law Review* 153.

²²⁴ Bleddyn Davies, *Social Needs and Resources in Local Services* (1968).

²²⁵ Foster, above n 223, 153.

²²⁶ Ibid 154.

²²⁷ Ibid.

²²⁸ Ibid 158.

²²⁹ Ibid 159.

²³⁰ Ibid 161.

head’.²³¹ He concluded that the high correlation suggested ‘that the location of solicitors and their offices is governed principally by economic considerations very similar to those which govern the location of retail distribution outlets.’²³²

Davies’ concept of ‘territorial justice’,²³³ Foster’s work on mapping the distribution of solicitors in the UK, and Abel’s²³⁴ work on the legal profession was followed through with the work of Watkins, Blacksell and Economides,²³⁵ in which the disciplines of geography and law were combined. The justification for involving both disciplines was not only to describe the regional (as opposed to the national or urban)²³⁶ distribution of legal services but also ‘to provide policymakers with concrete guidelines as to where legal services, especially public legal services, should be located’.²³⁷

Economides²³⁸ lamented the lack of earlier research into regional differences in the delivery of legal services, finding it surprising because where a solicitor practices is recognised as one of the key factors affecting the type of work a solicitor does and how much he earns.²³⁹ This viewpoint informs RIs 3 and 4.

Definitions of ‘Rural’

An important aspect in the task of gathering statistical data was the need to define ‘rural’.²⁴⁰

US Research

Landon discussed the US concept of ‘rural’,²⁴¹ acknowledging the following features. Rurality entails diversity of characteristics that can include both college towns and coal-mining towns²⁴² and there are ‘tangible differences between rural and urban.’²⁴³ He acknowledged that there was disagreement among scholars ‘over the extent and character of the urban-rural distinction’,²⁴⁴ and that it was apparent that they formed points on a continuum.²⁴⁵ Landon ultimately distinguished between locations on the basis of population.²⁴⁶

²³¹ Ibid.

²³² Ibid 161 – 162.

²³³ Davies, above n 224.

²³⁴ RL Abel, ‘The Decline of Professionalism’ (1986) 49 *Modern Law Review* 1.

²³⁵ Kim Economides, Mark Blacksell and Charles Watkins, ‘The Spatial Analysis of Legal Systems: Towards a Geography of Law’ (1986) 13 *Journal of Law and Society* 161; Kim Economides, Mark Blacksell and Charles Watkins, ‘The Distribution of Solicitors in England and Wales’ (1988) 13(1) *Transactions of the Institute of British Geographers* 39; and Kim Economides, ‘The Country Lawyer: Iconography, Iconoclasm, and the Restoration of the Professional Image’ (1992) 19 *Journal of Law and Society* 115.

²³⁶ Economides (1988), above n 235, 48 – that Foster’s work was aimed more at the national and urban distribution.

²³⁷ Economides et al (1986), above n 235, 173.

²³⁸ Economides et al (1988), above n 235.

²³⁹ Ibid 40.

²⁴⁰ Refer to Lisa R. Pruitt, ‘Rural rhetoric’ (2006) 39(1) *Connecticut Law Review* 159 for a discussion on the range of US legal definitions of ‘rural’.

²⁴¹ Landon (1990), above n 156, 3, 121 – 122.

²⁴² Ibid 3.

²⁴³ Ibid.

²⁴⁴ Ibid 122

²⁴⁵ Ibid.

²⁴⁶ Ibid 121.

In a series of surveys, Landon investigated the ‘profile’ of the rural legal practitioner. In his 1982 survey²⁴⁷ he investigated the background of Missouri lawyers to find out about their age, place of birth, father’s occupational status, religious preference, rank in law school; and starting position in the practice. Later, in Landon’s 1990 survey,²⁴⁸ he investigated legal practitioners’ social background and their law school background. The series of surveys (1982, 1985 and 1990) ultimately provided details on the profile of rural practitioners, the impact of the size of the community, the need for entrepreneurial practice in the rural context, lawyers and the communities in which they practise, the social values of legal practitioners, and the relationship between legal practitioners and their clients.

Landon’s longitudinal studies²⁴⁹ grounded the development of his theory that RRR legal practice is contextual, meaning, ‘the roots of the practice of law are less attached to the doctrinal areas learned in professional school than they are to the distinguishing characteristics of the containing community where the practice occurs ... [I]t resonates largely to its environment and displays the impact of external forces.’²⁵⁰ This ‘externality’, context, or impact of the containing environment extends to the scale and type of business that in the smaller setting involves matters that relate to people. Landon contrasts this with the setting of urban legal practice, where the clients are ‘powerful actors’,²⁵¹ and that ‘[t]he scale of practice mimics the scale of enterprise in the containing community. ... The entrepreneurial practice mode is found in the smaller settings where entrepreneurship is the mode.’²⁵² He concluded that ‘As an entrepreneur [the rural lawyer] must do what is necessary to get business. What is necessary is involvement.’²⁵³

Landon’s research is relevant for the development of the semi-structured interviews that encompass RIs 1 to 7.

UK Research

In his investigation into the regional distribution of legal practitioners, Economides had to consider the definition of what is ‘rural’.²⁵⁴ This research relied upon an index calculated by Cloke and Edwards²⁵⁵ in which urban areas (based on proportion of built-up areas in the district) were excluded, leaving the remaining locations to be divided into one of four categories: extreme rural; intermediate rural; intermediate non-rural; and extreme non-rural.

²⁴⁷ Landon, (1982), above n 156, 464.

²⁴⁸ Landon, (1990), above n 156, 21 – 23.

²⁴⁹ Details of Landon’s studies are at above n 156.

²⁵⁰ Ibid 32.

²⁵¹ Ibid 33.

²⁵² Ibid.

²⁵³ Ibid 96. Refer also to Gregory M. Fulkerson and Alexander R. Thomas (eds), *Studies in urbanormativity: Rural community in urban society* (Lexington Books, 2014) for views on urban life as the standard for what is considered ‘normal’ about ‘place’. Also, Alexander R. Thomas, Brian M. Lowe, Gregory M. Fulkerson and Polly J. Smith, *Critical Rural Theory: Structure Space Culture* (Lexington Books, 2011) on how urban systems create the dominance over rural places.

²⁵⁴ Economides et al (1988), above n 235, 48.

²⁵⁵ Refer to PJ Cloke, ‘An Index of Rurality for England and Wales’ (1977) 11 *Regional Studies* 31; and P Cloke and G Edwards, ‘Rurality in England and Wales 1981: A Replication of the 1971 Index’ (1986) 20 *Regional Studies* 289.

Economides concluded that from the perspective of the UK context, the more rural the location is, 'the greater the chance that it will have a relatively low ratio of population to solicitors.'²⁵⁶ Two important conclusions from Economides' work were that, first, the location of solicitors 'is a compromise between the need to be centrally located, in order to provide an efficient service, and the need to be dispersed, in order to be close to those who need legal services.'²⁵⁷ Second, Economides stated that there is 'the necessity for critical evaluation of the sources of data used as a basis for empirical work on the provision of solicitors.'²⁵⁸

On the topic of 'legal practice areas', Economides²⁵⁹ considered the responses of country lawyers to the prospect of legal practice without conveyancing.²⁶⁰ The responses created four categories of lawyers; pessimists who felt threatened by such a loss; entrepreneurs who considered a strategic response, specialists who were not affected due to other practice areas, and fatalists who were cautious but felt other factors would protect them from the competition.²⁶¹ Economides drew the conclusion that country lawyers, rather than defending their traditional market would be better off creating and entering new markets, and that this would be more likely to occur through investing in legal education, research, and new technology.²⁶²

Legal Practitioners Involvement with the Profession and the Community **US Research**

The literature covered here informs RIs 1, 2 and 6. Landon's thesis was that there is an 'ecology of law practice'.²⁶³ By this he meant that the practice of law 'is an externally determined social system' with variables that impact on both the content of legal practice, and the manner in which it is practised.²⁶⁴

In his study Landon considered the variables acting upon the content and practice of law as including the profile of country lawyers,²⁶⁵ the community size in which the country lawyer practised and its impact,²⁶⁶ and that one of the key impacts on the country lawyer was that country law practice involved 'entrepreneurial practice'²⁶⁷ rather than being 'institutional or firm practice', which he asserted to be an invention to satisfy the needs of metropolitan clients who 'are corporations, large businesses and powerful individuals.'²⁶⁸ A second impact on country lawyers due to the context of their practice was in 'the complex interweaving of professional and community roles.'²⁶⁹ The country lawyer

²⁵⁶ Economides et al (1988), above n 235, 49.

²⁵⁷ Ibid 52.

²⁵⁸ Ibid 53.

²⁵⁹ Economides (1992), above n 235.

²⁶⁰ Ibid 117.

²⁶¹ Ibid 118.

²⁶² Ibid 121. Refer also to Department of Agriculture and Rural Development, *A guide to rural proofing: Considering the needs of rural areas and communities* (Department of Agriculture and Rural Development, UK, 2002) <<http://www.ofmdfmi.gov.uk/rural.pdf>> viewed on 08 April, 2013, on 'rural proofing', in which governments consider the needs of rural communities as part of policy development.

²⁶³ Landon, (1990), above n 156, 8.

²⁶⁴ Ibid 8.

²⁶⁵ Ibid 19 – 33.

²⁶⁶ Ibid 35 – 50.

²⁶⁷ Ibid 51 – 65.

²⁶⁸ Ibid 63.

²⁶⁹ Ibid 81. The discussion of this 'interweaving' is at 81 – 96.

participates in, and is committed to community organisations;²⁷⁰ and they carry the status of being a ‘local expert’,²⁷¹ not just on legal matters, but on a range of issues beyond law. Country lawyers are expected to fill an expanded role.²⁷²

Most country lawyers were raised in the country so that the ‘local view has been internalized.’²⁷³ Impacts for the country lawyer can be both positive and negative including ‘the pervasiveness of multiple-interest relationship [to the effect that] the small town conducts most of its affairs within a context of intimacy.’²⁷⁴ There are also implications for ‘reputation’; ‘Obscurity is not the problem of the small town lawyers; they are talked about widely.’²⁷⁵

UK Research

The more recent UK literature on rural legal services has further investigated this ‘embedded nature’ of the country lawyer.²⁷⁶ The concept of ‘embeddedness’, established as part of ‘socio-logical theory of economic action’,²⁷⁷ is discussed in Chapter 3 as part of the business literature.²⁷⁸ Its adaptation into the context of RRR legal practitioners²⁷⁹ warrants some discussion now. Franklin and Lee considered its application to the ‘sustainability’²⁸⁰ of legal services in rural Wales. Chapter 3 provides a definition of sustainability. Franklin and Lee did not provide a definition for sustainability, rather their research focused on ‘embeddedness’ as it related to the way in which social relations shape economic action, and concluded that some economic approaches often overlook or incorrectly assume that such social ties have only a minor impact upon economic behaviour.²⁸¹

²⁷⁰ Ibid 86 – 90.

²⁷¹ Ibid 90 – 91.

²⁷² Ibid 11.

²⁷³ Ibid 136.

²⁷⁴ Ibid 127.

²⁷⁵ Ibid 133.

²⁷⁶ Alex Franklin, and Robert G Lee ‘The embedded nature of rural legal services: sustaining service provision in Wales’ (2007) 34(2) *Journal of Law & Society* 218.

²⁷⁷ Ibid 219.

²⁷⁸ Brian Uzzi, The Sources and Consequences of Embeddedness for the Economic Performance of Organizations: The Network Effect’ (2000) *American Sociological Review* 9 states that embeddedness relates to ‘the exchange of services that are critical for survival but are difficult to price or specify contractually beforehand’. Refer also to Brian Uzzi and Ryon Lancaster, ‘Relational Embeddedness and Learning: The Case of Bank Loan Managers and their Clients’ (2003) 49 *Management Science* 383; Brian Uzzi and Ryon Lancaster, ‘Embeddedness and Price Formation in the Corporate Law Market’ (2004) 69 *American Sociological Review* 319 and Brian Uzzi, Ryon Lancaster and Shannon Dunlap, ‘Your Client Relationships and Reputation: Weighing the Worth of Social Ties: Embeddedness and the Price of Legal Services in the Large Law Firm Market’ in Laura Empson (ed), *Managing the Modern Law Firm* (Oxford University Press, 2010) 91 – 116.

²⁷⁹ Franklin, and Lee, (2007), above n 276, 218.

²⁸⁰ Ibid 219, where ‘sustainability’ is defined to ‘mean the longer term health, vibrancy and viability’ of such services.

²⁸¹ Uzzi, 2000, above n 278, 1 referring to the work of Lawrence A Crosby and Nancy Stephens, ‘Effects of Relationship Marketing on Satisfaction, Retention, and Prices in the Life Insurance Industry’, (1987) 24 *Journal of Marketing Research*, 404 – 411 and Mark S Granovetter, ‘Economic Action and Social Structure: The Problem of Embeddedness’ (1985) 91 *American Journal of Sociology* 481. Franklin and Lee (2000), above n 276, 221 state that ‘The literature on embeddedness is somewhat infamous for failing to provide a single comprehensive definition of what is meant by the term.’ See also the study by D. Podmore, *Solicitors and their wider community* (Heinemann Educational Books Inc, London, 1980).

Franklin and Lee's research into Welsh law practices was to understand embeddedness within the context of rural law practices. They considered select aspects as part of that exploration, including the rural solicitor, the rural law firm and business collaboration.

In terms of examining rural embeddedness in the rural solicitor, the findings were consistent with Landon's investigation into the US country lawyer. Franklin and Lee found that '[t]he most prominent feature of the solicitors... was their connection to place.'²⁸² They came from the immediate area in which they practised and many had family connections to their law firm.²⁸³ The reward of this was in a sense of responsibility towards the community and an ensuing status.²⁸⁴

Franklin and Lee's findings were that rural embeddedness, from the perspective of the (smaller) rural law firm, allowed solicitors to establish strong relationships with their clients.²⁸⁵ It also gave these solicitors an advantage against competitors originating from new law practices which were 'never accepted.'²⁸⁶ Finally, Franklin and Lee concluded that rural embeddedness, from the perspective of business collaboration, resulted in rural solicitors failing to deal with threats to traditional patterns of work.²⁸⁷ The example of the regulatory reforms to conveyancing work – a primary source of work for rural solicitors – was used as an example of a 'general lack of foresight' in how they would approach it.²⁸⁸ In short, rural embeddedness provided both an advantage to rural solicitors in terms of their 'connectedness' to the community, and conversely, a disadvantage in terms of their ability to foresee threats or to exploit opportunities to deal with them.

Legal practitioners and business planning

Franklin and Lee's research is important in terms of identifying both the advantages of being a country lawyer, as well as the disadvantages. Their empirical data showed 'a lack of proactive approach – towards change.'²⁸⁹ Franklin and Lee concluded that in terms of the relevance of indicators relating to the:

*sustainability of rural legal services... [was] that levels of profit do not appear to be the greatest driving influence behind solicitors' decision making. ... [T]he vast majority undertake pro bono work, will happily visit clients at home, seek to offer bilingual services as needed, retain less profitable work areas, and exchange opportunities to earn more for a better quality of life.'*²⁹⁰

The UK research is consistent with the US research in terms of the relationship between solicitor and client – Franklin and Lee's term is 'embeddedness' with the community, Landon refers to it as the 'containing community'.²⁹¹ Franklin and Lee identified the

²⁸² Franklin and Lee (2000), above n 276, 227.

²⁸³ Ibid.

²⁸⁴ Ibid 227.

²⁸⁵ Ibid 230.

²⁸⁶ Ibid 233.

²⁸⁷ Ibid 236.

²⁸⁸ Ibid. Franklin and Lee found that the impact of embeddedness led to a complacency about business planning and dealing with the possibility of future threats (including regulatory reform that might impact on legal practice areas, an absence of the need to develop marketing strategies because work was created through word of mouth and reputation, and limited planning on expansion in part due to the problems of finding qualified staff.

²⁸⁹ Ibid 240.

²⁹⁰ Ibid 240 – 241.

²⁹¹ Refer to Landon's work generally at above n 156.

bond between the local firm and its clients, its effect being in terms of the impact on the work the solicitors provide to the clients (described above), but also worked to the advantage of the solicitors in that ‘the connections and word of mouth recommendations brought in the work – virtually all of it from the immediate locality.’²⁹² The impact of this was that solicitors did not need to advertise for business.²⁹³

In terms of developing strategies for expansion or growth, Franklin and Lee found that there were a number of issues that arose. First, solicitors found it unappealing to run rural practices in which mergers with other practices in other towns were concerned on the basis that the ‘supervisory and regulatory responsibilities effectively doubled.’²⁹⁴ Secondly, solicitors continued to ‘resist opportunities for moving beyond anything other than loose informal collaborative arrangements with other local professional service providers’. Thirdly, that the desire for personal autonomy was too high.²⁹⁵

2.6 Summary

This chapter has critically analysed the literature in relation to the regulation of the legal profession in Queensland. It also provided a review of the detailed longitudinal sociology literature in relation to RRR legal practice in the UK and the US. There is no mirroring of that type and kind of literature within the Australian RRR legal practice context. There is a clear gap in the corresponding literature in Australia. This review is relevant in order to identify the research issues that relate to the research question with particular focus on RIs 1 to 3.

The following chapter continues the literature review, focusing on the theoretical perspectives underpinning RRR legal practice. It then considers the business management literature as it relates to RIs 4 to 7.

²⁹² Ibid 241.

²⁹³ Ibid.

²⁹⁴ Ibid 242.

²⁹⁵ Ibid.

Chapter 3

Theoretical Perspectives Underpinning the Regional, Rural and Remote Legal Practice

3.1 Introduction

This research is underpinned by a number of theories advanced predominantly by US and UK social scientists. The theories are grouped into three broad categories: Spatial theories advanced by Landon²⁹⁶ and Economides²⁹⁷ in which the context or environment of the legal practice is seen as significant in determining sustainability of the legal practice, and ‘law as business’ theories advanced by Maister²⁹⁸ in which the legal practice is seen as a business, rather than the practice of a profession. Finally, ‘resource-based’ theory described by Barney,²⁹⁹ which has application to general businesses and organisations. This theory identifies tangible and intangible resources that work to give advantages to those organisations.

The chapter considers the theories relating to regional, rural and remote (RRR) legal practice. The theories (to different extents) underpin the research question, and all the research issues (RIs). It also provides the business and legal management literature in terms of RIs 3 to 7 with particular emphasis on how that relates to the elements of sustainability. A detailed definition of sustainability is provided.

3.2 Overview of the Theories

3.2.1 Theory 1: Theory of Spatial (or Geographical) Location

Landon,³⁰⁰ Economides³⁰¹ and Franklin and Lee³⁰² have advanced social scientific theories based on empirical analyses of the ‘environment’ in which RRR legal practitioners work. Landon’s³⁰³ analysis of the significance of the rural setting for the practice of law in Missouri led to his conclusion that RRR legal practice is highly contextual and that there may be ‘an ecology of legal practice’. The practice of law in small rural settings is apt to be significantly different from the practice of law in large urban contexts. One of the variables is that it includes a unique client mix that is person-intensive; practice style is likely to be more entrepreneurial; and there is an emphasis of individual clients within a small intimate setting that would lead to a higher level of accountability.³⁰⁴

Landon also further developed Heinz and Laumann’s³⁰⁵ documented research that

²⁹⁶ Donald D Landon, *Country lawyers: The impact of context on professional practice* (Praeger 1990); ‘Clients, Colleagues, and Community: The shaping of zealous advocacy in country law practice’ (1985) 4 *American Bar Foundation Research Journal* 81; and ‘Lawyers and localities: The interaction of community context and professionalism’ (1982) 2 *American Bar Foundation Research Journal* 459.

²⁹⁷ Kim Economides, Mark Blacksell and Charles Watkins, *Justice outside the city: Access to legal services in rural Britain* (1991). This article also researches into mergers and amalgamations within rural communities as a method of sustaining law practices.

²⁹⁸ David H Maister, *Managing the Professional Service Firm* (The Free Press, 1993).

²⁹⁹ J Barney ‘Firm resources and sustained competitive advantage’ (1991) 17 *Journal of Management* 99 – 120 and J Barney, *Gaining and sustaining competitive advantages* (1997).

³⁰⁰ Landon, above n 296.

³⁰¹ Economides, Blacksell and Watkins, above n 297.

³⁰² Alex Franklin, and Robert G Lee ‘The embedded nature of rural legal services: sustaining service provision in Wales’ (2007) 34(2) *Journal of Law & Society* 218.

³⁰³ Landon (1990), above n 296, 16.

³⁰⁴ *Ibid* 17.

³⁰⁵ John P Heinz and Edward O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* (North Western University Press, 1982) as cited in Landon (1990), above n 296, 20.

*lawyers tend to reflect the outlook, perspectives, and values of their distinct clientele. Rather than being a distinct professional subculture impervious to the structuring effect of the environment, the legal profession appears to mirror its immediate environment and be structured by the interests of its ... clientele.*³⁰⁶

Landon therefore looked to the ‘containing community’ of legal practice and compared legal practice carried out within the contrasting ‘containments’ of urban practice and rural practice. The features and characteristics of each ‘containment’ (or environment) formed the basis of the survey instruments that he had used in 1982³⁰⁷ and 1985.³⁰⁸ The features of contrast included the number of legal practitioners available to practise and their differing educational backgrounds, the expanded practising role expected of a rural lawyer as opposed to the more specialised role of an urban lawyer, the socio-economic characteristics of rural clients as opposed to urban clients, the predominance of ‘multiplex relationships that existed within the rural community and was largely absent for urban legal practitioners’, the less regulated setting of the rural community and the intimacy of the rural setting.³⁰⁹

On the basis of his empirical studies, Landon³¹⁰ identified the importance of ‘entrepreneurial practice’ within the context of the RRR community. He adopted Lortie’s³¹¹ description of law careers as being either ‘institutional’ or ‘entrepreneurial’ and that the distinctions depended on the size of the law practice in which the law career was commenced. Whether the entrepreneurial legal practice is in the urban context or rural context, the ability to develop business is important to the private practice lawyer.³¹² The impact on the RRR legal practitioner is that, compared with the urban context, the amount and type of work is more limited. For the rural practitioner, the ability to foster entrepreneurial skills becomes necessary for survival. The theory is important for investigation into RIs 1 and 2, which relate to the contextual connectedness of the RRR legal practitioner to community more so than the profession.

One of the significant aspects of this theory in relation to the research was that it provided a theoretical basis that Queensland RRR legal practice includes a dimension that is ‘entrepreneurial’ rather than ‘institutional’. This theory provides additional support for the cognate, co-parent theory of ‘legal practice as a business’. The latter theory is discussed later in the chapter and is relevant because it assists with identifying and exploring the RIs 3 to 7.

³⁰⁶ Landon (1990), above n 296, 4.

³⁰⁷ Ibid.

³⁰⁸ Ibid.

³⁰⁹ Ibid 13. Refer also to Richard L. Abel and Philip S.C. Lewis (eds), *Lawyers in society: Comparative theories* (The Regents of University of California, 1989) for Abel’s theory of ‘market control’ in which he asserted the power of the professions to control their markets for their own ends. See also Scott L. Cummings (ed), *The paradox of professionalism: Lawyers and the possibility of justice* (Cambridge University Press, 2011). Refer also to Alan Paterson, *Lawyers and the Public Good: Democracy in Action (The Hamlyn Lectures)* (Cambridge University Press, 2012).

³¹⁰ Ibid.

³¹¹ Dan C. Lortie, ‘Institutional and Entrepreneurial Careers in Law & Medicine’, unpublished paper delivered at the Graduate School of Education, Harvard University (1958), as cited in Landon (1990), above n 296, 51.

³¹² Landon (1990), above n 296, 57.

Franklin and Lee³¹³ considered sustained legal practice based upon research in rural Wales in 2007. The theory relied upon by Franklin and Lee related to the ‘embeddedness’³¹⁴ within sociological theory of economic action (ie. practising as a lawyer). Franklin and Lee identified different forms of embeddedness, including cultural, structural and political. However, for legal practice, the researchers focused on the structural and cultural forms of embeddedness. ‘[F]actors of embeddedness play a key role in determining the on-going viability of legal services’ delivery in rural areas’.³¹⁵ The theory is useful to the extent that it provides additional features and factors against which to determine how a RRR legal practice can become sustainable.

The theory of ‘cultural embeddedness’ supported Landon’s earlier theory of ‘containment’, adding to it by suggesting that through a strength of connection to the community, this may provide ‘an advantage of a protected market base which, by its very nature, keeps the majority of external competition at bay.’³¹⁶ Further, this advantage is not easily available to outsiders. The theory of cultural embeddedness may assist with analysing aspects of sustained legal practice in terms of ‘longevity’.

Franklin and Lee suggested that ‘structural embeddedness’ may impact on the ability to sustain RRR law practice. The ‘structural’ aspects (or measures) related to internal management practices and attitudes towards business collaboration. The study found that in Wales, legal practitioners were not proactive in capitalising on either aspect.

This parent theory of ‘geographical location’ identifies variable characteristics impacting on sustainable legal practice that are potentially within the control of the RRR legal practitioner.

3.3 Theory 2: Law as ‘Business’

The concept of the professional service practice being treated as a ‘business’ was pursued by Maister,³¹⁷ who approached the running of legal practices (among a number of professional service practices) as being not only a profession, but also a business. While the theory (and application) of a legal practice being treated as a business may appear obvious, the approach is in tension with a traditional and widely-held belief that the practice of law as a ‘profession’ denies its simultaneous characterisation as a business.³¹⁸ The

³¹³ Franklin and Lee, above n 302, 218.

³¹⁴ Ibid 221 acknowledge that the literature on ‘embeddedness’ is ‘infamous for failing to provide a single comprehensive definition of what is meant by the term.’ Refer to Brian Uzzi and Ryon Lancaster, ‘Relational Embeddedness and Learning: The Case of Bank Loan Managers and their Clients’ (2003) 49 *Management Science* 383; Brian Uzzi and Ryon Lancaster, ‘Embeddedness and Price Formation in the Corporate Law Market’ (2004) 69 *American Sociological Review*, 319 and Brian Uzzi, Ryon Lancaster and Shannon Dunlap, ‘Your Client Relationships and Reputation: Weighing the Worth of Social Ties: Embeddedness and the Price of Legal Services in the Large Law Firm Market’ in Laura Empson (ed), *Managing the Modern Law Firm* (Oxford University Press, 2010) 91 – 116.

³¹⁵ Franklin and Lee, above n 302, 221.

³¹⁶ Ibid 232.

³¹⁷ Maister, above n 298.

³¹⁸ Refer also to Sir Daryl Dawson who commented upon the commercialisation of legal practice with the inclusion of business ethics at the expense of legal ethical traditions, as stated in *The Legal Services Market*, (1995) 5 *Journal of Judicial Administration* 147. Refer also to the documentation of similar concerns on the increasing commercialisation of legal practice by other members of the judiciary in the

reliance on the theory of ‘legal practice as a business’ broadens the research into the question of ‘how and why are RRR law practices made sustainable?’. It enables the exploration to extend beyond law practice as a profession solely required to comply with a strong formal and informal regulatory regime, which was historically accurate, into the research of a dynamic, organic structure capable of growth and profit, able to promote and market itself and strategically capable of entering into alliances with other service-firms. This exploration occurs through consideration of RIs 3 to 7.

The theory of ‘legal practice as a business’ can be supported on a number of grounds; for example, law practices in Queensland are now capable of incorporating,³¹⁹ (as discussed in detail in Chapter 2). Incorporation provides the law practice with the legal mechanism to be able to exist as a separate legal entity, to limit its liability and to raise capital.³²⁰ Immediately, this enhances a law practice’s opportunities to be enterprising.

Maister was one of the first commentators to identify the specific features of a law practice as a business in which the ‘management of a professional firm requires a delicate balancing act between the demands of the client marketplace ... and the firm’s economic ambitions.’³²¹ His theory of professional service firm (ie. law practice) as a business, acknowledged that management must be geared so that it addresses elements that are distinctive from other businesses. Those elements relate to ‘a profession’ that requires investment in education and qualifications, and with certain expectations regarding the work to be carried out. The elements also include that the profession will be fulfilling and rewarding.³²²

Maister explained ‘professional service firms’ and the need for an express theory of governance of them by way of a model that sets up the potential for competing and conflicting interests. Those interests, he asserted, included that increasingly the work of lawyers was becoming less of an art and more of a science, that as the service that is offered matures and becomes capable of being offered by more junior staff, then it increasingly relies on specified procedures. In order for law practices to avoid such mechanised work, they must seek more creative work. ‘Routine work, though temptingly profitable because past experiences can be leveraged to cut costs, inevitably results in a routinised work

Honourable Justice Geoffrey Nettle’s journal article, ‘Ethics – The adversarial system and business ethics’, (2005) 10(1) *Deakin Law Review* 67, including the views of the Honourable Justice Michael Kirby that a culture of loyalty and self-respect should be balanced with the interests of commercialisation. The Honourable Justice Michael Kirby’s comments were made in his article, *Legal Professional Ethics in Times of Change, Forum on Ethical Issues*, Sydney 23 July 1996, at 5. Refer also to Morgan, above n 318, Chapter 2 in which Morgan asserts that ‘American lawyers are not part of a profession’. The Chapter outlines the distinction between the historical (and ethical) developments of lawyers in both America and England; the American rejection of the English approach to law and lawyering; and the role of American lawyers into the future.

³¹⁹ Refer to Christine Parker, ‘Law Firms Incorporated: How Incorporation Could and Should Make Firms More Ethically Responsible’ (2004) 23 *The University of Queensland Law Journal* 347 on how the use of a corporate structure has the potential to increase the ethical responsibility of legal practices. Refer also to the concept of ‘ethical capital’ referred to by Umair Haque in his economic writings – *The New Capitalist Manifesto: Building a Disruptively Better Business* (Harvard Business Review Press, 2011) in which the demands of capitalism at the expense of ethics is critically analysed.

³²⁰ Philip Lipton and Abe Herzberg, *Understanding Company Law* (Thomson Law Book Co, 13th ed, 2006) 3.

³²¹ Maister, above n 298, 3.

³²² Ibid.

environment – anathema to those who choose professional careers.’³²³ In this statement, Maister’s explanation of life in the professional service firm indicated the potential for a conflict of interests between the expectations of ‘the professional’ in carrying out creative work, with the demands for generating profit.³²⁴ For the law practice to be sustainable, both needs must be met. This is an indication that sustainable law practice requires more than attention to profitability; aspects of satisfaction and motivation also need to be addressed if the law practice is to have longevity. This is an important point that requires the research question of how and why RRR law practice is sustainable, to look beyond mere profitability into issues relating to the management of intellectual and human capital.

Maister’s theory of law practice as a business draws on resource-based theories in that it explained human capital as being an asset which must be protected, motivated, recompensed and managed.³²⁵ The peculiarities of the ‘profession’ in terms of profitability and compensation are explained in both qualitative and quantitative terms. At the level of professional partnership, compensation is seen as being a ‘contribution to business development’, which is described and explained with reference to complex algorithms.³²⁶ It is an attempt to recompense for the entrepreneurial ability of the partner.

Maister’s theory usefully categorises types of law practices, and from this flows the type of work carried out, and the type of marketing needed.³²⁷ He analysed law practice in terms of a cycle in which there was development, movement and progression through phases particular to the profession. In this way his theory was not that of a static and rigid structure, but rather one that is dynamic and responsive.³²⁸

The application of Maister’s theory to explaining and describing how and why RRR legal practice can be sustainable, has a number of limitations. The theory focuses primarily on large law practices in which there is a hierarchical structure. This will certainly be useful to explain and describe larger RRR law practices, but they are not representative of most RRR law practice. It may therefore be of limited value when applied to the typical RRR law practice. Maister’s research is carried out within the context of US law practices during the 1990s. RRR Queensland presents a different context which will need to be addressed.

3.3.1 Theory 3: The Resource-based Theory

The resource-based theory is based on the assumption that the unique physical, organisational and human resources of a firm not only differentiate it from its competitors,

³²³ Ibid 292.

³²⁴ Refer to the New South Wales Case of *NSW Law Society v Foreman* (1994) 34 NSWLR, 408, as discussed by Christine Parker and Adrian Evans, *Inside Lawyers’ Ethics* (Cambridge University Press, 2007) 210 in which the competing interests of the expectations of the profession with the need to generate profit was described in the judgment of Kirby, P: ‘[Ms Foreman] and some staff members even slept at the office on occasion after working very late. Many like [Ms Foreman] were highly stressed by the pressure under which they worked. Part of the stress would appear to have arisen from the obligation to meet budgeted requirements of feed production required by the firm.’

³²⁵ Maister, above n 298, parts 3 and 4.

³²⁶ Ibid chapters 23 – 25.

³²⁷ Ibid chapter 2.

³²⁸ Ibid.

but are also durable and difficult to imitate and substitute.³²⁹ The types of resources include reputational resources,³³⁰ organisational resources,³³¹ financial resources,³³² technological resources,³³³ and intellectual and human resources.³³⁴ Dollinger creates a subset from human capital, of ‘relationship capital’:

*Relationship capital refers not to what the organisation’s members know but rather who the organisation’s members know and what information these people possess. Networking gives the entrepreneur access to resources without controlling them. This minimises the potential risk of ownership and keeps overheads down.*³³⁵

The identification of ‘relationship capital’ overlaps with the concept of ‘embeddedness’ which is seen as being of considerable importance for RRR legal practice.³³⁶

The resource-based theory supports the exploration into the areas of business planning carried out, recruitment and retention practices, marketing, and the use of information technology. The theory is that human resource capability

... is a source of competitive advantage as it is embedded in the collective knowledge of the firm members (inimitable), which is developed over a period of

³²⁹ Barney, (1991) above n 299, 99 -120. Barney is cited throughout the legal practice management literature including Stephen Mayson, *Law Firm Strategy: Competitive Advantage & Valuation* (Oxford University Press, 2007), Empson, (2007), above n 314, and Richard Susskind, *Transforming the law: essays on technology, justice and the legal marketplace* (2000). Refer also to Barney (1997), above n 299; and Jay Barney, and William S. Hesterly, *Strategic Management and Competitive Advantage: Concepts and Cases* (2008 2nd ed). Refer also to Joseph T. Mahoney and J Rajendran Pandian, ‘The resource-based view within the conversation of strategic management’ (1992) 13(5) *Strategic Management Journal* 363; C K Prahalad and G Hamel, ‘The core competence of the corporation’ (1990) 90(3) *Harvard Business Review* 79; and A Rangone, ‘A resource-based approach to strategy analysis in small- medium sized enterprises’ (1999) 12(3) *Small Business Economics* 233.

³³⁰ Marc J Dollinger, *Entrepreneurship: Strategies and resources* (Prentice Hall Upper Saddle River, 3rd ed, 2003) 33.

³³¹ *Ibid.* Organisational resources include the firm’s structure, routines and systems. Dollinger asserts at 34 that ‘depending on where the firm is in its life cycle, certain resources are more vital than other. For example, although human capital and experience are more important early on, organisational resources dominate later.’

³³² *Ibid* 34. Dollinger identifies financial resources as being the firm’s borrowing capacity, the ability to raise new equity, and the amount of cash generated.

³³³ *Ibid* 38. Dollinger identifies these as being physical, intangible or legal entities and are owned by the organisation. In contrast, ‘intellectual capital’ he states, is embodied by the person, so if the person leave the firm so does the capital.

³³⁴ *Ibid* 36. Dollinger includes the knowledge, training and experience of the entrepreneur and their team of employees. It includes ‘the judgment, insight, creativity, vision and intelligence of the individual members of an organisation. Dollinger states that entrepreneurs often see great opportunities where others see only competition or chaos, therefore entrepreneurial perception is a resource.’ Dollinger creates a subset from human capital, of ‘relationship capital’. ‘Relationship capital refers not to what the organisation’s members know but rather who the organisation’s members know and what information these people possess. Networking give the entrepreneur access to resources without controlling them. This minimises the potential risk of ownership and keeps overheads down.’

³³⁵ *Ibid.*

³³⁶ Refer to the earlier work of Landan, above n 296 in which the ‘containing community’ and involvement in it is seen as important for the RRR legal practitioner as a source of ‘relationship capital’ for the US RRR legal practitioner; Franklin and Lee above n 302 for their discussions on the importance of ‘embeddedness’ as a form of ‘relationship capital’ for the UK RRR legal practitioner; and Uzzi and Lancaster, above n 314 for a more general discussion on ‘embeddedness’ as a form of ‘relationship capital’.

*time (rare) and valuable as the firm's routines for management people can direct employees' talent and behaviours to meet objectives and create value.*³³⁷

The relevance of this theory for this research into sustainable legal practice is that the theory of the resource-based view of the firm, including the law practice, would argue '... that a firm's growth³³⁸ and competitive advantage³³⁹ are a function of the unique bundle of resources that it possesses and deploys'³⁴⁰ This perspective emphasises the fact that human resources are an important source to generate sustained competitive advantage. Not only do human resource systems contribute to sustained competitive advantage through facilitating the development of competencies that are firm-specific but they also generate implicit organisational knowledge.³⁴¹ However, the assumption that human resources maintain competitive advantage relies upon the notion that these resources stay competitive, difficult to imitate and to substitute. Further to this, the argument has been made that the accurate projection of the needs of human resources, the identification of individuals who are best suited to contribute to organisational objectives, the training and development of employees, the adequate compensation of these individuals for their efforts and the effective management of performance, are expected to be positively associated with superior workforce performance and consequently also enhance the competitive advantage of a firm.³⁴²

In conclusion, the resource-based theory supports investigation into the research question and RIs 3 to 7.

3.4 Legal Practice Management

This part of the chapter reports on the literature that has applied management literature to the context of 'legal practice management'. Most notably, this has occurred in the US and the UK and with respect to large urban law practices. The development of this literature creates and builds upon the theory of 'law as business', drawing upon resource-based theory.

The concept of 'competitive advantage', first identified and investigated by Porter³⁴³ was then explored further by Barney.³⁴⁴ Barney identified four attributes of a firm's resources for sustained competitive advantage, namely the resource must be valuable. it must be rare among the firm's competition, it must be imperfectly imitable, and the resources

³³⁷ Aradhana Khandekar and Anuradha Sharma, 'Managing human resource capabilities for sustainable competitive advantage: An empirical analysis from Indian global organisations' (2009) 33(5) *Journal of European Industrial Training* 628, 631.

³³⁸ E Penrose, *The Theory of the Growth of the Firm* (Oxford University Press, 3rd ed, 1959/1995), cited by Khandekar and Sharma, above n 337, 629.

³³⁹ B Wernerfelt, 'A resource-based view of the firm' (1984) 5 *Strategic Management Journal* 171, cited by Khandekar and Sharma, above n 337, 629.

³⁴⁰ Barney (1991) above n 299, and Barney (1997), above n 299.

³⁴¹ AA Lado and MC Wilson, 'Human resource systems and sustained competitive advantage: A competency-based perspective' (1994) 19(4) *Academy of Management Review* 699.

³⁴² MJ Koch and RG McGrath, 'Improving labor productivity: human resource management policies do matter' (1996) 17 *Strategic Management Journal* 335.

³⁴³ Michael E Porter, *Competitive Strategy: Techniques for Analyzing Industries and Competitors* (The Free Press, New York, NY, 1980) and *The Competitive Advantage of Nations* (1990, Free Press).

³⁴⁴ Barney (1991), above n 299, and Barney (1997), above n 299.

cannot be strategically substitutable.³⁴⁵ Both Porter and Barney are referenced throughout the legal practice management literature.³⁴⁶

The theory that a firm has organic properties including the potential for growth was identified by Penrose.³⁴⁷ Consistent with the elements of ‘sustainability’ as identified by this research, Penrose stated that firms do not have opportunities for infinite growth, but rather there is an optimal size firm.³⁴⁸ Penrose stated that the question she wanted to investigate in terms of analysing the growth of firms, was to determine ‘whether there was something inherent in the very nature of any firm that both promoted its growth and necessarily limited its *rate* of growth.’³⁴⁹ Further, Penrose argued that the rate of growth of a firm through time was possible.³⁵⁰ This discussion is relevant for the development of the elements of ‘sustainability’, including the concept that growth can (indeed possibly should) be limited.

Galanter and Palay³⁵¹ considered the dynamics of large law practices with the recognition that law practices are ‘big business’. Their work focused on the literature of organisational structures and people management and has been drawn upon consistently in the legal practice management literature.³⁵²

Maister’s work on professional service practices³⁵³ brought the management literature and the professional service firm literature together to provide a ‘handbook’ approach to maximising the profitability and longevity of professional service practices. The legal practice management literature references this work³⁵⁴ and in the case of Mayson³⁵⁵ builds upon it. The focus for both Maister and Mayson is upon types of practices, profitability, clients, marketing and recruitment and retention.

The context of Maister’s work in which law practices involved highly leveraged business models can be contrasted with the context of later explorations into law practices by

³⁴⁵ Barney (1991), above n 299, 105 – 106.

³⁴⁶ Ellen Weisbord, Bruce H Charnov and Jonathan Lindsey, *Managing People in Today’s Law Firm: The Human Resources Approach to Surviving Change* (Quorum Books, 1995); Maister, above n 298; Empson, above n 314; and Mayson, above n 329.

³⁴⁷ Penrose, above n 338. Penrose’s work considered firms in general rather than either law firms specifically, or even professional service firms.

³⁴⁸ Ibid Chapter 6.

³⁴⁹ Ibid xi.

³⁵⁰ Ibid Chapter 9. At Chapter 10 Penrose referred to small firms as being distinct and having special features in comparison to large firms, including access to finances.

³⁵¹ Marc Galanter and Thomas Palay, *Tournament of Lawyers* (University of Chicago Press, 1991).

³⁵² Weisbord, above n 346; Jerry Van Hoy, *Franchise Law Firms and the Transformation of Personal Legal Services* (Quorum Books, 1997); Maister, above n 298; Morgan, above n 318; Empson, above n 314; Mayson, above n 329.

³⁵³ Maister, above n 298.

³⁵⁴ Matthew Parsons, *Effective Knowledge Management for Law Firms* (Oxford University Press, 2004); Empson, above n 314, 66, 117 and 137; Mayson, above n 329, 100 and particularly from 128 to 134 in which he expressly expands on Maister’s three key benefits of ‘expertise, experience and efficiency.’; and Richard Susskind, *The Future of Law: Facing the Challenges of Information Technology* (1996, Oxford University Press).

³⁵⁵ Mayson, above n 329.

Richard Susskind³⁵⁶ and Thomas D Morgan.³⁵⁷ Here the legal practice management literature addresses economic and information technology developments.

Specifically, the literature relates to RIs 2, 4, 5, 6 and 7.³⁵⁸

3.4.1 Identification of Types of Legal Practices

This part of the chapter summarises the recent legal practice management literature and its identification of different types of legal practices. The earlier discussion in Chapter 2 on law practice structures available under the *Legal Profession Act 2007* (Qld) is relevant, in that that discussion gives an account of the regulatory framework. In contrast, the current discussion views choices of legal practices from a strategic point of view.

Maister³⁵⁹ approached managing the professional service firm with a focus on identifying the type of firm and then gearing management around that characterisation. Maister's three types of legal practice were as follows. First, the expertise practice,³⁶⁰ which is characterised by serving clients with 'frontier problems' and employing lawyers sought out and attracted from the top graduates from the best schools. Training of lawyers is by an informal apprenticeship system with a 'rigorous up-or-out promotion system'.³⁶¹ Profits are derived from low fixed costs and high margins, in which firms make their profits from high billing rates that are 'justifiable and sustainable because of the criticality, complexity and risk in the client engagement'.³⁶² The location of such firms is initially in a single place that relies on the development of a national reputation to attract clients. The evolution of this type of firm is expected to occur into multiple-locations that would enhance the ability of the individual office to provide clients with experience and network-systems.³⁶³

Secondly, Maister characterised the firm that had an 'institutional reputation' as being 'the experience-based practice'.³⁶⁴ In this legal practice, the reputation was not based on 'raw talent' of key individuals as described in the earlier type of practice, but rather on 'the ability of the firm to bear its collective knowledge derived from past engagements'.³⁶⁵ This type of practice makes greater use of 'team approaches' and 'provides career opportunities to the proportionally larger number of junior professionals who [have] accumulated valuable experience that the firm [can] ill afford to lose'.³⁶⁶ Marketing of the practice's specialised knowledge was through brochures and seminars,

³⁵⁶ Susskind (1996), above n 354; Susskind (2000), above n 329; and Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press, 2010) Chapters 1 and 2.

³⁵⁷ Morgan, above n 318.

³⁵⁸ These research issues relate to the connectedness to the community, legal practice areas carried out, business planning carried out, recruitment and retention, marketing, and use of information technology.

³⁵⁹ Maister, above n 298, 31 – 36 and 41.

³⁶⁰ Ibid 23 – 27.

³⁶¹ Ibid 23.

³⁶² Ibid.

³⁶³ Ibid 27.

³⁶⁴ Ibid 24.

³⁶⁵ Ibid.

³⁶⁶ Ibid 26.

and profit is derived from increased leverage based on the higher ratio of junior to senior professional time billing.³⁶⁷

Finally, Maister identified that the efficiency-based practice is comprised of a large number of clients who are mainly interested in the firm who can deal with low-risk, familiar issues.³⁶⁸ This type of practice markets its ability to deal with specific types of problems through established systems and procedures.³⁶⁹ There is client fee sensitivity through the engagement of junior legal staff and a maximum use of para-professional staff. In this type of practice, efficiency based practices implemented by disciplined and organised managers are employed, rather than inspirational leadership styles.³⁷⁰

Maister's identification of three different 'types of legal practices', was used then to account for the approach to recruitment and retention of staff, areas of legal practice, clients, systems and procedures, billing and marketing. The literature is relevant for exploring the types of law practices in RRR Queensland in terms of RIs 3 to 6.

Mayson further developed the anatomy of the legal practice by commencing his discussion of types of legal practices. He commenced by analysing the constraints of the sole practitioner to generate income. He identified four constraints: the limitations of their talents, which by the nature of the complexity of law will be limited, the market place which requires the practitioner to attract clients that match these talents, time, which is limited, and access to finance.³⁷¹

Within these constraints, there also exist risks for the sole practitioner. These risks are present in the market place which may shift against the sole practitioner. The risks include clients who do not pay bills and the sole practitioner's own personal circumstances.³⁷²

The solution to these constraints and risks, according to Mayson, involved employing legal assistance. To do this, the sole practitioner must satisfy a number of pre-conditions. They include the need to develop a professional surplus in terms of more client work or opportunities than the sole practitioner can handle, that surplus must be capable of being shared, for example, clients must be willing to allow someone other than the sole practitioner to carry out the work, the sole practitioner must monitor the performance of the new fee-earner to ensure quality of work, and the sole practitioner must continue to manage the growth of this professional surplus.³⁷³

For Mayson, the evolution of the development of legal practice then continues into establishing a partnership.³⁷⁴ Again, Mayson saw risk in this. The risks included that partners must know why they are in business together, and that knowledge should be

³⁶⁷ Ibid 25.

³⁶⁸ Ibid 27.

³⁶⁹ Ibid.

³⁷⁰ Ibid.

³⁷¹ Mayson, above n 329, 29.

³⁷² Ibid 30.

³⁷³ Ibid 33 – 35.

³⁷⁴ Ibid 33. For further discussions on the ethos and dynamics of partnership, refer to Laura Empson, 'Your Partnership: Surviving and thriving in a changing world: the special nature of partnership', in Empson (ed), (2007), above n 314, 10 – 36.

gained through strategic thinking and business planning.³⁷⁵ Partners need to be able to negotiate and compromise, they need to be able to rely on fellow partners to perform duties that will limit professional and economic risk and exposure, and partners need to be able to bear the consequences of an under-performing partner.³⁷⁶

Mayson allocated a number of strategic options in terms of defining types of legal practices, based on whether the practice strategically chose to pursue services, or a market sector or domestic geography or foreign geography.³⁷⁷ Mayson stated that service and clients flow from geography; ‘to some extent the link is circular – lawyers who are only capable of providing routine private client services may only operate locally... talent will constrain geographical ambitions.’³⁷⁸ Mayson used geography to then define types of legal practices in terms of being ‘local’, ‘regional’ or ‘national’.³⁷⁹

*A local firm confines its geographical aspirations to a limited area around its immediate location.... [t]ypically they must offer a range of services. ... Even a firm with offices in more than one location can be said to be pursuing a local firm strategy if its intention in each office is to serve the needs of its local clients.*³⁸⁰

Mayson’s contribution was his identification that ‘geography’ is of ‘strategic primacy’ in terms of the legal practice. While this has been noted in some detail in Chapter 2 regarding the work of Landon,³⁸¹ Economides³⁸² and Franklin,³⁸³ it was the first time that it had appeared in the legal practice management literature. This literature informs on exploring the types of legal practice structures in RRR Queensland in terms of RIs 2 to 4.

3.4.2 Strategic Management

The literature on business planning, performance measurement, business growth and competitive advantage, developed through management literature and economic literature, has now been adapted into the context of legal practice management. One of the key terms from this literature, is ‘strategy’, which:

*relates to the whole pattern of decisions that sets the long term direction of the organisation. There tends to be a concern not with a specific decision, although some specific decisions may be critically important, but with the pattern over time. And we observe that a concern with consistency, or the coherence of a pattern over time, is a recurring theme in discussions of strategy.*³⁸⁴

³⁷⁵ Mayson, above n 329, 35.

³⁷⁶ Ibid.

³⁷⁷ Ibid 99.

³⁷⁸ Ibid 100.

³⁷⁹ Ibid 99.

³⁸⁰ Ibid 104.

³⁸¹ Landon (1990), above n 296; Landon (1985), above n 296; and Landon (1982), above n 296.

³⁸² Kim Economides, Mark Blacksell and Charles Watkins, ‘The Spatial Analysis of Legal Systems: Towards a Geography of Law’ (1986) 13 *Journal of Law and Society* 161; Kim Economides, Mark Blacksell and Charles Watkins, ‘The Distribution of Solicitors in England and Wales (1988) 13(1) *Transactions of the Institute of British Geographers* 39; and Kim Economides, ‘The Country Lawyer: Iconography, Iconoclasm, and the Restoration of the Professional Image’ (1992) 19 *Journal of Law and Society* 115.

³⁸³ Franklin, and Lee (2007), above n 302.

³⁸⁴ Jeremy Davie and Timothy Deviney, *The Essence of Corporate Strategy: Theory for Modern Decision Making* (Allen & Unwin Australia, 1997) 7.

Maister's approach to strategy emphasised the need for profitability³⁸⁵ to the extent of determining a calculation of profit/partner. Maister relied upon a model of leveraging profit based on a hierarchy of fee-earners to partner ratio. He did not specifically discuss 'business planning' or 'strategy', rather, he pointed to the actions needed to bring about profitability. Mayson³⁸⁶ did identify the need for 'strategy' and for a 'strategic response'. He identified that profit is linked to 'three pillars'. They are: service provided, clients and geography.³⁸⁷ Once these three pillars are identified, then the strategic options of the firm are worked through.³⁸⁸ Mayson specifically addressed the importance of geography in terms of determining the strategic response to maximise profitability (and sustainability). Mayson stated that it is legitimate to give geography strategic primacy because services and clients flow from this pillar.³⁸⁹ 'Geography dictates the clients and the services'.³⁹⁰

Mayson incorporated far more of the management literature than Maister (who primarily focused on people management literature and marketing literature). Maister's primary concerns were 'clients' and 'professionals'. In contrast, Mayson used much of the management literature on strategy and aligning that strategy with performance. He filled the gap in Maister's work.

Mayson identified the increasing complexity and specialisation that was occurring in commercial legal advice, coupled with the investment of legal practices in training and technology as methods of improving the efficiency and quality of legal services. This, he concluded, led to 'enormous growth in private law firms'.³⁹¹ However, Mayson also observed that lawyers were not trained to deal with the results of such growth.

*They start with no experience of business... the management role has fallen on the partners in law practices, most of whom became partners as a reward for being good lawyers and staying with their practices for a considerable period of time. They were not prepared for the.... responsibilities of ownership and management in multi-million pound businesses.*³⁹²

This discussion has relevance for the Queensland RRR legal practitioner and their levels of understanding for what is involved with running a legal practice.

Strategic management³⁹³ and sustained competitive advantage are fundamental business management concepts that have been developed by researchers such as Barney.³⁹⁴ Barney has been cited throughout much of the law firm management literature.³⁹⁵ The

³⁸⁵ Maister, above n 298, Chapters 3 and 4.

³⁸⁶ Mayson, above n 329, Chapters 6 – 7, at 77 – 95 and 98 – 117 and Chapter 17 at 322.

³⁸⁷ Ibid 79.

³⁸⁸ Ibid 95.

³⁸⁹ Ibid 100.

³⁹⁰ Ibid.

³⁹¹ Stephen Mayson has been writing about the development of the legal profession since 1992: Stephen Mayson, 'The Future of the Legal Profession' (1992) 1 *Nottingham Law Journal* 1, 3.

³⁹² Mayson 3.

³⁹³ Davis and Devinney (1997), above n 384.

³⁹⁴ Barney (1991), above n 299, Barney (1997), above n 299 and (2008), above n 329.

³⁹⁵ Barney, *Gaining and sustaining competitive advantage* (Upper Saddle River NJ Prentice Hall, 2nd ed. 2002), cited by Mayson, above n 329, 46 in terms of competing successfully; and Barney (1991), above n 299, 99, cited by Mayson, above n 329, 267 in terms of the elements of competitive advantage. Mayson devotes a chapter – Chapter 8, The nature of competitive advantage, above n 329, 119 – 136. Also cited

key concepts relate to putting in place strategic management processes,³⁹⁶ developing strategic alliances,³⁹⁷ and measuring firm performance.³⁹⁸

Kaplan emphasised the importance of measuring the elements that an organisation wants to manage: ‘You can’t manage what you don’t measure.’³⁹⁹ However, Kaplan also acknowledged the tensions between growth, profit and the ability to manage both aspects of a business organisation:

*an excessive emphasis on profit and growth can lead to danger. Employees may engage in behaviours that put the business at risk. They may misconstrue management’s intentions and innovate in ways that present unnecessary risks to the business.*⁴⁰⁰

Both Maister and Mayson gave considerable attention to the need for ‘profitability’.⁴⁰¹ The importance of ‘profitability’ is picked up later in the chapter under the discussion on sustainability.

by Peter D Sherer, ‘Your competitors: Mapping the competitive space of large US law firms: a strategic group perspective’, in Empson (ed), above n 374, 162 – 185, at 168 and 184.

³⁹⁶ Barney (2008), above n 329, Chapter 1.

³⁹⁷ Ibid Chapter 9; and D Ernst, and J Bleeke, *Collaborating to compete: using strategic alliances and acquisition in the global marketplace* (John Wiley, 1993) and J Barney and H Hansen, ‘Trustworthiness as a source of competitive advantage’ Winter 15 *Strategic Management Journal* 175; G Lorenzoni and A Lipparini, ‘The leveraging of inter-firm relationships as a distinctive organisational capability: A longitudinal study’ (1999) 20(4) *Strategic Management Journal* 317. See also Barney (1997), above n 299, Chapter 9. In particular, at 284 dealing with cooperative strategies and strategic alliances; at 286 dealing with the economic value of strategic alliances; and at 300 dealing with strategic alliances and sustained competitive advantages. Refer also to Antonia Albani and Jan LG Dietz, ‘Current trends in modelling inter-organisational cooperation’ (2009) 22 (3) *Journal of Enterprise Information Management* 275, in which it was concluded: ‘there is a clear trend in business and industry that companies increasingly participate in cooperative networks for their own benefit. These networks may be temporary... or more or less permanent. Either way they are dynamic: during the existence of the network, members may join and leave. In order to meet the requirements and challenges of participating in networks, companies must be able to cooperate effectively and efficiently.’ Refer also to Joseph L Badaracco, *The knowledge link: How firms compete through strategic alliances* (Harvard Business School Press, Boston, 1991). Refer also to Brian Uzzi, Ryon Lancaster and Shannon Dunlap, ‘Your client relationships and reputation: Weighing the worth of social ties: Embeddedness and the price of legal services in the large law firm market’, in Empson (ed), above n 314.

³⁹⁸ Barney (1997), above n 299, at Chapter 2 discussing ‘measuring firm performance’ and firm survival as a measure of performance. Refer also to Robert S Kaplan and Robin Cooper, *Cost & effect: Using integrated cost systems to drive profitability & performance* (Harvard Business School Press, Boston Massachusetts, 1998); and Robert Kaplan and David P Norton, *Alignment: Using the balanced scorecard to create corporate synergies* (Harvard Business School Press, Boston Massachusetts, 2006); and Robert Simons, *Performance Measurement & control systems for implementing strategy* (Prentice Hall, Upper Saddle River, New Jersey, 2000); and Azhdar Karami, *Strategy Formulation in Entrepreneurial Firms*, (Ashgate, England, 2007) in which firm performance measurement is discussed at 124: ‘Performance measures are a common control mechanism. They communicate desired outcomes or behaviour to employees and are used to evaluate the degree of success in achieving goals.

³⁹⁹ Kaplan (2006), above n 398, 245.

⁴⁰⁰ Ibid 8.

⁴⁰¹ Maister, above n 298, discusses ‘profitability’ in terms of ‘leverage’ and the firm structure at 8 and 31 to 36, and 41; for compensation for staff, at 27; with reference to billing, at 25; and the role of the partner’s supervision in increasing profit, at 246. Mayson, above n 329 defines ‘profitability’ as now have to acknowledge ‘the prospect of external investment and ownership ... becoming a reality..., profit could in future be shared with investors who are not necessarily equity-owning lawyers engaged in the delivery of a firm’s professional services. Their focus will be on the return to entrepreneurial risk. This is arguably a truer measure and comparator of profit than the usual measure of total net profit in law firms’, at 281.

It is relevant at this point to focus merely on ‘profitability’ from the point of view of fees and billing. Both Maister and Mayson identified the link between profitability and fees and billing: Maister from the dual point of view of the ‘rewards of partnership’ – that these are ‘in part from the high hourly rates that the top professionals can charge for their own time’,⁴⁰² coupled with ‘the surplus generated from hiring staff at a given salary and billing them out at multiples of that salary.’⁴⁰³ Mayson⁴⁰⁴ also considered strategic billing as the basis of profitability taking into account leveraging; he also agreed with Maister that the link with profitability goes beyond billable hours: ‘What you do with your billable time determines your current income, but what you do with your non-billable time determines your future.’⁴⁰⁵

In recent times, current methods of billing, particularly hourly billing has been the subject of criticism. Mayson⁴⁰⁶ commented on the chosen method for fees and billing:

*In retrospect, a reliance on hourly charging was probably the single largest error of the profession in its recent history. ... [I]t is inevitable that lawyers will try to create as many chargeable hours as possible. Here is a system that rewards the inefficient, the ignorant, and probably even the downright incompetent. Client satisfaction and service become secondary issues.*⁴⁰⁷

Ronald J Baker remarked that ‘The legal and accounting professions in particular have taught approximately two generations of professionals the only thing they sell is their time. This is unadulterated nonsense ... no client buys time. How can you sell something the client doesn’t buy?’⁴⁰⁸

The issue of fees and billing is perhaps one of the most important features that highlights the competing interests of legal practitioners in terms of satisfying the professional and ethical regulatory requirements under the *Legal Profession Act 2007* (Qld), and the necessity ‘to make a profit’ in order to keep the legal practice sustainable.

3.4.3 Human Capital

Mayson identified that ‘[t]here are five forms of capital relevant to the value of a law firm: financial, physical, human, social and organisational,’⁴⁰⁹ and that each form of capital ‘needs one or more of the other forms for its acquisition and maintenance.’⁴¹⁰ In addition, Mayson contended that ‘much of the competitive success of a law firm is derived from ... types of capital [including human capital] which are not all capable of ownership in the legal sense and are not recorded on its balance sheet.’⁴¹¹

⁴⁰² Maister, above n 298, 8.

⁴⁰³ Ibid.

⁴⁰⁴ Mayson, above n 329, 202.

⁴⁰⁵ Maister, above n 298, 46 and cited by Mayson, above n 329, 307.

⁴⁰⁶ Mayson above n 391, 4.

⁴⁰⁷ Ibid 4.

⁴⁰⁸ Ronald J Baker, ‘Bye-Bye to the billable hour’ (Autumn 2009) *The Complete Lawyer*, 21.

⁴⁰⁹ Mayson, above n 329, 138.

⁴¹⁰ Ibid.

⁴¹¹ Ibid.

Kaplan did place a value on these intangible assets, including human capital within the context of the knowledge-based global economy, stating that it now accounts for almost 80 percent of an organisation's value.⁴¹²

*Converting intangible assets to tangible results represents a new way of thinking for most organisations. Those who master this process, generally emanating from the HR organisation, can create substantial competitive advantage.*⁴¹³

Since human capital cannot be owned, Mayson asserted that 'the crucial issues for a firm become (a) what human capital does the firm need access to; (b) how best can it access it; and (c) how can it best protect its rights of access?'⁴¹⁴ Mayson identified a number of methods of access including external access from consultants and internal access from recruitment, as well as through development from training and personal advancement.⁴¹⁵

In this part of the chapter, first the literature on legal staff recruitment,⁴¹⁶ staff retention and progression⁴¹⁷ and both mentoring and coaching⁴¹⁸ is reviewed. Also, the literature on the characteristics of legal practitioners (principals/directors) is considered, in terms of entrepreneurship.⁴¹⁹

⁴¹² Kaplan (2006), above n 397, 87.

⁴¹³ Ibid.

⁴¹⁴ Mayson, above n 329, 143.

⁴¹⁵ Ibid.

⁴¹⁶ Galanter and Palay (1991), above n 351, reveal an evolution in terms of the methods of recruitment into the US legal practices, commencing, at 14, with the 'casual apprenticeship and nepotism' industry standard, moving through to the '[h]iring of top law graduates soon after their graduation [as being] one of the building blocks of the big firm. Most hiring [being] from a handful of law schools. By ... 1960... most firms had a 'hiring partner' in charge of recruitment, and firm members made recruiting visits to law schools.': Here, Galanter and Palay citing Erwin Smigel, 'The impact of recruitment on the organization of the large law firm', (1960) 25 *American Sociological Review* 56, 59. Finally, Galanter at 57, citing Tamar Lewin, 'The new national law firms' *New York Times*, April 18, 1984 stated that with the increasing number and size of large law firms, recruitment has had to become more competitive leading to changes in the social composition of the new recruits so that '[b]arriers against Catholics, Jews, women and Blacks have been swept away.'

⁴¹⁷ Mike Simpson, Nicki Tuck, Sarah Bellamy, 'Small business success factors: the role of education and training' (2004) 8/9(46) *Education & Training* 481 – 491.

⁴¹⁸ Brian J Caldwell and Earl MA Carter (eds), *The return of the mentor: strategies for workplace learning*, (Falmer Press, London, 1993). In particular, refer to Chapter 2 in which the principles and practice of mentoring are defined as being in two categories: 'those [who] emphasise the professional development of the protégé; and those [who] emphasise professional and personal development of the protégé'. Refer also to Chapter 10 in which coaching trainers for workplace performance are discussed. At 146 'coaching' is defined as being: 'one who has performed under operational conditions in all areas to be covered in the training program. The most critical components of the coach's role will be the capacity to demonstrate skills, communicate knowledge and demonstrate appropriate attitudes within a well-planned performance review and improvement strategy. A coach must also expect trainees to perform at their best and share a common goal of winning. ... Coaching is about having clear performance objectives, a plan for achieving them and a strategy of maintaining their relevance.' See also, Kevin Cashman, 'Transformational coaching: home and practice three core skills' (2003) 20(11) *Executive Excellence* 11; and Clare Rigg, Jim Stewart, Kiran Trehan (eds), *Critical human resource development: Beyond orthodoxy* (Pearson Education, England, 2007).

⁴¹⁹ Refer to Marc J Dollinger, *Entrepreneurship: Strategies & Resources* (Prentice Hall Upper Saddle River

3rd ed, 2003), in which Dollinger, at 9, characterises the 'new entrepreneur' who is 'emerging today [as] a class of professional entrepreneurs who rely more upon their brains than their guts – and who have been trained to use both methods and technology to analyse the business environment'. Also refer to Robert D Hisrich, Michael P Peters and Dean A Shepherd, *Entrepreneurship* (McGraw-Hill Irwin, US 7th ed, 2008); and Karami (2007), above n 398.

Legal Staff Recruitment and Retention

Maister⁴²⁰ emphasised the importance of ‘human capital’⁴²¹ in terms of the need to provide coaching⁴²² and to teach partners how to better fulfil their role.⁴²³ Maister also identified the importance of motivation in professional work,⁴²⁴ asserting that ‘a less than fully motivated work force is a competitive disadvantage’⁴²⁵ and that ‘the link between motivation and performance in professional work is an important phenomenon’.⁴²⁶ In terms of the recruitment of professional legal human capital, Maister stated that it was ‘sensible to ensure that potential recruits know what they are letting themselves in for.’⁴²⁷ He noted that the professional psyche was insecure, needed constant checking and repeated feedback. From this assessment of professionals, Maister stated the importance of motivation and the need for supervision.⁴²⁸

*Motivating professionals is akin to being the coach of an athletic team; both roles involve trying to bring out the best possible performance in talented individuals. The techniques of doing so are similar in both environments.*⁴²⁹

Maister saw the need to recruit suitable staff as being as important as the need to attract clients.⁴³⁰ He relied heavily upon the business management literature and applied it to the context of the professional service firm. He saw the role of the partner as being significant in terms of providing counselling and coaching. ‘[O]f all the ways of improving a professional firm’s success, partner performance counselling is one of the most powerful.’⁴³¹ For Maister, it was also part of the senior professional’s role to be involved in recruitment.⁴³² Maister concluded, in terms of articulating the ‘one firm firm’⁴³³ culture in which there was loyalty, team work and conformity and a sense of mission, through long hours and hard work for the purpose of client service.⁴³⁴

Mayson is consistent with Maister with respect to acknowledging the importance of the legal practice culture, in that Mayson begins his analysis of law firm strategy by identifying the firm’s ‘normative environment’⁴³⁵ as being a factor in sustainability.⁴³⁶

⁴²⁰ Maister, above n 298 at Chapters 4 (delegation, skill building and motivation); 14 (building human capital), 15 (the importance of motivation and performance), 18 (competing for staff and retention), 21 (role of partners in coaching and counselling) and 27 (training, recruitment and the firm culture).

⁴²¹ Ibid Chapter 14.

⁴²² Ibid 157.

⁴²³ Ibid 159.

⁴²⁴ Ibid 165.

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Ibid. 167.

⁴²⁸ Ibid 169

⁴²⁹ Ibid 170.

⁴³⁰ Ibid Chapter 18.

⁴³¹ Ibid 245..

⁴³² Ibid 309.

⁴³³ Ibid 304.

⁴³⁴ Ibid 305 – 307.

⁴³⁵ Mayson above n 329, 47, defines ‘normative environment’ as being ‘one or more of the overall purpose, concept, culture, and climate of the business. All organisations have a normative environment. It results from what ought to happen (purpose and culture) as well as what does happen (climate) – and they are not always the same.

⁴³⁶ Ibid Chapter 5.

Mayson similarly incorporated the need for acquiring and building ‘human capital’ heavily into the level of sustainability of a legal practice. He linked the level of sustainability with factors, including whether or not there is an ‘emphasis on firm-specific human capital, organisational capital, [or] internal social capital...’⁴³⁷

In terms of developing the strategy to deal with ‘human capital’, Kaplan stated that:
*strategy is formulated at the top, but it must be executed at the bottom.... If employees don’t understand the strategy or are not motivated to achieve it, the enterprise’s strategy is bound to fail. Human capital alignment is achieved when employees’ goal, training and incentives become aligned with business strategy.*⁴³⁸

Mentoring and coaching have been more recently adapted by the law firm management researchers.⁴³⁹

The literature on the topics of recruitment and retention, and coaching and mentoring is relevant to RI 5.

Entrepreneurship

The second aspect of human capital in the research deals with entrepreneurship. The basis for relying on literature on this topic is based on Landon’s theory that RRR legal practice is an ‘entrepreneurial business’ as opposed to an ‘institutional one’.⁴⁴⁰ Entrepreneurship is discussed in the literature⁴⁴¹ in which the growth of the firm is linked to factors such as entrepreneurial ambition⁴⁴² and judgment.⁴⁴³

The characteristics of entrepreneurs have been identified through the management literature.⁴⁴⁴ Dollinger provides a definition of entrepreneurship as being, ‘the creation of an innovative⁴⁴⁵ economic organisation (or network of organisations) for the purpose of gain or growth under conditions of risk and uncertainty.’⁴⁴⁶ Dollinger identified characteristics of entrepreneurs as including the ability to deal with risk and uncertainty, see advantageous opportunities, maintain knowledge of technologies in order to advance the organisation, deal confidently with social situations, exercise judgment and insight, be creative and have vision, use legal intelligence; develop rapport with clients, and to

⁴³⁷ Ibid 341.

⁴³⁸ Kaplan (2006), above n 397, 263.

⁴³⁹ See Kay, F, Hagan J, Parker, P, ‘Principals in Practice: The Importance of Mentorship in the Early Stages of Career Development’, (2009) 31(1) *Law & Policy*, 69 – 110 and Terrence Lee, ‘How great firms create high performance cultures’ (2001) *Australian Legal Practice Management Journal* 11; and Bastiann Sparreboom, ‘The role of coaching in a legal firm’ (2001) *Australian Legal Practice Management Journal* 2.

⁴⁴⁰ Landon (1990), above n 296, 223.

⁴⁴¹ Penrose, above n 338; Dollinger, above n 419.

⁴⁴² Penrose, above n 338, 39.

⁴⁴³ Ibid 40.

⁴⁴⁴ Dollinger (2003), above n 419.

⁴⁴⁵ Robert Simons, *Performance Measurement & control systems for implementing strategy* (Prentice Hall, Upper Saddle River, New Jersey, 2000) 7 identified the competing tensions associated with the need of the organisation to be constantly seeking profitable growth. That need had to be balanced, as part of one of the roles of those who manage or lead high-performance organisations. In pursuit of that profitable growth, such managers (or leaders) are continually innovating. ‘Innovation may take many forms. It may be in developing new ... services, or it may appear as new ways of doing internal tasks related to order-processing and manufacturing. Over time, successful innovation finds its way into sustained profitability and growth.’

⁴⁴⁶ Dollinger, above n 419, 3.

lead.⁴⁴⁷ The discussion on entrepreneurship is relevant to RI 2 and the importance of connectedness to the community for RRR legal practice, as identified by Landon⁴⁴⁸ and RI 4.

3.4.4 Marketing

Earlier discussions in Chapter 2 on the regulatory context of legal practice centred on ethical dilemmas associated with ‘marketing’ and on the ‘professional’ characterisation of legal practice. These two elements have worked to create a resistance to the idea of marketing legal services among many law practices. Nevertheless, the legal practice management literature draws from marketing literature to advocate marketing, albeit within a professional context. In particular, the legal practice management literature draws upon the concept of ‘reputational resources’.⁴⁴⁹

Maister was very particular in his discussions on marketing, identifying (but not defining) the specific importance of ‘reputation’ as being one of the ‘keys to winning clients’⁴⁵⁰ for the type of legal practice he termed, ‘the expertise practice’. In addition, he dissected the strategic approach to marketing into activities such as ‘listening to clients’,⁴⁵¹ marketing to existing clients,⁴⁵² attracting new clients,⁴⁵³ and managing the marketing effort.⁴⁵⁴

Mayson was more detailed in his analysis of the value of ‘reputation’ than Maister. For example, Mayson also used the phrase ‘reputation’⁴⁵⁵ in his discussions in terms of building capital.⁴⁵⁶ He considered the legal practice’s ‘identity, image and reputation’⁴⁵⁷ as being categorised into elements relating to human capital attributes that had effects on the legal practice’s labour market, the way in which the quality of the practice’s client base was perceived, and perceptions on how easy or difficult it would be to deal with the practice.⁴⁵⁸

The value of ‘reputation’, discussed by Maister and Mayson in terms of large urban law practices, was explored more deeply through an economic analysis by Brian Uzzi through

⁴⁴⁷ Ibid 5 – 7. Penrose, above n 338 devoted Chapter 3 to an analysis of the characteristics (or qualities) of the entrepreneur within ‘the firm’, beginning with the distinction between entrepreneurial versus managerial competence, at 34; the versatility of the entrepreneur, at 36; fund-raising ingenuity (at 37); entrepreneurial ambition, at 39; and entrepreneurial judgement, at 40.

⁴⁴⁸ The importance of connectedness to the community is discussed in Chapter 2. See also generally Landon (190), (1985) and (1982), above n 296.

⁴⁴⁹ Dollinger (2003), above n 419, 33 included ‘reputational resources’ among the range of resources and capabilities available to an organisation.

⁴⁵⁰ Maister, above n 298, 23. Chapter 5 on practice development; Chapter 6 on listening to clients; Chapter 9 on marketing to existing clients; Chapter 11 on attracting new clients; and Chapter 12 on managing the marketing effort. Maister approach to marketing – client attraction and retention – was driven by his initial classification of the type of professional service firm (ie. the expertise practice, the experience-based practice, or the efficiency-based practice, outlined earlier in this chapter).

⁴⁵¹ Ibid Chapter 6.

⁴⁵² Ibid Chapter 9.

⁴⁵³ Ibid Chapter 11.

⁴⁵⁴ Ibid Chapter 12.

⁴⁵⁵ Mayson, above n 329, 132.

⁴⁵⁶ Ibid Chapter 9.

⁴⁵⁷ Maister, above n 298, 164 – 165.

⁴⁵⁸ Ibid.

the concept of ‘embeddedness’. ‘Embeddedness’ is defined by Uzzi as referring to the fact that the ‘players in an economic transaction do not exist in a vacuum, but rather in a system of social relationships.’⁴⁵⁹ Uzzi identified the economic benefits of embedded ties with clients as being due to mutually beneficial social relationships that allow a firm to maintain or increase its profit margin while at the same time providing an incentive for client retention. That incentive can occur through charging such clients lower prices because of the ties.⁴⁶⁰ Embeddedness can be developed through network structures and status.⁴⁶¹

The theory of ‘embeddedness’, discussed earlier in Chapter 2 within the context of RRR legal practitioners in Wales,⁴⁶² can be seen to apply to both US and UK mega-practices (described by Maister and Mayson) as well as in the RRR legal services context. This is relevant for RI 2 and the importance of connectedness to the community as a means of generating business and for RI 6.

3.4.5 Use of Information Technology

The management literature identified ‘intellectual capital’ as a firm resource.⁴⁶³ In this part, ‘use of information technology’ also includes knowledge management, information management, and training on these aspects. The review of this literature is important to inform RI 7. Peter F Drucker⁴⁶⁴ identified the impacts of the changing nature of workers from being unskilled towards being ‘knowledge workers’ and the impacts upon management, innovation and organisational structures. Law is chiefly involved in the management of knowledge and information; as such this area has grown in response to the issues for legal services. The leading authority on the topic is Richard Susskind who has been publishing in the area since 1996.⁴⁶⁵

Lawyers as ‘Providers of Information’

Susskind in *The Future of Law*⁴⁶⁶ accurately forecast the use of information technology in law, and more recently he has questioned *The end of lawyers?*⁴⁶⁷ The underlying basis for Susskind’s predictions concerning the impact of information technology for the practice of law is that ‘lawyers are in the information business’.⁴⁶⁸

⁴⁵⁹ Brian Uzzi, Ryon Lancaster, Shannon Dunlap, ‘Chapter 5: Your client relationships and reputation: Weighing the worth of social ties: embeddedness and the price of legal services in the large law firm market’ 91 – 116, in Empson, above n 314, 93.

⁴⁶⁰ Ibid Uzzi above n 459 106.

⁴⁶¹ Ibid 97.

⁴⁶² Franklin, and Lee (2007), above n 302.

⁴⁶³ Thomas A. Stewart, *Intellectual capital: the new wealth of organisations* (Nicholas Brealey Publishing, 2003). Refer also to Badaracco, (1991), above n 397, who has written on the importance of knowledge management in organisations.

⁴⁶⁴ Refer generally to Peter F Drucker, ‘The Coming of the New Organisation’, (1988) *Harvard Business Review*, 3 – 11; *The New Realities* (Harper & Row, New York, 1989); *Managing for the Future* (Butterworth-Heinemann, Oxford, 1992); *Managing in a Time of Great Change* (Truman Talley Books/Dutton, 1995); and *Management Challenges for 21st Century* (Harper Business, New York, 1999).

⁴⁶⁵ Susskind (1996), above n 354; Susskind (2000), above n 329; and Susskind (2010), above n 356. See also Morgan (2010), above n 318.

⁴⁶⁶ Susskind (1996), above n 354.

⁴⁶⁷ Susskind (2010), above n 356.

⁴⁶⁸ Susskind (1996), above n 354, 79.

*Lawyers acquire information through education and training, capture and retain information as part of their stock-in-trade, and sell information to clients who ask for it to be applied to their circumstances. Lawyering is, arguably, more information intensive than any other industry or profession.*⁴⁶⁹

It was therefore inevitable that technology would impact on any profession whose function it is to collect, manage, advise and manifest that knowledge and information to its clientele. Legal practices that were quick to recognise these implications would certainly have an early competitive advantage.⁴⁷⁰ Susskind considered the use of information technology by legal practices for automation only or for innovation arguing that use of the latter (strategically) was one of the greatest challenges faced by lawyers.⁴⁷¹ For other law practices, there may be inertia to overcome:

*... some might want to argue that lawyers' conservatism is the key factor here [for the take up of IT] an inertia which extends well beyond that of most professionals, and, it might be said, is institutionally enshrined and bolstered in the legal psyche by precedent, the very lifeblood of the common law.*⁴⁷²

For RRR legal practitioners there may be two compounding reasons that might foster a reluctance or inertia to the use of information technology: first, the conservatism to be found in the law, noted above, and secondly, the lack of foresight of rural lawyers to take advantage of opportunities (or conversely deal with threats) identified by Franklin and Lee.⁴⁷³

There may be valid reasons for hesitancy in using information technology on the grounds that such innovation may be disruptive, or may result in reducing the effectiveness of the practice.⁴⁷⁴ Not all change leads to increasing sustainability and competitive advantage. Additionally, research indicates that an integrated approach, rather than a fragmented approach for introducing innovation, can improve performance.⁴⁷⁵ Both points support a strategic approach, rather than a reactive one, to the introduction of information technology.

Susskind suggested that the use of information technology by legal practitioners must take into account a number of factors if it is going to provide genuine innovation and ultimately adaptation to the changing environment. First, information should be used for innovation not merely automation.⁴⁷⁶ This approach would influence and shape wider

⁴⁶⁹ Ibid.

⁴⁷⁰ For a discussion of competitive advantage, refer to Barney (1991), above n 299, 119 – 120.

⁴⁷¹ Susskind (1996), above n 354, 77.

⁴⁷² Susskind (2010), above n 356, 246.

⁴⁷³ Refer to Alex Franklin, and Robert G Lee 'The embedded nature of rural legal services: sustaining service provision in Wales' (2007) 34(2) *Journal of Law & Society* 218. See also the more complete discussion in Chapter 2.

⁴⁷⁴ Paul Hyland and Ron Beckett, 'Engendering an innovative culture and maintaining operational balance' (2005) 12(3) *Journal of Small Business and Enterprise Development* 336.

⁴⁷⁵ Mile Terziovski 'Achieving performance excellence through an integrated strategy of radical innovation and continuous improvement' (2003) 7(2) *Measuring Business Excellence*, 78 – 92.

⁴⁷⁶ Susskind, above n 356, 227. Peter Drucker noted the need for innovation rather than mere automation in his article, 'The New Organisation' (1988), above n 464, 350 in which he stated 'most computer users still use the new technology only to do faster what they have always done before, crunch conventional numbers. But as soon as a company takes the first tentative steps from data to information, its decision processes, management structure, and even the way its work gets done begin to be transformed.'

business objectives,⁴⁷⁷ such as enabling legal practices to attract legal staff by allowing more flexible working conditions.⁴⁷⁸ Lawyers needed to focus their initiatives according to what they consider as the more beneficial uses of such systems,⁴⁷⁹ for example, to use information technology for research, improved communications; systematised client file management rather than mere word processing.

Second, this strategic use of information technology could be a ‘major enabler’ including the reduction of geographical differences. Susskind focused on international geographical impact,⁴⁸⁰ but, just as easily, the geographical impacts can relate to distances that are within a country, particularly a country as big as Australia. Third, law staff and clients may judge a legal practice on the quality of the information flowing from it through information technology, including the presentation of documents and the ‘look and feel’ of its website.⁴⁸¹ This may give an advantage to a RRR legal practice that can have a high quality ‘virtual office’ on the Internet without the expense of a city lease.

Fourth, it will allow small legal practices to group together as single, ‘virtual legal practices’ under one ‘virtual’ roof. This feature or impact of the use of information technology has been further pursued by Susskind in his recent publication *The End of Lawyers?*⁴⁸² in which he predicts that the role of lawyers is changing due to the impacts of technology. Susskind anticipates that technology will allow small legal practices and sole practitioners to aggregate work, and to stay in the small firm and remain competitive.

There is an argument that adaptation through the use of innovative information technology is more readily available to smaller practices than larger practices on the grounds that they are simpler, cheaper and less complex.⁴⁸³

Empirical research into the use of technology by law practices is now available to test some of the assertions made by Susskind.⁴⁸⁴ In the study of the use of information technology by small and large legal practices in the UK,⁴⁸⁵ the findings supported Susskind’s view that large law practices have financial leverage to develop their

⁴⁷⁷ Susskind (2010), above n 356, 227.

⁴⁷⁸ The critical issue of attraction, selection, retention and progression of suitably qualified legal staff is complex. This paper proposes the innovative use of information technology as one means of dealing with the issue. It is certainly not the only means. Further research into this issue is being carried out in terms of strategies being used by RRR legal practices. An example of alternative methods that has been taken up by a number of RRR legal practices is the recruitment from within local communities, and the recruitment and training from within legal practices.

⁴⁷⁹ T du Plessis ASA du Toit ‘Knowledge management and legal practice’ (2006) 26 *International Journal of Information Management* 360 – 371.

⁴⁸⁰ Susskind (1996), above n 354, 227.

⁴⁸¹ Ibid 230.

⁴⁸² Susskind (2010), above n 356 .

⁴⁸³ Susskind (1996), above n 354, 229.

⁴⁸⁴ For example, empirical studies have been carried out in Europe. Refer to Gurmak Singh, John O’Donoghue and Karen Broome, ‘An Empirical Study in the Use of IT by Small and Large Legal Firms in the UK’ (2002) (1) *Journal of Information, Law and Technology*, available at <http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2002_1/singh>, viewed 15 September, 2012; and Petter Gottschalk, ‘Law Firm Clients as Drivers of Law Firm Change’, 2002 (1) *Journal of Information, Law and Technology*, available at <http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2002_1/gottschalk>, viewed 15 September 2012.

⁴⁸⁵ Singh, *ibid*.

information systems, with the suggestion that it is in part due to corporate clients' instigation.⁴⁸⁶

Critical Factors for the Innovative Use of Information Technology

Susskind stated that the use of information technology, to be effective and to enhance sustainability, should take into account 'critical factors',⁴⁸⁷ including the need for strategy,⁴⁸⁸ user involvement⁴⁸⁹ and hybrid management.⁴⁹⁰ 'Hybrid management' means the assumption of responsibility by unqualified members of the law firm, so as to fill a void. Susskind commented that when decisions occurred through such hybrid management, they were not always well researched nor did they necessarily fit strategically within the business planning.⁴⁹¹

3.5 Sustainability

The literature review provides a critical analysis of the definition of 'sustainability'. The surrounding strategic concepts associated with the term are 'complex and demanding, posing issues of economic and social transformation which challenge the way we value and measure critical concepts such as 'progress', 'well-being' and growth.'⁴⁹² The term 'sustainability' is used throughout the management literature. It is linked with 'competitive advantage', but it is also used without definition or clarification.

3.5.1 A Definition of 'Sustainability'

It has been difficult to find a clear and complete definition of what it is to be 'sustainable' within a business context. It is necessary to identify elements relevant to the term so that some attempt can be made to measure whether or not a legal practice is 'sustainable'.

Mayson⁴⁹³ refers to 'sustainable' and 'sustainability' consistently and with great care. However, he does not expressly define either 'sustainability' or 'sustainable' as he does with other terms.⁴⁹⁴ The absence of a clear definition here and throughout the business and management literature may be deliberate.

Mayson does, however, state that creation, sustainability and longevity are treated as different dimensions of an organisation:

Once an organisation exists, longevity refers to the characteristics that determine the period of time for which it is sustained, as distinct from the attributes of

⁴⁸⁶ The impact on the use of IT by law practices as being the result of the expectations and pressures from clients (especially corporate clients) is the subject of Petter Gottschalk's, 'Law Firm Clients as Drivers of Law Firm Change', above n 484.

⁴⁸⁷ Susskind (1996), above n 354, 223 – 267.

⁴⁸⁸ Ibid 234.

⁴⁸⁹ Ibid 236.

⁴⁹⁰ Ibid 238.

⁴⁹¹ Ibid.

⁴⁹² John Cole, *Towards Sustainability* (2011) as yet unpublished.

⁴⁹³ Mayson (2007), above n 329.

⁴⁹⁴ Ibid 351.

*organisation that sustain it. It is the merging of creation, sustainability and longevity that combine to determine the persistence of the firm itself.*⁴⁹⁵

For the purposes of the present research, ‘longevity’ is included in the definition of ‘sustainability’ because it gives some indication that the legal practice has continued. Mayson also refers to degrees of sustainability, in terms of a law practice either being of ‘high sustainability’ or ‘low sustainability’.⁴⁹⁶ In his discussion, he recommended that to remedy ‘low sustainability’, investment should be made in the drawing out of a sympathetic normative environment.⁴⁹⁷ This suggests the possible inclusion of a ‘normative environment’ as being one of the elements of sustainability. (That element is discussed below.)

In the management literature, the term ‘sustainable’ has been used interchangeably and coupled with ‘successful’. Although there may be some overlap of meaning between the terms, for example, Mayson⁴⁹⁸ stated that a law practice needed to be not only successful, but also sustainable, the implication being that to be ‘sustainable’ is to be something more than successful.

The management literature also acknowledged that ‘success’ is a subjective concept. That a person may hold a vision of what ‘success’ is for them, for example, that the person enjoys a happy work-life balance in their work. However, when viewed from an outside point of view, that ‘success’ becomes questionable because, for example, the rate of profit is dwindling.⁴⁹⁹ Therefore, bringing the economic, management, legal professional and systems literature together, the following elements for a definition of ‘sustainability’ are proposed.

Continuity

First, there must be longevity (or continuity) of practice. Although Mayson expressly distinguishes ‘longevity’ from ‘sustainability’, he does so on the grounds that it is ‘a different dimension’ of the organisation, not on the ground that it is unrelated. For this research, ‘longevity’ provides a much needed baseline from which ‘sustainability’ practices can be explored. Mayson adds, however, that longevity is ‘more than the avoidance of cessation, it is the continuation of active, productive life.’⁵⁰⁰ Again, this emphasises Mayson’s vision that there are degrees of ‘sustainability’.

Mayson stated that ‘longevity does not refer to its immortality, but rather to its durability or continuance’.⁵⁰¹ This could take into account legal practitioners who have an ‘exit strategy’.

Profit

Secondly, there must be profit or solvency. This is at the heart of the economist, John Hick’s concept of value and capital in which he stated ‘The purpose of income

⁴⁹⁵ Ibid 237.

⁴⁹⁶ Ibid 340 – 342.

⁴⁹⁷ Ibid 341.

⁴⁹⁸ Ibid.

⁴⁹⁹ Simpson, above n 417.

⁵⁰⁰ Mayson, above n 329, 237 citing Montuori ‘Organisational longevity – integrating systems thinking, learning ...’ (2000) 13(1) *Journal of organisational change management* 61, 69.

⁵⁰¹ Ibid.

calculation... is to give people an indication of the amount which they can consume without impoverishing themselves.⁵⁰²

The economic literature on ‘commercial sustainability’ provided a limited, narrower definition:

*a person’s maximum consumption should not be greater than the level of income that does not reduce the initial level of capital. Such a concept of maximising income flows without reducing asset stocks is the key to many concepts of sustainability.*⁵⁰³

Jacobsen (a legal practitioner) provides the following, very brief, definition of sustainability: ‘to keep solvent’.⁵⁰⁴ Munro⁵⁰⁵ stated that the benefits of a definition that relate to ‘benefits exceeding or balancing costs’ may be more easily measurable, although it will still be affected by many variables.

The requirement of mere profit, or continued profit alone, are definitions that are too narrow for this research. A narrow definition does not take into account ‘costs’ that may not be apparent, including a miserable working environment or a high staff turnover. Given the context (and justification) of this research, that relates to the critical issue facing RRR legal practices of legal staff recruitment and retention, the definition of ‘sustainability’ must incorporate other criteria at least, for example, an element that relates to ‘a working environment’. Elements other than profit are needed. The pursuit of a broader definition is supported by Mayson’s references to ‘high sustainability’ and ‘low sustainability’, in which he comments that a legal practice driven purely on profit may be ‘sustainable’, but not nearly as highly sustainable as it could or ought to be.⁵⁰⁶ The narrow definition does not take into account either ‘the normative environment’ in which ‘sustainability’ is occurring, or its resources – which include clients to create the income and legal staff to service the needs of clients.⁵⁰⁷

This element of sustainability will assist with exploring RIs 3 and 4 (legal practice areas carried out and business planning carried out).

Access to Resources – Legal Staff and Clients

Thirdly, then, there must be ‘resources’ to sustain the legal practice. ‘Resources’ in this context relate to ‘available clients’ and ‘access to legal staff’. And these resources must be renewable to take into account the effects of time and ageing on these mortal resources. This element of the definition is relevant to the exploration of RIs 2, 5 and 6.

⁵⁰² JR Hicks, *Value and capital: An inquiry into some fundamental principles of economic theory* (Clarendon Press, 2nd ed, 1946) 172.

⁵⁰³ Matthew Clarke and Sardar MN Islam, *Contributions to economic analysis: Economic Growth & Social Welfare: Operationalising Normative Social Choice Theory Volume 262* (Elsevier, 2004) 183.

⁵⁰⁴ David Jacobsen ‘Measuring the benefits of sustainable best practice’ (2001) 21(7) *Proctor* 17.

⁵⁰⁵ David Munro, ‘Sustainability: Rhetoric or Reality?’ in Thaddeus C Trzyna and Julia K Osborn (eds) *A sustainable world: defining and measuring sustainable development* (California: International Center for the Environment and Public Policy, 1995).

⁵⁰⁶ Refer to Mayson (2007), above n 329, 341 – 343.

⁵⁰⁷ *Ibid* particularly at 56 – 57, and 60 – 65.

Controlled Growth

Fourthly, ‘growth’ as an element linked to capital sustainability⁵⁰⁸ must be considered for a number of reasons.⁵⁰⁹ Growth is seen as essential for allowing professional practices to diversify and to meet changing client needs.⁵¹⁰ Management research shows that business structures that grow and employ people, manage to survive better than business structures that do not grow.⁵¹¹

Dollinger stated that the entrepreneur saw growth of the organisation under circumstances of risk and uncertainty, as being one of the purposes to be achieved.⁵¹² In the knowledge-based economy, growth is linked to assets that include human capital that is enhanced through appropriate recruitment, training and leadership.⁵¹³

Maister⁵¹⁴ and Mayson⁵¹⁵ both stated that growth provides the structure to attract staff and to provide a path of progression and to ensure that sufficient and suitable staff is available to service the clients.⁵¹⁶ The extent, to which the growth can occur, however, is dependent upon the ability to expand and manage through leveraging or gearing the renewable resources that include clients and legal staff.⁵¹⁷

The systems literature, however, views ‘growth’ with caution. ‘The longer people sustain a social, economic, or ecological system in its growth phase, the sharper, harder, and more destructive its ultimate breakdown will be.’⁵¹⁸ Homer-Dixon proposes an adaptive cycle that can be represented as a three-dimensional entity that rises and falls and rises again.⁵¹⁹ Handy used the Sigmoid Curve as the descriptor of growth: ‘[The Sigmoid Curve] is the story of a product’s life-cycle and of many a corporation’s rise and fall.... The secret of constant growth is to start a new Sigmoid Curve before the first one peters out.’⁵²⁰ The research will explore the management practices carried out within (and

⁵⁰⁸ Porter, above n 343 and CM Fiol, ‘Revisiting an identify-based view of sustainable competitive advantage’, (2001) 27(5) *Journal of Management* 691 – 699; both cited by Simpson, above n 417, 485.

⁵⁰⁹ Theories of growth, and its relevance to organisations has been considered by the literature particularly by Penrose, above n 338, in which ‘long-run profits and growth’ are discussed at 29 – 30; the optimal size of the firm and growth are discussed at 89 – 92; and the rate of growth of a firm over time is discussed at Chapter IX.

⁵¹⁰ Gardner, Morris, Anand, ‘Your expertise: Developing new practices: Recipes for success, in Empson (ed), above n 314, 65. Growth is discussed by Maister, above n 298, chapter 1 and by Mayson, above n 329, 32 and 34.

⁵¹¹ Svante Andersson and Joakim Tell, ‘The relationship between the manager and growth in small firms’, (2009) 4(16) *Journal of small business and enterprise development* 586 – 598, citing P Davidsson, F Delmar, J Wiklund, (2001) *Tillväxtföretagen i Sverige.*, SNS förlag, Stockholm.

⁵¹² Dollinger (2003), above n 419, 3. See also the research of O’Gorman that ‘has identified the sustainability of growth as being due to... the strategic choices of the entrepreneur’: Simpson, above n 417, 485, citing C O’Gorman, ‘The sustainability of growth in small and medium-sized enterprises’, (2001) 7(2) *International Journal of Entrepreneurial Development* 366 – 385.

⁵¹³ Kaplan and Norton (2004), above n 398, 40. See also Kaplan and Norton’s discussion on aligning learning and training, with growth at 77.

⁵¹⁴ Maister, above n 298, 6 – 7.

⁵¹⁵ Mayson, above n 329, 32 – 34.

⁵¹⁶ Ibid.

⁵¹⁷ Ibid 32 and Maister above n 298, 3 – 10.

⁵¹⁸ Thomas Homer-Dixon *The upside of down: Catastrophe, creativity, and the renewal of civilization* (Text Publishing, Melbourne Australia, 2006) 232.

⁵¹⁹ Ibid 229.

⁵²⁰ Charles Handy *The Empty Raincoat: Making sense of the future* (Hutchinson Business, 1995) 50 – 51.

available to) legal practices to assist with identifying opportunities for dealing with the rises and falls.

The idea of ‘limits to growth’ was the foundation of Brundtland’s ‘sustainable development’.⁵²¹ While this research does not rely upon an environmental definition of sustainability, the definition acknowledges that growth does not need to be limitless. Maister discussed growth in terms of ‘strategic growth’ that was dependent upon the type of legal practice,⁵²² and also ‘controlled growth’ linked to the ability of the professional service firm’s ability to train its legal staff.⁵²³

This element of the definition of sustainability is relevant to inform on RIs 3 to 6.

Adaptiveness

The element of controlled growth reveals the complexity of sustainability. It also suggests that an additional element of ‘adaptiveness’ may be important as a means of increasing sustainability. The systems literature identifies ‘an adaptive cycle’,⁵²⁴ and that it embraces two opposites: growth and stability, and change and variety.⁵²⁵ The cycle is ‘at once conserving and creative – a characteristic of all highly adaptive systems’.⁵²⁶

Homer-Dixon identified certain characteristics of highly adaptive cycles including first, diversity, secondly, that the power to make decisions and solve problems is not centralised but distributed, and thirdly, that they are sufficiently unstable to create unexpected innovation, yet orderly enough to learn from failures and successes. Such systems are able to be experimental in order to generate problem solving strategies.⁵²⁷

Clearly, the elements of being adaptive overlaps with some of the characteristics of entrepreneurs, in particular, that they are able to deal with risk and uncertainty. For the

⁵²¹ Simon Dresner *The principles of sustainability* (Earthscan, 2002) 76 discussed the idea of sustainability has having originally emerged out of the ‘limits to growth’ thinking put forward by Brundtland in his concept of ‘sustainable development’ as part of the *Brundtland Commission World Commission on Environment and Development*, commissioned by the United Nations (1983). The idea of limitations related to the extent that an environment’s ability to meet not only present needs but also future needs.

⁵²² Maister, above n 298, 24. The types of legal practices identified by Maister were: ‘the expertise practice’; ‘the experience-based practice’ and ‘the efficiency-based practice’: refer to Maister, Chapter 2.

⁵²³ Ibid 311.

⁵²⁴ Refer to Lance H Gunderson, *Panarchy: understanding transformations in human and natural systems* (Island Press, 2001); Carl Folke, Steve Carpenter, Thomas Elmqvist, Lance Gunderson, Crawford S. Holling, and Brian Walker, ‘Resilience and sustainable development: building adaptive capacity in a world of transformations’ (2002) 31 (5) *AMBIO: A journal of the human environment* 437, Jeremy Walker and Melinda Cooper, ‘Genealogies of resilience from systems ecology to the political economy of crisis adaptation’ (2011) 2(42) *Security Dialogue* 143; Brian Walker, Crawford S. Holling, Stephen R. Carpenter, and Ann Kinzig, ‘Resilience, adaptability and transformability in social-ecological systems’ (2004) 9(2) *Ecology and society* 5; Lindsay C. Stringer, Andrew J. Dougill, Evan Fraser, Klaus Hubacek, Christina Prell, and Mark S. Reed, ‘Unpacking ‘participation’ in the adaptive management of social-ecological systems: a critical review’ (2006) 11(2) *Ecology and Society* 39; and Kevin J. Dooley, ‘A complex adaptive systems model of organization change’ (1997) 1(1) *Nonlinear dynamics, psychology, and life sciences* 69.

⁵²⁵ Crawford S Holling, ‘Understanding the complexity of economic, ecological, and social systems’ (2001) 4(5) *Ecosystems* 390.

⁵²⁶ Homer-Dixon, above n 518 , 228.

⁵²⁷ Ibid 294.

RRR legal practitioner, the identification of this element as part of sustainability may assist with explaining if some highly sustainable legal practices do not necessarily ‘fit’ the model presented by the legal management literature. The ability to adapt to an adverse regulatory, economic and social environment may increase the sustainability of RRR legal practices.

This element of sustainability is relevant to inform RIs 3, 4, 5 and 7.

Normative Environment

Finally, a complete definition of ‘sustainability’ should make reference to the environment within the law practice. Mayson defines the ‘normative environment’ within the legal practice as ‘the overall purpose, concept, culture and climate of the business.’⁵²⁸ It ‘is the sum of all those influences on the ways in which shared meaning is developed and transmitted within the firm and in which commonly acceptable behavior is framed and enacted.’⁵²⁹

The internal environment is then dependent upon processes relating to these relationships, including dispute resolution mechanisms, partner relations, and protection of values such as ‘trust’. Mayson described it as encompassing what ought to happen (the culture) and what actually does happen (the climate).⁵³⁰

Choueke and Armstrong⁵³¹ studied the reasons for organisational growth and business success in small/medium enterprises (SMEs) and found what they called a ‘missing perspective’ – the effects of culture on SME development. They identified that some companies had unique cultures, which had a positive effect on SME performance. The respondents recognised the role of culture in the success of their businesses, the principles of which in most cases originated from the founder through the top management. The most successful companies were those where staff felt ownership of the organisation, or felt they were partners within it.⁵³²

As a start, some attempt at exploring this element can be made by describing partner satisfaction and legal staff retention. In this way it will assist with exploring RI 5.

3.6 Summary

This chapter has provided the theoretical perspective underpinning the research question’s exploration into sustainable RRR Queensland legal practice. The theories assist with identifying the associated RIs 2 to 7. Specifically, the literature review focuses on types of legal practices, strategic management, human capital, marketing and use of information technology.

⁵²⁸ Mayson, above n 329, 47.

⁵²⁹ Ibid 56.

⁵³⁰ Ibid.

⁵³¹ R Choueke and R Armstrong, ‘Culture: a missing perspective on small and medium-sized enterprise development?’ (2000) 6(4) *International Journal of Entrepreneurial Behaviour and Research* 227, cited in Simpson, above n 417, 485.

⁵³² Simpson, above n 417.

The literature review identifies a gap in the business management literature in terms of how it applies to sustainable RRR legal practice. Chapter 2 identified how RRR legal practice has been distinguished in terms of a number of features including a legal practitioner's connectedness to the community and legal practice areas. This chapter has identified how the current business management and legal management literature relates to sustainable RRR legal practice as well as the gaps in the literature. The chapter also provides a definition of sustainability drawn from the economic, legal management literature and systems literature.

Chapter 4

Research Methodology

4.1 Introduction

This chapter provides an overview of the research methodology used in this study. In particular, the chapter articulates the research question (RQ) and the seven research issues (RIs). It details the research design and the research methodology, including the unit of analysis and the sample size, the method of data collection using semi-structured interviews, and the development of the semi-structured interview protocol and the pilot survey used to maximise the content validity of that protocol. The chapter includes a detailed discussion on the development of a new index to assess ‘regional’, ‘rural’ and ‘remote’ as applied to ‘access to legal services’. That discussion is necessarily detailed in order to explain the justification for the new index, and to provide the method through which it was developed. The chapter then continues with details on the interviewee selection process and the interview process itself. The chapter outlines the analysis of both the quantitative and qualitative data, and provides details on how the reliability and validity of the research methodology were maximised. Finally, the chapter provides the delimitations of the research in terms of its scope, and also identifies key assumptions underpinning the research.

4.2 Research Question and Research Issues

4.2.1 Research Question

The research question examined in this thesis is ‘What is the prevalence and nature of sustainability practices in regional, rural and remote (RRR) law practices? The research focuses on exploring sustainability of RRR law practices in Queensland using identified criteria including location, longevity of practice, structure of the law practice, recruitment and retention of legal staff, legal practice areas carried out, clientele, marketing and use of information technology.

4.2.2 The Research Issues

The following research issues inform the research question:

RI 1 What is the prevalence and nature of connectedness to the profession by legal practices in RRR Queensland?

RI 2 What is the prevalence and nature of connectedness to the community by legal practices in RRR Queensland?

RI 3 What is the prevalence and nature of business (legal practice areas) carried out by legal practices in RRR Queensland?

RI 4 What is the prevalence and nature of business planning carried out by legal practices in RRR Queensland?

RI 5 What is the prevalence and nature of recruitment and retention used by legal practices in RRR Queensland?

RI 6 What is the prevalence and nature of marketing carried out by legal practices in RRR Queensland?

RI 7 What is the prevalence and nature of the use of information technology by legal practices in RRR Queensland?

4.3 Research Design

The research design into sustainable legal practice in RRR Queensland was developed to gain exploratory data about the internal management practices of such RRR law practices. Research design is relevant in terms of how the research idea can be transformed into a research project capable of being carried out in practice.⁵³³ The research design in this study draws on the phenomenological paradigm in the form of carrying out semi-structured interviews. The phenomenological paradigm is concerned with understanding behaviour within the context of the legal practice from the participant's own perspective. However, the research approach in this study differs in some aspects from a pure phenomenological approach where the unit of analysis would generally have been the individual and in-depth narratively oriented interviews would have been conducted. Instead, this study draws from the experience of a selection of principals/directors/sole practitioners within 30 legal practices. Therefore, even though the study employs predominantly a qualitative interpretive methodology (which enables a more in-depth understanding of sustainability in RRR Queensland law practices), than a quantitative approach,⁵³⁴ the analysis of the interview data also draws on a positivist approach in that 30 interviews also allowed for the quantification of most responses in the form of frequencies.⁵³⁵

Due to the lack of research on sustainable Queensland RRR legal practice within the context of the business management practices carried out, the research was conducted utilising an emergent framework. Even though an in-depth literature review has been conducted to inform the research question, an emergent approach enables an analysis and understanding of the business management practices carried out from the perspective of the interviewees, rather than refocusing their perceptions through the point of view of an existing theory or framework.⁵³⁶ The approach in this study is not meant to be a depiction of theory building from case study research,⁵³⁷ instead, the objective of this study was to develop a thematic analysis rather than to develop substantive theory.

The current research employed a mix of exploratory and descriptive research design. The research is exploratory because there is not a proliferation of subject material that exists in the research area of sustainable RRR law practices,⁵³⁸ and it is descriptive in nature

⁵³³ Lisa Given, *Qualitative Research Methods* (Sage, 2008) 761.

⁵³⁴ Jay A. Congar, 'Qualitative research as the cornerstone methodology for understanding leadership' (1998) *The Leadership Quarterly*.

⁵³⁵ Positivism, within the context of quantitative research, is a philosophy of science based on the view that information derived from logical and mathematical treatments and reports of sensory experience is the exclusive source of all authoritative knowledge. Refer to John J. Macionis and Linda M. Gerber, *Sociology* (Pearson Canada, 7th ed, 2010). Further, positivism asserts that there is valid knowledge only in such scientific knowledge. Refer to Jorge Larrain, *The Concept of Ideology* (Hutchinson, London, 1979) 197.

⁵³⁶ Ellen Baker, Melanie Kan and Stephen T.T. Teo, 'Developing a collaborative network organization: leadership challenges at multiple levels' (2011) 24(6) *Journal of Organizational Change Management* 853.

⁵³⁷ Kathleen M. Eisenhardt, 'Building theories from case study research' (1989) 14(4) *Academy of management review* 532.

⁵³⁸ Given, above n 533. S.B. Neuman, and J. Dwyer, 'Missing in action: Vocabulary instruction in pre-K' (2009) 62(5) *The Reading Teacher* 384.

because there has been a paucity of research in relation to the topic examined in this research.⁵³⁹

4.4 Research Methodology

The research methodology of this study comprised 30 mini-case studies which were explored through semi-structured interview methodology. A case study has been defined as a research methodology that involves the detailed and intensive analysis of a single or multiple cases.⁵⁴⁰ According to the definition by Sekaran and Bougie,⁵⁴¹ case studies

... involve in-depth, contextual analysis of similar situations in other organisations, where the nature and definition of the problem happened to be the same as experienced in the current situation.

Usually, qualitative research uses a case-oriented approach where interviews are applied and where the research focuses on a specific person or an organisation in a specific situation.⁵⁴² Despite the lack of consensus on the characteristics of the case study approach, case studies have increasingly been recognised as one of the most used approaches in qualitative inquiry.⁵⁴³ Therefore, the approach followed in this research was a multiple-case research design in which each mini-case study was considered as an independent experiment⁵⁴⁴ in generating the necessary information for the purposes of analysis. The 30 mini-case studies formed the context of analysis for exploring sustainable Queensland RRR legal practice in terms of the business management practices carried out. The in-depth semi-structured interview program was conducted with 30 legal practitioners who were responsible (solely or in partnership) for the business management practices.

The use of interviews based on 30 cases was consistent with comparable studies of the legal profession. For example, Levin gained useful and reliable data concerning ethical legal practice by New York lawyers, by conducting 41 structured interviews which lasted from ninety minutes to two hours.⁵⁴⁵ Furthermore, a combination of quantitative and qualitative methodology was used in this study. The main advantage of using a combination of methodologies or methodological triangulation is that it enhances the validity of the study since the data was collected and analysed using different methods.⁵⁴⁶

⁵³⁹ Refer to Chapter 1 for a discussion on the lack of research in this area, and the justification for the research.

⁵⁴⁰ Alan Bryman, 'Why do researchers integrate/combine/mesh/blend/mix/merge/fuse quantitative and qualitative research?' (2008) *Advances in mixed methods research* 87.

⁵⁴¹ U. Sekaran and R. Bougie, *Research methods for business: A skill building approach* (Wiley, 2010) 30.

⁵⁴² Kenneth A. Kavale and Lucinda S. Spaulding, 'Is response to intervention good policy for specific learning disability?' (2008) 23(4) *Learning Disabilities Research & Practice* 169, and Sekaran and Bougie, *ibid.*

⁵⁴³ Norman K. Denzin and Yvonna S. Lincoln (eds), *Strategies of qualitative inquiry, Volume 2* (Sage, 2003), and Sekaran and Bougie, above n 541.

⁵⁴⁴ Robert Yin, *Case Study Research: Design and Methods* (Sage Publications, 4th ed, 2009).

⁵⁴⁵ Leslie C. Levin, 'The ethical world of solo and small law firm practitioners' (2004-2005) 41 *Houston Law Review* 309.

⁵⁴⁶ Jill Hussey and Roger Hussey, *Business Research: A practical guide for undergraduate and postgraduate students* (Macmillan Press Ltd, London, 1997).

The quantitative data in this study comprised semi-structured interview questions that related to constructs pertaining to specific business management practices with regard to their prevalence. These variables relate to the interviewees' connection to the legal profession and to the community, business planning, areas of legal practice, recruitment and retention methods, marketing, and use of information technology.

The qualitative component of the interviews comprised the deeper exploration of these variables through in-depth follow up questioning with the view to building up ideas and accumulating material from multiple mini case studies.⁵⁴⁷ The rest of this section details various aspects of the conduct of mini-case studies as an in-depth interview program.

4.4.1 Unit of Analysis and Sampling

In order to investigate the prevalence and nature involved in business management practices including strategic management practices, recruitment and retention practices, marketing and use of information technology, this research draws from the experience of a selection of Queensland RRR legal practitioners who are either sole practitioners, partners or directors within the law practice.

Traditional quantitative research usually calculates sample size using a mathematical formula to determine the variation in the population.⁵⁴⁸ However, in qualitative research there is much debate about how large the sample should be. The general consensus among researchers is that there is no specific number of cases that should be used.⁵⁴⁹ For example, Neuman⁵⁵⁰ believes that 'one principle of sample size is that the smaller the population the bigger the sample ratio has to be for accurate sampling'. While Miles and Huberman⁵⁵¹ and Patton⁵⁵² argue that it is acceptable for qualitative research to rely on small sample sizes when the aim is to study the topic of inquiry in depth and detail. However, Eisenhardt⁵⁵³ commented that any less than four cases would not be acceptable as it would not yield enough information. Yin⁵⁵⁴ suggested that a sample of eight to 10 interviews are ample for qualitative research, whereas Ellram⁵⁵⁵ and Hedges⁵⁵⁶ argue that 12 to 15 cases are suitable for gathering information. Gummesson⁵⁵⁷ suggests that a

⁵⁴⁷ P. Ghauri, K. Grunhaug and I. Kristianslund, 'Qualitative Methods: Research Methods in Business Studies: a Practical Guide' in *Human Resource Practice Selected Readings*, Distance Education Centre, USQ, Toowoomba, Queensland.

⁵⁴⁸ Kathleen M.T. Collins and Alicia O'Cathain. 'Introduction: Ten points about mixed methods research to be considered by the novice researcher' (2009) 3(1) *International Journal of Multiple Research Approaches* 2.

⁵⁴⁹ Michael Quinn Patton, 'Two Decades of Developments in Qualitative Inquiry A Personal, Experiential Perspective' (2002) 1(3) *Qualitative Social Work* 261; Michael Quinn Patton *Utilization-focused evaluation* (Sage, 2008); and William G. Zikmund, *Business Research Methods* (7th ed, 2003).

⁵⁵⁰ Neuman, above n 538.

⁵⁵¹ Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis* (Sage Publications, 2nd ed, 1994).

⁵⁵² Michael Quinn Patton, 'Evaluation, knowledge management, best practices, and high quality lessons learned' (2001) 22(3) *The American Journal of Evaluation* 329.

⁵⁵³ Eisenhardt, above n 537.

⁵⁵⁴ Yin, above n 544.

⁵⁵⁵ Lisa M. Ellram, 'The use of the case study method in logistics research' (1996) *Journal of Business Logistics*.

⁵⁵⁶ Larry V. Hedges and Ingram Olkin, *Statistical methods for meta-analysis* (1985) 350.

⁵⁵⁷ Evert Gummesson, *Qualitative methods in management research* (Sage Publications, 2000).

researcher should only stop accumulating cases at the point where no new information is being presented or recorded. Given⁵⁵⁸ argues that 15 to 20 interviews are appropriate for saturation of themes during analysis, but it was acknowledged that sample size could vary depending on the content and context under study. Baum⁵⁵⁹ suggests criteria of 12 to 20 respondents to achieve maximum variation and understanding. According to Ragin,⁵⁶⁰ a broader range of 10 to 60 cases would be appropriate in case study research. The purpose of the research and resources available should be considered in establishing the number of cases.⁵⁶¹

It is clear from the variation in academic opinion noted above, that there is no clear rule that can be applied when it comes to the sample size. Nevertheless, considering the foregoing discussion, it could be argued that the selection of 30 mini-cases is more than adequate.

4.4.2 Methods for Contacting RRR Legal Practitioners

The predominant method of seeking participation was through direct contact with legal practitioners (primarily through their support staff). This method was chosen to maximise the response rate on participation. Three sources were useful in obtaining legal practitioners for the structured interviews: Source 1: data from the Legal Services Commissioner (the chief source of contact), Source 2: response to publicity through the Queensland Law Society email bulletin: *Update*, and Source 3: recommendations from other legal practitioners.

Based on data from the Queensland Legal Services Commissioner (2008), there were 1363 law practices in Queensland. From this data and based on the adapted ARIA index, there were 299 RRR law practices in Queensland (or 21.9 percent of law practices in Queensland can be termed ‘RRR’). One hundred and ninety-two of these RRR legal practices were contacted through the research (64 percent of the RRR law practices). Of the 192 RRR law practices contacted, 37 RRR legal practitioners responded (or 19 percent responded).

A number of the 37 respondents were ineligible on the grounds of the law practice being located only in an urban location (two respondents), the respondent was not the principal or a director of the law practice (four respondents), or the respondent withdrew (one respondent).

⁵⁵⁸ Given, above n 533.

⁵⁵⁹ Joel A.C. Baum, Tony Calabrese and Brian S. Silverman, ‘Don't go it alone: Alliance network composition and start-ups performance in Canadian biotechnology’ (2000) 21(3) *Strategic Management Journal* 267.

⁵⁶⁰ Charles C. Ragin, *The comparative method: Moving beyond qualitative and quantitative strategies* (University of California Press, 1989).

⁵⁶¹ Michael Quinn Patton, *Qualitative evaluation and research methods* (Sage Publications, inc, 1990); Bryman, above n 540; and Peter Swanborn, *Case study research: What, why and how?* (Sage, 2010). Refer also to Lisa R. Pruitt, ‘No black names on the letterhead? Efficient discrimination and the South African legal profession’ (2002) 23 *Michigan Journal of International Law* 545, for a further discussion on the adequacy of the number of interviews and the combination of qualitative and qualitative methods in studying the legal profession.

Source 1 – Data From the Legal Services Commissioner

The chief source of information on Queensland RRR legal practitioners relied upon was provided by the Legal Services Commissioner (LSC) in 2008 (and later updated in 2012). This provided information on every law practice that was registered to practise in Queensland. This information provided the name of the law practice, the street address, the location, the area code, the type of law practice, the number of principals, the number of employed solicitors, the number of consultant solicitors, and the total number of practising certificates held in the law practice.

Responses from RRR legal practitioners based on geographical location

Using this data, the details of law practices from RRR locations were drawn out. To determine whether a law practice was RRR, the adapted ARIA Index/ABS Geographical Statistical Regions criteria was used – the Access to Legal Services Index. Refer to Table 1: Responses from RRR Legal Practitioners Based on Geographical Location (below).

Table 4.1: Responses from RRR Legal Practitioners Based on Geographical Location

Location	Number of calls made	Source of contact information (LSC/Internet – 2008)	Number of respondents
Airlie Beach	2	1	1
Allora	1	0	
Atherton	3	4	1
Ayr	1	2	
Barcaldine		0	
Biloela	3	3	1
Blackall	2	2	1
Brisbane	0		2
Bundaberg	11	9	1
Cairns	12	44	2
Charleville	4	1	
Charters Towers	1	4	1
Childers	1	1	
Chinchilla	2	1	2
Clifton	1	1	
Cooktown	1	4	
Dalby	4	4	2
Emerald	5	4	
Gatton	3	4	1
Giru	1	1	1
Gladstone	5	12	
Goondiwindi	2	4	1

Location	Number of calls made	Source of contact information (LSC/Internet – 2008)	Number of respondents
Gympie	8	24	1
Hervey Bay	5	11	
Ingham	3	7	
Innisfail	3	4	
Kingaroy	6	7	3
Laidley	4	3	
Longreach	1	2	1
Mackay	6	12	
Malanda	1	3	
Mareeba	3	4	1
Maryborough	5	7	
Mossman	1	0	
Mt Isa	5	5	1
Oakey	3	0	
Pittsworth	1	0	1
Port Douglas	3	3	1
Proserpine	3	2	1
Rockhampton	11	15	1
Roma	3	8	1
Rosewood	1	1	
Stanthorpe	3	2	
Toowoomba	5	35	4
Torquay (and surrounds)	5	6	
Townsville	20	24	3
Warwick	10	4	
Yeppoon	7	7	1
TOTAL	192	299	37

The LSC data was then used to search on the Internet for a telephone contact number for the law practice. Information relating to the presence/absence of a website was included as part of the information relating to each law practice. The information was drawn from the LSC data in a ‘staged’ way to accommodate travelling to relevant locations. The stages included: Group 1: Dalby. This was done as an early and close location. Group 2: Cairns, Port Douglas, Atherton Tablelands; Townsville; Charters Towers; Mount Isa; Group 3: Mackay, Proserpine, Airlie Beach; Group 4: Bundaberg, Hervey Bay, Childers; Group 5: Emerald, Barcaldine; Group 6: Chinchilla, Kingaroy, Roma.

Each law practice was first contacted by telephone and then email. (Refer to *Appendix Three – Proforma Letter to Legal Practitioners*). Usually, the telephone call was taken by reception. By referring to an adaptation of the content of the *Proforma Letter*, an email address was obtained to forward the invitation to participate in the research. Information obtained from that telephone call was also recorded in the table of all legal practitioners. For example, information relating to name of receptionist, email address, and title of the person to whom the email was to be sent. In some instances the legal practitioner answered the telephone and a conversation was carried out to the effect of either interest in the research or no interest in the research. Again, the discussion was noted.

After the initial telephone contact with (usually) the support staff, an email was sent to the law practice outlining the researcher, the research objectives, what was involved in the research, benefits for involvement, and ethical considerations of confidentiality, privacy and anonymity. (See *Appendix Three – Proforma Letter to Legal Practitioner*). Approximate timeframes were given to allow for scheduling the interviews at a time when the researcher would be available in the location of the law practice.

Source 2 – Queensland Law Society, Update

The Queensland Law Society forwards a monthly email bulletin to all members, *Update*. This email details forthcoming events. Mr John Teerds (editor, *Update*) ran a small item on the research. Three legal practitioners responded – two of whom were based in urban locations, and so were outside the scope of the research. Interviews were conducted with the principals of these law practices due to the interest expressed in RRR practice but these interviews could not be used for this research.

Source 3 – Recommendations from Other Practitioners

In some instances, legal practitioners who participated in the research made recommendations that other practitioners be approached to be involved. In a number of instances, the recommendation was a law practice that had already been approached. In some instances – that law practice had already agreed to participate (from their own volition). In other instances the recommendation was able to be included in the initial contact to the law practice. Three of the participants responded to these requests. Five legal practitioners who were recommended to participate elected not to participate.

Source 4 – Workshop for RRR Legal Practitioners

In October 2009 a workshop for RRR legal practitioners was held at the University of Southern Queensland. This workshop was used to raise awareness of the research. Approximately 30 legal practitioners from throughout South-west Queensland attended. Three of the resulting participants attended and registered interest in the research. Follow-up through email resulted in their participation.

4.4.3 Negative Response to Participate

From the 192 telephone calls made to legal practices there is some limited data on ‘reasons why’ some legal practitioners choose not to participate.

Nineteen telephone calls were not possible because the telephone was either disconnected, or repeatedly rang out. Eleven of the telephone calls were received directly by the principal/director of the law practice with the immediate response that they did not want to participate for the following reasons: two were not interested (1%), two were retiring (1%);

four were too busy due to no other staff (2%), one, the practice was too small (0.5%), one, the practice was home-based, and the research was not relevant (0.5%), one, the practitioner had retired that week (0.5%). In one case, the practitioner had recently died. In all instances of the negative response to participate, the practitioner was a sole practitioner.

Table 4.2: Response Rates from Initial Contact

TABLE SHOWING RESULTS FROM INITIAL CONTACT	
% from Source 1 (LSC Data)	30 (82%)
% from Source 2 (QLS, Update)	2 (5%)
% from Source 3 (Recommendation)	2 (5%)
% from Source 4 (Workshop)	3 (8%)
% of legal practitioners which whom contact not possible due to telephone disconnected	19 (9.9%)
% of legal practitioners expressed they were not interested in participating (retiring; not suitable for them; no time; dead)	12 (6.3%)

4.5 Data Collection – Interview Methodology

4.5.1 The Interview Protocol Development

As mentioned earlier the objective of the semi-structured interviews was to collect both quantitative and qualitative data. Therefore, the interview protocol (see *Appendix Two – Semi-Structured Interview Protocol*) consisted of a combination of limited choice responses (closed questions) and open-ended questions which allowed the interviewees to expand and provide an in-depth rationale for their responses.⁵⁶² It also provided rich data to account for individual differences and variations. This strengthens the quality of the data collected.⁵⁶³

The semi-structured interview protocol covered several themes and associated questions identified by Landon. However, support for these themes and questions was also based upon the literature review that argues the relevance of these themes for sustainability outcomes – including longevity, profitability and growth of businesses (see *Appendix One – Semi-structured Interview Protocol Matrix*).⁵⁶⁴

Landon identified the following themes: strategic planning practices, motivational practices, mentoring and coaching practices, recruitment practices, selection practices, information technology practices, marketing practices, legal practice performance, and partnership relations.⁵⁶⁵

⁵⁶² Given, above n 533; J.J. Shaughnessy and E.B. Zechmeister, *Research methods in psychology* (New York, McGraw-Hill, 1994).

⁵⁶³ Kavale, above n 542; and Patton 2008

⁵⁶⁴ Yin, above n 544, 58. Yin states that the number of cases deemed necessary or sufficient for the study is not relevant because it is not applying sampling logic. The number of case studies undertaken is a matter of discretion that relates to replications and certainty.

⁵⁶⁵ Donald D. Landon, *Country lawyers: The impact of context on professional practice* (Praeger, 1990).

As part of the research design, the measurement constructs were mind-mapped using the following aspects: the elements of sustainability, factors within the control of the RRR legal practitioner, factors external to the legal practitioner, and issues of adversity to the legal practitioner.

The result of the mind-map exercise was represented as a diagram included below in Diagram 1: Mind Mapping of the measurement constructs. Mind maps are useful

...because they can represent ideas that are linked around a central theme. There are also very few rules to creating mind maps and it has been said that the main rule is simply to bring your brain and imagination.⁵⁶⁶ It is this lack of rules that makes creating mind maps an easy and natural method of organizing and visualizing complex data, such as research methods, and the interactions among the data.⁵⁶⁷

⁵⁶⁶ T. Buzan and S. Abbott, *The ultimate of mind maps: unlock your creativity, boost your memory, change your life* (Thorsons, London, 2005).

⁵⁶⁷ Michael Crowe and Lorraine Sheppard, 'Mind mapping research methods' (2012) 46(5) *Quality and Quantity* 1493, 1493.

REGIONAL RURAL QUEENSLAND

(External to the practice)

- ARIA Index/PIFU/ALS
 - Regional
 - Rural
 - Remote
- The ‘containing community’ (Landon)
- ‘Embeddedness’ (Franklin and Lee)
 - Values – loyalty; expectations
- Government policies
- Government infrastructure

LAW PRACTICES

(External to the practice)

- The profession
- *Legal Profession Act*
 - Establishment of types of practices
 - Regulation of the profession
- Queensland Law Society
- Legal Services Commission
- Lexon

THE LAWYER

(Fixed features/factors)

- Background
 - Parents; birthplace; gender
- Qualifications

SUSTAINABLE

(Within the control of the practice)

- Longevity/Continuity
 1. Of the practice
 2. Of the practitioners within the practice
 3. Type of practice established
 4. Use of IT (innovation)
 5. Entrepreneurial characteristics
 6. Business planning; *systems planning*
 7. Succession planning

- Profit
 1. Billing; model for billing
 2. Leverage/gearing of staff
- Controlled growth
 1. Practice performance
 2. Retention and progression of staff
 3. Specialisation of business
 4. Selection of clients
- Adaptiveness
 1. Business planning: systems planning and response to external adversity
 2. Areas of legal practice
 3. Recruitment and retention of staff
 4. Use of information technology
- Renewable resources
- (financial; clients; intellectual; social capital)
 1. Recruitment of staff
 2. Marketing – branding/ reputation
 3. Continuing education
 4. Knowledge sharing
 5. Client base
 6. Alliances (sources of knowledge and clients)
- Environment within the law practice
 1. Connection to the community
 2. Connection to the profession
 3. Dispute resolution processes
 4. Partner relations
 5. Values (trust; respect; consensus)
 6. Approach to staff (adaptation)

Diagram1: Mind Mapping of the Research Design

In order to collect quantitative data with regard to the prevalence of business planning, recruitment and retention practices, marketing and use of information technology, interviewees were asked to respond to questions using a number of scales. The determination of which particular scale was used is related to the type and kind of question being asked. Three types of scales were used to collect this data. Appendix One provides a full description of the interview protocol, the relationship of individual questions to the literature, and the selection of scaling used in the form of a matrix.

Thurstone Scaling was used to assist with determining the attitudes of participants to a number of circumstances, by asking them to choose from a selection of statements that make up the scale.⁵⁶⁸ Guttman Scaling was used to provide a range of responses so that the participant could record a single selection on an ordered scale. With the Guttman scale, the selections of responses were arranged so that the participant who agrees with a particular item also agrees with items of lower rank-order.⁵⁶⁹ Likert Scaling was used to

⁵⁶⁸ Robert DeVellis, *Scale Development Theory & Application* (Sage Publications, 2nd ed, 2003) 71.

⁵⁶⁹ Ibid 72.

provide participants with a scale that specifies their level of agreement or disagreement on a symmetric agree-disagree scale relating to a series of statements. In this way, the scale is able to capture a level of intensity towards the particular statements.⁵⁷⁰

4.5.2 Interviewee Selection Process

Pilot

In order to ensure that the interview protocol used in this research was considered to be valid and reliable,⁵⁷¹ a pilot case study and feedback from a selected group of RRR legal practices was undertaken. This pilot was conducted during late 2008. Five legal practitioners were interviewed using the draft interview protocol. The participants were selected on the following criteria: RRR location representation; sole practitioner, partnership and incorporated legal practice representation; and fewer than five years, and more than five years in practice. The Pilot Study assisted with developing both the substantive questions and the methodology.⁵⁷²

The pre-interviews with a selected group of RRR legal practices, was used to modify and improve the interview protocol. This was then followed by the final semi-structured in-depth interviews in 30 RRR law practices, in which the principals were invited to (and agreed to) participate. Following the completion of the 30 semi-structured interviews, further changes to the semi-structured interview could have been made, for example, the inclusion of definitions of some terms with which participants were not familiar.

Selection of Interviewees from Regional, Rural and Remote Locations

The cases (RRR law practices) included in the interview program were chosen on the basis of geographical location. Geographical location relied upon using an adaptation of the Accessibility/Remoteness Index of Australia ('ARIA'). The adaptation of that Index, the Access to Legal Services Index, is discussed below. This ensured data collection from across 'regional', 'rural' and 'remote' locations in Queensland. Principals from each of the areas were selected: The remoteness classes of Highly Accessible and Very Remote were excluded on the following basis: localities with high accessibility to services are too similar to law practices carried out in metropolitan locations, and localities that are classified as being Very Remote tend to be supported by Aboriginal or community legal services that are funded by external sources, and therefore do not present as a business model.

Following the results from the Pilot Survey, a number of issues were raised concerning the use of the ARIA Index in terms of its accuracy in being a descriptor of 'regional', 'rural' and 'remote'. Therefore, a new index was developed. The development of that index is noted in some detail below. This detail is necessary in order to provide the justification for a new index relating to 'access to legal services', however, it also provides greater accuracy in terms of the methodology of the research.

Principals that satisfied the criteria detailed above were personally contacted in order to form the two stratified groups. Scheduled interviews were arranged to be conducted either in person or by telephone. The use of 30 interviews assisted with countering criticisms that the methodology would not be sufficiently robust.⁵⁷³

⁵⁷⁰ Ibid 78.

⁵⁷¹ William G. Zikmund, *Business Research Methods* (7th ed, 2003).

⁵⁷² Yin, above n 544, 93.

⁵⁷³ Ibid 53.

4.5.3 Development of a New Index to Describe ‘Regional’, ‘Rural’ and ‘Remote’ Access to Legal Services

‘Regional’, ‘Rural’ and ‘Remote’

The methodology required participation from the three categories of location – regional; rural and remote. The phrase ‘regional, rural and remote’ (‘RRR’) was used throughout the thesis. The definition of RRR was based on either Landon’s numerical definition; or the adapted ARIA definition.

The literature review considered qualitative definitions of the phrase based on Landon.⁵⁷⁴ The ‘rural setting’ was considered in terms of ‘a set of assumptions about rural, small-town life that distinguish it from urban, metropolitan experience’⁵⁷⁵ and the listed characteristics about the rural environment.⁵⁷⁶ Landon considered ‘rural’ and ‘urban’ as being points on a continuum.⁵⁷⁷ He also relied upon the comments from lawyers who had worked in urban practice and suggested that the difference lay in the ‘content’ of the practice rather than in the manner of their practice.⁵⁷⁸

It is important to define ‘regional, rural and remote’ for a number of reasons that include the following. Location has an impact of government policies on inequalities between the urban and the bush.⁵⁷⁹ Successful governments have implemented contrasting policies in terms of ‘regional, rural and remote’, and urban, that have impacted dramatically.⁵⁸⁰ Although (as part of the delimitation), this study focuses only on the decisions and policies within the control or power of a legal practitioner. There are, however, some overwhelming external factors that need to be identified as potentially having an impact on commercial sustainability.

Comparison of Alternative Methods for Defining ‘Regional’, ‘Rural’ and ‘Remote’ The Accessibility/Remoteness Index of Australia

The Accessibility/Remoteness Index of Australia (‘ARIA’) is an index of the accessibility of places to service centre. ‘Geographical areas are given a score (continuous between zero to 15) based on the road distance to service towns of different sizes. ... The index scores can be classified into various categories, including ‘remoteness areas’ that are classified as being within one of the following: major cities, inner regional, outer regional, remote, and very remote. Alternatively, ‘remoteness classes’ are classified as being: ‘highly accessible’, ‘accessible’, ‘moderately accessible’, ‘remote’, or ‘very remote’.⁵⁸¹ The classification into each of the categories relies upon: levels of access to a wide range of goods and services, and levels of opportunities for social interaction.⁵⁸²

⁵⁷⁴ Donald D. Landon, ‘Clients, Colleagues, and Community: The shaping of zealous advocacy in country law practice’ (1985) 4 *American Bar Foundation Research Journal* 81, 84 – 84 discussing the rural setting.

⁵⁷⁵ Ibid 84.

⁵⁷⁶ Ibid 85.

⁵⁷⁷ Ibid 85.

⁵⁷⁸ Ibid 85.

⁵⁷⁹ Gabrielle Meagher, ‘Social sustainability in Australia’ (2000) 96 *Canberra Bulletin of Public Administration* 63, 74.

⁵⁸⁰ Brian Dollery, ‘A note on Australian local government and regional economic and social inequalities’ (2000) 35(2) *Australian Journal of Social Issues* 159; and Meagher (2000), above n 579.

⁵⁸¹ <http://www.gisca.adelaide.edu.au> viewed on 31 August 2010.

⁵⁸² <http://www.gisca.adelaide.edu.au> viewed on 31 August 2010.

In its application to this research, ARIA is able to assist with classifying locations within Queensland in terms of differentiating between ‘metropolitan’, ‘urban’, ‘regional’, ‘rural’ and ‘remote’. There are, however, a number of anomalies in providing the classification. For example, Pittsworth is classified as being ‘highly accessible’, while Townsville is classified as being only ‘accessible’. Pittsworth has a population of 2500, a Magistrates Court, fewer than five solicitors, and is a distance of 169 kilometres from Brisbane. Townsville has a population of 182,000, a Supreme Court, District Court and Magistrates Court, and has a significant population of solicitors and barristers (over 100). It is a major city. It is 1334 kilometres from Brisbane, and it has a commercial airport.

In terms of analysing the sustainability of regional and rural legal practice, the ARIA Index is unsatisfactory for providing a classification method of what is ‘regional’ and what is ‘remote’.

The Australian Standard Geographical Classification

The Australian Standard Geographical Classification (ASGC) is a hierarchical geographical classification, defined by the Australian Bureau of Statistics (ABS), which is used in the collection and dissemination of official statistics. The ASGC provides a common framework of statistical geography and thereby enables the production of statistics which are comparable and can be spatially integrated.

In practice, statistical units such as households and businesses are first classified or assigned to a geographical area in one of the seven ASGC structures. Data collected from these statistical units are then compiled into ASGC-defined geographical aggregations which, subject to confidentiality restrictions, are then available for publication.⁵⁸³

Queensland Law Society – District Law Associations

The Queensland Law Society accesses the regions of Queensland through twenty district law associations (‘DLAs’), including: Bundaberg, Caboolture, Central Queensland, Downs and South-West, Far North Queensland, Fraser Coast, Gladstone, Gympie, Mackay, North Queensland, North West, South Burnett, Southern District, Sunshine Coast, Townsville, Gold Coast, Ipswich and District, Logan City/Beenleigh, North Brisbane, and Redcliffe Pine Rivers. The latter five DLAs are within a 100 kilometre radius of Brisbane, leaving the remaining 15 to provide ‘regional’ (or non-metropolitan) representation to the Queensland Law Society.

The DLAs are constituted by volunteer members with little capacity to provide consistent and meaningful data on the areas they represent. Membership of DLAs is voluntary and therefore would offer little reliable data in terms of spread of practitioner membership. Therefore, the use of DLAs as a method of specifying statistical divisions holds very little benefit.

Local Government Areas

The Office of Economics and Statistical Research (within Treasury Department of Queensland Government) uses a range of statistical methods for research including local government areas in Queensland. ‘The Queensland Regional Profiles are informative statistical reports on a range of Queensland community types (e.g. local government

⁵⁸³ <http://www.oesr.qld.gov.au/about-statistics/statistical-standards/national/asgc.php>, viewed on 31 August 2010.

areas). These reports are generated automatically using the latest demographic, social and economic data available. Community regions can be selected individually, or easily combined to create customised regions or catchments for profiling. The smallest geographical region available for selection is a Statistical Local Area.⁵⁸⁴

Local government areas' are defined under the *Local Government Act 2009* (Qld). The Explanatory Notes of the Local Government Reform Implementation Bill 2007 stated that: 'on 19 April 2007, Parliament determined there was a need for structural reform of local government to create stronger councils with greater capacity to deliver services and infrastructure to Queensland communities. The Local Government Reform Commission (the Commission) was established to undertake a State-wide review (excluding Brisbane City Council) to address these features of local government in Queensland. The Commission was directed to review Queensland local government with a view to facilitating improved governance and service delivery to Queensland communities over and above current structural arrangements, and maximising existing regional links to enhance the social, environmental and economic future of Queensland communities.

The Objectives of the Bill provided that:

The primary objective of the Bill is to amend the Local Government Act 1993 (LGA) to implement a restructure of Queensland local governments that improves the sustainability of, and service delivery to, all Queensland communities. It aims to establish local governments that: facilitate optimum service delivery to Queensland communities, effectively contribute and participate in Queensland's regional economies, better manage economic, environmental and social planning consistent with regional communities of interest, and effectively partner with other levels of government to ensure sustainable and viable communities.

Possibly, one of the benefits of using 'local government areas' is that these areas correspond to the economic and statistical research carried out by the Queensland Treasury Department, including research on education, populations, communication, industry and development. This statistical research is localised to an area, and is relevant and important for a number of reasons. First, it provides the differentiation and diversity between regional and rural locations, and illustrates that the issues facing regional Australia (and Queensland) cannot be generalised from one regional location to another.⁵⁸⁵ Secondly, the statistical research on the local government areas also provides an initial exposure of some of the regional economic and social inequalities in terms of access to services and a cursory view of the differences between local government areas.⁵⁸⁶

Finally, the focus on the local government area provides some insight into the 'containing community' in which the legal practitioner must practice.⁵⁸⁷ The local government areas

⁵⁸⁴ <http://www.oesr.qld.gov.au/about-statistics/statistical-standards/national/asgc.php>, viewed on 31 August 2010.

⁵⁸⁵ Jeff Giddings, Barbara Hook, Jennifer Nielsen, 'Legal services in rural communities: issues for clients and lawyers' (2001) 26(2) *Alternative Law Journal* 57 and Kaz Eaton, 'One size does not fit all: Legal needs of women in regional, rural and remote Australia' (2001) 26(2) *Alternative Law Journal* 64.

⁵⁸⁶ Dollery (2000), above n 580.

⁵⁸⁷ Donald D. Landon, 'Lawyers and localities: The interaction of community context and professionalism' (1982) 2 *American Bar Foundation Research Journal* 459.

are more localised (97 in number) than the Australian Standard Geographical Divisions (only 13 in number). In this way the data and research with respect to each local government area are more finely tuned to the community (or context) in which the legal practitioner practises. However, local government areas do not include any reference to access to legal services or court infrastructure.

Developing an Index for Accessibility for Legal Services in RRR Queensland

Justification for Developing an Adaptation of the ARIA

The ARIA Index was originally used as a method of assisting with categorising the location of legal practitioners into ‘remote’, ‘rural’, and ‘regional’. However, there were a number of anomalies associated with the index that made the creation of new index necessary. The research found a number of anomalies with using the ARIA Index including the following. Locations (such as Dalby) where residents and practitioners ‘felt’ they were in a rural location would be categorised as being in a location of ‘high accessibility’ to services and infrastructure. This would place Dalby in the same position as Brisbane in terms of access to services and infrastructure. (Refer to the earlier discussion on this above.) Also, the ARIA Index assumes that most people have access to transport so that they can access services and infrastructure in a location of a certain proximity. The assumption is patently false for many RRR areas do not have any, or adequate, public transport. Thirdly, the ARIA Index does not take into account access to the types of services and infrastructure that is relevant to a legal practitioner. For example, it does not take into account access to the Queensland court system. Neither does it take into account access to a ‘legal fraternity’ that will support a legal practitioner in terms of ongoing professional education, collegiality and social interaction. The ARIA Index does not take into account that a legal practitioner needs access to the profession to provide specialist legal services, including specialist practice areas (eg. intellectual property law), and specialist functions (eg. advocacy services from a barrister).

A number of other indices were considered including the Rural, Remote and Metropolitan Areas classification, the Australian Standard Geographical Classification, the local government areas from the *Local Government Act 2009* (Qld), and the categorisation of the district law associations used by the Queensland Law Society. None of these methods of classification appropriately reflected either the access to legal services, or the sense of ‘rurality’ experienced by the resident population.

One of the key variables of this research is the location of the law practice, and how that impacts on its sustainability. The following index, the Access to Legal Services Index (ALS Index) has been created to assist with that categorisation.

Basis of Access Legal Services Index (ALS index)

The ALS Index is based on the following criteria: population, access to the Queensland court system, access to the Queensland Law Society district law associations, and access to legal practitioners (both solicitors and barristers).

Population

The population of each location was divided into three categories and each category was assigned a range of points: fewer than 10,000 was one point, 10,000 to 100,000 was two points, and more than 100,000 was three points.

Access to the Queensland court system

The access to the Queensland court system was based on the presence of courts in each location. This included an established court, which was usually the Magistrates Court, and access to the higher courts through the circuit system. Therefore, presence of a Magistrate's Court was one point, presence/access to a district court was one point, and presence/access to a supreme court was also one point.

Access to a district law association

Access to a district law association at the location was one point. The presence of a DLA at the location is an indicator of a community of legal practitioners who are a source of continuing professional legal education, social interaction, and professional support. The requirement for the point was that the DLA had to have the structure of the association at the actual location; it was not sufficient for the DLA to be at another location.

Access to legal practitioners

Access to legal practitioners included both solicitors and barristers. This is an indication of access to the profession acting more widely than solicitors. The access a legal practitioner has to other practitioners is important for a range of reasons including: accessing specialist legal advice and legal functions (including advocacy functions provided by barristers), access to fellow legal practitioners for forming partnerships and other governance structures, and for collegial support.

Access was divided into three categories: fewer than five solicitors (acting as either sole practitioners or in a legal practice)/barristers was one point, five to 10 solicitors/barristers was two points, and more than 10 solicitors/barristers was three points.

Categorisation of Location

The categories of location were divided into remote, rural and regional. It was calculated that, from a qualitative view, a location would be remote if it had a small population, with minimal access to legal practitioners and without access to any court system. This would result in a quantitative score of two. Remote was then defined to be a score from one to three. Similarly, a rural location, qualitatively, would be a location with a small population and some access to the lowest courts. This would convert to a score from four to six. Finally, a location that had a large population, with full access to the court system and access to the camaraderie of a DLA would convert to a score of at least eight. Regional was defined then from being from seven to 10.

Table 4.3: Access to Legal Services Index of Queensland Locations

Access to Legal Services Index									
Location	Pop'n		Access to Qld Courts			Access to legal practitioners	DLA	Total	Location Rating
			Mag	Dist	Sup				
Atherton	11800	2	1	0	0	2	0	5	Rural
Ayr	9078	1	1	0	0	1	1	4	Rural
Barcaldine	3503	1	1	0	0	1	0	3	remote
Biloela	5752	1	1	0	0	1	0	3	remote
Blackall	1500	1	1	0	0	1	0	3	remote
Bundaberg	46961	2	1	1	1	2	1	8	regional

Access to Legal Services Index									
Location	Pop'n		Access to Qld Courts			Access to legal practitioners	DLA	Total	Location Rating
			Mag	Dist	Sup				
Cairns	164356	3	1	1	1	3	1	10	regional
Charters Towers	12500	2	1	1	0	1	0	5	Rural
Childers	6500	1	1	0	0	1	0	3	remote
Chinchilla	6290	1	1	0	0	1	0	3	remote
Cooktown	2000	1	1	0	0	1	0	3	remote
Dalby	12000	2	1	1	0	2	0	6	Rural
Emerald	9398	1	1	1	0	1	0	4	Rural
Gatton	18600	2	1	0	0	1	0	4	Rural
Gladstone	28808	2	1	1	0	3	1	8	regional
Goondiwindi	5380	1	1	1	0	1	0	4	Rural
Gympie	11, 027	2	1	0	0	3	1	7	regional
Ingham	6127	1	1	0	0	1	0	3	remote
Innisfail	9000	1	1	1	0	1	0	4	rural
Kingaroy	13500	2	1	1	0	1	1	6	rural
Longreach	4150	1	1	1	1	1	0	5	rural
Mackay	81148	2	1	1	1	2	1	8	regional
Mareeba	6806	1	1	0	0	1	0	3	remote
Mossman	1850	1	1	0	0	1	0	3	remote
Mt Isa	23000	2	1	1	1	1	1	6	rural
Pittsworth	5069	1	1	0	0	1	0	3	remote
Port Douglas	3000	1	0	0	0	1	0	2	remote
Proserpine	5000	1	1	0	0	1	0	3	remote
Rockhampton	60000	2	1	1	1	2	1	8	regional
Roma	13145	2	1	1	1	1	0	6	rural
Stanthorpe	10745	2	1	1	0	1	0	6	rural
Toowoomba	90000	2	1	1	1	2	1	8	regional
Townsville	181743	3	1	1	1	3	1	10	regional
Warwick	23200	2	1	1	0	2	0	6	regional
Yeppoon	13284	2	1	0	0	1	0	4	rural

Based on the ALS Index, eight participants were located in ‘remote locations’, 11 from ‘rural locations’, and six from ‘regional locations.’ In addition, Pittsworth is now categorised as being ‘remote’, rather than being ‘highly accessible’, as it was under the ARIA Index, and Townsville is categorised as being ‘regional’, rather than being ‘accessible’.

4.5.4 The Interview Process

Location of the Interview

Most of the interviews were carried out at the law practice's premises. There were a number of advantages for the research in using this location: participants were more relaxed, the location and quality of the premises, the staff, the 'mood' and 'feel' of the offices, and any literature and publications available in the waiting area, all offered some triangulation of data for practice management. In some instances the practitioner did not have any 'premises' or it suited both participant and interviewer to conduct the interview at a third location, for example in Toowoomba or Brisbane, while the participant was carrying out other business.⁵⁸⁸

The structured interviews were mostly carried out in a room offering privacy and quiet – for example, conference rooms, interview rooms, or the practitioner's own office. In some instances the interviews took place in a public location, for example – at an education institution, in a hotel public bar, or in a coffee shop.

Interviewees

Most of the interviews were conducted with participants who were either a sole practitioner or a partner, or who carried a CEO position (including director of the ILP). In a number of cases, the law practice nominated a member of the practice who was not in this role. For example, in one case the nominated participant was the Practice Manager. In another instance, the ex-managing partner (currently now a partner only) included the newly appointed CEO (a non-legal practitioner) to participate in the interview; another included the Information Technology Specialist. In these circumstances, all participants provided consent to the terms of the interview. A number of the participants were now no longer practising, but had previously been the principal/director of their law practice.

Formalities Prior to the Interview

Regardless of the location, the structured interviews followed a very similar format. Introductions were made, a reminder was given about the length of time for the interview, and a question was asked whether there were any special time limits that needed to be accommodated. Details on the informed consent were carried out, including a verbal summary of the ethical clearance, including confidentiality of all information discussed, privacy and security of all information kept and stored, and anonymity of any reporting and writing up. Participants were reminded that they could withdraw at any time. Participants then had time to read and sign the informed consent, and all participants were provided with a copy for their own records.

Recording the Interview

In some instances the interviews were recorded following a request by the interviewer to record with permission. However, a number of interviews began with a conversation prior to the ability to record, making it difficult to halt the conversation and then start to record. In some instances, there was hesitancy to be recorded. Finally, the interviewer decided that it was more appropriate not to record and to write responses. There were moments of

⁵⁸⁸ See generally IS Rubin and HJ Rubin, *Qualitative interviewing: The art of hearing data* (Sage Publications, 2011) and S Kvale and S Brinkmann, *Interviews: Learning the craft of qualitative research interviewing* (Sage Publications, 2008).

intense conversation in which it seemed the conversation was more ‘honest’ and ‘frank’ due to the interviewer writing – there was a sense of presence and yet separation.⁵⁸⁹

Duration of the Interview

The interviews were scheduled to go for one hour, however, in most cases the interviews extended beyond the hour at the request of the participant. Most of the interviews went for 90 to 120 minutes.

Content of the interview

The structured interview followed the format laid out in the *Semi-structured Interview Protocol* (see Appendix Two). The initial questions were framed as short-answer information-based questions (based on demographics of the participant), that progressed through to increasingly open-ended questions about the management of the law practice, and finally ended in personal, introspective questions about satisfaction.

The semi-structured interview covered the following areas: length of time practising as a solicitor, length of time as a partner or sole practitioner of the law practice, connection to the profession, connection to the community, strategic direction of the law practice, partnership characteristics and relationships, business carried out by the law practice, recruitment and retention practices, management practices, marketing practices, use of information technology, trends in law practice performance, characterising RRR legal practice, and satisfaction. In most cases the interview followed the structured format; in one instance the participant spoke at length without regard for the questions asked.

Additional Content of the Interview

A significant number of the interviews (more than 50 %) involved participants offering information that was beyond the scope of the structured interview. This information was recorded.

Ending the Interview

The interviews were ‘wound-down’ over a period of 10 minutes. Following the more lengthy interviews, participants expressed a keen sense of introspection; of having talked about aspects of themselves and their practice that they had not previously articulated. In the circumstances where there was a sense of confidences having been given, it was important to move back into the more pragmatic aspects of the interview. At the end of the interview, all participants were advised they could provide further information, add or change any information provided. Participants were also advised that ‘from time to time’ updates and developments would be provided to them.

Transcribing the Interviews

The interviews were transcribed as soon as possible after the interviews to increase accuracy. The transcriptions were inserted directly into the interview protocol to increase consistency. Where the participant had given a detailed response, that detail was recorded and transcribed as fully and as accurately as possible. Where there was confusion about what was actually said by the participant – that was also recorded. Where the interviewer has inserted words or phrases from memory and to increase the coherency of the transcription; those inclusions are noted as inclusions. All participants were provided with

⁵⁸⁹ See generally Claire Smith, ‘What would I change the next time? A confessional tale of in-depth qualitative data collection’ (2012) 12(1) *Qualitative Research Journal* 98.

a transcript of the interview and were given the opportunity to change any of the content, thus negating any issues with the fact that not all of the interviews were recorded. In place of that recording, the participants could ensure the integrity of their responses through the written transcript.

4.5.5 Limitations

A number of factors were identified that might negatively impact on the research. These factors included: response rates being too low to draw reliable conclusions, response rates not accurate or deliberately false because respondents did not want to share information they consider personal or would impact on their own profitability; or responses only from law practices that were not performing.

Measures Taken to Counter Negative Impact

A number of measures were taken to counter negative impacts. Valuable information on increasing commercial sustainability as the study progressed was offered, so as to encourage response rates. This was achieved through the Australian Centre for Sustainable Business and Development (ACSBD) website. In the covering letter to potential respondents, it was noted that the data would be analysed in terms of existing research to-date carried out in US and UK, and other parts of Australia. If the responses were heavily skewed towards under-performing law practices, then this data in itself may be valuable as a ‘what not to do’.

Effect of the Measures

Contrary to the research attracting under-performing practices, the study attracted large law practices that indicated longevity. A significant proportion of sole practitioners were reluctant to participate for reasons including: insufficient time, or that the research had no relevance to them.

4.6 Analysis

All interviews were recorded in detailed notes and transcribed, after which the data analyses commenced.

4.6.1 Quantitative Data Analysis

Preparing the Data, Data Screening and Transformation

Each of the questions was numbered and included numbered options. This allowed a unique identification for each question which was uploaded into Excel. Each participant’s response was given an identifier (to ensure anonymity). Each participant’s responses to the structured interview were able to be uploaded into the Excel spreadsheet. This information was then imported into the *Statistical Package for Social Sciences* (SPSS).

The first step in the analytic process is to explore the characteristics of the data. Data may have been incorrectly entered... Errors in data entry can be corrected...

*and variables transformed before further analysis... Data may also need to be transformed using Recode... commands...*⁵⁹⁰

The quantitative data did need to be transformed in a number of instances. The primary purpose for this recoding related to the original choice of scales that had been drafted in the interview protocol as being too diverse. Given the small sample, this meant that the original data would have been spread across too many scales. The data was recoded to collate the original data into groups of no more than three. Some of the scales with negative wording were recoded to make them comparable with the rest of the data.

Prior to the quantitative analysis, the data was tested for normality. A number of statistics were used to test for normality including skewness and kurtosis.⁵⁹¹

*Skewness and kurtosis refer to the shape of the distribution [of the data], and are used with interval and ratio level data. Values for skewness and kurtosis are zero if the observed distribution is exactly normal. Positive values for skewness indicate a positive skew, while positive values for kurtosis indicate a distribution that is peaked... Negative values for skewness indicate a negative skew, while negative values for kurtosis indicate a distribution that is flatter.*⁵⁹²

Following the application of the skewness and kurtosis tests to the data, it was found that the data did not have a normal distribution. Owing to the small sample size and the skewness of the distribution of the data, the conduct of advanced inferential statistics was not possible. Since the objective of the quantitative analysis was to summarise, describe and present a profile of the demographics and “prevalence” of business planning carried out, recruitment and retention practices, marketing and use of information technology, descriptive statistics (including frequencies and percentages) were calculated using SPSS. The frequency distributions are visually displayed in graphical form in Chapters 5, 6 and 7.

Limitations on the Use of the Quantitative Data

It is acknowledged that the skewness of the data and the small sample size posed constraints to the quantitative analysis. It is also acknowledged that the results, while being useful in identifying some links amongst the variables, cannot be generalised. The literature is cautious in terms of generalising the results from research into individual ‘businesses’, and ‘there is no evidence to suggest that analysis of one individual (or business) is applicable to another.’⁵⁹³ Watson, based on an extensive accumulation of research in an attempt to define clear characteristics shared by the owners of small businesses which affect their success, concluded that there is no simple pattern.⁵⁹⁴

Secondary Quantitative Data Sources

Quantitative data was also obtained from access to secondary data from the Legal Services Commissioner (LSC).⁵⁹⁵ This provided an important source of triangulation of the data

⁵⁹⁰ Sheridan J. Coakes and Lyndall G. Steed, *SPSS Analysis without anguish: Version 10.0 for Windows* (2007, John Wiley & Sons Australia) 29.

⁵⁹¹ Ibid 31.

⁵⁹² Ibid 35.

⁵⁹³ K. Watson, S. Hogarth-Scott, and N. Wilson, ‘Small business start-ups: success factors and support implications’ (1998) 4(3) *International Journal of Entrepreneurial Behaviour and Research* 217, 218.

⁵⁹⁴ Ibid.

⁵⁹⁵ The Legal Services Commission provided 2008 and 2012 data on legal practitioners in terms of location of practice; number of practising certifications; and type of practice. This data was used to

offered by the participants, and also provided the context of the numbers of legal practitioners practising in RRR Queensland; where they were located, numbers of practising certificates and numbers of principals in each law practice. Secondary data collected in the form of independent data-collections maintained by the LSC⁵⁹⁶ and data-collections and statistics maintained by the Australian Bureau of Statistics (ABS) were also relied upon.

4.6.2 Qualitative Data Analysis

Qualitative Analysis Using NVivo

Qualitative analysis was performed by conducting content analysis on the interview and secondary data collected, utilising the computer-assisted qualitative data analysis software program, *NVivo*. The purpose of undertaking content analysis of the interview data was to identify and interpret the data and identify common themes.⁵⁹⁷ This involved the coding and categorisation of data and the subsequent identification of main themes and sub-themes.⁵⁹⁸ As part of the content analysis, a logical path of data coding and interpretation was followed.⁵⁹⁹ The transcribed interviews in Word format and the secondary data were drawn into *NVivo* after which the interview data was initially coded and then submitted to a themed analysis where strips of interview data were grouped into themes, sub-themes and patterns in the process of pattern-coding. Pattern-matching⁶⁰⁰ was used to compare patterns and themes across case interviews.⁶⁰¹ The use of *NVivo* enabled the tracking of individual identification numbers which represented the individual cases. After conducting the thematic analysis, the themes, sub-themes and examples of direct quotes which represented these themes were carried over into tables for the purpose of presenting the qualitative data in this thesis.

Whilst the quantitative data only summarised the prevalence of business planning carried out, recruitment and retention practices, marketing and use of information technology, and was limited in how it could be used, in contrast, the depth of the semi-structured interviews provided rich data on a range of topics that in many instances went beyond the scope of the interview questions. The research question (and associated seven research issues) was exploratory and required both a breadth of questions and depth that would not have been possible through just the use of a survey instrument. Further, it is unlikely that the prospective participants would have completed a survey that covered the range of topics, without the supportive interview environment. The context of the semi-structured interview fostered greater confidence in the quality of material. Finally, there was some

provide comparative information in terms of ratios of urban:RRR practices; and numbers of practices that have been structured as, for example, incorporated legal practices.

⁵⁹⁶ Ibid.

⁵⁹⁷ Marilyn Healy and Chad Perry, 'Comprehensive criteria to judge validity and reliability of qualitative research within the realism paradigm' (2000) 3(3) *Qualitative Market Research: An International Journal* 118; Yoland Wadsworth, *Everyday evaluation on the run* (1997).

⁵⁹⁸ Earl Babbie, 'Laud Humphreys and research ethics' (2004) 24(3/4/5) *International Journal of Sociology and Social Policy* 12. Michael Quinn Patton, 'Evaluation, knowledge management, best practices, and high quality lessons learned' (20010), 22(3) *The American Journal of Evaluation* 329.

⁵⁹⁹ Yin, above n 544, 101.

⁶⁰⁰ Miles and Huberman, above n 551, 69.

⁶⁰¹ See also generally at this part Johnny Saldana, *The coding manual for qualitative researchers* (Sage Publications, 2009).

opportunity for a degree of triangulation of the qualitative data based on the quantitative data provided by the LSC,⁶⁰² the literature and (to a lesser extent) from other participants.

Reliability and Validity

In order to assure that the interview protocol used in this research was considered to be valid and reliable,⁶⁰³ a pilot case study (discussed earlier) and feedback from a selected group of RRR legal practices were undertaken to determine validity. ‘Validity’ is used in the sense that the methods, approaches and techniques used in the study actually relate to, or measure, the issues being explored.⁶⁰⁴

During late 2008, the Pilot Study on the semi-structured interview was carried out which fed into the content validity of the semi-structured interview protocol. The content validity refers to the pilot study in which the participants in that study provided feedback as to whether the semi-structured interview was valid in terms of covering the areas relevant to ‘sustainable legal practice’. The Pilot Study assisted with developing both the substantive questions and the methodology.⁶⁰⁵

To ensure construct validity, the research constructs measured in the interview protocol were based upon a measuring instrument that had been previously validated to measure the themes included in the interview protocol, and an extensive literature review was conducted. Construct validity relates to the validity of the questions in the semi-structured interview in terms of their relevance to the literature review.

Appendix One – Semi-structured Interview Matrix records the questions in terms of their reference to the literature review and the Pilot Study, and the measurements being applied.

The use of multiple sources of evidence assisted with addressing issues further related to the construct validity.⁶⁰⁶ Yin itemises construct validity as being one of a number of tests to establish the quality of empirical social research. Construct validity, in which the correct operational measures have been identified to measure the concepts of the research, can be better assured if the following mechanisms are used: if multiple sources of evidence are relied upon, if a chain of evidence can be established, and if key informants review the draft case study report.⁶⁰⁷ In this research, the construct validity of the interview protocol was enhanced through the use of multiple sources of evidence which were drawn from: (1) the structured in-depth interviews of the participants and any other persons the interviewees recommend for interview; (2) the independent data-collections maintained by the LSC⁶⁰⁸ and data-collections and statistics maintained by the ABS; (3) direct observation based on the setting and context of the case study including observations of the actual premises, staff,

⁶⁰² Legal Services Commission, data on legal practitioners (2008) and (2012).

⁶⁰³ Zikmund above n 571, 109.

⁶⁰⁴ Loraine Blaxter, Christina Hughes and Malcolm Tight, *How to research* (Open University Press, 1996) 86.

⁶⁰⁵ Yin, above n 544, 93.

⁶⁰⁶ Ibid, 116.

⁶⁰⁷ Ibid 40 – 41.

⁶⁰⁸ The Legal Services Commission provided data on legal practitioners in terms of location of practice, number of practising certifications, and type of practice. This data will be used to provide comparative information in terms of ratios of urban:RRR practices, and numbers of practices that have been structured as, for example, incorporated legal practices.

marketing materials, and information technology resources; and (4) the literature review in which the evidence of other studies was used as evidence.⁶⁰⁹

4.7 Delimitations of Scope and Key Assumptions

Delimitations of the thesis include that it is a study into RRR law practices only; the research does not include ‘urban’ law practices. Further, the study does not include ‘risk management’ or ‘ethics’. Nor does the study include race or ethnicity issues. All areas are worthy of studies in their own right.

The research does not include discussions on external factors or social policy impacting on RRR Queensland (or Australia). The research focuses only on those factors within the control of the participants. The research methodology assumes that strategic decisions are made by the participants. The literature provides some justification for this delimitation. The traditional view has been that ‘organisations are affected by the environment in which they operate. However, O’Gorman found that when measured over time these became less significant, concluding that neither industry structure theory nor strategic choice theory gives sufficient explanation for high growth’⁶¹⁰ in the small businesses studied.

4.7.1 Ethical Approval

An application for ethical clearance from the University of Southern Queensland Ethics Committee was obtained on 12 April 2010. (Refer to Ethics Approval H10REA049.) The interviews were a minimal imposition upon participants and involved no risk to participants. The structured interviews ran for approximately two hours. Participants were able to claim two CPD points as part of continuing legal education. The research did not involve any deception. The following steps were taken to ensure protection of the participants’ welfare: information was de-identified to protect privacy, information (including the hard copy interview, the soft copy interview, and the digital recording) was stored confidentially, and participants were advised that they could withdraw from the study at any time. One participant did withdraw prior to the scheduled interview. Participants were able to follow the progress of the study via the ACSBD website link dedicated to the study.

4.8 Summary

This chapter has provided details on the research question and the associated research issues. It also provided the details of the research design including the justification for the design, how that design related to earlier studies, and the theory underpinning the design. The chapter also provided an explanation for the choice of scales used as part of the structured interviews and the delimitations and key assumptions relevant to the study were

⁶⁰⁹ Yin, above n 544, 101 – 110.

⁶¹⁰ Mike Simpson, Nicki Tuck and Sarah Bellamy, ‘Small business success factors: the role of education and training’ (2004) 8/9(46) *Education & Training* 481, referring to Colm O’Gorman, ‘The sustainability of growth in small- and medium-sized enterprises’ (2001) 7(2) *International Journal of Entrepreneurial Behaviour and Research* 60.

detailed. Details on how the data (both quantitative and qualitative) was obtained were provided. The semi-structured interview methodology was outlined in detail including how the semi-structured interviews were carried out and how the data (both quantitative and qualitative) was analysed. The chapter also provided a detailed discussion on the development of the Access to Legal Services Index in preference to the ARIA Index.

Chapter 5

Results of the Structured Interview Data

5.1 Introduction

This chapter reports on the results of the quantitative and qualitative data from the structured interviews with respect to the demographics of regional, rural and remote (RRR) law practices and RRR legal practitioners. The following two chapters report on the data in relation to the research question (RQ) and the seven research issues (RIs). The approach to considering the results of the structured interviews is to re-state the relevant research issues and relevant questions from the structured interview, and then present the quantitative data and qualitative data generated by the questions. A brief reflection is made in regard to those results. A detailed discussion of the results follows in Chapters 6 and 7.

5.2 Overview of the Demographics of the Legal Practice and the Participant

5.2.1 Overview of the Demographics of the Legal Practice

The demographics of the law practice include its longevity, location, governance structure and number of members of the practice. Part A of the structured interview questioned participants on the demographics of the law practice relating to the length of time the practice had operated, the location of the head office of the law practice and the number of locations from which the practice operates. A number of other questions asked in Part B (*The Law Practice, the Community and the Profession*), and Part J (*Characterising Regional Legal Practice*) provided responses that are relevant to more fully describing in qualitative terms the demographic aspects of the research and so they have been included in this part.

5.2.2 Overview of the Demographics of the Participant

Part A of the structured interview asked a series of questions relating to gender of the participant, their age, law school attended, undergraduate and postgraduate qualifications, completion of law society accreditation, method of admission, category of law practice (ie. sole practitioner, partnership or incorporated legal practice (ILP)), number of solicitors in the practice (including a breakdown of principals/directors, employed solicitors, trainee solicitors), number of administrative staff and whether any family members were in the practice.

Table 5.1 below provides details of the de-identified participants in terms of their gender, location, number of legal practitioners, governance structure and longevity of the legal practice. The identification numbers are referred to in the subsequent qualitative data throughout this chapter, and Chapters 6 and 7.

Table 5.1: Characteristics of the Sample (N=30)

ID #	Gender	Location (Based on ALS Index)	No. of Legal Practitioners	Governance Structure	Longevity of Legal Practice (Years)
1	Male	Regional	10 – 15	ILP	10 – 30
2	Male	Rural	5 – 10	Partnership	10 – 30
3	Male	Rural	5 – 10	Partnership	31+
4	Female	Regional	15 – 20	Partnership	10 – 30
5	Female	Rural	1 – 5	Sole Practitioner	10 – 30
6	Female	Remote	1 – 5	Partnership	10 – 30
7	Male	Remote	1 – 5	Sole practitioner	0 – 9
8	Male	Regional	95 – 100	Partnership	31+
9	Male	Regional	30 – 35	Partnership	10 – 30
10	Female	Regional	30 – 35	Partnership	31+
11	Female	Rural	1 – 5	Sole practitioner	0 – 9
12	Male	Regional	1 – 5	Sole practitioner	0 – 9
13	Male	Regional	1 – 5	ILP	0 – 9
14	Male	Regional	5 – 10	Partnership	0 – 9
15	Female	Rural	1 – 5	Sole practitioner	0 – 9
16	Male	Regional	1 – 5	Partnership	0 – 9
17	Male	Remote	5 – 10	Partnership	0 – 9
18	Male	Rural	1 – 5	ILP	31+
19	Female	Rural	1 – 5	ILP	0 – 9
20	Male	Remote	1 – 5	Partnership	10 – 30
21	Male	Rural	1 – 5	Sole practitioner	0 – 9
22	Female	Remote	1 – 5	Sole practitioner	0 – 9
23	Male	Rural	1 – 5	Sole practitioner	10 – 30
24	Male	Remote	1 – 5	Sole practitioner	10 – 30
25	Male	Rural	1 – 5	Partnership	10 – 30
26	Female	Rural	5 – 10	ILP	31+
27	Female	Remote	1 – 5	Partnership	10 – 30
28	Female	Rural	1 – 5	Sole practitioner	10 – 30
29	Male	Rural	1 – 5	ILP	0 – 9
30	Male	Regional	15 – 20	Partnership	31+

5.3 Demographics of the Legal Practice

5.3.1 Longevity of the Legal Practice

The longevity of the law practice was considered subjectively and determined by the participant. Participants were asked ‘how long has the practice operated?’ and then provided a series of optional responses relating to ‘0 – 9 years’; ‘10 – 30 years’ or ‘31 years or more’. Participants were not required to prove the longevity of the law practice. In a number of instances the continuity of practice related to the location of the building housing a law practice, or the name of the law practice, or the combination of partners who had practised law together.

The discussions following this item of both ‘Reasons for the choice of the location of the law practice premises’ and ‘Location of the law practice’, provide further insight into the question about longevity (or continuity) of legal practice.

Thirteen law practices (43%) had existed for zero to nine years; nine (30%) had existed for 10 – 30 years and eight (27%) had existed for 31 years or more. The longest existing law practice was ‘one hundred years or more.’

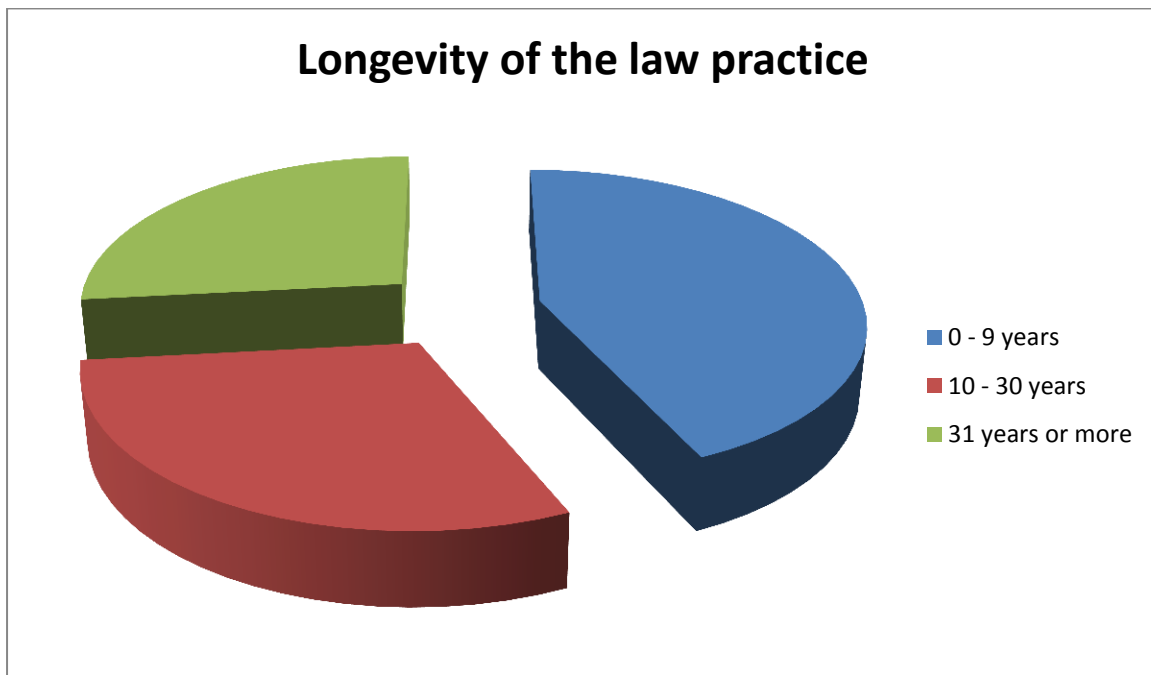


Figure 5.1: Longevity of the law practice

The qualitative data identified some of the difficulties in determining the longevity of the law practice on the grounds that it related to a range of circumstances including: that a law practice had operated from specified premises that the participant had acquired, or that legal practitioners had practised together for a period of time but in a number of locations and possibly with a number of combinations of partners (or directors).

The concepts of ‘longevity’ and ‘continuity’ of practise were identified by a number of participants as being characteristics or attributes that were seen as beneficial to the reputation of their practice. This is discussed below at Table 5.2.

Table 5.2: Themes and examples reflecting the broad range of longevity of RRR legal practice

Theme	Example of broad range of longevity of RRR legal practice
Longevity of the practice linked to the location	I bought [name of law practice] from [name of previous owner] who was a sole practitioner. [Name of previous owner] ran the practice and a tax business with his brother Z. [Name of prior previous owner] ran the original practice since 1931 from the same building; [Name of prior previous owner] took the business over and had it for 40 years; then [name of previous owner] took it over. I am the first outside of the family to run the practice. (#24)
Longevity of law practice	Over the border in [name of state] we interact with three firms at [name of place], two of which have been established since the early 1900s and one had its beginnings in 1975 or so and is still going strong. (#26)
Newness of law practice	The practice has only been going for 18 months. (#22)

5.3.2 Reasons for Choosing Location of Premises

The structured interview considered the location of the law practice in terms of both the physical location of the premises as well as the geographical location.

Part B of the structured interview (*The Law Practice, the Community and the Profession*) questioned participants on the reason why they had chosen the physical premises for the law practice. Participants were asked to rate on the basis of ‘highly relevant’, ‘moderately relevant’ or ‘not important’ whether they had chosen the premises because of: ‘the quality of the premises’, ‘proximity to other businesses’, ‘proximity to commercial centre’, ‘proximity to professional services’, ‘proximity to court’. Figure 5.2 below summarises the results.

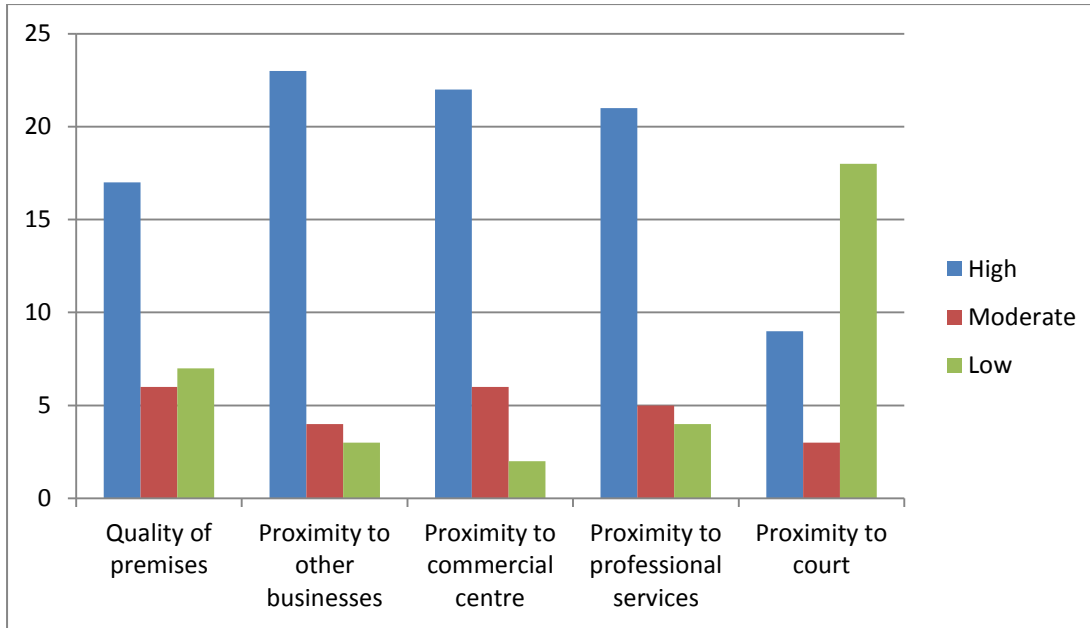


Figure 5.2: Reasons for choosing location of premises

Table 5.3 reports on the reasons why the principal/director chose the current premises in which the law practice is operated.

Table 5.3: Themes and examples of reasons for the choice of location of the law practice premises impacting on longevity

Theme	Example of reasons for the choice of location of the law practice premises impacting on longevity
Location of the building is linked to longevity	I chose the building – for continuity. A law firm has always been here. It’s at the front of the arcade which is for better exposure and ease of access for wheelchairs. (#7)
Location and positive work environment	We were renting in M Street – but the rent was too high - \$1000/m2. We wanted our own place. Three others bought and built these premises and we now own it. We had it project managed. There is limited land in [name of rural location] – we chose not to be in M Street due to the high prices. It’s peaceful here and that impacts on the workplace. It’s a nice environment. (#6)
Absence of a permanent location	I visit clients. I’m located on a property. It is a mobile practice; the practice runs from home. I will visit clients in their homes, to do wills. I will meet at roadhouses or where-ever – I’m very flexible. (#11)
Relocation of the law practice in response to client needs	We were located in the city in the [name of building] for ten years. We were about to renegotiate the lease. [Name of builder] said to take the firm out of the city. We didn’t have an intent to come out of the city. The

Theme	Example of reasons for the choice of location of the law practice premises impacting on longevity
	negotiations broke down on the basis that the re-fit be done. My view is that ‘let’s do something else’. We discussed it seriously with the partners and it progressed. We wanted expansion. There was difficulty with clients coming into town. We were worried about the courts, but IT allowed it. We decided to go. We would have limited opportunities for expansion. We purchased the land... growth was substantial. We bought extra land and then expanded. This was the driver for expansion at M Street – this is to establish the relationship with mums and dads – free parking in the suburbs in their location. (#9)
Location of the law firm and negative impact on the partnership	One of the issues for the original partnership separation was over the premises. I wanted to invest in purpose built premises that were attractive. My then partner – L – wanted to invest in a farm rather than the legal practice. We ended up splitting. I have since built the premises. (#2)

The results and comments indicate that the choice of the location of the law practice premises is strongly determined by its proximity to other businesses, even in preference to being close to court infrastructure. The qualitative comments suggest that the choice of location is a strategic decision in which consideration of a number of factors is important, including: easy access to premises by clients, minimising leasing costs. and maximising a pleasant working environment.

5.3.3 Location of the Legal Practice Using the Access to Legal Services Index

Part A of the structured interview asked participants where their practice was geographically located in terms of the Access to Legal Services Index (ALS Index), discussed at Chapter 4. The options were ‘remote’, ‘rural’ or ‘regional’.

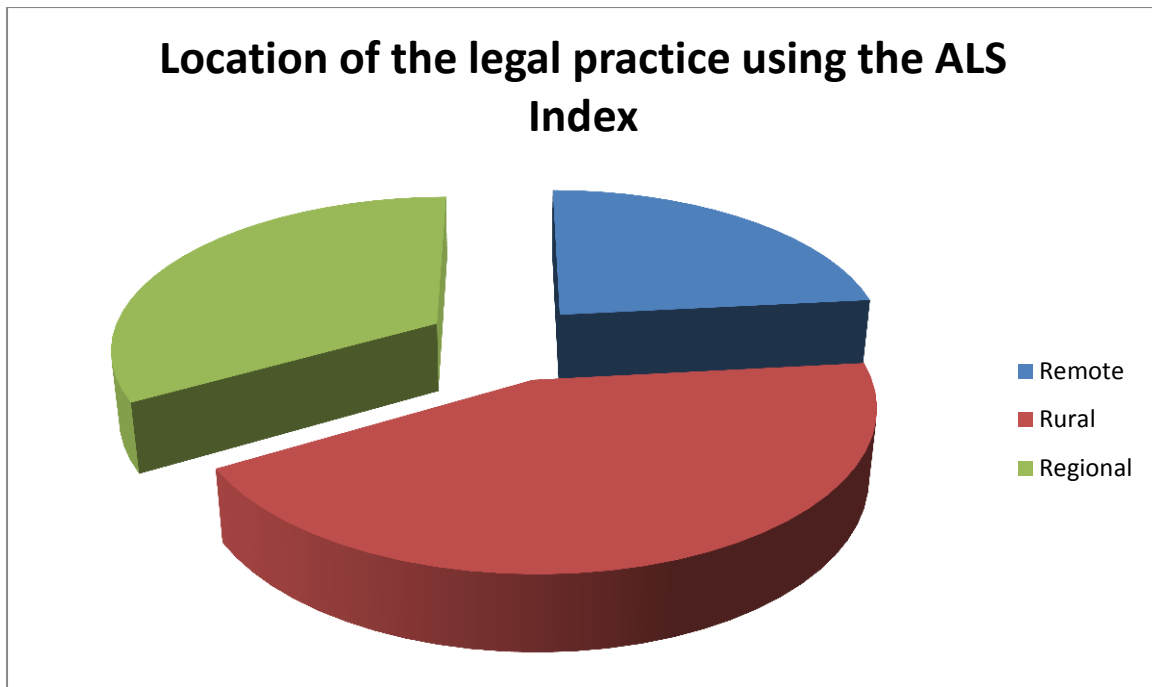


Figure 5.3: Location of the law practice

Seven (23%) law practices were located remotely, 13 (43%) rurally and ten (33%) were located regionally. This particular question did not trigger any qualitative responses from participants. However, under Part J (*Characterising Regional Legal Practice*) the question ‘what made you practise in this location’ provided significant qualitative data. The themes are provided below.

Table 5.4: Themes and examples of the reasons why the location was chosen

Themes	Examples of reason why the location was chosen
Life partner is located in the area and flexibility	I was always interested in law. I was studying externally at the time – travelling in [overseas location]. I enjoyed the course – especially the judicial system. I am married to a farmer – and I thought I would be a teacher or a nurse. I saw an ad for a trainee solicitor in [name of rural location] and I thought that I could do that anywhere (and travel). I knew that it would be in a rural area. (#19)
Asked to come to the location	My first partnership was in 1974 – I had a job lined up in [overseas location]. I was unmarried at the time. I wanted to be in [overseas location]. I was about to go when the partner phoned me up, begged me to come up [rural location]. I said ‘yes’ and I’m still here. The other partner induced me to go in to the partnership. We lasted for some years – he did sugarcane at [rural location]; I did tourism at [second rural location]. (#21)
Life partner, lifestyle and values	I found my life partner. I didn’t want to remain in the city – neither of us liked it. We could work really hard – someone would be out to get you. When I was first in [rural location] –

Themes	Examples of reason why the location was chosen
	people handed client back to you. It was a good place to work. There was no aggression in [rural location] – it’s more adversarial in the city. You’re working long hours in the city. There is no work-life balance – if you are an associate. (#6)
Work and clients are available and the approach to work	The clients are in plenty! The law is not different, but the approach is different. If I was employed in a large city practice, I would be expected to wear a suit. I’m neat and tidy now, but not dressed in corporate attire. The approach is different – I try and make the client at ease. I’m not stand-offish – I’m friendly. I’m not looking at the clock. If a client is having a personal crisis – then I make time for them. I don’t tell them that I don’t have time for this. (#29)
Family connections and better work opportunities than metropolitan location	I met my wife in [metropolitan location] and wanted to stay there. When I graduated there were lots of law students. I got a job in Brisbane for one year in family law – I didn’t choose family law – but I was given it. At the law firm they said: “We will take two students but just a job for one year”. At the end of the year I knew of a job in [regional location]. My wife said to apply. I got a job with [name of participant’s law practice] – to run family law. [Regional location] chose me – my wife chose [regional location] – all her family connections. (#9)
Links to long term family commitments and interests	The family grazing property was here – great-grandfather ran it there since 1873. I was running around. I worked in [rural location] for a year – for [name of law practice]. I came back to [remote location] and the local solicitor died. He wouldn’t sell the practice to me. He sold his legal files to [name of metropolitan law practice]. I was 24 when I opened up over the road. I starved – then it went feral. At 24 it was very scary; I didn’t think I’d still be here. (#24)

Chapter 4 describes how some effort was put into attempting to select participants from the three ALS Index locations. The quantitative data reflects that the distribution is reasonably even. The qualitative data provides important insight in terms of why participants chose to practise in each of the locations, including: previous family connections and commitments, the range of work and clients available, and being asked to locate to the particular area.

5.3.4 Number of Locations of the Law Practice

Part A of the structured interview asked participants about the number of locations from which the law practice operated. Seventeen (57%) have only one location. Twelve (40%) have two to three locations and only one law practice operated from more than four locations (four to six). The quantitative results are shown below in Figure 5.4.

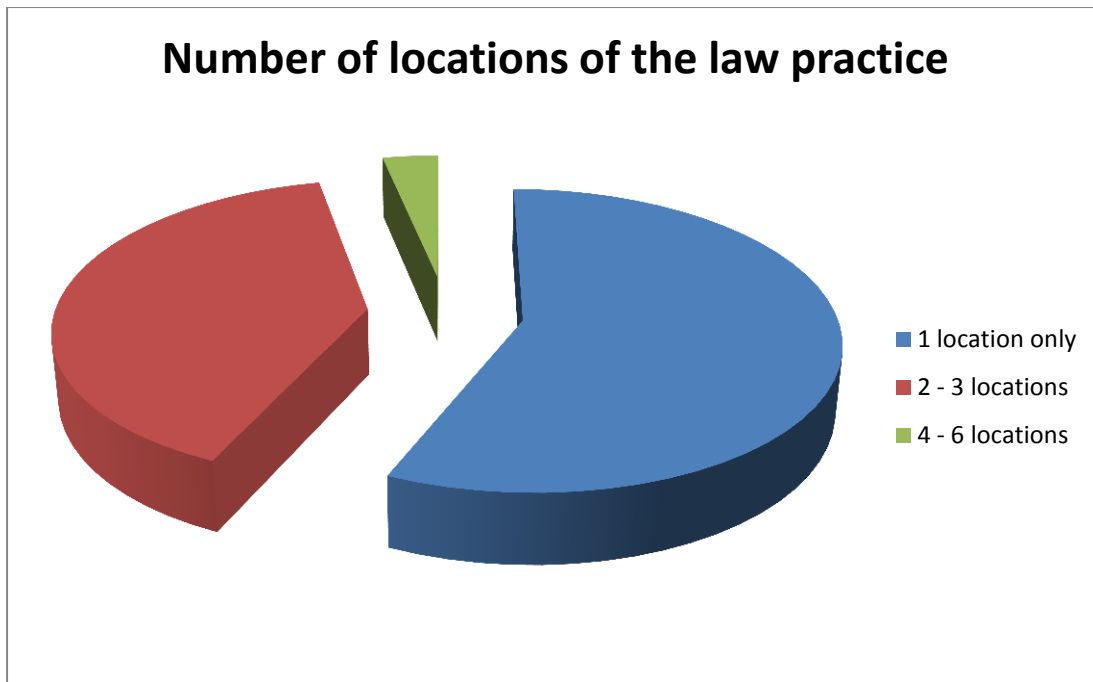


Figure 5.4: The number of locations of the law practice

Table 5.5: Themes and examples of locations from which the law practice operates

Themes	Examples of reason why the location was chosen
Locations used to distribute types of work	The [metropolitan location] law practice is in the metro CBD. This is showing growth of profit and experience. [Metropolitan location] office does business services and litigation goes out there too. The regional firm specialises in not-for-profit work; agribusiness. (#26)
Breadth of geographical locations	Using IT we also have a presence in [overseas location]. (#10)
Multiple locations to accommodate partners and the use of information technology	There were four partners in [rural location], including one partner from [metropolitan law practice]. His wife became sick and so he wanted to move to the coast to help with her health. The firm valued clients and partners so highly that they decided to open a branch office. For five to 10 years the [regional location] office was not viable, but has now begun to contribute their share. The [rural location] partner moved to [regional location] – and spends only some of his time at [rural location]. Again this was accommodated because the firm value the partner. With the IT available – iPhone, emails etc... - he is always available. Distance is no longer a tyranny. (#3)

The results indicate that most law practices operate from only one location, however, forty40 percent operate from a number of locations that span across the ALS Indices from

rural, remote and regional. The reasons for the multiple locations, in some instances, were to accommodate the needs of partners and legal staff (discussed later in the chapter) and to provide specialised legal knowledge.

5.3.5 Governance Structure of the Legal Practice

Part A of the structured interview asked participants to categorise their legal practice. Ten (33%) legal practices were sole practitioners. Fourteen (47%) were partnerships and six (20%) were incorporated legal practices. The predominant type of law practices was a partnership.

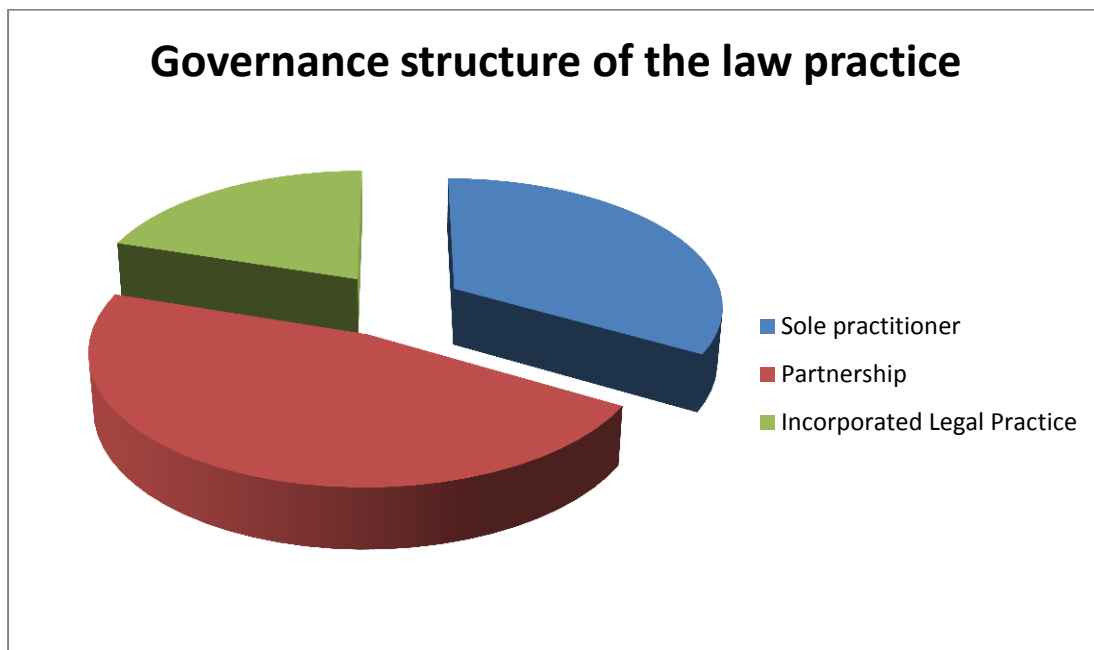


Figure 5.5: The governance structure of the law practice

Governance structure is also explored later in the chapter in terms of the data on the duration and number of partnerships a participant has been involved in, and the duration of sole practice arrangements a participant has been involved in.

Table 5.6: Themes and examples of choice of governance structure

Themes	Examples of choice of governance structure
The earlier limited choice on governance structures	The inability to incorporate – I was paying top dollar when I was in practice. Accountants, surveyors, doctors – they could all pay 30%. Now we can do that too. The inability to incorporate that made a big difference in my practice. (#23)
Negative view of partnership; positive view of ILP	I would do it as a family business – but never as a partnership. I wouldn't consider a partnership. The company structure is better – it's governed by shares. You could issue more shares. (#29)
Negative view of	I was asked by another practice to merge – it was discussed, but

Themes	Examples of choice of governance structure
partnership	not finalised. I didn't do it because I felt the loss of control. I had a bad experience with another partnership. (#18)
Partnership the choice for business management benefits	The partners complement each other, but are opposites. This is very good for business management, but can create tensions. I have rapport and am very understanding. (#10)
Partnership chosen for ability to specialise	X [name of partner] is a general practitioner, but strategic; there is a managing partner. Each partner does their own legal department. Each partner presents on their area and consults on the other – this creates alignment and a third party approach keeps the unity. The areas of practice are succession; building and construction; litigation and employment; commercial; property; planning and environment; and family law. (#4)
The right partnership and the benefits for specialisation	[Name of law practice] in 2000 had 20 people. We now have 50 people – the profit has doubled. There are two factors: First, the partners – getting these relationships right; and secondly, specialising. (#10)
Benefits of being a sole practitioner	I have been approached by another firm to join forces – in a partnership. I said 'no'. There is no benefit. I would make a bad partner. I have the Northern European pig-headedness! And you have to have trust! (#18)
Negative views on partnership and advantages of sole practice	I was in a partnership – I had a growing discontentment with my partner's lack of professionalism. He'd had a marriage breakdown – he was a heavy drinker – there were financial implications. I was with X for 19 years – there were some productive years. He had \$4000 drawings. The best thing I've done – was to dissolve the partnership. My life is less stressed; my life has improved. It is a small town – people talk. (#23)
Benefits for the choosing partnership	I'm in a partnership because you can get away for a short time; you can consult with another practitioner – that eases the burden. You can go away. I enjoy living in a small town – it's convenient for transport. (#25)
Benefits of a partnership with shared values	An action won't proceed unless they look at 'the benefit of the firm'. If there is strong opposition then they will not proceed. If there is a majority then they will go ahead. In a partnership you need to respect the opinions of others. We always have plenty of discussion and take a professional approach. There is a sense that the partners would die for you. Good partners – they rely on you. If I got sick then they would carry me. We have full insurance (death and disability), but there is the sense that if I couldn't work that they would look after me. (#3)

The qualitative data on the type of law practice was considerable. All of the participants commented on their chosen type of law practice and further questions linked to topics on dispute resolution provided additional insight into this key question.

Briefly, the governance structure of the law practice indicated both a passion for and against sole practice, as well as a passion for and against partnership. The question triggered possibly one of the most important areas for sustainable legal practice in terms of experiences associated with the structures, methods of dispute resolution, taxation issues and ability to adequately deal with legal work. Sub-themes emerged relating to health and stress issues where the participant felt inadequately prepared to deal with the range and amount of work (if a sole practitioner) as well as health and stress issues where the participant felt yoked to an unproductive or incompatible partner. The third option of incorporated legal practice was at the time of the interviews a relatively recent option, but one that was being taken up. The six participants that had taken up this option spoke positively of this structure.

5.3.6 Total Number of Legal Practitioners in the Law Practice

Under Part A of the structured interview a number of detailed questions were asked about the composition of the law practice in terms of the total number of legal practitioners in the law practice. This information was then clarified into the number of principals/directors and the number of employed solicitors/consultants.

Below are a series of figures that show the detail of the composition of the participant law practices. The figures sequentially show the total number of legal practitioners in the law practice (Figure 5.6), the total number of principals/directors (Figure 5.7), the total number of consultants/employed solicitors (Figure 5.8), the total number of trainee solicitors (Figure 5.9), and the total number of administrative and paralegal staff (Figure 5.10).

Figure 5.6 reports on the total number of solicitors with a practising certificate, in the law practice.⁶¹¹ The number includes the full range of legal consultants, principals/directors/sole practitioner and employed solicitors. It does not include a trainee solicitor because a trainee solicitor does not yet hold a practising certificate.

⁶¹¹ Data from the Legal Services Commission was referred to as a means of providing some triangulation of the data. That data was compiled prior to the interviews and so was only useful as a guide.

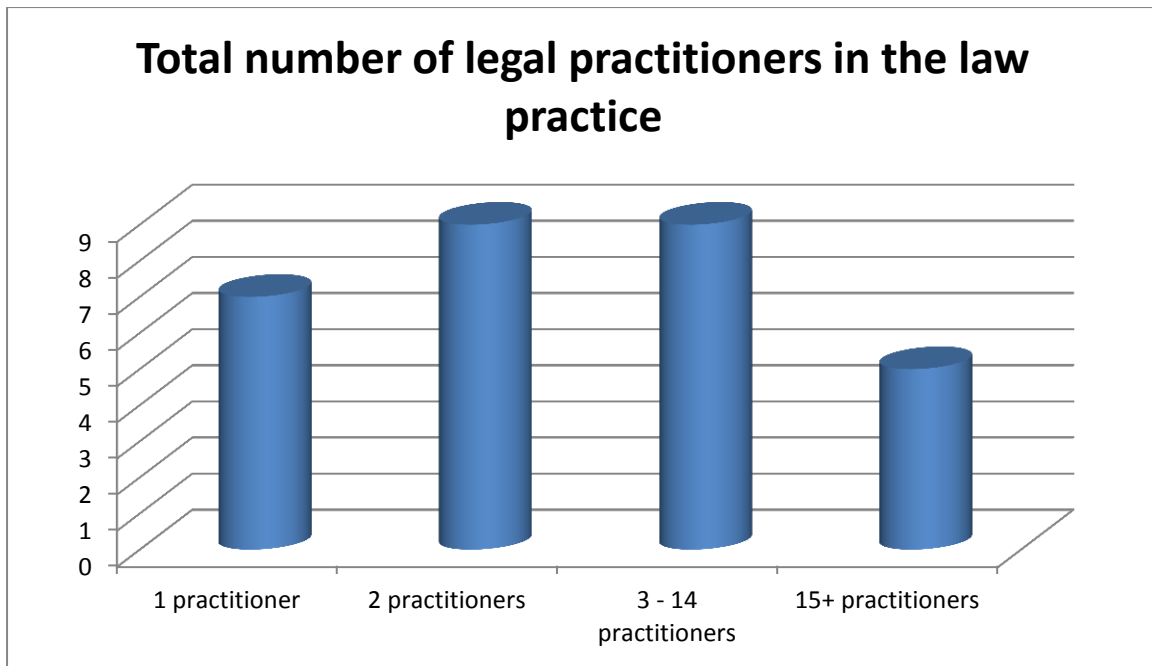


Figure 5.6: The total number of practising certificates held in the law practice

Figure 5.7 reports on the number of principals/directors in the law practice. Principals/directors have a management role in the law practice. There were no salaried partners.

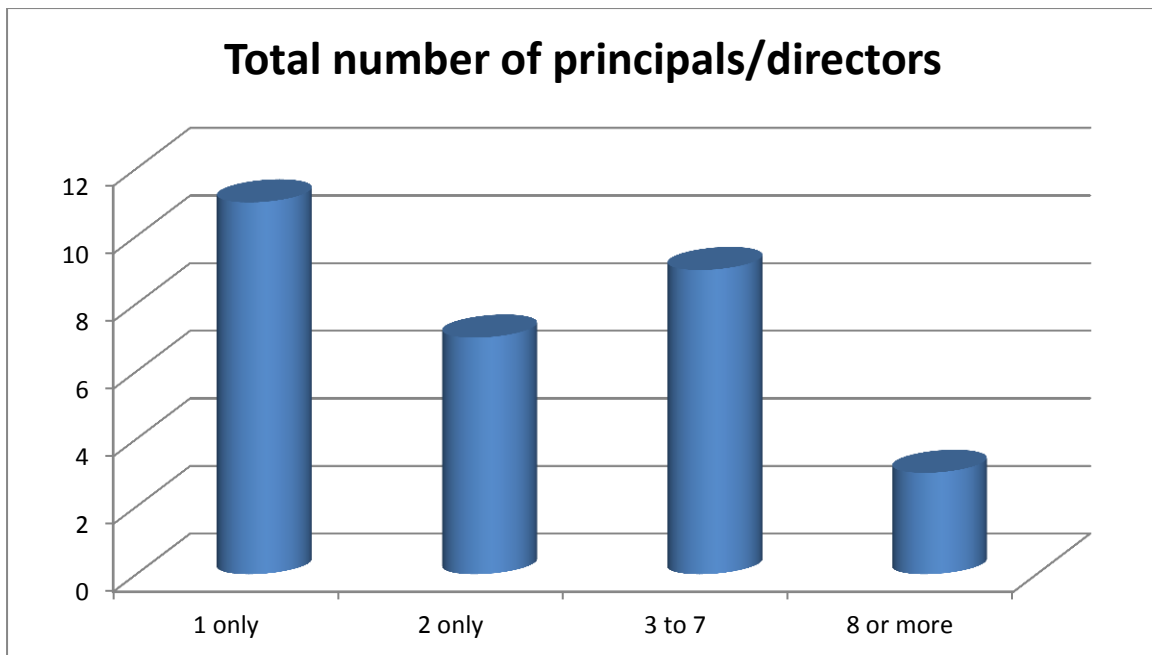


Figure 5.7: Total number of principals or directors in the law practice

Figure 5.8 provides details on the numbers of consultants and employed solicitors within the law practice.



Figure 5.8: Total number of consultants/employed solicitors in the practice

Figure 5.9 shows the total number of trainee solicitors in the law practice. Data on trainee solicitors (and employed solicitors) is relevant to the research question and research issues in terms of the ability of a law practice to service clients and to effect succession planning. The data below in which 60 percent of participants did not have any trainee solicitors emphasises the difficulty in either attracting legal staff, or in retaining them.



Figure 5.9: Total number of trainee solicitors in the law practice

Eighteen participants (60%) had no trainee solicitors, eight (27%) had one trainee solicitor and four (13%) had between two and three trainee solicitors.

Figure 5.10 shows the number of administrative and paralegal staff in the law practice. Three participants (10%) had zero administrative or paralegal staff, five (17%) had between one and two, and 22 (73%) had three or more administrative or paralegal staff.

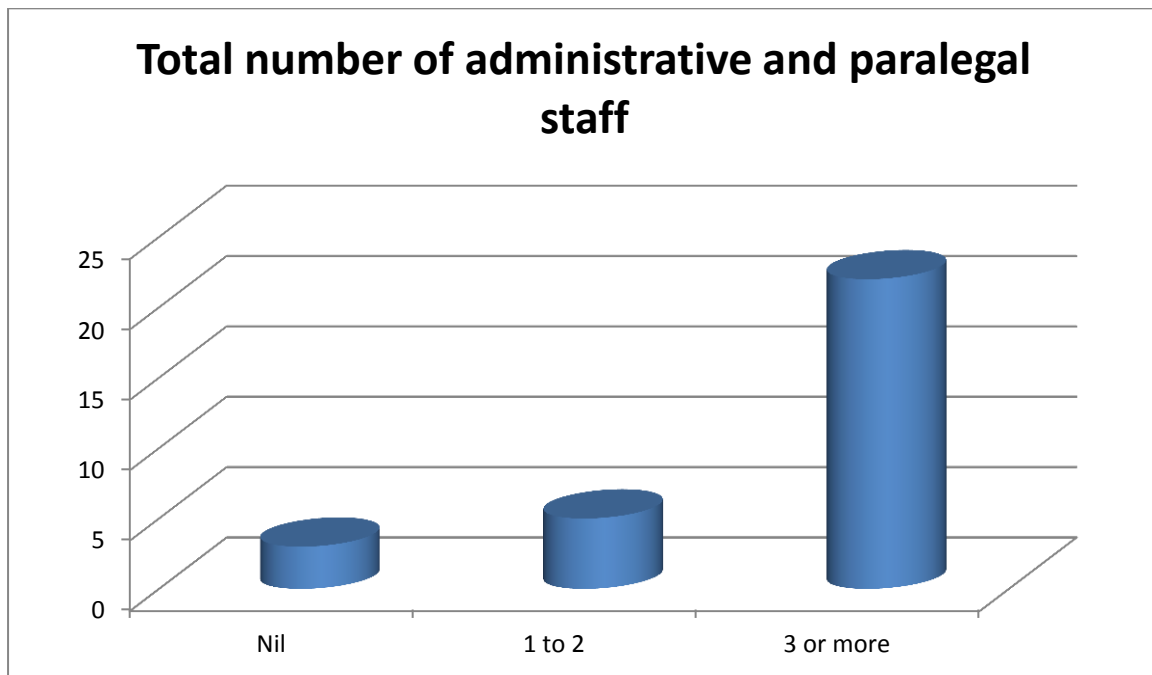


Figure 5.10: Total number of administrative and paralegal staff in the law practice

The quantitative data reflects that many RRR Queensland legal practitioners practise as sole practitioners without any other support either from another legal staff or administrative staff. The data also suggests that the weighting of staff is towards administrative and paralegal staff, rather than legally qualified staff. The issue of being able to attract qualified legal staff is discussed in Chapter 7 in relation to RI 5 (Recruitment and Retention). These figures support one of the means by which RRR Queensland principals/directors overcome the shortage of such staff that is by recruiting from within the ranks of their own administrative and paralegal staff.

In responding to the quantitative questions about legal staff composition, nineteen participants provided additional qualitative data on the topic of attraction of legal staff.

Table 5.7: Themes and examples of the issues relating to attracting legal staff

Theme	Examples of issues relating to legal staff attraction
The problems associated with attracting legal staff including geographical, perception, health and lack of services	The country is seen as a backwater. Solicitors who come to [rural location] assume that they want the ‘lifestyle’. And ‘lifestyle’ is more important than service, than the work. We need to weed that out. The firm has had some disasters. We’ve appointed inappropriate people because they are the only ones we can get. If they are single (or in a relationship) I’m sceptical that they won’t want to be here in ten years. If they are married then that is better. We get newly qualified solicitors with no experience... There is the perception that young lawyers want to have fun. If law is a way to earn

Theme	Examples of issues relating to legal staff attraction
	money – they will be gone. If they have the attitude that this is a stepping stone – these are difficult to find – they will be alright. There have been many lawyers at the [name of DLA] – say it’s difficult to get professional staff (and legal secretaries). This is a constant problem – it hasn’t changed. There is a reduction in the number of firms in the area – due to closing down – due to serious mental health issues and family commitments – there are no private schools. My kids have gone boarding – and with the expense of running a practice. (#21)
Succession planning based on attracting legal staff	There are ‘mirrors’ of each partner to replicate a senior partner. They are groomed. Senior partners are not indispensable. This is why the need to increase the number of solicitors. The partners are 42 – 50. (#10)
Positive approaches to the difficulty of attracting legal staff	We don’t worry about graduates going or leaving. People go – because if a partner or wife has been transferred. We have a partner in [metropolitan location] who has great interpersonal skills – we can access him remotely. (#4)
Problems and benefits of the shortage of legal staff	[Rural location] can’t attract professional staff to buy businesses in rural areas. X and Y [names of other lawyers from other law practices] are both in their 60s and looking to get out. Solicitors are aging – they all have more work than they can handle. I can turn away work every day. I can turn clients away because I don’t like the sound of them. (#29)
Attracting legal staff from within the law practice	If I physically had the room, I would definitely put on another solicitor. But there is difficulty getting solicitors up here. There are two local girls studying law – C who works at [name of another law practice], and S would does some work in the office. I would encourage local students doing law to come back home. I have told the staff I would encourage training and their studies. (#18)
Attracting legal staff through ‘poaching’ other law practice’s staff	In [name of rural location] law firms poach each other’s staff. All of my staff has worked either in other law firms or banks. My staff are not unhappy – they could have left when I took over. I am sure that they have been approached. Good staff – you have to pay them well to make it difficult for another firm to poach them. I realised that you wouldn’t get staff from outside. How would I replace them? Get them off the street and train them. My biggest risk is if T leaves. If others left, then I could do the estates work. Training is time; I would be in strife if I had to do that work. My contingency plan is for my wife (who is a manager with community engagement in [name of government

Theme	Examples of issues relating to legal staff attraction
	organisation]) to help. (#18)
Attracting legal staff through connections	All of the staff have come through connections. For example, C came through [name of legal practitioner] at the Legal Practice Course. I was aware of him – he had joined [name of social club] and I knew he was keen to get back to law. I’ve not had to advertise – but I’d possibly put an advert in [name of professional journal] or the regional newspaper. (#21)
A multi-pronged approach to attracting legal staff	<p>Ten to fifteen years ago we had problems with recruiting any professional staff. It was difficult to get them out of the South-East corner. This was a problem for a long time. We would offer more money and better conditions than they were getting. We set up a Brisbane office and electronically transferred work, but that didn’t work. We couldn’t get good lawyers. We used a recruitment agency and paid money. We’d get an upstart from Brisbane who all they would do, would be to tell us how smart they were. Then after two weeks – after the money was paid to the agency - \$10,000 – they would go. We had a series of disasters.</p> <p>We now have a multi-pronged approach. Five or six years ago – we had a permanent advert in <i>Seek</i>. We are involved with the local high school. We give prizes to the students who do well in the legal studies course and had a passion to study locally. We’d put two students on at a time. This has worked out well. We really hired locally. We targeted the [two regional locations] areas. They want to come back to the bush.</p> <p>Every application we get I make sure I interview them all. Some will be available. We get requests for trainees. We hire for local content and put them on. They have a network of friends and family and will stay.</p> <p>We have recruited from within the practice. We have a number of them. We identify good kids doing paralegal work. We help them with their studies. We give them time off; pay them for their study leave. (#30)</p>
Age as a factor in attracting legal staff	We want a young partner – this is part of our succession planning. We have a young partner at the [regional location]. She is a salaried partner – and we will help her get her equity. She is a country girl with country values; and partnership material. You need to be a good lawyer, with the right attitude. (#3)
Attracting legal staff is not an issue	We don’t want to expand [name of law practice] – we want to have people who can do the job. We’re not looking for

Theme	Examples of issues relating to legal staff attraction
	new opportunities but to improve on what is done, that it is properly resourced. There aren't any new opportunities in the law. (#2)

Almost all the participants expressed a view on the topic of legal staff that provided insight into the ability of law practices to be sustained into the future. Briefly the comments were able to be grouped into a number of sub-themes that included the problems associated with attracting legal staff because of perceptions of geographical isolation, the lack of services and perceptions of what RRR legal practice entailed. Another sub-theme related to participants sourcing legal staff from within their own ranks as a means of replenishing staff and succession planning and sourcing staff from within other RRR law practices (ie ‘poaching’). A number of participants described how they strategically dealt with the issue of attracting (and retaining) legal staff and those comments are explored in much more detail later in Chapter 7. Only a few participants expressed the sub-theme that attracting legal staff as not being a problem.

5.3.7 Personal Relationships Involved in the Law Practice

Part A of the structured interview asked participants if there were any personal relationships involved in the law practice, including family, marital, personal or intimate relationships that existed between people working in the practice. A simple ‘yes’ or ‘no’ response was provided. The quantitative data revealed that 19 (63%) of law practices reported the presence of personal relationships involved in the law practice. Eleven (37%) stated that there was no personal involvement.

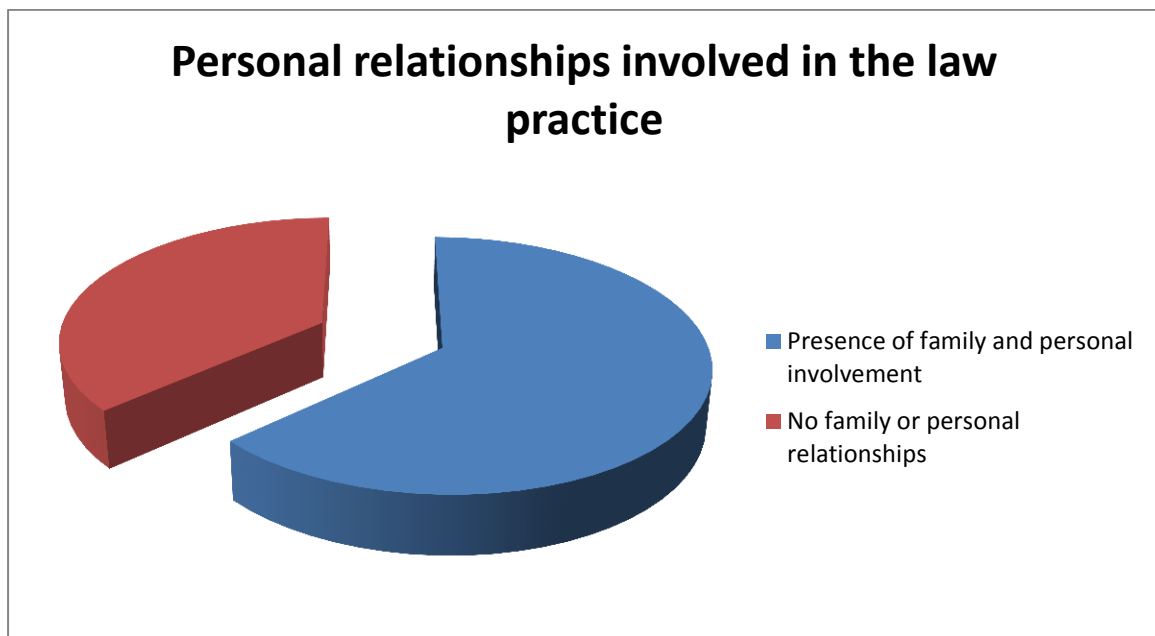


Figure 5.11: Personal relationships involved in the law practice

Table 5.8: Themes and examples of personal relationships

Theme	Examples of Personal Relationships
Marital relationships	My husband is a partner; two other partners have relationships – partner is a son of a retired partner and deceased partner; the other is the son of an ex-partner. (#10)
Personal relationships being a source of dissatisfaction with other staff	Father and daughter – this is a source of dissatisfaction. His daughter is a source of tension; there is an imbalance of access to decision-making and this impacts on other staff. He needs to control this more. This is awkward – it may resolve, but it creates tension and sensitivities. (#13)
The extent and complexity of family involvement	In the next six months my son will work for the firm. We have a partner’s daughter as an admin assistant – she has completed her legal studies. We have a partner and her husband started as an accountant; we have a partner with a nephew and niece. (#8)
Family as contingency plans	My contingency plan is for my wife (who is a manager with community engagement in SE Qld with Indigenous, homeless and multi-culture) to help. (#18)
Difficulties	I am more approachable – the girls come to talk to me. I had to put a girl off recently – it was uncomfortable because she was the sister-in-law of the receptionist. (#19)

The quantitative results revealed the extent of this occurrence in RRR legal practice. The range of personal relationships as well as the importance of their presence in the legal practice is evident from the qualitative data above. Participants identified ‘husband-wife’ relationships as being the predominant relationship, but other relationships existed including in-laws, children and relatives. Sub-themes emerging from the discussions included that such relationships provided something of a solution to the difficulties of recruiting legal staff (and administrative staff) as well as the sub-theme that such intimate relationships created awkward dynamics between the non-intimate staff.

5.4 Demographics of the Participant

The next part of this chapter provides the quantitative and qualitative results relating to the demographics of the participant. Part A of the structured interview again is the source of the questions which asked about the gender, age, educational qualifications and professional qualifications of the participants.

5.4.1 Gender of the Participant

Part A of the structured interview asked the gender of the participant. Nineteen (63%) were male participants and 11 (37%) were female. Participants were not deliberately selected to reflect any reference to gender so this result was not in any way pre-

determined. A de-limitation on this thesis is with respect to gender. Within that de-limitation a number of comments from participants were volunteered and these have been included below.

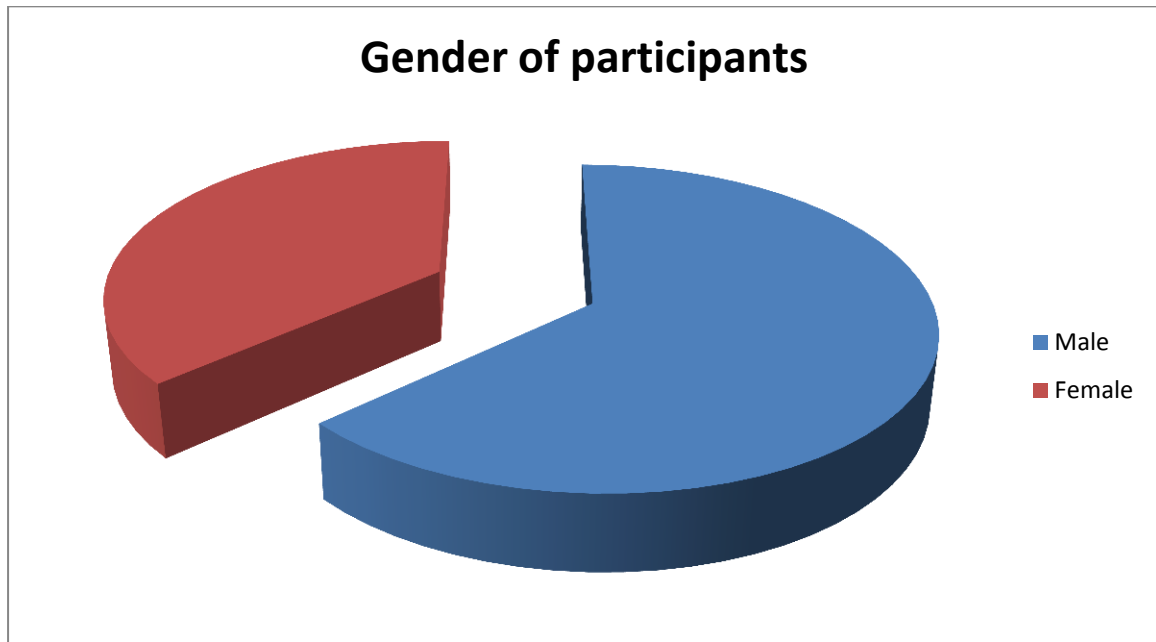


Figure 5.12: Gender of participants

Table 5.9: Themes and examples relating to gender in RRR law practice

Theme	Examples of the impact of gender
Preference for a male lawyer	Country men like male lawyers – have grey hair and have words of wisdom. I ask: ‘Why choose me?’ I have clients from [rural location] and [regional location] and they say: ‘I thought your name was a man’s name – you’re a woman – but I’m pleased that I came in.’ (#5)
Effect of gender on other lawyers	I will deliberately file in [metropolitan location] to avoid the female family lawyers in [regional location]. They are very condescending. (#19)
Lack of collegiality between women and men	There is no collegiality. It is a ‘boy’s brigade’. There is one practitioner who has never spoken to me. When I phone the practice I go through the secretary. He’s in his 60s – not that old. No collegiality. When I came here – he didn’t like a young woman (which I was back then) joining [remote location]. If I am walking down the street and I look straight at him, then he will grunt a ‘hello’. The other lawyer does talk. (#28)
Attitude to young girls	There is a ‘small town’ attitude to girls wanting to do law. We had a girl doing work experience - her family expectations – her mother said, ‘She could not do all that well.’ She was excellent! (#6)
Increasing	Two to four years ago, it was all blokes in the practice. We

Theme	Examples of the impact of gender
gender balance	previously had a strong male imbalance. Now we have more gender balance. (#2)

Eight participants, male and female, offered comments relating to ‘gender’. There were no clear themes revealed from the qualitative data but rather a range of comments that included a lack of collegiality between male and female practitioners, a negative ‘small town’ attitude to ‘girls who want to do law’ and, a male participant seeking to create more gender balance in his law practice through recruiting more women.

5.4.2 Age of the Participant

Part A of the structured interview asked the age of the participant. Eight of the participants (27%) were aged between 35 and 45; 18 (60%) were aged between 46 and 55; and 4 (13%) were over 55.

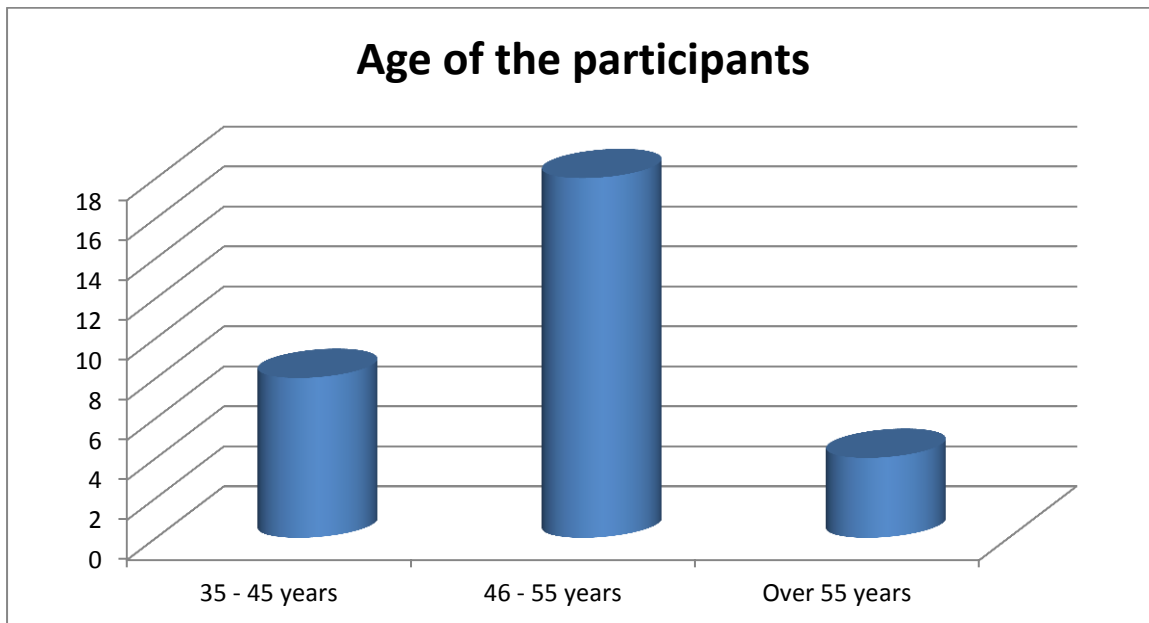


Figure 5.13: Age of the participant

The quantitative data reflects the existing data on the age of RRR legal practitioners to the extent that this population is predominantly aging. The discussion on the impact of an aging RRR legal population is given more attention in Chapter 6 with respect to RI 3 (Business Planning) with respect to the specific topic of succession planning.

5.4.3 Legal Education

As part of exploring the demographics of RRR legal practitioners participants were asked a series of questions in the structured interview under Part A concerning their legal education including: ‘what law school did you attend?’, ‘what is your undergraduate qualification?’, ‘did you obtain honours?’, ‘have you undertaken a higher degree?’ and, ‘have you completed a law society specialist accreditation?’. An additional question that has relevance to this exploration is the question asked under Part E: *The Business of the*

Law Practice ‘what proportion of the practice’s day-to-day practice is work for which law school training has given you specific expertise?’. The quantitative and qualitative data relating to the questions on education is summarised below.

Law School Attended

Nine participants (30%) had attended the University of Queensland; 13 (43%) attended Queensland University of Technology; 3 (10%) had attended another university and 5 (17%) had not attended a law school. The reason for non-attendance relates to alternative methods of admission into legal practice, discussed at Chapter 2. One participant did not have any legal qualifications, because they were not a legal practitioner but the practice manager.

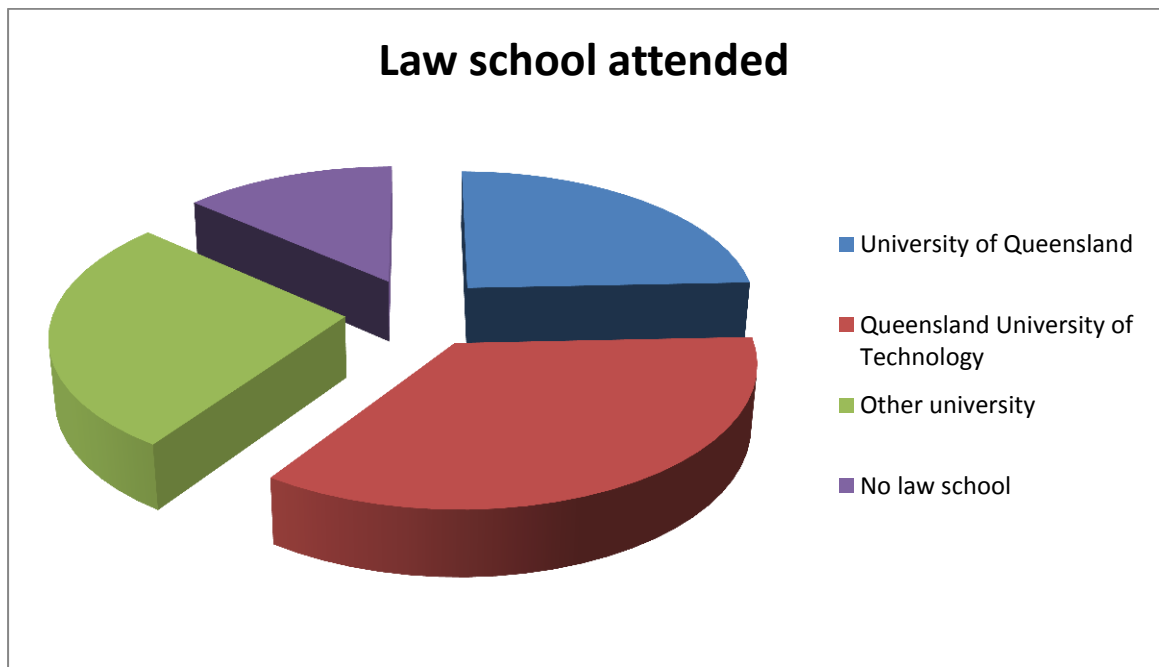


Figure 5.14: Law school attended

Undergraduate Qualification

Sixteen participants (53%) obtained a Bachelor of Laws; 8 (27%) obtained a Bachelor of Laws with another degree and 6 (20%) did not have any university qualification.

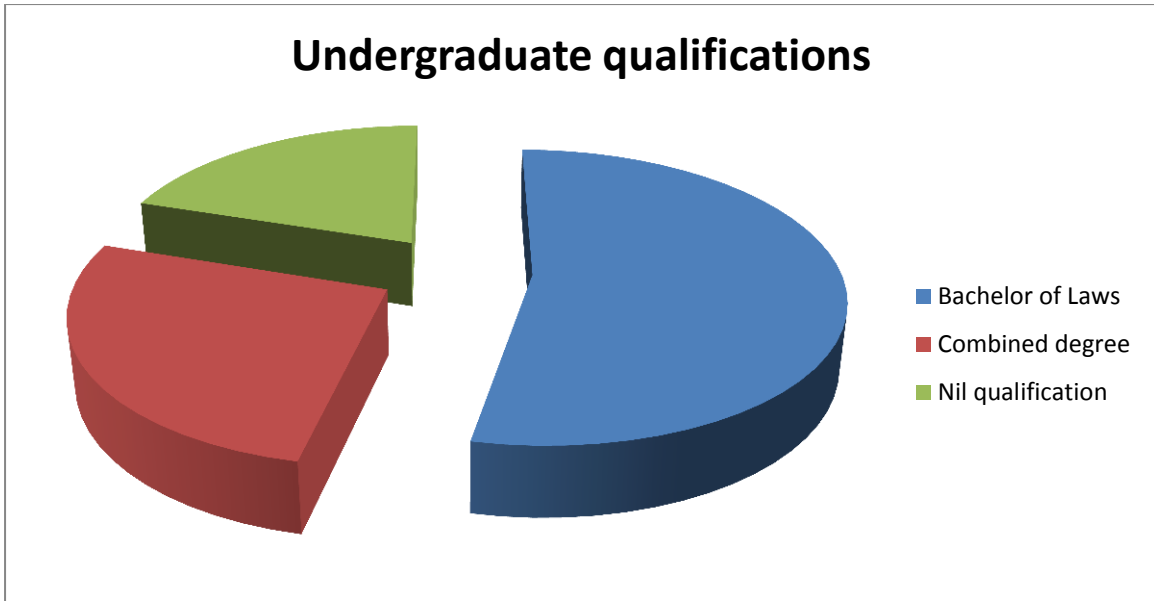


Figure 5.15: Legal qualification obtained

Undergraduate Qualification with Honours

Eight (27%) participants completed their undergraduate law qualification with honours, 16 (53%) were not awarded honours and for 6 (20%) the question was not applicable because they did not gain a university qualification.

Law School Training as Preparation for Legal Practice

Part E: *The Business Carried out by the Law Practice*, of the structured interview asked participants ‘what proportion of the practice’s day-to-day practice is work for which law school training has given you specific expertise?’ The results are shown below.

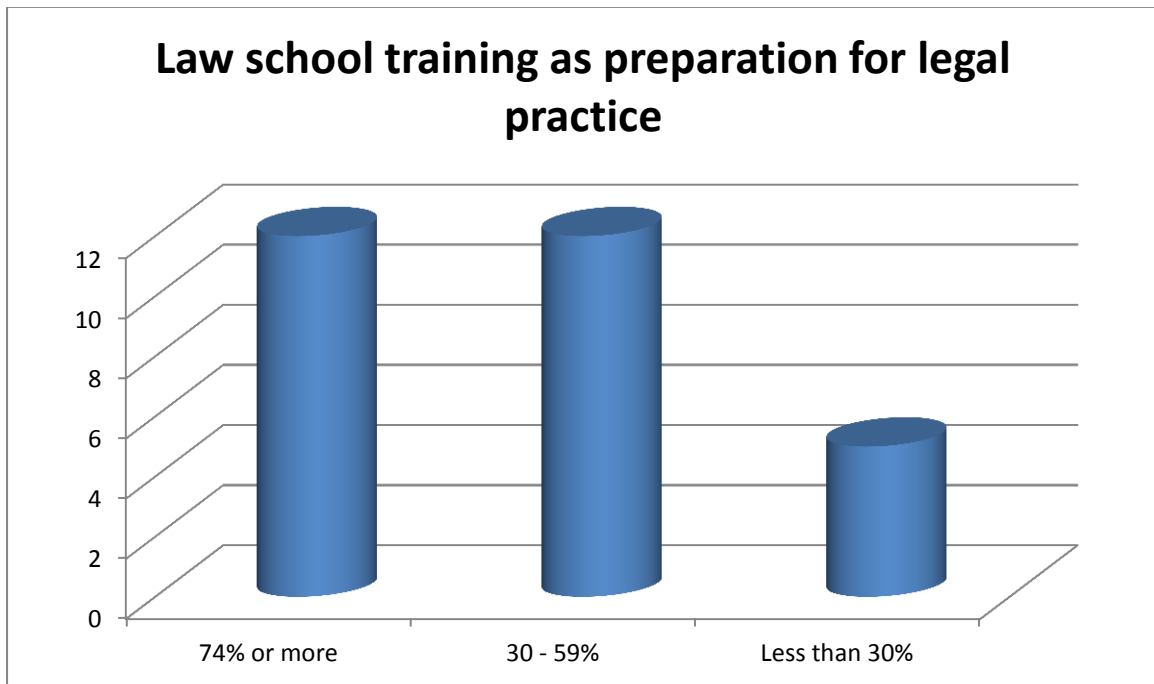


Figure 5.16: Law school training as preparation for legal practice

Table 5.10: Themes and examples on issues relating to law school training as preparation for legal practice

Theme	Examples on issues relating to law school training as preparation for legal practice
Legal education provides the conceptual approach that assists throughout legal practice	UQ was very relevant – it gives you the grounding. The QUT LPC was very good. I couldn't have opened without it – the precedents! 60 – 80% of the work. The conceptual approach from UQ in terms of dealing with the law has been a benefit; this has been more effective than if I'd completed the more prescriptive, process orientated version at QUT. (#22)
Benefits of the skills learnt through legal education. No time to develop these in practice	The actual practice – five to ten percent. But the skills – they were 50 – 60%. The skills such as comprehension, analysis, verbosity, research. I did an assessment on unit trusts at QUT – and I got an HD for it. But I didn't know what a unit trust was! I knew the language – but not the intellectual connection. I fell foul in a Mabo Assignment – my approach was taken badly. In practice – I do contracts and torts all the time – these are first year subjects. I was lucky that I worked and studied as well – which helped. Uni was out of touch – but it teaches you how to think and research – it teaches you the skills. There is no time to get that in practice! (#22)
Legal education does not provide the business management aspects of legal practice	Studying and practising law are different. Studying law is essential – but you need more. The study gives you grounding in law, but not in business management. The [Bachelor of] Commerce was good. Accounting was useful for practice management. You have to study law before you can practise it. Just because you are a brilliant academic won't make you a brilliant lawyer. (#25)

Seventeen participants provided qualitative data in response to this question. Clear sub-themes emerged from the question. The first sub-theme was that legal education provided the conceptual approach to legal practice as opposed to merely dealing with prescriptive, process orientated issues. The discussion included the benefits of such a legal education as being that the law changes from the days of being at university, yet a thorough knowledge of the concepts allows the practitioner to extrapolate those concepts into current day issues. A second sub-theme was the importance of legal education for developing skills such as comprehension, critical analysis and research and that, in practice, there is no time to develop these skills. A third sub-theme was that legal education does not provide the business management aspects of legal practice. Most of the participants made the point that legal education (including postgraduate legal practice courses) had not prepared them for legal practice. This particular sub-theme is related to topics such as mentoring and continuing legal education – both of which are discussed in Chapter 7 in relation to RI 5 (Recruitment and Retention).

Method of Admission as a Solicitor

Part A of the structured interview asked participants the method by which they gained admission to practise as a solicitor. The methods of admission to practise as a solicitor have changed over a number of years. The legal profession in Queensland is currently regulated by the *Legal Profession Act 2007*. The historical and current regulatory context of admission to practice as a solicitor is discussed under Chapter 2. Five participants were admitted through the legal practice course, one as a trainee solicitor, 16 were admitted through completion of articles, 2 through the Bar Board Examinations, 2 through the Solicitors’ Board Examinations, 2 through completion of 10 years government service and 2 through mutual recognition.

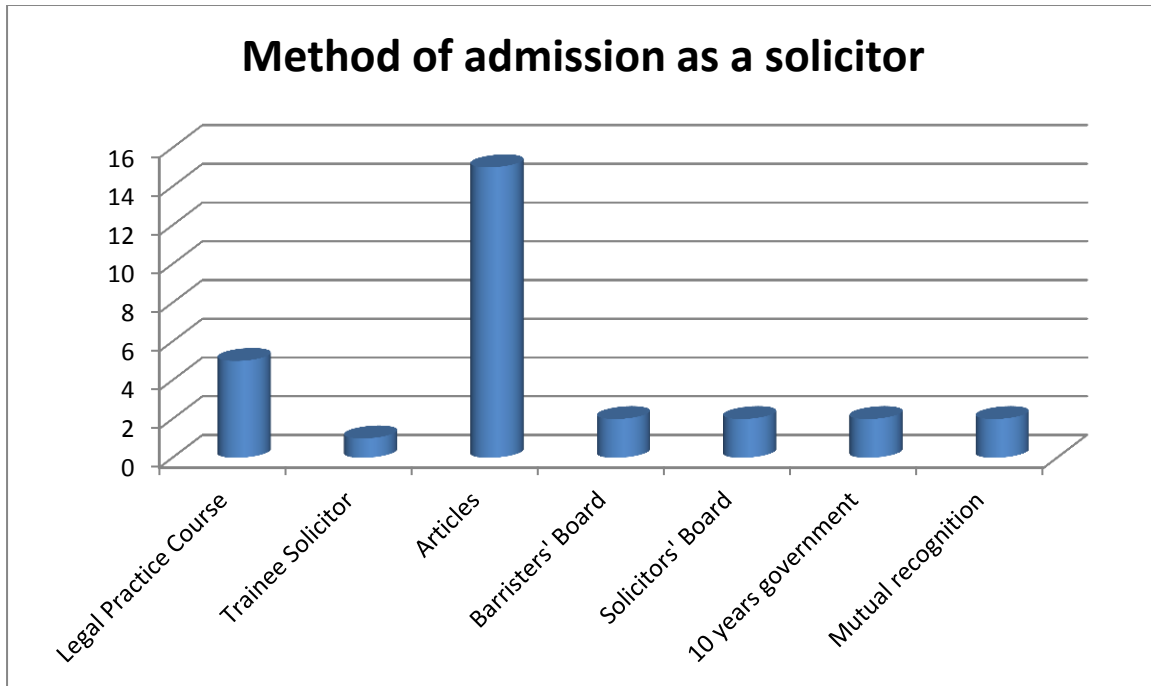


Figure 5.17: Method of admission into legal practice

Table 5.11: Themes and examples relating to method of admission into legal practice

Themes	Examples relating to method of admission into legal practice
Training and admission through rural location	I was working as a clerk in [rural location]. I was admitted in [rural location] on the basis of being employed as a clerk for more than ten years. (#11)
Training and admission through 10 years	I joined the Mag Court in 1973 and knew all the partners; I did various postings. I left the public service and worked for [name of legal practice] as an employee – that was in 1996. In 1997 I was asked to be a partner. (#3)

The quantitative data reveals that most of the participants had gained admission through completion of articles. A significant number had also gained admission using methods that are now no longer available and for which a university education was not required. These include completion of the Barristers’ Board Course, the Solicitors’ Board Course

and ten years government service. Only five participants had completed more recent methods of admission – completion of the legal practice course and as a trainee solicitor. Both of these methods do require a university education. The quantitative data possibly reflects the data on the age of the participants – which largely comprised older practitioners who would have had only the earlier methods of admission available to them.

Postgraduate Qualifications

Part A of the structured interview asked participants about their postgraduate qualifications. Five (17%) of participants have acquired postgraduate qualification. Twenty-five (83%) participants do not have any postgraduate qualifications. Postgraduate qualifications include Master of Laws. Participants did not offer comments on this particular question, but did provide comments on the allied question relating to acquisition of specialist legal accreditation, detailed below.

Specialist Legal Accreditation

Part A of the structured interview asked participants to state whether they had any specialist legal accreditation and if so, to nominate the type of such accreditation. Four participants (13%) had acquired family law specialist legal accreditation following admission as a solicitor. One participant (3%) had acquired personal injury law accreditation, 3 (10%), mediation law and 22 (73%) had acquired no specialist legal accreditation.

Discussion on specialisation has been covered in Chapter 2 in terms of the difficulties in being able to specialise in RRR legal practice. Thirteen participants commented on the topic of specialisation in RRR legal practice including the sub-theme that specialisation ‘is not suitable’. Related topics to specialisation are discussed more fully later in Chapter 6 in terms of RI 3 (Business Carried Out), specifically on ‘areas of legal practice’ and ‘dealing with in-expertise’.

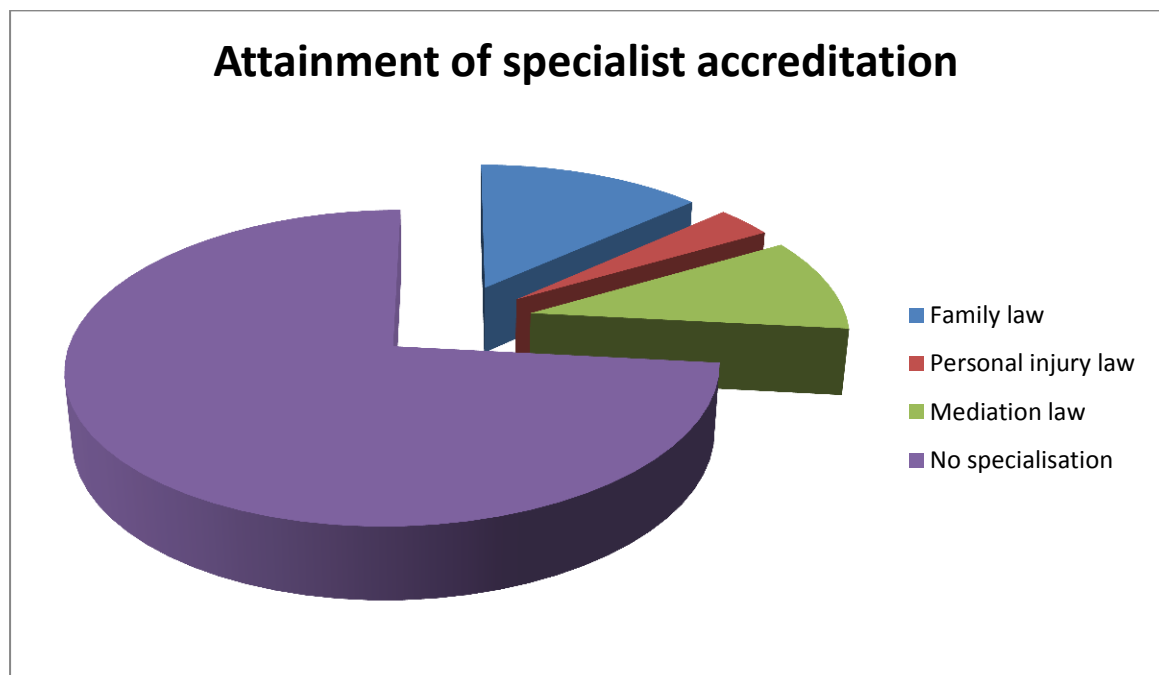


Figure 5.18: Attainment of specialist accreditation

5.4.4 Demographics on the Participant’s Legal Practitioner Status

Part A of the structured interview included a series of questions relating to the length of time the participant had been admitted as a solicitor. If the participant was in a partnership (including an ILP with multiple solicitors) participants were asked about the duration of that arrangement. Similarly, if the participant was a sole practitioner (including an ILP), they were asked about the duration of that arrangement. Participants were asked if they had entered into partnerships and the duration of those partnerships. The data is relevant in terms of providing the exploratory background on the dynamics of sole practices and partnerships. With both structures, participants noted positive and negative aspects that are discussed in Chapter 7 in relation to RI 5 (Recruitment and Retention), specifically in terms of partnership disputes. The relevance of the data for the research question into sustainable RRR legal practice relates to the mechanisms put in place to deal with (in particular) the identified negatives such as resolution of partnership disputes, and the isolation of the sole practitioner.

Length of Time Admitted as a Legal Practitioner

Two participants (6%) were admitted as solicitors for a period of 9 years or fewer, 7 (22%) between 10 to 19 years; and 20 (67%) were admitted for more than 20 years.

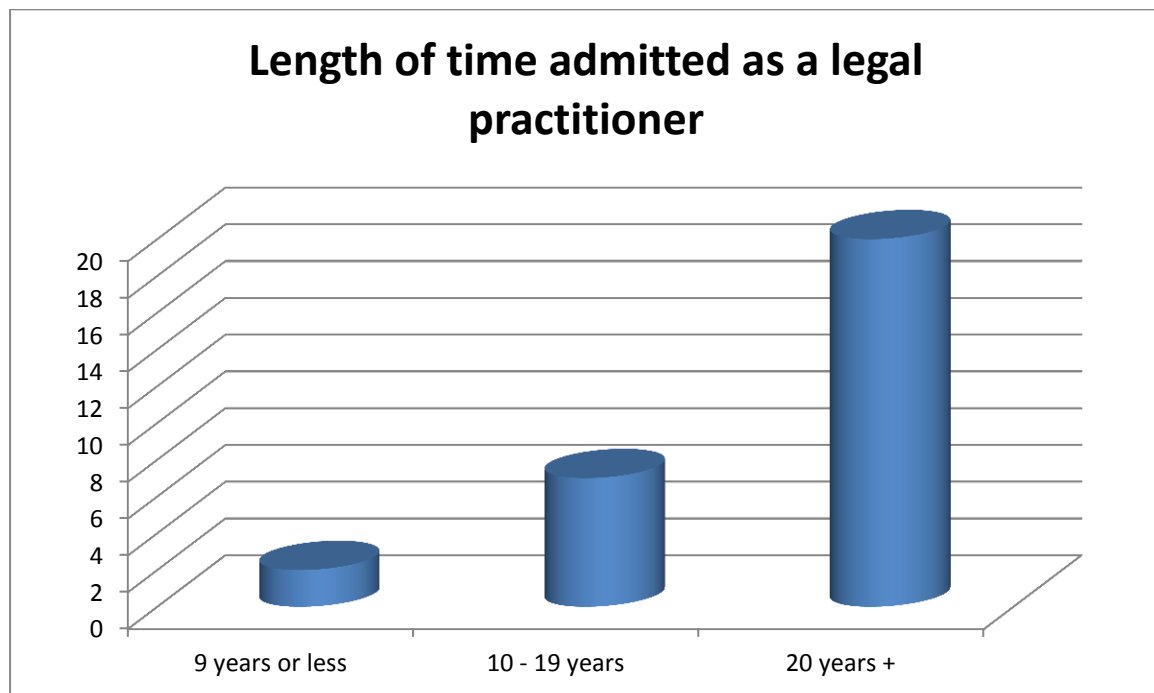


Figure 5.19: Length of time admitted as a legal practitioner

Length of Time as a Principal/Director with the Current Partnership

Part D of the structured interview (Principals/director’s characteristics and relationships) asked participants to state the duration of their current partnership. Seven participants (23%) have been partners (or directors) with the current legal practice for a period of 4 years or fewer, 7 for a period of 5 to 10 years and, 14 (47%) for a period of 10 years or more.

Number of Partnerships

Part D of the structured interview asked participants to state how many partnerships they had occupied. Five participants (17%) have not been involved in any partnerships, 15

(50%) have had one partnership and 10 (33%) have been a partner in between two and three partnerships.

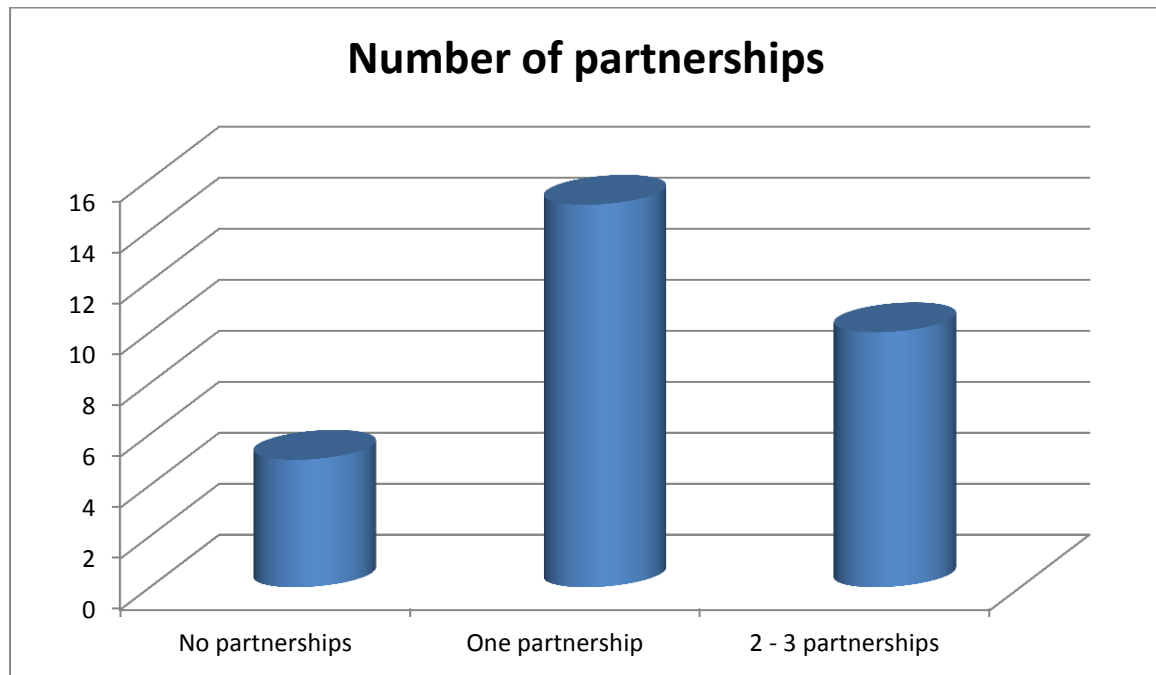


Figure 5.20: Number of partnerships

Length of Time Being a Principal/Director in the Current Sole Practitioner Governance Structure

Part D of the structured interview asked participants to state the length of time they had been a sole practitioner. Two participants (6%) have been a sole practitioner (or director) for a period of four years or fewer; 5 (17%) for a period of five to ten years; and 4 (13%) for a period of ten years or more. Participants from 15 sources made similar comments about the movement between sole practice and partnership.

Family Background in Law

Part A of the structured interview asked participants whether they had any family background in law. Only 2 (7%) participants reported that a family member had a background in law. The remaining 28 (93%) had no such link.

The qualitative data on the dynamics, duration and disputes involved in partnerships and sole practices is discussed in detail in Chapter 6 in terms of RI 4 (Business Planning) and the choice of governance structure of the law practice is explored as part of the nature of sustainability practices.

5.5 Summary

This chapter has summarised the results of the structured interview data with reference to the demographics of the participants and their law practice. Chapters 6 and 7 continue the presentation of the results with reference to the research question and the associated research issues. This chapter provided a summary of the demographics of the participant's law practice in terms of its longevity, location and why that location was chosen. The chapter provided a summary of the number of locations of the legal practice,

the governance structure and the number and status of the legal practitioners within the law practice. A brief summary was also provided of the themes relating to difficulties in attracting legal staff. The chapter also provided a summary of the participant in terms of their gender, age, legal education and professional qualifications.

The following two chapters continue the summary of the results. Chapter 6 focuses on the research question in terms of the findings with respect to RIs 1 to 4 that deal with connectedness to the profession, connectedness to the community, legal practice areas carried out and business planning carried out. Chapter 7 provides the summary of findings relating to RIs 5 to 7 that deal with recruitment and retention practices, marketing and use of information technology.

Chapter 6

Results of the Structured Interview Data (Part 1): ‘The Prevalence and Nature of Sustainability Practices’

6.1 Introduction

This chapter reviews the quantitative and qualitative data from the structured interviews in terms of the research question which asks: What is the prevalence and nature of sustainability practices in regional, rural and remote (RRR) law practices? Seven research issues (RIs) inform the research question. They relate to the prevalence and nature of connectedness to the profession and the community by the legal practices, the business carried out, business planning, recruitment and retention, marketing and use of information technology. This chapter focuses on providing the results of the data in terms of research issues one to four. The chapter reports on the participants' connectedness to the profession and the community, including additional business interests of the participants. It also looks in detail at the business carried out including the legal practice areas, dealing with lack of expertise, methods of fees and billing, profitability and growth of the legal practice. Categories of clients are also reported on including sources of clientele. The chapter reports on business planning practices in terms of frequency, responsibility and scope. The chapter also deals with the use of strategic alliances.

6.2 RI 1: What is the Prevalence and Nature of Connectedness to the Profession by Legal Practices in RRR Queensland?

Chapter 2 highlighted the importance of the involvement of RRR legal practitioners in their community and their relationship with their profession. This part of the chapter looks at the data in terms of that involvement. First, it considers the participants' involvement with the legal profession.

6.2.1 Involvement with the Legal Profession

Part B of the structured interview (*The Law Practice, the Community and the Profession*) asked participants the extent to which they are involved with professional organisations including the Queensland Law Society, their district law association, the Women's Law Society, young lawyers' associations, international law associations, family law associations, mediation law associations or any other law profession association.

Figure 6.1 reports on the extent of involvement the participant has with professional organisations. The involvement is in terms of being: 'well-connected and involved', 'moderately connected and involved', 'low or absent connection'.

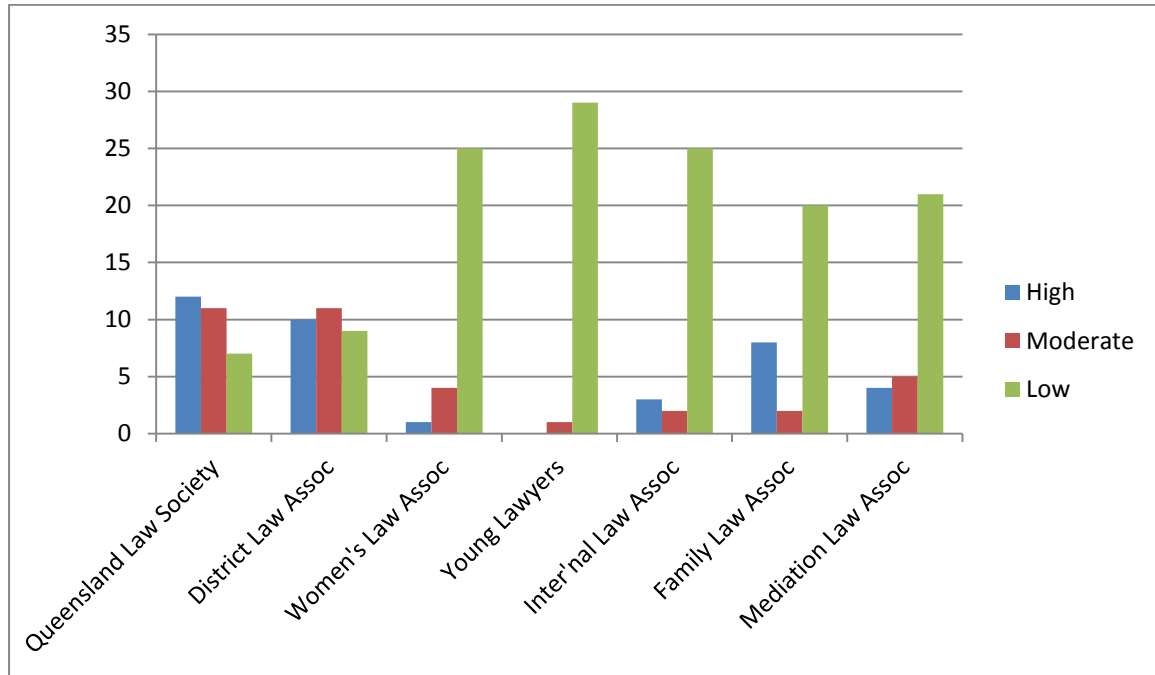


Figure 6.1: Involvement of RRR legal practices with professional law associations

The most significant involvement was with the Queensland Law Society and district law associations, with some involvement with family law associations and mediation law associations.

The comments from 22 participants provide additional insight into the connections with the Queensland Law Society (QLS), and also with Lexon (indemnity insurers for the legal profession).

Table 6.1: Examples of connections with professional law associations

Theme	Examples of connections with professional law associations
QLS as a source of continuing legal education	I am regularly in contact with the QLS – I annoy them. I’m always utilising their services. With the DLAs I will go to the conferences for the CLE/CPDs – I’m a conference junkie. They are too far away. (#22)
Unimpressed with QLS as a source of support for its members	I am a QLS member. I’ve been disappointed with the level of help to the profession. Very unimpressed with the effort. And annually – nothing changes. They have capitulated to individuals and to government. They have conceded on plaintiffs’ rights – plaintiffs’ rights have been eroded and the QLS have accepted that. They continue to play a policemen role. The QLS is not for the profession in terms of encouraging and supporting the profession. I would like to see the QLS as an AMA – that stands up for its members. Ours is an association where its members are shafted. There is a positive side though – the continuing legal education has been far more accessible for regional practitioners – they are mindful of the regions. With the DLA we meet in [regional location]. I’ve maintained my membership and they
Positive response about the DLA as a source of legal education	

**Chapter 6 – Results of the Structured Interview Data (Part 1):
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Theme	Examples of connections with professional law associations
	run an annual conference – which is worth 10 CPD points – that’s very good. (#21)
The QLS showing no leadership to protect legal practice areas	The fact that the QLS shows no leadership – this allowed cut-price conveyancing. It’s less personally rewarding. The QLS they abolished the scales – as price fixing and contrary to the ACCC – and which the profession relied upon. Now it’s a price war. Clients of Conveyancing Works – very poor – it’s a shithouse. They think that buying property is easy. (#21)
The QLS failing to support its members against clients	I had an instance in the law few years – a disgruntled client went to the QLS to complain. The QLS didn’t want to play a role to support me. It went to the LSC. Why pay fees to the society? They need to be an advocate to the members – not to the disgruntled clients. (#21)
Comparison of the QLS with the DLA	We have small informal meetings. We all get on reasonably well. The meetings are convivial. I’m strongly connected. The QLS is more at arm’s length. The presidents do come up – every alternate year we see a president. Their interests are different...’ (#22)
Lexon as a source of support and greater sense of connection	All the partners have contacted David Durham – Lexon – on various occasions he has helped or referred. He came into the office for member support. David was travelling around Queensland. Until he came it didn’t impact – he helped so much with reducing stress. We felt as though he was on our side. We have a better connection with Lexon. David is right in there. He has practical solutions; he is very giving and caring. If someone gets sued and it’s outside their practical concerns he makes me feel cared for – he has empathy. Fifteen years ago – I was less experienced and still negotiating the ethics. I had this gut feeling that something was wrong but I didn’t get in contact. Now – with David – I wouldn’t hesitate to contact him. The check-lists are too complex but I applaud them thoroughly. (#6)

RRR legal practitioners appear to rely on local connections, including local professional connections, rather than any broader professional connections. Many of the participants reflected that they felt detached and unsupported by the QLS in terms of it being an advocate for RRR legal practitioners. In comparison they felt closer and more supported by their own district law association. However, many participants also stated a reliance on information that was available from the QLS in terms of updates to the law. A number of participants voluntarily nominated Lexon as being a source of support that was not only willing to be physically available, but also was active in providing measures to assist with potentially stressful ethical and regulatory matters.

6.3 RI 2: What is the Prevalence and Nature of Connectedness to the Community by Legal Practices in RRR Queensland?

6.3.1 Involvement with Community Organisations

Part B of the structured interview (*The Law Practice, the Community and the Profession*) asked participants the extent to which they are involved with community organisations, including civic organisations, such as community legal services, service clubs, for example Lions or Rotary, social clubs including golf clubs, political organisations, religious organisations such as churches and, school organisations.

Figure 6.2 reports on the extent of involvement of the participant with organisations from within the local community in which the legal practice is located. The involvement is in terms of being: ‘well-connected and involved’, ‘moderately connected and involved’, ‘low or absent connections and involvement’. Figure 6.2 below reveals the extent of community involvement.

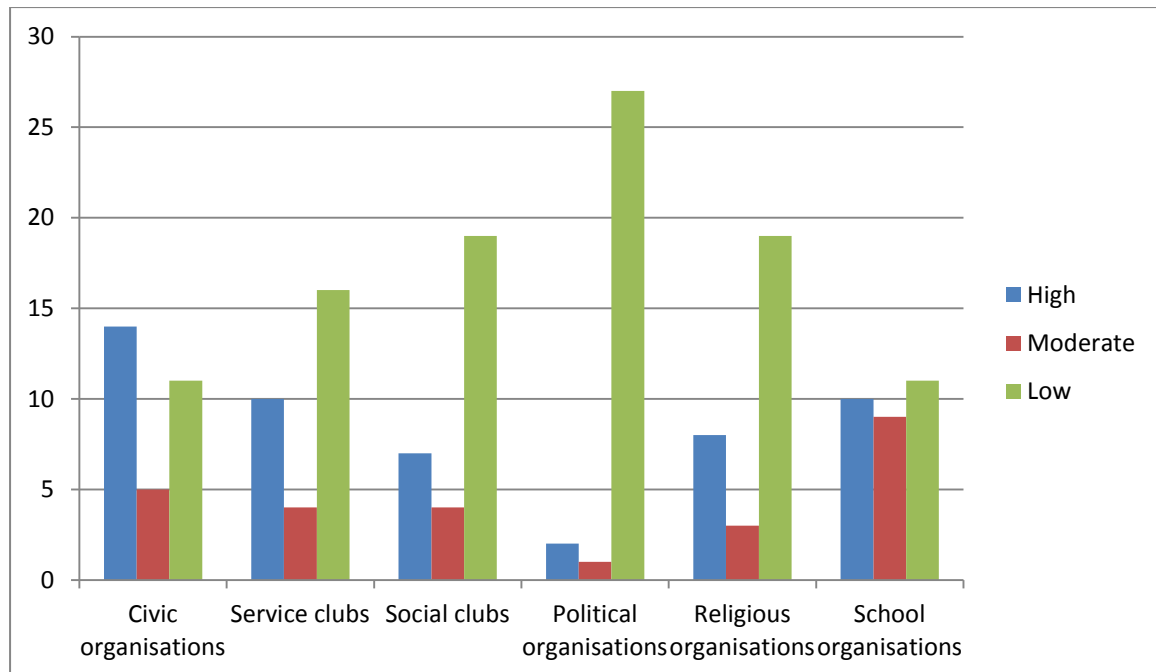


Figure 6.2: Involvement of RRR legal practices with community organisations

Figure 6.2 indicates that the highest community involvement is with civic organisations, service clubs and school organisations. Political organisations have the lowest involvement.

Responses from 25 participants on their involvement with local organisations provide further insights.

Table 6.2: Examples of connections to the community

Themes	Examples of connections to the community
Involvement in not-for-profit and agricultural organisations	I’m involved with establishing a medical practice – not-for-profit; and I’m the honorary solicitor for every not-for-profit organisation in [remote locations]. I do all the legal and pro bono work for all that – sorting out leasing; constitutions. It takes about 10% of my time. I’m also involved with the [cattle breeders association]. (#22)
Extensive involvement across community organisations, schools, local government and environmental groups	We have a big involvement – the [remote location] Community Centre, Surf Life Saving, [remote location] High School – ‘Mr and Miss [remote location]’; school debating; my son – [X] – school in [remote location] – we are on the school board. We have a lot of students from [remote location school] doing work experience... We are on the [remote location] Advisory Board. This board reports to the Mayor and local government. We are on the Chamber of Commerce, the Combined Clubs, and the [remote location environmental society]. (#6)
Involvement with schools and local organisations	I am a member of the Board of Secondary Studies; P and F; the Football Club. We take work experience from the school. We don’t do any advertising, but we will sponsor locals. If the ambulance asks I say ‘yes’. If [metropolitan hospital] asks – I say ‘no’ because it’s not local. I support the community... local races... (#7)
Younger members of the legal practice are encouraged to have involvement with social justice organisations	We have a strong philosophy to encourage the younger members to be involved in sporting clubs... networking upwards. Their involvement is in the [regional location] Community Legal Centre... pro bono. We have five in family law – they have regular meetings. Three girls contribute to the community – for example – the Homeless Person Legal Clinic and [regional location] Women’s Community Clinic. They are also involved in the paraplegic association. (#9)
Extensive involvement across a range of community, government and school organisations	I am deputy mayor of the local council; Treasurer of the Aged Care; Treasurer of the Ambulance Committee; On the Advisory Committee for the [name of church] nursing facility. I was on the [name of region] Health Advisory Committee. I’m a firewarden. My partner is the deputy of the local state school. (#24)
Inter-generational involvement with organisations. Family association with political	I’m involved in [social club] – like my father. My father was heavily involved in the ambulance and other community organisations. I do about a week’s worth of work a year – that is apart from the meetings. I don’t do their legal work. My father was the campaign manager for [name of politician]. My brother

Themes	Examples of connections to the community
organisations	is in the [political party]. I’m not in any political organisation. (#25)
High involvement with political organisations	I’m a member of [name of political organisation]. I was asked to run for a seat. (#19)

Almost all of the participants expressed a high involvement with a wide range of community organisations, in particular, organisations that involved schools, sporting and community service purposes. The extent of that involvement included monetary support and pro bono legal advice. The motivation for the involvement was diverse, including as a replacement for advertising, access to recruitment for the law practice and assistance with community building without any need for advertising. There was a sense from many participants that such involvement was simply a necessary part of the ‘job of being a local solicitor’. Although involvement with political organisations appeared minimal in the quantitative data, in two instances the political involvement was at the high end and included parliamentary representation.

6.3.2 Entrepreneurial Characteristics of the Principal/Director

A sub-theme from ‘connections to the community’ is the ability of the RRR legal practitioner to become involved in the community and to display entrepreneurial characteristics in order to generate business.

Part D of the structured interview (*Principles/Director’s Characteristics and Relationships*) asked participants to rate the extent to which they considered they displayed characteristics associated with being ‘entrepreneurs’. The characteristics for comment included: ‘ability to deal effectively with risk and uncertainty’, ‘ability to see opportunities to the legal practice’s advantage’, ‘ability to maintain a knowledge of business methods and technologies to advance the legal practice’, ‘ability to deal confidently with social situations’, ‘demonstrates judgement and insight’, ‘demonstrates creativity and vision’, ‘demonstrates keen legal intelligence’, ‘ability to develop a rapport with clients and colleagues’ and, ‘is considered a strong leader’.

The analysis is subjective. Participants self-assessed on the basis of the frequency of displaying the characteristics in terms of ‘often displaying’, ‘sometimes displaying’ or ‘never displaying’.

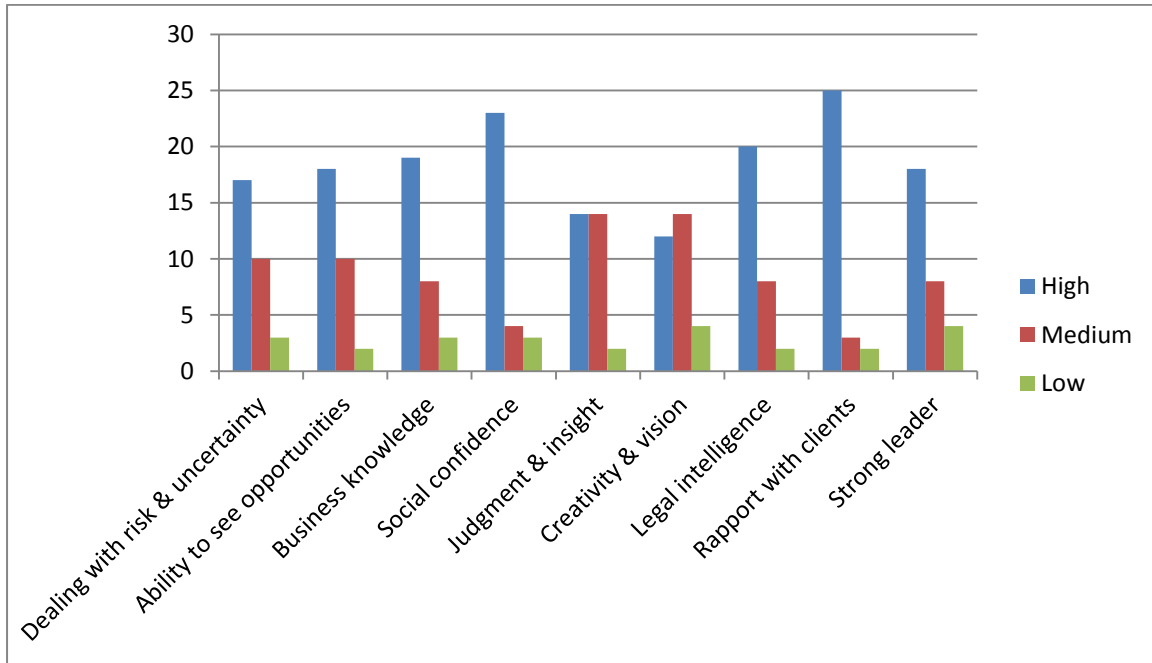


Figure 6.3: Entrepreneurial characteristics of the principal/director

Participants were generally uncomfortable responding to these questions – freely stating this discomfort. They did not overly elaborate other than, in most cases, to down-play their ability to display entrepreneurial characteristics. The data shows, however, that most participants still rated themselves reasonably highly on all characteristics, with the exception of judgement and insight and, creativity and vision. The characteristics of social confidence and rapport with clients were both rated highly. This is of some relevance to the earlier data relating to the RRR legal practitioner’s need to be connected to, and involved with, their community in order to generate business.

In most instances, the qualitative responses were brief and tentative, and included comments such as: ‘I worry and am concerned about risk and uncertainty’ (#1), ‘creativity and vision – this is a weak point’ (#2), ‘No! I’m not considered a strong leader’ (#3), ‘No! One of the problems...’ (#2), ‘I hate uncertainty’ (#25) and, ‘With regard to judgment and insight – I’m on a razor’s edge’ (#2); and ‘Lawyers are not creative’ (#1).

6.3.3 Additional Commercial Activities of the Principal/Director

Part D of the structured interview asked participants, ‘What other businesses or enterprises (other than the law practice) are partners within the law practice engaged in?’ Figure 6.4 reports on sources of additional income that is available to the participant. The additional sources of activities offered to participants included: ‘Real estate’, either ownership or group investment,; ‘banking’, ‘insurance’, ‘teaching’ (eg. at university or TAFE), ‘farming’, ‘accountancy’ or ‘public office’ (eg. at, local, state or federal government level).

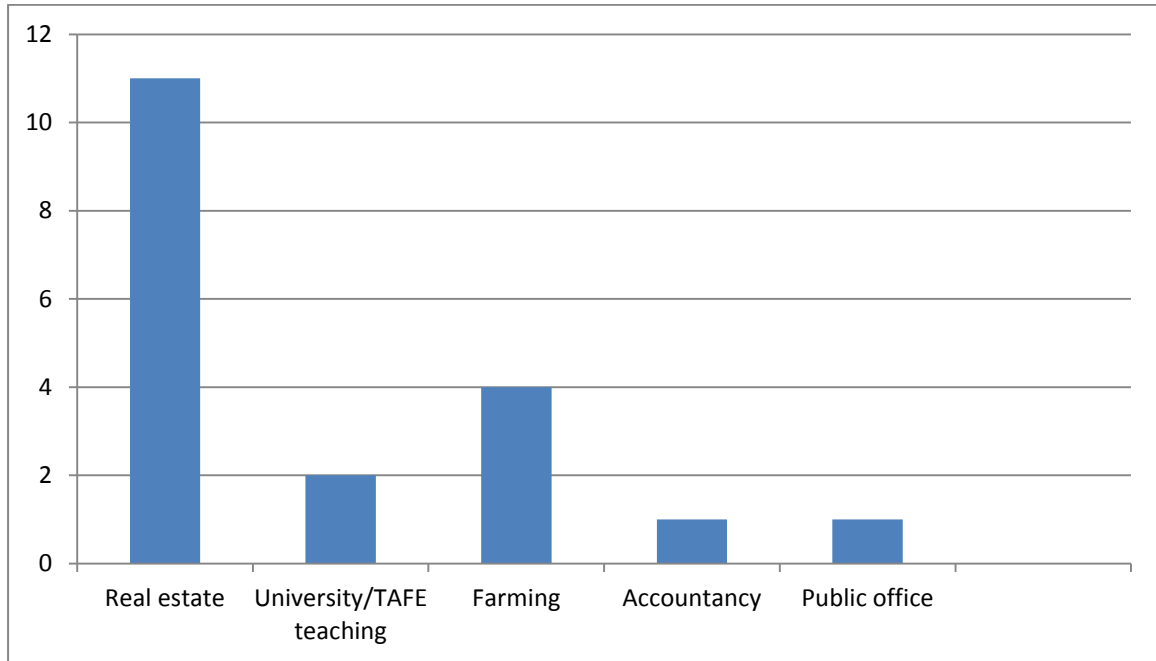


Figure 6.4: Sources of additional income

The quantitative data shows that real estate was the most common source of additional income, with farming coming a notable second. The qualitative data provides further details on the additional sources of income generated by the participants. The comments were not detailed and included remarks such as, ‘I own the building the practice is in and three grazing properties. I’m also the deputy mayor’ (#24) and, ‘as a partnership we purchased the property and now rent it back through the business. The partners also own another property’ (#6) and, ‘My husband has just opened the local [name of franchised business]. My partner owns a pub’ (#19). Again, the qualitative data indicates some diversity of involvement with the community in terms of sources of income.

6.4 RI 3: What is the Prevalence and Nature of Business Carried Out by Legal Practice in RRR Queensland?

Chapter 2 discussed the legal practice areas traditionally carried out by RRR legal practitioners and the difficulty in being able to specialise. Part E of the structured interview (*The Business Carried out by the Law Practice*) asked participants a series of questions including: the areas of law dealt with by the law practice, the activities which consume the highest proportion of the participant’s time, dealing with lack of expertise and, the amount of personal advice, rather than legal advice, given to clients.

6.4.1 Legal Practice Areas Carried Out

Part E of the structured interview asked participants to indicate in percentage terms, the time spent on a list of practice areas including probate, wills and estate planning, conveyancing and property law and family law. The percentages included: ‘more than 50%’, ‘25 – 49%’, ‘10 – 24%’, ‘less than 10%’ or ‘nil’. Figure 6.5 reports on the results.

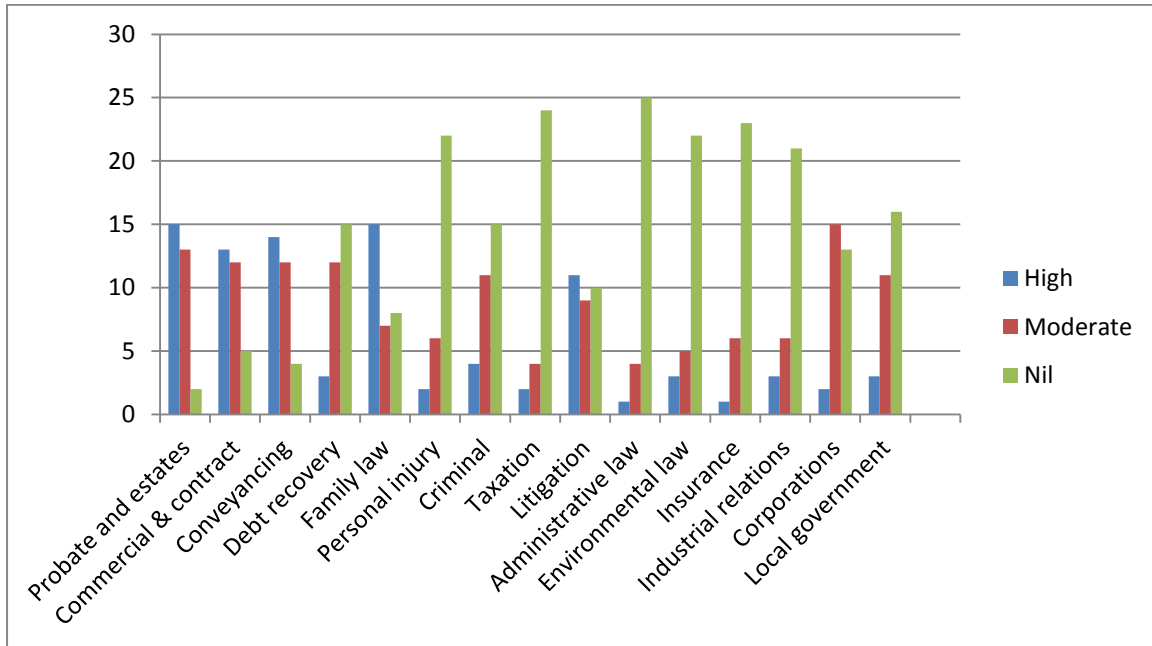


Figure 6.5: Practice areas carried out by RRR law practices

The quantitative data reveals that the most common areas of practice for RRR legal practices include probate and estates, commercial and contract, conveyancing and family law. Some areas of law, it seems, are not practised at all including: personal injury, taxation, administrative law, insurance and industrial relations.

Participants did not provide much additional comment on this particular question. Table 6.3 below provides some comments.

Table 6.3: Examples and issues relating to legal practice areas

Theme	Examples and issues relating to legal practice areas
Specialisation in conveyancing, rural properties and succession	We have a large conveyancing practice – we have increased our fields which has let us have specialisations within the firms. We specialise in rural properties and succession. There is another firm in town that does legal aid, and another one that does family and legal aid. We bought this practice in March 2002. We do the largest share of conveyancing. It’s 10% of our budget. (#18)
Practising in more areas of law but for less income	With property – we are doing more but it brings in less money. We do litigation... personal injuries and bad debts. The golden days of PI are gone. What is left is like dogs fighting over the left overs. (#25)
Ability to see gaps in legal practice areas	I’ve been able to see areas in the law where there are gaps that need developing. My areas of interest have been in equity and fairness. (#18)
Diversifying to sustain	This is a small practice; we’re always doing something

Theme	Examples and issues relating to legal practice areas
a small practice	different. (#29)

The data reveals that the participants practise in particular areas of law that tend to be probate and estates, conveyancing and family law and, commercial and contracts. There were only a limited number of comments about a strategic approach to dealing with legal practice areas.

6.4.2 Activities Which Consume the Highest Proportion of the Participant’s Time

Part E of the structured interview asked participants to state in ‘yes’ or ‘no’ terms the activities which consumed the highest proportion of their time. The options related to: ‘conferring with clients’, ‘researching and preparing briefs’, ‘negotiating on behalf of clients’, ‘developing clientele and public relations’, ‘updating case files’, ‘reading to maintain legal knowledge’ and, ‘conferring with colleagues’. The quantitative results are shown below in Figure 6.6.

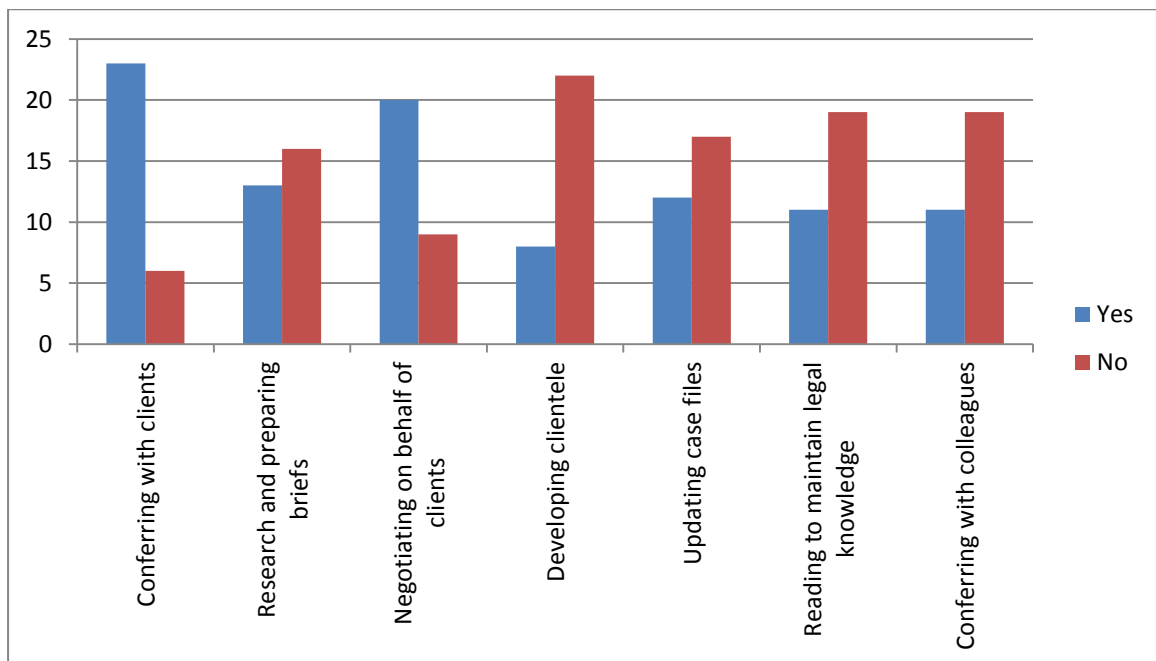


Figure 6.6: Activities which consume the participants’ time

Figure 6.6 reveals that conferring with clients and negotiating on behalf of clients were the two activities that consumed participants’ time. Again, there was little additional comment on this question. This may be due to the nature of the question that contained a number of components to it, leaving participants reluctant to add more.

6.4.3 Dealing with Lack of Expertise

Part E of the structured interview included the question: ‘If a matter referred to the law practice was not within a partner’s area of expertise, how would the law practice deal

with it?’. The options were ‘to research the matter within the law practice’, ‘to seek the support of other practitioners within the law practice’; or, ‘to refer the matter to specialists from another law practice’.

Figure 6.7 reports on how participants indicated they would deal with legal practice areas for which they did not have any expertise.

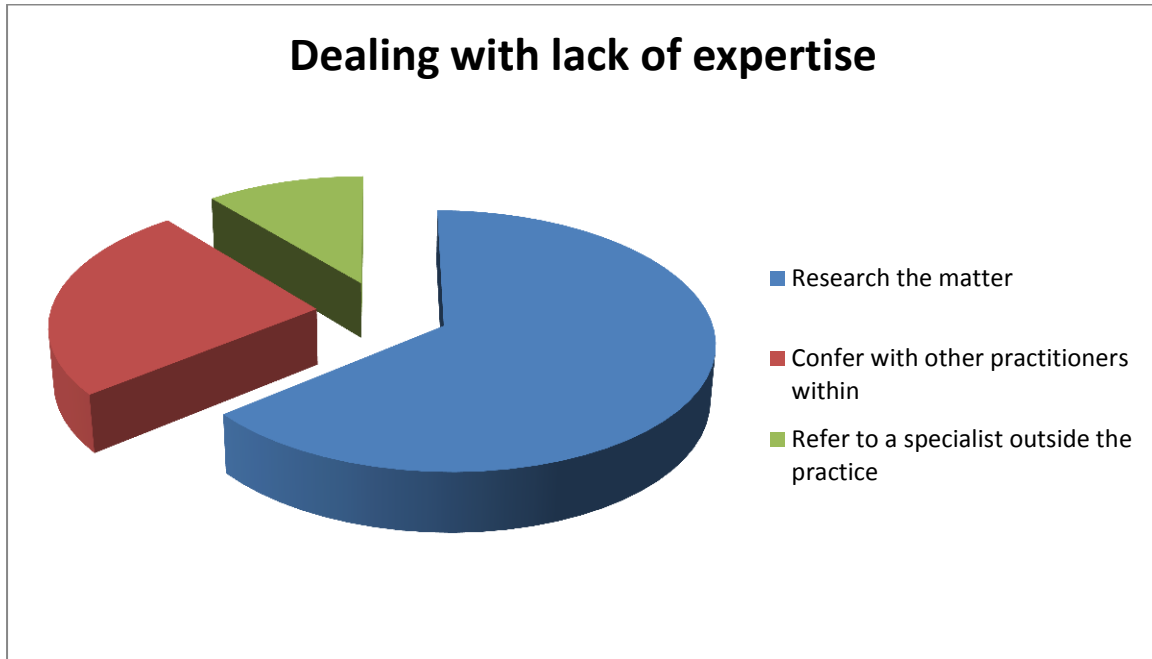


Figure 6.7: Dealing with lack of expertise

The quantitative data indicates that most participants, when faced with a matter for which they had no expertise, would research the matter.

Table 6.4: Dealing with lack of expertise

Themes	Examples of issues associated with dealing with lack of expertise
Balancing risk with keeping the matter and client	If it’s not too difficult – I will be honest and say I will look into it. If it’s complex – I’ll refer it. If we can take it on without too much risk – then I will research it (or phone QLS). I’m happy to take it on. (#14)
Experience in practice impacts on the decision	It depends on the matter: If I can handle it with some direction I would sound someone out. I’m more inclined to say: “I can’t do it appropriately” or “I don’t do much practice in that area; better to see someone who specialises” and I will provide details. To do otherwise, increases the stress levels. When I first started in sole practice – I was worried about the work – I would take everything. Now – knowing the stress that creates [I] will now refer the matter. This is from experience! If you are a sole practitioner – if you say “yes” you can’t do everything. I’ve said to Legal Aid – “no

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Themes	Examples of issues associated with dealing with lack of expertise
	more”. (#7)
Obtaining advice through an alliance Piecemeal referral and knowledge sharing	If I need advice – I prefer to use [name of large law firm in another location] rather than a barrister. They will do a piecemeal job. I will refer for, say, a succession planning and I will learn from it. I use them as a partnership. (#22)
The need for resources to assist with the decision	I need a list of barristers and their specialties. If you could find the barrister – this would be easier for rural practices. (#21)
Diversity of geographic locations of the practice	The [metropolitan location] law practice is in the metro CBD. This is showing growth of profit; and experience. Litigation goes out to [metropolitan location]. The regional firm specialises in not-for-profit work; agribusiness. (#26)
Specialisation	Our referrers are at the CBD level. The expertise is less at the GP level. We are very specialised – we don’t do criminal law. We do only a handful of areas. If someone comes into us with a franchise issue while we are on a conference call, we can refer it. Even though we are in the bush we have access to lawyers. (#17)
Decision is based on avoidance of embarrassment	My biggest motivation is embarrassment – I don’t want to stuff up and have to explain it to the client. I have made mistakes (and had to explain) and the clients have stuck with me. This is contrary to what the indemnity insurer advises. (#18)

Eighteen participants provided additional comments around the topic of dealing with a lack of expertise. The comments provided further insight into how the participants dealt with the dilemma of a lack of expertise. A number of participants said that they would refer the matter to a barrister – rather than a solicitor who might be considered a competitor. Participants also commented that they would seek the services of the QLS to assist them in terms of asking for research materials or for names of other solicitors who could deal with the matter. Another common response was that the participant would not provide advice on the matter – that they would get them to see someone else.

The issue of lack of expertise is a complex one for the RRR legal practitioner. It impacts on balancing competing requirements of running a law practice that involve the need to retain clients and generate work, with the competing risks of increasing stress and breaching ethical standards. Participants indicated the development of some methods to deal with the issue including: referring work to other practices that they trusted not to take the client, establishing alliances with metropolitan practices and, referring to barristers (rather than solicitors).

6.4.4 Extent of Personal Advice Rather Than Legal Advice Given to Clients

Part E of the structured interview asked participants the extent of personal advice, as opposed to legal advice, that was given to clients in terms of ‘0 – 5%’, ‘6 – 20%’, ‘31 – 40%’ or ‘more than 40%’.

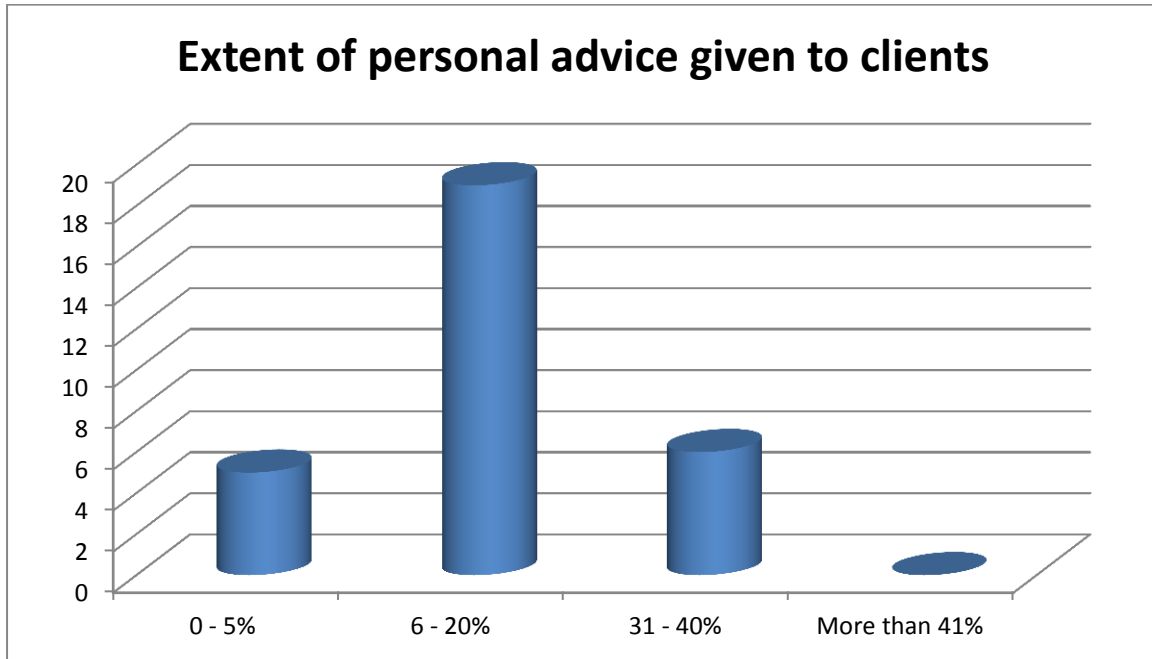


Figure 6.8: Extent of personal advice given to clients

Figure 6.8 indicates that most practitioners provide at least six to 20 percent of their time when with a client in giving personal advice rather than legal advice. Only two participants responded directly to this question; however, during other parts of the interview, other participants contributed comments. Table 6.5 documents some of those responses.

Table 6.5: Examples of issues related to providing personal advice to clients

Theme	Examples of issues related to providing personal advice to clients
Providing counselling	This is a burden – you’re charging for that advice. There are a lot of emotions – but you give the family what they want – you try to keep it together. I feel like a counsellor for rural matters. There is a history with these family arrangements. If there is a lot of counselling – then I can refer it to rural consultants who deal with these rural issues. I can refer to Relationships Australia. But there is a stigma with psychologists. Rural people – they keep on working – they will find a solution. They are a stoic breed. (#5)
Confidentiality associated with	Whatever you tell them they know that it is confidential and that it is allowable to talk to a profession. That they

Theme	Examples of issues related to providing personal advice to clients
being a solicitor	can talk about issues beyond... other things. We do an awful lot of grief counselling – and using a psychologist. (#5)
Referring the issues	Not as much now as I used to... difficult to draw the line between legal advice and life skills advice. I make referrals to counselling; anger management and parenting courses. (#15)

Most of the participants reported that there was an expectation that they provide personal advice – including marriage counselling, parenting, problem solving, personal advice and general life skills counselling. The amount of personal advice was most recorded in the areas of family law and criminal law matters. Participants commented that they could not charge out time for such advice yet it took up a significant amount of time. Participants commented that the issue of providing personal advice was an area they had improved on over time and experience, in terms of knowing that they could refer clients to a qualified counsellor.

6.4.5 Fees, Profitability and Growth

The literature review (Chapters 2 and 3) reported on the LCA Survey⁶¹² on RRR lawyers and their average income. Chapter 2 focused on fees and billing, profitability and growth as being functions of legal practice management. The topic of ‘fees and billing’ for legal practitioners merged into ethical issues that are beyond the scope of this thesis.

The structured interview, at various parts, asked participants on the three topics of fees and billing, profitability, and growth. The results are now presented in that order.

Fees and Billing

Part E (*The Business Carried out by the Law Practice*) of the structured interview asked participants to select from a series of three statements which method best described how service fees were determined. The three statements were: ‘high billing rates are based on complexity of the advice and/or risk in client engagement’, ‘moderate billing rates based on the greater use of less skilled professionals and paralegals’ or, ‘strong reliance on highly competitive billing based on the maximum use of paralegals.’ Figure 6.9 below reports on the quantitative results.

⁶¹² Law Council of Australia and the Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey*, July 2009, 31.

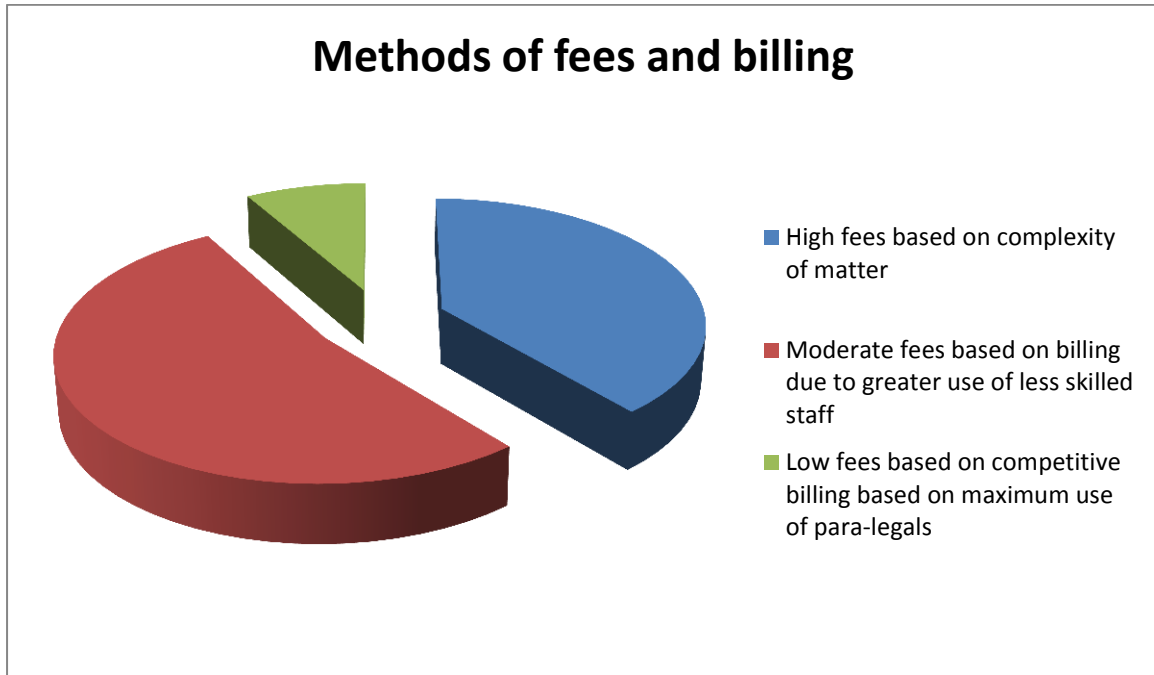


Figure 6.9: Methods of fees and billing

The quantitative data indicates that participants charged moderate fees based on billing that utilised less skilled staff. Twenty-one participants provided further comments on this question that indicates the importance of this aspect of RRR legal practice. Those comments are summarised in Table 6.6 below.

Table 6.6: Examples of issues associated with fees and billing

Themes	Examples of issues associated with fees and billing
The importance of understanding fees for legal practice management	I have a big rural base in my firm. I’ve been approached by some big firms to sell to... I put all the figures on paper now. This is essential for selling to the big firms. That process was good. I’m now very comfortable with my billing. If you up the fees then you need good staff to justify those fees. People will pay for good services. You need the brand name and the reputation. (#22)
Justifying the fees through clear written communication with clients	I draft the documents clearly and understandably. I explain the legal terms and why they are needed – clients are happy to pay for that. This helps with billing. (#22)
Billing depends on the legal practice area Analysing legal practice areas and	I’d use all methods. It depends on the work and the client. I need paralegals to gear the business. I did the legals for the medical centre – I did 40 percent on pro bono – there were a lot of unrecorded meeting. I recently increased my fees. I did a report on conveyancing and found that rarely does a cottage conveyancing give any follow up work. From an estate file – I will do a cheap rate – you’re giving a service... free wills for

Themes	Examples of issues associated with fees and billing
<p>clients to determine best returns</p> <p>Reduced fees are not a benefit</p>	<p>granny. But I didn't get the estate. I analysed both areas – both cause 90 percent of my problems, but with no return. I do them as a service. I can choose whether to do them or not. After that report – it freed me up. There is no gratitude for the reduced fees... That decision has taken all the stress out! It's a business not a job. (#22)</p>
<p>Requirements to advise clients about disputing the bill – a source of stress</p>	<p>But it is insane – the notices you have to give on disputing the bill! And the initial letter on conveyancing. The pressure is on lawyers – protecting their backside... that is very stressful. It's a cultural thing. We take responsibility for our mistakes. With ethics – there are practitioners in town whose ethics are appalling! (#3)</p>
<p>Clients' lack of understanding about the role of the solicitor</p> <p>Impact of client expectations on solicitors' stress</p>	<p>Clients don't understand what solicitors do. They say they are "just ringing up to get your opinion". That's like asking a plumber to fix your loo for free! One person in a small town gets more of those calls. They know you... they call at six in the morning and quarter to twelve at night! So now I sit in my office... I don't walk down the street to get the paper because people ask for stuff. It's difficult to be in the town. (#7)</p>
<p>Legal practice areas have different billing rates</p> <p>Clients are not prepared to pay for work that is required of solicitors</p> <p>Conferences are a source of finding out what other solicitors do</p>	<p>I like family law because it is costed to scale or rate. It's more about getting the right balance though for conveyancing. With wills – these are the basis of the firm. Wills and estates – these are a nightmare waiting to happen. We charge \$300 (including GST) for a will. I worry about that – we don't do the big letters and follow-up things. We should be doing that, but if we did we wouldn't get the clients back. They wouldn't be prepared to pay for the cost of the letters and follow-up. (#22)</p> <p>The Succession Conference was interesting to find out what others were charging. (#22)</p>
<p>Billing is competitive</p> <p>Solicitors do the legal work and billing is based on that expertise</p>	<p>Billing is competitive – with varying rates of charge depending on the client. We don't operate on paralegals. We use solicitors with support staff and charge on a six minute rates. It depends on the level of the lawyer. All lawyers are supervised... there's supervision. Each division – family, litigation, commercial... has a partner... may have junior lawyers under them. The partners' role is as supervisor. The Partners bring clients and files in. (#8)</p>

**Chapter 6 – Results of the Structured Interview Data (Part 1):
‘The Prevalence and Nature of Sustainability Practices’**

Themes	Examples of issues associated with fees and billing
The impact of the insurer’s demands upon solicitors and the ensuing work	With the example of the form, under Lexon, I should have written a letter – what I said; what she said; that no instructions were given; that no instructions were taken.... Who has time for that? This would be a two page ‘what I did and didn’t do; what I did and didn’t say’. (#22)
Rural locations demand an added level of interaction with the client that does not occur in the urban setting	That’s a real issue with regional firms. In the CBD – it’s commercial and there’s an acceptance of that. That it’s commercial. You’re hitting it all the time in the CBD. In [rural location] – you’ve got to meet three or four times for a social coffee. (#17)
Legal practice areas have different billing rates	It depends on the matter. Conveyancing is set fees plus the searches - \$770. If it’s a major property, I will charge more – but a standard price. With wills and estates, again it’s a standard price. The estate will depend on the complexity. It can initially seem easy, but it can become complex. I use a standard base rate – I will charge hourly for the administration of estates and for consultation. (#18)
Billing is used as a method to factor in additional work associated with difficult client	We would have an ‘arse-hole’ rate that we could charge on attendance on file – you could adjust this for more time that you had to put into these clients. (#16)
<p data-bbox="201 1267 475 1335">Billing is seen as an uncertain area</p> <p data-bbox="201 1458 459 1525">Work that is included in the fee</p> <p data-bbox="201 1648 483 1715">Fees and the impact on reputation</p> <p data-bbox="201 1794 472 1906">Priority in taking care of the client to sustain business</p>	<p data-bbox="520 1267 1361 1626">A dartboard. With conveyancing and wills we have set fees. We will charge a set fee for a residential house. With a commercial property or farms – we have a range of fees from \$750 - \$1500. With a business - \$500 - \$3000. We try and time cost – but it’s difficult. With estates – they are time costed and PI and civil litigation. We don’t charge for every phone call. On one matter we made 20 phone calls, but only charged for three – there were a lot that weren’t charged for. [Name of law clerk] – we can charge out as a law clerk rate. But for [names of administration staff] – there is no time costing. (#18)</p> <p data-bbox="520 1648 1361 1906">There was the example of the old lady who was sent a bill for \$150 – she came in crying about this bill; that she had never not paid a bill. I wiped the invoice – put it down to good will and being fair. I couldn’t buy that sort of good will in a place like [rural location]. In the 1980’s I went to a TAFE course about running business – the speaker’s number one rule was: look after the clients, and the money will look after itself. (#18)</p>
Billing is used to deal with difficult	Legal billing is based on Supreme Court rules; care and consideration plus 10%. Or 30 percent - with dick-head tax. I

**Chapter 6 – Results of the Structured Interview Data (Part 1):
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Themes	Examples of issues associated with fees and billing
clients	use an hourly or fixed fee. (#16)
Timing on when to send out the bill	The systems work well. The consultant [name of consultant] – he bills at the end of each month. He gets 35 percent of fees generated. I bill when the work is finished. [Name of employed solicitor] – he bills when the work is finished. Short term matters – may go for one or two months – we may do an interim bill. Estates are lucrative. (#23)
Billing rates vary dependent upon the expertise of the solicitor	The consultant and I are charged out at \$350/hour. I charge [employed solicitor] out at \$270/hour. I don’t do six minute billing – it’s not computerised. (#21)
Impact of the QLS on billing	The fact that the QLS shows no leadership – this allowed cut-price conveyancing. It’s less personally rewarding. The QLS they abolished the scales – as price fixing and contrary to the ACCC – and which the profession relied upon. Now it’s a price war. Clients of Conveyancing Works – very poor – it’s a shithouse. They think that buying property is easy. (#21)
Lucrative practice areas that no longer exist due to regulatory changes	When I started in 1978 I did estate duties, but the effect of the abolishing of death duties was that estates files were halved in value because there was less estate work. In the late 1980’s WorkCover and [Suncorp] the insurer of motor vehicles centralised their work. In the 1980’s we would have done work for injury and accident claims but these have been centralised or taken up by the specialist PI law firms. With the competition policy in conveyancing, our fees have halved. Conveyancing is 50 percent of revenue out here... 40 – 50%. (#25)
Billing in the regional context is different to the urban context	In a shallow pool – you can’t charge \$300/\$400. That was my major business with [name of partner]. They won’t come to a country solicitor... they will go to a city solicitor. We are not going to get the big city work. (#13)
The importance of the client	I work a lot and don’t make much money. It’s a good will thing – you look after the client so that they will come back. (#7)
The importance of treating the legal practice as a business Increasing fees	About seven years ago we would have monthly meetings after which nothing would get done. We then engaged [consultant]. His philosophy was ‘be business like.’ With [name of consultant] he taught us to always look ahead; have budgets; and have a direction of where we are going. After [name of consultant] had been with us for a while we bought our own building; increased our fees; had regular meetings. (#3)

**Chapter 6 – Results of the Structured Interview Data (Part 1):
‘The Prevalence and Nature of Sustainability Practices’**

Themes	Examples of issues associated with fees and billing
Costing files for profitability	All files are costed. We have mechanisms to recover the costs. We check with compliance; we need to keep the practice profitable – this was very much the ethos of our managing partner – he deals with all that. (#10)
Billing formulae	There is not a hard and fast billing system; although they aim to achieve three and a half times the billings. (#15)
The need to justify the fees Impact of appropriate billing methods on stress	For a file I like to start from scratch – we use juniors now who can do some research – and then bill this in. The hardest part of practice is justifying the fees! We developed our own scale of fees – and itemise everything. Some of our clients hate this – they don’t want to know that a phone call costs them \$27! But I can sleep at night because I do itemise everything. (#2)
The importance of educating legal staff into financial aspects of the practice	At first it was said that there was too much concentration on money. Now there is greater acceptance – they understand. We have an Author Meeting every three months – the partners are excluded so there is honesty. It gives [name of CEO] an insight. It may be revealed that 11 are making budget – it’s a competitive environment. We talk about the importance of cash flow – that debts are realised – cash flow and made more effective. We focus on debts. They are educated about financial performance... That the pressure has come from within and peer pressure – there is a level of embarrassment. We reward performance – that is rewarded... the solicitors know the criteria to get rewarded. The Authors meeting include finances, marketing, community involvement, pro bono, sponsorship. It’s opened up what is happening. There is clear articulation of what is needed. (#9)
The cyclical nature of life in the country and the impact on the finances of clients	We don’t put performance levels on solicitors. We are more interested in training them and that they will produce an income. Finances are very cyclical in the country – and we have to accept that. We do costings on files. (#10)

The qualitative data revealed a range of issues surrounding the topic of fees and billing. Again, there was diversity in the approach to billing ranging from the ad hoc approach that compared it to ‘throwing a dart at a dart board’ to the understanding that legal staff needed to be educated into the need for appropriate and competitive billing. Most participants distinguished between the amount billed upon the basis of qualifications and expertise of the staff carrying out the legal work. One participant commented that employed solicitors were ‘not taught how to time-bill; they do not know how to run a business... to keep the work-flow going.’

Common to a number of participants was the comment that fees needed to be justified to both the practitioner and to the client. This point was made in terms of creating a benefit to the client and the likelihood of the bill being paid because the client knew (and appreciated) the work carried out and, from the practitioner's point of view it reduced stress, increased reputation and assisted with ethical compliance. The lack of client understanding about the work carried out by solicitors – and hence questioned the ability to charge a particular fee – was a common complaint even from participants who had taken a sophisticated practice management approach to billing. The comment extended to a comparison between regional and metropolitan legal practitioners, as well as between legal practitioners and other types of work (ie. plumbers). There was a sense that RRR legal practitioners were always on call and available to provide legal advice and yet not able to expect recompense. A number of participants commented that they factored in the work needed to deal with 'difficult clients' through billing methods that were given derogatory titles.

A number of participants commented that billing depended on the legal practice area; some had even analysed practice areas to determine the most lucrative. There were only a few comments in terms of the timing of sending out bills in order to maximise cash flow within the legal practice. One comment related to an understanding that RRR life is cyclical in terms of the clients own cash flow situation.

There was considerable criticism of the regulatory bodies associated with legal practice (including both Lexon and the QLS) in terms of having imposed unreasonable demands upon legal practitioners about how and when to advise clients about disputing bills. Another complaint about these organisations was that the QLS had impacted negatively upon legal practitioners' incomes through regulatory changes to legal practice areas.

Profitability

The structured interview at Part I (*The Practice's Performance*) asked participants to estimate (and forecast) to what extent the annual profit derived from the practice had changed over the following periods: 'last year', 'this year', 'next year'. The estimate was in terms of 'increase', 'no change', 'decrease'. Figure 6.10 below reports on the quantitative results.

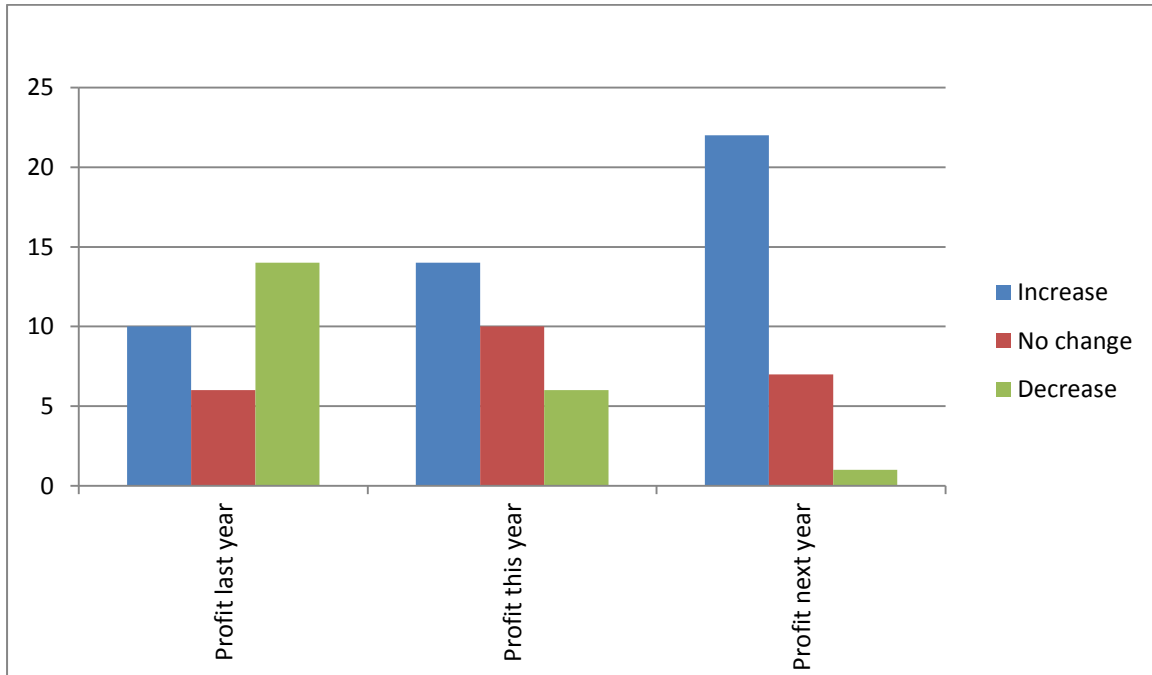


Figure 6.10: Practice performance in terms of last year, this year, next year

The quantitative data shows that most participants indicated a rise in profit. A number of cautionary points need to be made about the data. The estimation of profit was self-assessed and subjective without any verification of the data being made. A number of participants provided specific figures about the profitability of their legal practice but these were not cross-referenced. A further point that needs to be made about the quantitative data is that the interviews spread across two years so that the terms ‘last year’, ‘this year’, ‘next year’ were not actually aligned with consistent years among the participants. In this way there are express limitations on the quantitative data.

In comparison, the question triggered 26 participants to make additional qualitative comments concerning ‘profitability’, and that data provides useful insight into RRR legal practice and this key aspect. Table 6.7 below summarises the range of comments.

Table 6.7: Examples of issues relating to profitability

Theme	Examples of issues relating to profitability
Diversity of legal practice locations assisting profitability	The three practices – each supports the other in a different way. (#26)
Profitability in RRR legal practice	I have trebled the turnover of the practice. When I came out here to look at the practice I saw that the partners – three of them – were each making \$200,000 each. I was earning \$45,000 at the time! (#22)
Profitability over a period of time	We had one bad year – but we are sailing again. We have our work balance – that is put in place. We are keeping in business

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Theme	Examples of issues relating to profitability
	– we paused for three months – but we just keep going. (#9)
No impact of the GFC	There has been no downturn from the GFC. We have more work. My net profit has been a massive increase. (#10)
Legal practice areas being countered by external influences	It has been affected by the mines; there has been a slowdown in buying, but an increase in family law. (#29)
Profitability being only one aspect of a sustainable RRR legal practice	What we wanted to do and what we wanted to achieve was that the business was there to serve the interests of the owners. We made the decision to cap it at a certain size; to be selective; and to charge a premium. ... There was the expectation that the authors do five hours. We’re focussed on a balanced life. We are able to achieve comfortable returns on our investment in capital and time. We could do five or ten times the work. The partners can take holidays; have professional development days; we can let people be individuals. We have happy staff. (#17)
Regulatory compliance impacting on profitability	<p>Law practices are small businesses where the introduction of the GST has impacted on the business. Solicitors took the hit and a ten per cent reduction in income. That was never factored in. The compliance with red-tape is enormous. The BAS regime is very intrusive and very difficult to implement. The income is in accounts not in cash – with accrual accounting the cash flow is very difficult. This is the biggest single issue. With other businesses, for example, sandwich bars – the cash flow comes in.</p> <p>Plus the inability to incorporate – I was paying top dollar when I was in practice. Accountants, surveyors, doctors – they could all pay 30%. Now we can do that too. The inability to incorporate that made a big difference in my practice. (#23)</p>
Business management knowledge important for financial viability	The financial viability situation that I was ignorant of it has been a source of financial dissatisfaction. The financial situation has been a cause of stress. Some business management knowledge would have eased it... helped. (#7)
External factors influencing profitability	We’ve gone through three rescissions, before finding [rural location] – it’s made us very financially cautious. (#6)
Negative impact of the GFC on profitability	The money partners were making was high. Fifty-nine per cent was outgoing, the rest was profit. But it’s different at the moment. The GFC... the impact and this is continuing for the next 12 months. (#9)

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Theme	Examples of issues relating to profitability
Perceptions of RRR legal practice and profitability	You can't make a fortune in a small country town – that is different to what a law graduate is taught! (#29)
Profitability and the property boom	This firm was successful – it boomed due to the conveyancing! In 2007 the practice peaked due to the property boom. (#16)
Specific figures on profitability and unsustainable growth	From November to June 2004 we were increasing our turnover. From July 2005 to June 2006 we were increasing our turnover by 32%; and from July 2006 to June 2007 we were increasing by 22%. From July 2007 to June 2008 our turnover was 16%. A 20 percent growth was unmanageable. I worked a 70 hour week. My billable hours were \$250,000/year. I needed to do 20 billable hours a week – 4 hours/day. Admin were paid \$45,000 – we paid staff first. In 2007 our turnover was \$963,000 My income was \$240,000. (#17)
Profitability linked to good staff	First we wanted to develop a high level of service – we needed to have the work structure to attract for recruitment and the stress levels. In 2000 we had 20 people. We now have 50 people – the profit has doubled. There are two factors – first – the partners. Getting these relationships right. And secondly, specialising. We recruit into particular areas – there is no rotation, but some progression. (#10)
Strategically dealing with external factors potentially acting against profitability	Weathered GFC due to workplace employment – we manoeuvred through this. We were able to backend – we moved to unfair dismissals. (#10)
Strategically dealing with external factors potentially acting against profitability	Since the election was called, the contracts have died off. That means that in four or five weeks, the money coming in will be reduced. I can ride it out. After the election people will buy property. I know what comes in through the software, rather than through the reports. (#18)
Circumstances influencing profitability	It is difficult to compare the practice's performance. [Name of prior owner] was a sole practitioner. He didn't have to buy it. He had \$80,000 in trust account that he never drew down. When I bought the practice – I had a loan and interest repayments. [Previous owner] made \$150,000 pre-tax profits. In August I lost \$20,000. I pay myself a good regular wage. The Installation of [software] and the overheads were not considered (when I bought), but I'm ecstatic about the property market – this has dropped since taking the practice over. I knew it was a five year project – especially if I get the personal injury practice going. (#9)

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Theme	Examples of issues relating to profitability
Educating legal staff on the components that work towards profitability	At first it was said that there was too much concentration on money – now there is greater acceptance – they understand. We have an Author Meeting every three months – the partners are excluded so there is honesty. It gives [name of CEO] an insight. It may be revealed that 11 are making budget. It’s a competitive environment. We talk about the importance of cash flow – that debts are realised – cash flow and made more effective. We focus on debts – they are educated about financial performance... That the pressure has come from within and peer pressure – there is a level of embarrassment. We reward performance – that is rewarded... the solicitors know the criteria to get rewarded. The Authors meeting include finances, marketing, community involvement, pro bono, sponsorship. It’s opened up what is happening. There is clear articulation of what is needed. (#9)
One entrepreneurial pursuit subsidising another	The law practice makes enough – the grazing needs subsidising. (#24)
The importance of a pragmatic approach to legal practice areas	The practice is commercial. People signed for a house contract and got knocked back on finance. But with the estates practice – people are dropping dead like flies. I have a thriving estate practice. With family law – I can negotiate good deals. I didn’t make a loss. I’ve never made a loss in my life. I put \$100,000 in my superfund. [Remote location] will fold – its’ geographic. There is a suggestion that there will be mines in [remote location] – which will make business grow. There’s speculative investment happening. (#24)
Government subsidies for lawyers	There are lots of opportunities for rural practitioners in other professions. They pay chemists – but they don’t subsidise lawyers. The chemist got \$100,000 to open a chemist and \$60,000 a year. They need to offer that to accountants and lawyers. (#21)
Factors influencing profitability – both negative and positive	I will sit down with my accountant – he can access similar information – we don’t compare though. I do know that the practice is not as profitable as it was. Factors in that are that we are paying higher rental – but that’s okay because it’s owned by me. Legal practice has got tougher. We did some lucrative personal injuries litigation – that was speculative. We don’t do that anymore. The areas of practice have shrunk. There are other solicitors in town who do cut-price conveyancing work. I’m happy with the level of skill and work that I’m doing. I’ve felt guilty over the years that I’ve not grown the practice. I made it clear to my employed solicitor that I’ve not grown it; that I’ve just had to get through the work and make some

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Theme	Examples of issues relating to profitability
	money. With clients – I ask them about the level of service. (#25)
The costs of running a RRR legal practice	The practice should be more lucrative. It’s expensive running a professional library; publications; insurance. I’ve been funding \$2000/month to insure the staff. (#8)
Expansion of RRR legal practice impacting on profitability	The purchase of the practices at [rural locations] was opportunistic. They were sold for a song. The practice at [rural location] had been bought by [regional location] solicitors – but they were too far away. We had three partners and we needed to expand the practice. We were looking to expand. Since March 2009 we are running backwards. Legal practice is a business with fixed overheads... there are some hard decisions we’ll have to make.... with staffing. (#25)
Unethical behaviour impacting on profitability	The firm had been profitable. Whether there were other claims. He [a partner] had extracurricular activities... non-legal business affairs. He had a goat factory at [remote location] and other businesses. (#25)
Diminishing legal practice areas impacting on profitability	With property – we are doing more but it brings in less money. We do litigation... personal injuries and bad debts. The golden days of PI are gone. What is left is like dogs fighting over the left overs. (#25)
Centralisation of large organisation impacting negatively on profitability	The demand for legal services has been centralised. Suncorp and Workcover used to provide services that have now been centralised. The drive for competitive edge has made it so centralised... There are now fewer bank employers... fewer clients... This has impacted... has impacted on the general economic health. (#13)
Profitability at the expense of professionalism and collegiality	The collegiality has disappeared... decreased. It’s about making a buck. You want to make a living... but some lawyers are driven by financial maximisation. The impact of this is on relations between solicitors. Locally it’s good. It’s a by-product of the competition policy. You could compete and still be gentlemanly. It’s about propagation of success. (#25)
Profitability being diminished through external factors	It fluctuates. If you do well – then you get hit with an income tax bill. The variable income and taxation is a burden. (#21)
Deliberately reducing profit to retain clients	I see people, but don’t make any profit – so that they will come back. (#7)
Profitability but not	The business is increasing. It’s a matter of selling the shares.

Theme	Examples of issues relating to profitability
sustainable due to succession problems	There’s not a lot of interest in buying a practice out bush. The upside is that there are truckloads of work – you’re not fighting for work. You have PI firms fighting for work. But if you have a strong local name and that you provide a broad range of advice on legal matters... that you take things on. (#29)
Sustainability more important than profitability	We have sacrificed profit for long term sustainability; we employ at least two too many people for the profitability. (#2)

Again there was great diversity with respect to the qualitative data relating to profitability. The need for profitability was almost universally commented upon by the participants. However, surrounding the need for profitability was a number of other considerations to the extent that profitability was considered secondary to other aspects. For example, a number of participants put forward the following views that qualified the need for profitability: profitability needed to be considered over a period of time rather than merely annually, that it was only one consideration of a sustainable RRR legal practice – a balanced life for the partners and opportunities for staff development (and happy staff) were important and, the overriding importance of retaining clients rather than seeking mere profit; that it was more important to pursue sustainability by limiting growth in the interests of providing service as well as capping fees to retain clients. One participant commented that they employed more staff than necessary in order to pursue sustainability over profit.

A number of participants commented that profitability was something to be ‘averaged’ against multiple legal practice locations or other entrepreneurial pursuits (ie. grazing property) rather than considered solely the outcome of a single RRR legal practice location. Allied to this notion were the comments that some diversity of legal practice areas countered downturns in one area to provide upswings in others and therefore providing profit. Particular legal practice areas that had provided profit included property during the property boom, family law (divorces) as part of the mining boom and fly-in/fly-out locations and unfair dismissals during the GFC.

Participants did see external factors as both a positive aspect of profitability as well as a negative. The previously mentioned areas of the property boom, mining and the GFC were seen as positive impacts on profitability. External factors that were seen as being a negative influence, included the GFC (again), recessions, regulatory changes, for example GST and income tax generally and elections. Some of the internal factors that were seen as being a negative influence included the infrastructure costs of running a practice and the unethical behaviour of partners. One of the areas seen to be sacrificed to profitability was that of professionalism and collegiality.

Some participants considered factors within their control that might enable them to maximise profitability. These participants listed factors such as: developing high levels of service and staff, gaining business management knowledge, strategic choice of legal practice areas, resilience and, educating legal staff on components of profitability and creating a competitive internal environment.

Growth of the Legal Practice

Throughout the structured interview, participants were asked a number of questions relating to ‘growth’ of their legal practice. Some of these questions were covered in Chapter 6 with reference to RI 3 (Business Planning) in relation to ‘growth’. The term ‘growth’ was not defined but was pursued through the following aspects. Part C of the structured interview (*Business Planning Carried out in the Law Practice*) asked participants their plans to engage in alliances with other legal practices (or other professional service firms or other non-professional firms). The data on that question is covered later in this chapter with reference to RI 4 (Business Planning). Part C of the structured interview also asked participants about plans to increase staffing, both legal and administrative. Part E (*Business Carried out by the Law Practice*) asked participants on plans to increase legal practice areas as well as plans to increase the number of clients; again that data is reported on later in this chapter with respect to RI 4.

When grouped together, these questions provided data on the participants’ approaches to the topic of growth of the legal practice. The topic of growth triggered qualitative data from fifteen participants. A summary of those comments is provided below in Table 6.8 below.

Table 6.8: Examples and issues relating to growth

Themes	Examples and issues relating to growth
Physical demands of growth	We are talking about increasing our author numbers. We would have to look at new premises – to accommodate the younger generation. (#17)
Consolidation and strategic growth based on expert advice	We’ve realised we need to consolidate and not expand too quickly. Time wise – it is difficult to plan. We are now working with an accountant. If there is an opportunity to put someone on, we need to grab it. This is linked to our long term planning – succession planning. (#2)
Strategic growth of a legal practice area only – exclusion of staff expansion	I’ve reduced the other work and turned it away in favour of [legal practice area] and the ability to cope with the work without growing the practice. I don’t want to employ other solicitors – the problems and challenges of large practice – I got out of large practice. (#2)
A sense of a loss of control with growth	The buck stops with me; overheads are down; keep stress down of meeting overheads; more control over working hours – not locked into being available nine to five. I would have to expand the business beyond where I’d want to be. I can look after the family cattle property and my commitments to community and religious organisations... (#28)
Growth linked to strategic planning, specialisation and locating in a	[Name of legal practice] have continued to grow – need to assess where we are going in our next set of plans... I’ve been in practice for eight years. Then then there was growth... in 2010 we need to steer the growth – into 2015. We will continue

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Themes	Examples and issues relating to growth
metropolitan area	to grow and to specialise. There has been expansion – the number of partners and employed solicitors. Part of the strategic plan is to move into [metropolitan location] in specific areas. (#17)
Growth linked to the physical location of the legal practice	We wanted expansion... There was difficulty with clients coming into town. We were worried about the courts, but IT allowed it. We decided to go. We would have limited opportunities for expansion. We purchased the land... growth was substantial. We bought extra land and then expanded. We had 80 people – full capacity. After the GFC we now are at 52 FTE – 60 staff with the partners. With the part time people – we let them go we didn’t replace them... (#9)
Growth due to external factors	There is a suggestion that there will be mines in [remote location] – which will make business grow. There’s speculative investment happening... (#29)
Growth due to external factors	Sustaining growth is dependent on what is external rather than in your own practice. If there is no population – then you can’t do anything. (#24)
Growth expressly linked to profit and competitiveness	I’m opposed to growth for growth’s sake. We look at the productivity of the people. There is no point in putting on more people for the sake of it. We would want to grow only for two reasons – profit and to remain competitive. There has to be the productivity. (#17)
Growth is secondary to improving existing services	We don’t want to expand [name of legal practice]. We want to have people who can do the job. We’re not looking for new opportunities but to improve on what is done, that it is properly resourced. There aren’t any new opportunities in the law. (#2)
Growth as a factor in facilitating an attractive work culture	The law firm is now getting to a size that they can offer a career to their staff, although probably about two too many staff for the work. Now that the practice has expanded they can have a social life within the firm. Three or four years ago, it was all blokes in the practice – they would socialise, but [name of partner] now realises that you can create a social circle that generates a life – for example – picnic races; also they are close enough to [regional location]. We have sacrificed profit for long term sustainability; we employ at least two too many people for the profitability. (#2)
Growth as an end not to be sought	In ten years [name of partner] thinks that the practice will be as it is now. [Name of partner] has no plans to expand any further or to move into either a more urbanised practice, or to pick up more remote work. (#2)

Themes	Examples and issues relating to growth
Growth being capped	What we wanted to do and what we wanted to achieve was that the business was there to serve the interests of the owners. We made the decision to cap it at a certain size; to be selective; and to charge a premium. ... There was the expectation that the authors do five hours. We’re focussed on a balanced life. We are able to achieve comfortable returns on our investment in capital and time. We could do five or ten times the work. The partners can take holidays; have professional development days; we can let people be individuals. We have happy staff. (#17)

Almost all of the participants who provided comments on growth viewed the concept with caution. None of the participants spoke in terms of wanting to expand and grow purely for its own sake. A number of participants commented that growth needed to be prefaced by consolidation and then to be strategic and based upon expert advice. Growth was also discussed in terms of being controlled and, only pursued if it meant profit and increased competitiveness. In some circumstances, growth was not sought out at all – rather the desire to improve what was already being offered in terms of service was seen as being more important.

Growth was seen as being a factor in fostering other aspects linked to the legal practice being sustainable including offering an attractive work culture and the potential to provide a social life to for staff. The practicalities of growth were viewed by a number of participants in terms of needing to provide a physical location for the growth of the legal practice. One participant’s legal practice relocated the practice from a CBD location to a suburban location in order to bring about growth and to provide staff accommodation. Growth was also considered in terms of the non-physical environment with one participant seeking to grow via use of the internet.

Some participants commented that external factors had an impact – both negative and positive – on growth. The negative related to the lack of population that necessarily limited growth and the positive aspects related to new economic developments that increased legal work opportunities and therefore promoting growth.

6.4.6 Clients of RRR Legal Practice

The literature review (Chapters 2 and 3) suggests that clients of RRR legal practice flow from the geography of the area in which the RRR legal practice is located; further that a prominent feature of RRR legal practitioners is their connection to place. The literature review covered findings from RRR US and UK social sciences studies as well as the legal management literature. There was consistency among the literature in terms of the importance of geography for the type of clients in RRR legal practice.

Part E of the structured interview asked participants about the categories of the legal practice’s clients and the proportion of the practice’s clients who had been personally acquainted with the participant prior to giving legal advice.

Categories of Clients of RRR Legal Practice

Part E of the structured interview asked participants to categorise the law practice’s clients in terms of the being from the following: ‘professionals’, ‘owners or managers of large businesses’, ‘owners or managers of small businesses’, ‘clerical/sales’, ‘trades-persons’, ‘labourers’, ‘large farm-operators’, ‘mixed – no majority in any category’ and ‘unemployed’. Participants were asked to determine whether the clients from each category were ‘high’, ‘moderate’ or ‘low’. Figure 6.11 below shows the quantitative results.

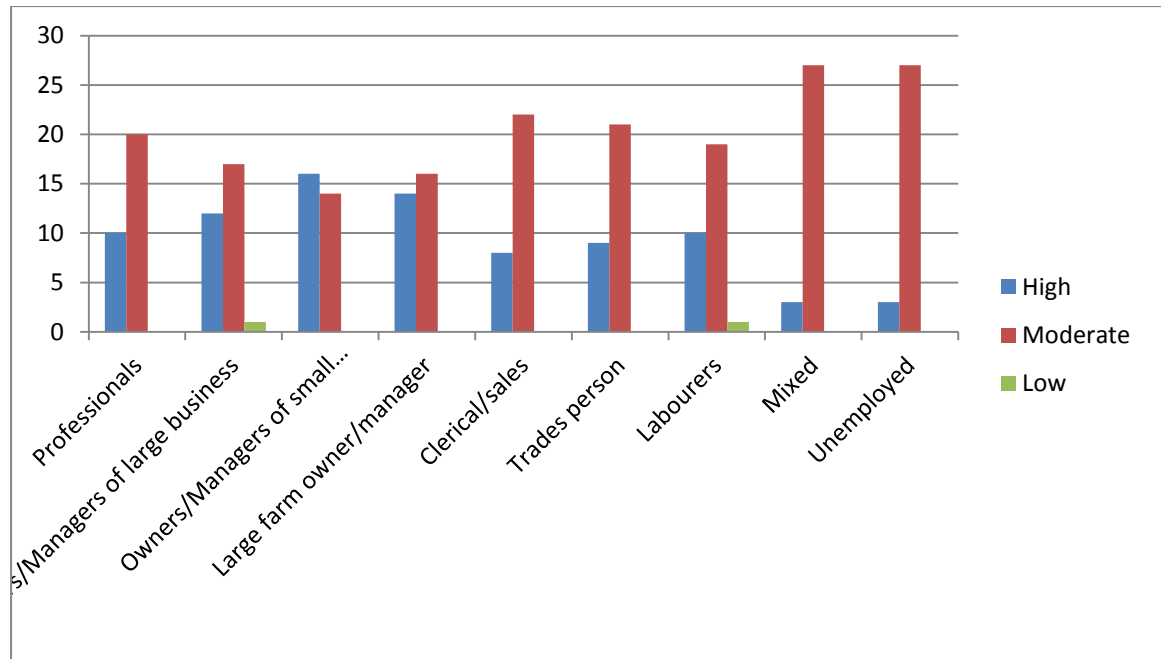


Figure 6.11: Categories of clients

The quantitative results indicate a broad range of clients from almost all categories. In particular clients who are ‘managers of small businesses’ and ‘large farm owners/mangers’ registered quite highly. Participants also indicated a moderate number of ‘mixed’ and ‘unemployed’ clients – although neither of these comprised the largest category of clients. It is difficult to draw any conclusion from this data; possibly the question might have been differently phrased in order to determine the ‘predominant’ category of client.

Twenty-seven participants provided further comments on issues relating to clients in RRR legal practice. In contrast to the quantitative data, the qualitative data was extremely descriptive of the issues faced by RRR legal practitioners. Almost all participants made comments relating to ‘problems’ with clients in terms of dealing with them and the associated stresses. It is apparent from the qualitative data, however, that there is significant diversity among approaches to clients; issues with clients; and categories of clients. A number of participants commented that their clients were predominantly ‘farmers’, and others that they were ‘elderly’.

Table 6.9: Examples of issues associated with categories of clients

Themes	Examples of issues associated with categories of clients
The importance of being selective with clients	I have turned back [name of local government] because they work against their own people. Whereas [name of other local government] works with the people. My philosophy is that it would have been counterproductive to my clients – I would have lost clients. The work would have been easier – bigger bucks. I made the decision not to do family law – it would have been unsustainable for me. (#22)
Inheriting clients and attracting disgruntled clients	We wanted the practice to deal with A-class clients only. By A-class, I mean the bigger commercial clients who were knowledgeable, paid their bills and wanted good advisors. I had inherited [large business] from [competing law practice]. I picked up ‘orphans’ – who are disgruntled clients from other law firms. (#16)
Strategic approach to practice areas and flow-on effect to client selection	With developing the skill set we have stringent classification... we have made efforts to get rid of rubbish clients. We get repeat business; we don’t need to advertise. We are at capacity. We have closed the books and are actively turning clients away. We are up to looking at the next step. (#29)
Institutional clients	I get the big institutional clients because we are the only one here – we have a high profile. (#10)
Changing clientele in response to the economic climate	The development days are over – it’s now investors and home buyers (mums and dads), tourists, members of the community. Banks have in-house lawyers. When the boom was on – it was tourists. (#6)
The importance of understanding the geographic base of clients	<p>We had a large client base that is rurally focused. I was living in the [regional location] working remotely. I identified a need for a firm to service the regional client base. This worked out very well. Lawyers come up to [remote location] to meet with the clients. These are high net worth individuals and families. That commitment to the bush has generated work locally. It couldn’t have been handled by a standalone firm, for example a sole practitioner in [remote location].</p> <p>In the Bush they have loyalty. They will stay with a sub-standard law firm. A law firm has got to do something really bad before they will find another lawyer. If you look after a client you have them for several generations. They say to me: ‘we think you are a great bloke, but we have loyalty to another solicitor.’ They don’t say ‘I use them’, they say ‘our</p>

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Themes	Examples of issues associated with categories of clients
	family uses them.’ (#17)
Understanding the physical needs of the clients	This was the driver for expansion at [street location of the legal practice] – this is to establish the relationship with mums and dads – free parking in the suburbs – at their location. (#9)
Attitudes to legal aid clients	<p>If I don’t get on with a client, I tell them to go. I don’t take crap from anyone; I don’t do legal aid – I don’t need the money. I don’t need clients abusing the staff. I get enough work in the door. If they are not happy – then I don’t need them. (#29)</p> <p>We don’t do legal aid. They are low socio-economic – I want higher socio-economic; and more clients. (#25)</p>
Flexibility in dealing with clients	I visit clients – I’m located on a property – it is a mobile practice; the practice runs from home. I will visit clients in their homes, you know, to do wills. I will meet at roadhouses – it’s very flexible. (#11)
Stress in dealing with clients. Specialising in clients helps reduce the stress	There is stress in dealing with certain clients. There is a trade-off – either stick with the clients because of the money or get rid of the client because I’m not sleeping. I’ve changed clients due to stress. My client numbers are reducing because I’m weeding them out – reducing them. If a client has a problem then I’m not taking them.... I’m specialising. Three years ago I did not do traffic matters because I couldn’t afford to take it on; three years ago I was time poor – getting four hours sleep. Then it lightened up and I will take on minor crime. (#7)
Stressful demands of clients	Clients were not perfect; they were messy; paying you; often had unethical demands that had an impact on you as a solicitor; often they were at fault; you were fighting for someone who has not always done the right thing. You need to reality test your clients. We would have an ‘arsehole’ rate that we could charge on attendance on file – you could adjust this for more time that you had to put into these clients. (#16)
Unreasonable expectations of rural clients	In the CBD – you wouldn’t go in on a train to ask for a form to be filled in. Even a CBD client wouldn’t expect their lawyer to fill in a form. The rural client has an expectation that you would. There is less appreciation of a lawyer’s time. (#17)
Being able to get	I have a policy – if you don’t get on with clients – then go!

Themes	Examples of issues associated with categories of clients
on with clients is essential to be a RRR lawyer	(#24)
The loyalty of some clients	The farmers are old and have been using [name of law practice] for over 40 years. They don't change unless they really don't like you. Recently, a farmer bought a property for \$1.1M – he didn't like something the lawyer did. The real estate agent recommended [name of law practice]. I'm the new boy – I know a few. But clients have known [name of law practice] since 1913. D [prior owner of law practice] did ask his 20 best clients to stay. (#18)
Client loyalty	There is strong client loyalty base. In fact files from [rural locations] often come through because they have been recommended by an agent. (#24)
Decreasing legal services improves number of clients to existing practices	There are no new firms from out west when Western solicitors retire – this work is now coming in. (#24)
The importance of looking after clients	In these towns – there is an acute shortage of services. They attract dodgy people who come and rip people off and then go on their way. If you want to hang around – you need to look after your clients. The business is increasing. (#29)

The qualitative data reveals that participants indicated a dilemma in terms of their dealings with clients; clients were needed in order to sustain the law practice and yet they were also considered a source of stress in terms of the demands they made. Participants commented that as they gained confidence and experience, they were able to be more selective in terms of who they dealt with. Participants also indicated that RRR clients tended to be loyal to a legal practitioner, even to the point of tolerating sub-standard legal work, simply because they (and their family) had always used a particular legal practice. A number of the participants emphasised their desire to look after their clients going as far as refusing some clients because the knowledge amongst the community that a legal practice had taken on that client may be counter-productive in attracting other clients. The importance of reputation of the legal practice is discussed later in this chapter.

Sources of Clientele through Acquaintanceship

Part E of the structured interview also asked participants what proportion of the practice's clients were they personally acquainted with prior to giving legal advice to them. The proportion was in terms of 'over 75%', '51 – 75%', '26 – 50%' or '0 – 25%'. Figure 3.2 provides information on the proportion of clientele of the legal practice that is derived through personal acquaintanceship.

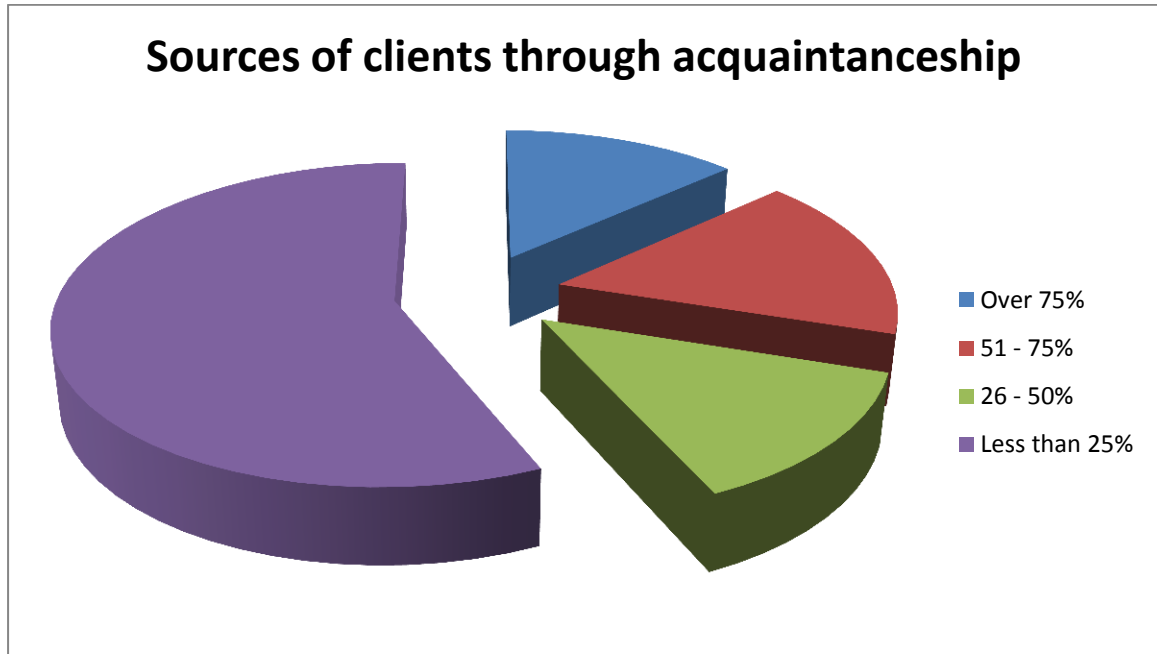


Figure 6.12: Sources of clients through acquaintanceship

Most of the participants remarked that many clients had some level of prior acquaintanceship with them, remarking that anything from 20 percent to 50 percent were known either socially or from family friends. The comment, ‘They know you or they know someone else who does’ was common. The qualitative data provides further insights into the connectedness between participants and their clients. Table 6.10 summarises these comments.

Table 6.10: Themes and examples of the impact of prior acquaintanceship

Themes	Examples of the impact of prior acquaintanceship
Limiting clients who are known socially	I try to limit clients from my social network. If it is a conveyance – that is okay; but if it’s a family matter – then I feel uncomfortable. I will most likely know both parties. Same if it’s a criminal matter. (#28)
The extent of clients known socially	Fifty percent of the clients were referral by other clients and other colleagues; 50 percent were met socially.
The importance of looking after clients	We push the brand as the law firm of choose – just known. In regional towns – it’s very important to have that relationship with the clients. With conveyancing – it’s all input – the real estate agent - 62 percent are from previous clients; 11 percent are client referrals; 10 percent are staff referrals. (#9)
The importance of acquaintances of clients	We have a huge client base... our consultant couldn’t believe it. We do better and we do more for them. For example. I spoke to a man who was living in a caravan – I

Themes	Examples of the impact of prior acquaintanceship
	did \$400 worth of work for him – but I did it pro bono. He was talking to a friend of his who was buying a big property. He mentioned my name and effectively brought in \$110,000 worth of work. (#22)
The fostering of acquaintanceship as part of being a client	In the CBD – it’s commercial and there’s an acceptance of that. That it’s commercial. You’re hitting it all the time in the CBD. In [rural location] – you’ve got to meet three or four times for a social coffee. (#17)
Clients who are friends or family are encouraged	We encourage solicitors to act on behalf of their family. It’s good for them to be able to say they can do it. (#10)

The qualitative data indicates some of the issues associated with clients being acquainted with the participant. The overriding theme was that some form of acquaintanceship occurred with clients, but that participants sought to minimise their dealings with these clients.

6.5 RI 4: What is the Prevalence and Nature of Business Planning Carried Out by Legal Practices in RRR Queensland?

The Literature Review (Chapter 2 and 3) considered various aspects relating to the strategic direction in the RRR legal practice including the current options available for business structures of Queensland law practices (Chapter 2) as well as the legal business management literature on strategic management. Both aspects are relatively new developments to law practices and possibly flow from the theoretical perspective that ‘law is business’ as opposed to being only a profession (discussed in Chapter 3).

Part C of the structured interview (*Business Planning Carried out by the Law Practice*) asked participants to respond to a series of questions on the activity of business planning, identifying and measuring business planning outcomes, strategic alliances, possible changes to the strategic direction of the law practice and succession planning. This part of the chapter deals with these questions in turn.

6.5.1 Business Planning Practices

Part C of the structured interview asked participants, ‘To what extent does planning on the direction and outcomes to be attained by the law practice occur?’. The question was asked in terms of ‘last year’; ‘this year’ and ‘next year’; and whether the extent could be measured as being either ‘high’; ‘moderate’ or ‘low’. Figure 5.1 shows the quantitative results.

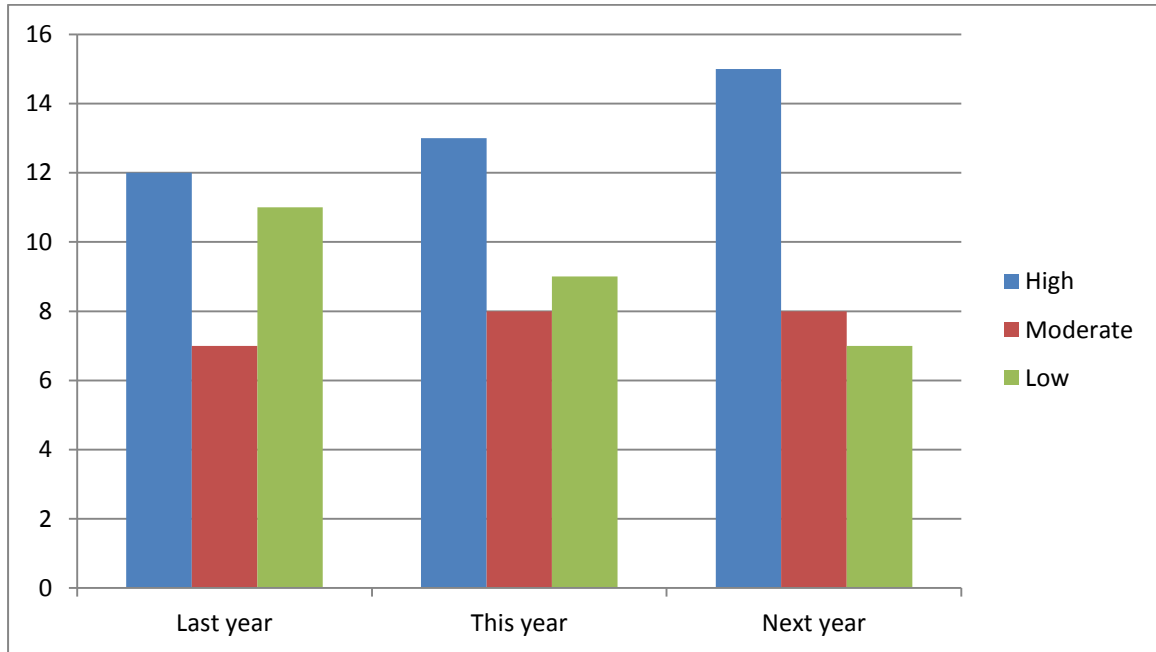


Figure 6.13: Frequency of business planning over a three year period

The quantitative data indicates that the extent of business planning was increasing.

Frequency of Business Planning

The structured interview then asked the follow-up question of ‘how often does planning occur in the law practice?’: ‘six-monthly’, ‘yearly’; or ‘no planning’. Figure 6.14 below shows the quantitative results.

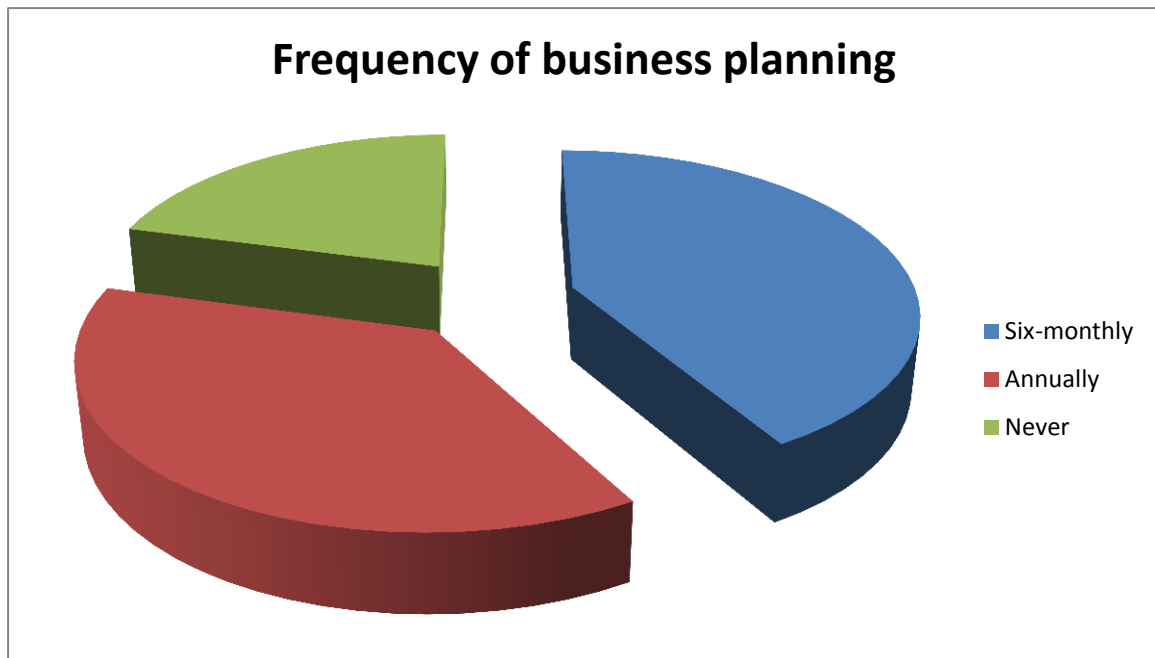


Figure 6.14: Frequency of business planning over a year

Ten (33%) participants reported that they carried out business planning six-monthly, nine (30%) that they did it annually and five (17%) that they carried out no business planning. The structured interview questions did not define ‘business planning’ to the participants in terms of being either formal or informal, or requiring anything in writing. The

response to the question was asked as an open-ended question. Notable responses from participants included that it occurred, ‘by the seat of my pants!’ and ‘No formal planning – but I have beliefs.’

The quantitative results indicate that most of the participants’ law practices were involved in some level of business planning.

Twenty-nine participants provided further comments on the topics of strategic direction and business planning which has given greater insight. Table 6.11 (below) summarises the comments.

Table 6.11: Examples of approaches associated with business planning

Theme	Example of approaches associated with business planning
An understanding that rural practitioners do not plan	It’s comparative – but amongst rural practitioners – our level of planning is high. I brought in a consultant business manager who helped with setting KPIs. We went through the safe custody – that took six months. Prior to all this I did courses on the practice management side of this. The ‘business’ of the practice – my macro-managing is good – but my micro-managing is not so good. (#18)
Informal business planning	Not a business plan. I think about these when swimming and walking – business planning. Business plan is not formal, but informal. (#5)
No time to do business planning when working	Business planning – I’ve always considered but for the first years of the firm I was concentrating on work. If there is work and the money is coming in then I don’t worry about succession. You tell everyone else! (#7)
Sole practitioner’s approach and difficulty	My business planning is increasing. I’m 44 and working harder every day... How do you operate as a sole practitioner? It’s very difficult. You have to look at progression... (#7)
Detailed business planning	There is an Annual Partners Retreat in which the strategic planning overviews the last year, the current year, and the following year, and the next five years. As GM I attend this. The retreat is nine to four and held off-premises with a detailed agenda. There are monthly partners meetings – with particularised issues and reports at each meeting. The Annual retreat is about strategy and looks at topics such as expansion, growth, GFC and employment. In June [the meeting considers] the budgets for the financial year; operations; firm spending – this is tracked monthly. At the strategy meetings, minutes are taken; reporting on various subjects and outcomes and actions in terms of role and person responsible. The Partners and GM have the meetings diarised.

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Theme	Example of approaches associated with business planning
	<p>With PI this is more linked to lawyers on their budget; they have annual accruals – year to date - they are monitored on a monthly basis in terms of file management; cash flow; fees billed; dollar per operative; number of debtors. They submit a full management report through ‘Law Master’. Law Master was tailored... customised for business. We can put in budget and times and charges. I put in the budgets and solicitors put in time and charges. Solicitors can monitor against the budget. (#30)</p>
<p>Business planning and implementing Involvement with a range of staff</p>	<p>This is central; we run a Partners’ retreat; there is a Directors’ meeting each month; we talk daily. At [metropolitan legal practice] we ran an annual retreat – we talked with all the solicitors. We had a review form; an Action Plan for the staff. Planning – this is the only way... (#8)</p>
<p>Lawyers are running a business</p>	<p>My role is full-time managing partner. I take on projects from the AGM or new issues. We have the resources to throw at these projects. If you want to implement it, then we make sure it happens. I hate the busy lawyer syndrome. They spend their time doing stuff a first year could do. Their time management is up the shit. They have no recruitment strategy. You need to recruit for the future.</p> <p>The yearly AGM – from the partners’ perspective it can be uncomfortable. It’s refreshing to look behind the personal issues. Having an objective reflection – that is amazing.</p> <p>The areas law firms stuff up in... Lawyers don’t think they are running a business. They think that because they are doing legal work, therefore the money should be coming in. What stops bringing in the money is that they are doing the wrong work. They need to wrap up doing stuff a clerk should do. (#30)</p>
<p>Business planning using an external consultant</p>	<p>This is the first time doing a five year place – previously doing annual plan. Plan each year – now doing a five year business plan. We use an external consultant over a weekend. We had an agenda – with outcomes written up. We met with the consultant to develop the preliminary strategic direction. Then had one-on-one with all the solicitors – ‘where would they and the practice be in the next five years?’.</p> <p>We met with the support staff. Partners asked that copies of the business plan will be given to the solicitors and the support staff. [Name of law practice] have continued to grow – need to assess where we are going... next set of direction/plans... We’d been in practice for eight years – then there was growth. In 2010 we needed to steer the growth – into 2015. We will continue to grow and to specialise. There has been expansion – the number of partners and employed solicitors. Part of the strategic plan is to</p>

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Theme	Example of approaches associated with business planning
	move into Brisbane in specific areas. (#17)
Informal business planning through reviewing the files	We don't do any formal business planning. But I keep an eye on the file. I have file numbers for [rural locations] from 2005 to 2010. I regard the file numbers as 'forward orders'. In 2008 we had 787 files... we were down. In 2009 – 824 files; in 2010 – 719 files for the year. That's the projected file numbers. The files are as bad as over the last 5 years. I don't see any recovery. Running monthly... since March 2009 we are running backwards. Legal practice is a business with fixed overheads... there are some hard decisions we'll have to make.... with staffing. (#25)
Business planning through experience	The big stuff I have done through circumstances – rather than through planning. I'm now fine tuning – thinking about the cash flow, establishing stable routines, and into 2011. (#18)
Informal business planning	I have a few ideas – but I have to go with what happens. No formal business planning – put I have beliefs; I put things into practice. I have informal discussions. (#5)
No control	It just happens; there is no control over things. (#7)
Business planning prompted by health concerns	I don't do a lot of business planning. I did think about an exit strategy though. I had a heart attack in Brisbane in 2010. I needed to have six to eight weeks off. I had to recover. That brought retirement closer to home. (#21)

The quantitative results indicate that participants had a slightly increasing trend or desire to be involved in business planning. It might be suggested that their involvement in this research had piqued their interest in the relevance of business planning.

It was clear from the qualitative comments that the approach to business planning was polarised in terms of those law practices that implemented strategic business planning and those that did not carry out any business planning. Comments included the reflection that RRR legal practitioners do not plan to the same extent that metropolitan legal practitioners do, that only informal business planning occurs and, that there is simply no time to carry out this activity. One participant was motivated into business planning only after experiencing severe health issues. In contrast, a significant number of the comments included that detailed business planning occurred that included the services of an external consultant; that lawyers are running a business and required a dedicated CEO role to carry out that aspect.

Who is Involved in Business Planning?

Part C of the structured interview asked participants to nominate 'who is involved in planning discussions?'. A number of options were offered that included: 'principals/directors', 'practice manager', 'employed solicitor/trainee solicitors', 'administration staff/paralegals', 'shareholders (if an ILP)' and 'combination'. Figure 6.15 below reports on the results.

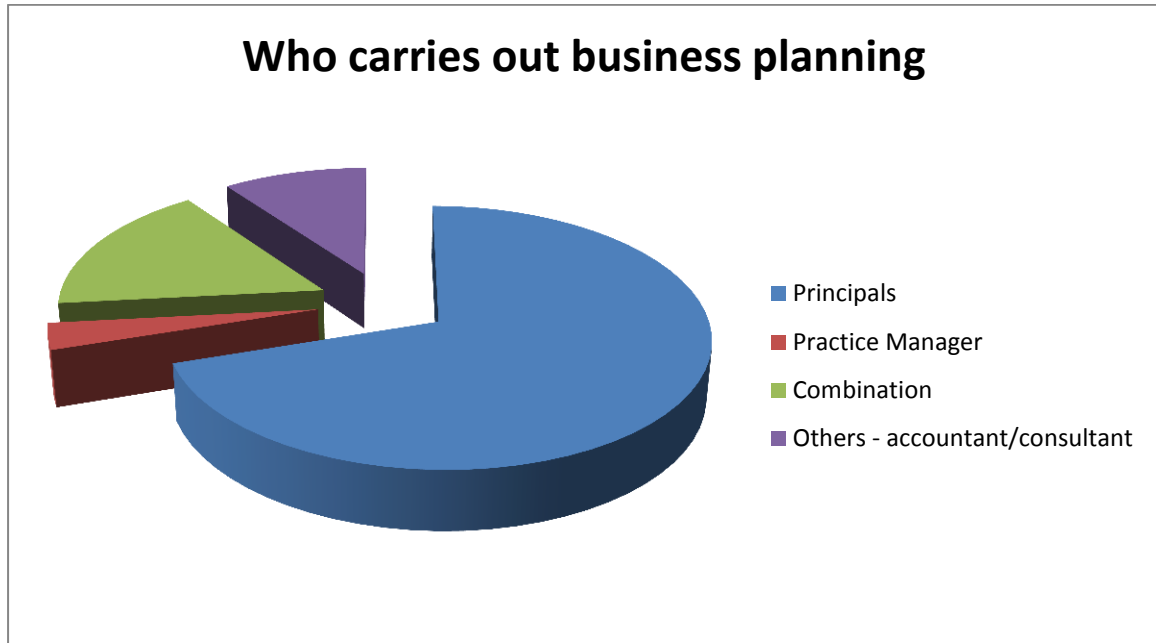


Figure 6.15: Who carries out business planning

The majority of business planning was reported to be carried out by principals (or directors) – 21 (70%) participants. One practice manager carried out business planning. The remaining 5 (16%) participants recorded that a combination of members of the legal practice were involved. A number of participants stated that they brought in a consultant, or that they sat down with their accountant.

Responsibility for the Management, Direction and Leadership of the Legal Practice

Part D (*Principals/Director's Characteristics and Relationships*) of the structured interview asked participants (where there was more than one principal), 'to what extent does the law practice divide responsibilities relating to the management, direction and leadership of the practice?'. The areas of responsibility related to: 'strategic direction of the legal practice', 'recruitment and progression of staff', 'client satisfaction', 'marketing and promotion of the legal practice', 'setting and reviewing profitability of the practice' and, 'researching and implementing innovative developments'. The extent of the division (in terms of the 'predominant responsibility being so allocated') was recorded in terms of 'strong division', 'moderate division' or 'all partners/directors contribute'. Figure 6.16 reports on the results.

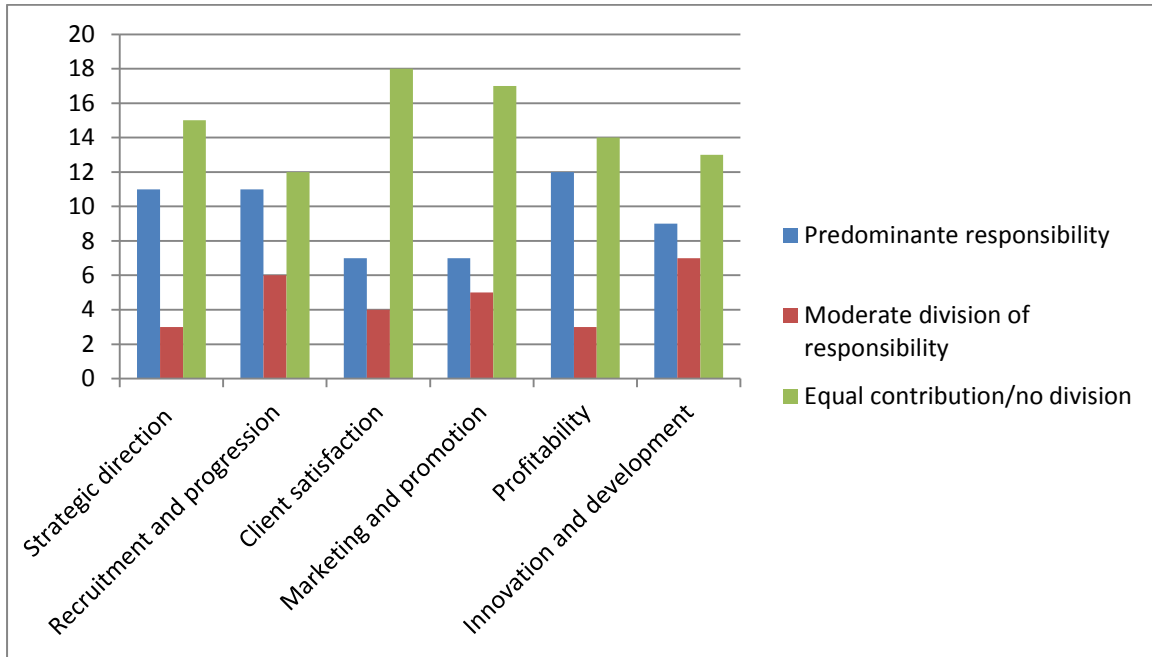


Figure 6.16: Responsibility relating to the management, direction and leadership of the legal practice

The quantitative data suggests that responsibility for ‘profitability’, ‘strategic direction’ and ‘recruitment and retention’ were the most common areas of responsibility given to one of the partners/directors. ‘Client satisfaction’ and ‘marketing and promotion’ were more commonly shared.

From the 29 participants who provided further comments on business planning, the following comments on who was involved are summarised in Table 6.12 below.

Table 6.12: Who carries out business planning?

Themes	Examples of who carries out business planning
The benefits of having an objective external consultant to encourage the partners fully opening up	<p>We are continually having pleasing financial years. This is due to having an outsider examine the practice. It can be unpleasant... painful. You get too close to things.</p> <p>One month before the AGM the consultant talks to the partners. It all comes out. The consultant works out ways to come forward. He sets up an agenda. The consultant can talk in confidence with the partners. They are more inclined to open up. He can bring out any undercurrent.</p> <p>The yearly AGM – from the partners’ perspective it can be uncomfortable. It’s refreshing to look behind the personal issues. Having an objective reflection – that is amazing. (#8)</p>
Using an external consultant to talk to the solicitors	<p>We use an external consultant over a weekend. We had an agenda – with outcomes written up. We met with the consultant to develop the preliminary strategic direction. Then had one-on-one with all the solicitors. They were asked, ‘where would they/the practice be in the next five years’. We then met with the</p>

**Chapter 6 – Results of the Structured Interview Data (Part 1):
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Themes	Examples of who carries out business planning
	support staff. Partners asked that copies of the business plan will be given to the solicitors and the support staff. (#8)
Sole practitioner supplementing business planning through a consultant and education	I fulfil all of the responsibilities for the management and leadership of the practice. I have brought in additional expertise through engaging a consultant business manager or through continued education. (#30)
A dictatorship	If we needed meetings, we had them – but in the end it is a dictatorship. (#18)
Consultant business manager	I brought in a consultant business manager who helped with setting KPI's. (#8)
Managing partner The ‘busy lawyer’ syndrome	My role is full-time managing partner. I take on projects from the AGM or new issues. We have the resources to throw at these projects. If you want to implement it, then we make sure it happens. I hate the busy lawyer syndrome. They spend their time doing stuff a first year could do. Their time management is up the shit. (#30)
Delegation of planning to junior employees	The planning has been due to W who has taken on this responsibility. Tracey away – the planning is quite poor, but with intentions to improve. I am not big on planning – that that W and T have taken on this role – they do the formal planning. I talk daily on the phone with my partner; many major decisions are made on the phone. (#2)
Using an accountant and a financial advisor	I sit down with my accountant and a financial advisor. (#22)

The qualitative data from participants gave an insight into who was involved in business planning. A number of participants indicated that expert external resources were used to assist with business planning including external consultants, accountants and financial advisors. One participant commented that business planning was also assisted by relying on continued education. Only a few participants indicated the presence of a dedicated role within the legal practice who took on the role of business planning. In one instance it was described as a ‘dictatorship’. Almost all of the responses acknowledged that this was time consuming and would effectively remove the participant from the ability to be generating income from legal work.

In terms of the involvement from within the legal practice in business planning, most participants indicated that this remained at the principal level – that is, only partners (or the sole practitioner) were involved in business planning. In a few instances participants commented that discussion from solicitors and administration staff to determine input into

the planning process; that discussion process followed a hierarchical approach that involved first solicitors and secondly administration staff. In one instance, the participant noted that business planning had been delegated to a junior employee.

Again the approach to business planning and who is involved appeared to be highly polarised, with high level strategic planning involving all members of the legal practice (to varying degrees) contrasted with minimal informal business planning carried out with little or no input or consultation, followed by minimal communication on the results.

Identifying Business Planning Outcomes

Part C of the structured interview (*Business Planning Carried out by Law Practice*) asked participants to gauge (in terms of ‘high’, ‘moderate’, or ‘low’) the extent to which they identified and measured three aspects of business planning including: ‘the outcomes identified as part of a planning process’, ‘indicators to measure achievement of outcomes’ and, ‘benchmarking to determine the best processes used to achieve a result’. Figure 6.17 reports on the outcomes.

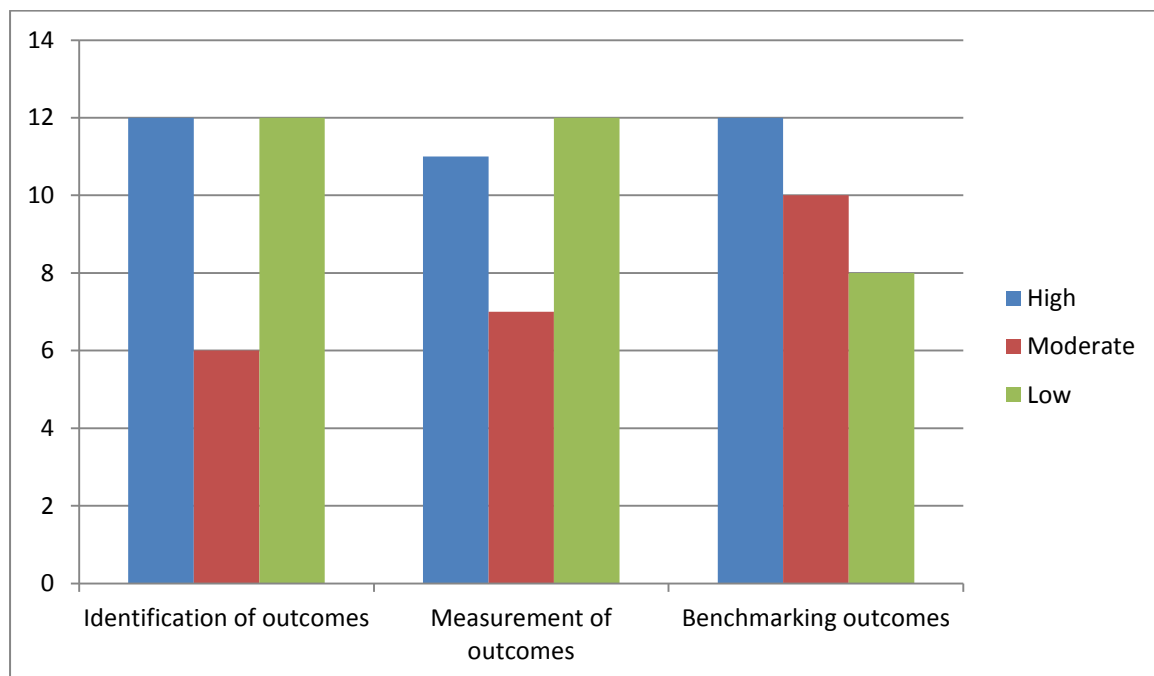


Figure 6.17: Identifying and measuring business planning outcomes

The quantitative data suggests that participants do engage in some identification and measurement of outcomes from the business planning process are identified by participants, and that benchmarking is used. The significantly large number of ‘low’ responses for identifying and measuring outcomes from business planning suggests that this aspect of business planning is not an activity that is carried out by the participants.

Use of Indicators to Measure Performance

Part C of the structured interview also asked participants to gauge (in terms of ‘high’, ‘moderate’, or ‘low’) the extent to which specified indicators were used to measure performance by the law practice. The specified indicators were, ‘measurement of revenue’, ‘measurement of profit’, ‘measurement of customer satisfaction’ and, ‘measurement of market share’. Figure 6.18 reports on the quantitative results.

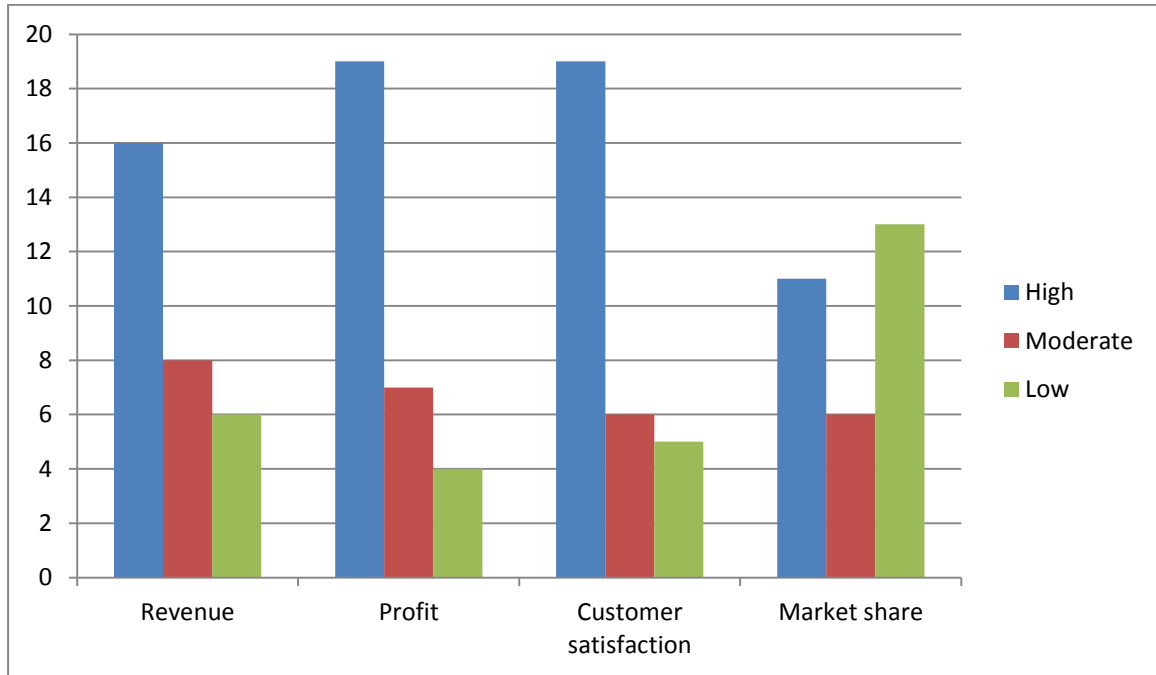


Figure 6.18: Use of indicators to measure performance

The quantitative results indicated that ‘profit’ and ‘customer satisfaction’ were the most commonly used indicators to measure the law practice’s performance. The importance of measuring customer satisfaction is consistent with the earlier data in this chapter in which client satisfaction was seen as being a key aspect for bringing in work for the practice.

Fourteen participants provided additional comment on this topic. Those who indicated that they did identify and measure business outcomes to measure performance provided important details about how this was done. Table 6.13 provides a summary of those comments.

Table 6.13: Themes and examples on how business outcomes were identified and performance was measured

Theme	Examples on how business outcomes were identified and performance was measured
The importance of measuring financial performance	We understand the business. We are strategic in terms of what we want to achieve. We are concentrating on measuring financial performance – that has been tightened up for example – budgets monthly; that money in trust; that we are getting good work in. That ‘big picture’ needed to have everything humming. We didn’t want to set unreasonable goals. We’ve been eliminating the road blocks. (#9)
Measuring as part of the processes in carrying out legal work	In terms of measuring – every file has a critique sheet – we ask for the negative responses. We get an 85 percent return rate – we do this for client satisfaction. We measure customer referrals. We have a large conveyancing practice – we have increased our fields which has let us have specialisations

Theme	Examples on how business outcomes were identified and performance was measured
	within the firms. We specialise in rural properties and succession. There is another firm in town that does legal aid, and another one that does family and legal aid. We bought this practice in March 2002. ... We do the largest share of conveyancing. It's 10 percent of our budget. (#9)
Processes learnt from a larger law practice that assist measuring	My method of working is that I will open a file in response to a question that may not be pursued. Then if they call back, we can find the file. This is due to my background with working for a larger rural law firm. Whereas with A – he started with a sole practitioner. His method is to put those matters into a ‘miscellaneous’ file. Figures would show that A not have as many files coming in. It's not a big deal though – there are swings and roundabouts. (#19)
Benefits of benchmarking	I used benchmarking for one year – this was good for one year to allow me to compare. (#26)

Again the participants were polarised in terms of their levels of confidence in using indicators to measure performance. A number of participants confidently and comprehensively used indicators to measure the performance of the law practice and stated that this was part of the processes in place from the moment a client walked in. Such processes were embedded in identification and measurement of client referrals, author details and client satisfaction. Some participants indicated that this aspect of business planning was the result of having worked in large metropolitan law firms (as opposed to colleagues who had had only RRR legal practice experience).

In terms of benchmarking, a number of participants referred to the use of benchmarking under the *Financial Management Resource Centre* and *Law Australasia*. Knowledge on that source of benchmarking was not expressly asked, however, it was a source that was repeatedly volunteered by participants. One participant responded that they had ‘an awareness of benchmarking’ (#28).

Sources of Information for Making Practice Management Decisions

Throughout the structured interview, participants were asked a series of questions concerning the basis for making strategic decisions relating to recruitment and retention, marketing and use of information technology. The purpose was to cross reference the extent and depth of business planning on these areas. The questions were asked at various parts of the structured interview including Part F (*People Management Practices*) on the reasons why the law practice implemented methods and programs to develop legal staff, Part G (*Marketing Practices*) to determine the source of marketing strategies and, Part H (*Use of Information Technology*) to determine the basis for the law practice’s reasons for making decisions relating to information technology.

Sources of Information for Making Legal Staff Development Decisions

Part F (*People Management Practices*) asked the participant the basis for choosing various people management practices. The options were, ‘practice management

decision’, ‘used by my previous law practice’, ‘based on relevant professional/legal journal articles’, ‘developed under the law practice’s business plan’ and, ‘law practice has always carried out this practice’. Figure 6.19 reports on the quantitative data.

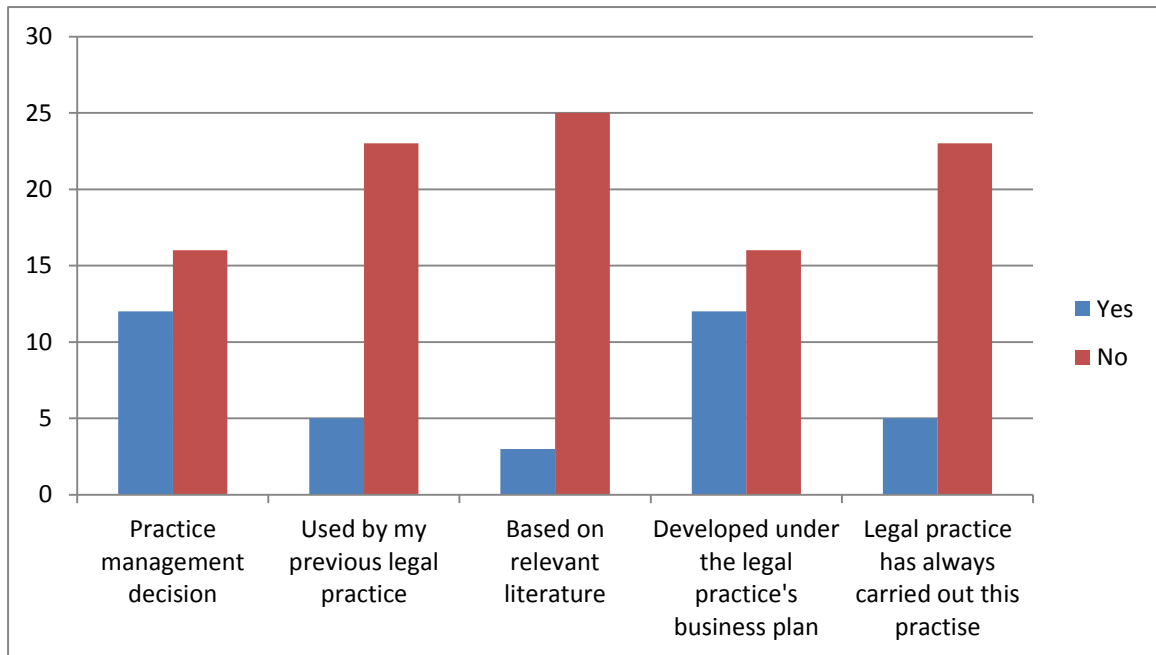


Figure 6.19: Sources of information for making legal staff development decisions

The quantitative data suggests that the most common reasons for making legal staff development decisions were that it was a ‘practice management decision’ or that it was ‘developed under the law practice’s business plan’.

Sources of Information for Making Marketing Strategy Decisions

Similarly, participants were asked in Part G (*Marketing Practices*) of the structured interview to determine the sources for making marketing strategy decisions in term of it being either a ‘practice management decision’; ‘[I]t was used by the principal/director’s previous legal practice’, ‘[I]t was based on relevant professional/legal journal articles’, ‘[I]t was developed under the legal practice’s business plan’, ‘[I]t was the recommendation of the marketing consultant’, or ‘the legal practice has always done it this way’.

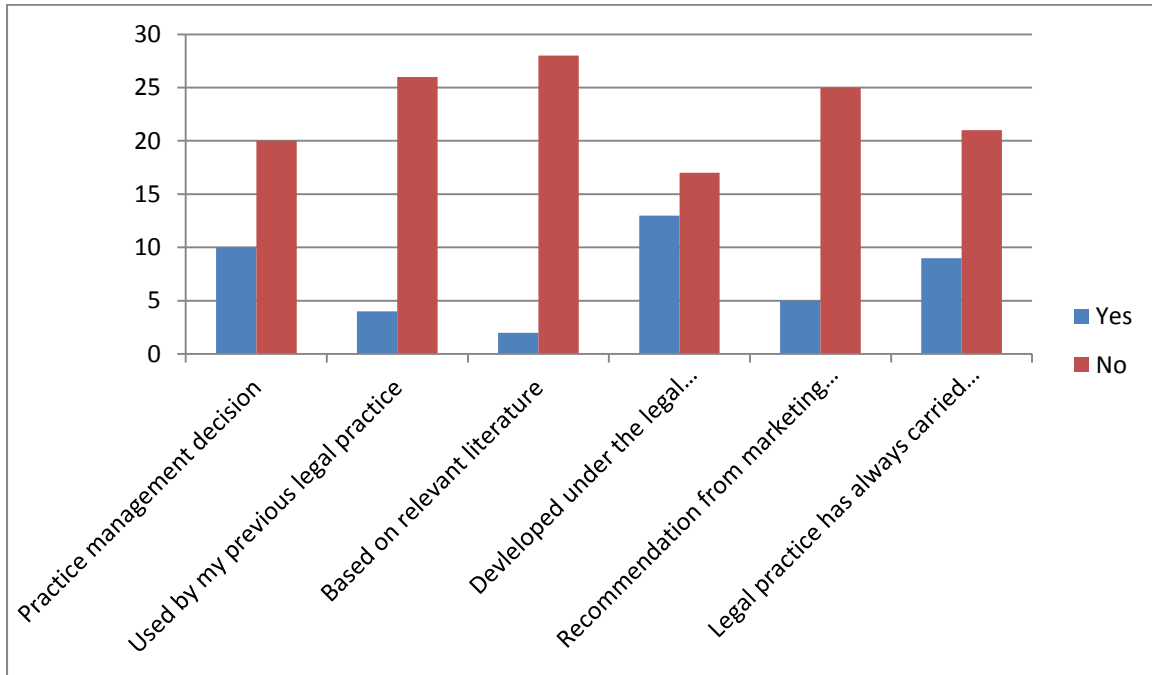


Figure 6.20: Source of information for making marketing strategy decisions

Participants indicated that the sources of information for making marketing strategy decisions were developed under the law practice’s business plan or that it was a practice management decision.

Source of Information for Making Information Technology Decisions

The structured interview Part H (*Use of Information Technology*) asked participants to determine the basis for the law practice’s reasons for making decisions relating to information technology. Participants were asked to select from the following options: ‘practice management decision’, ‘used by my previous law practice’, ‘based on relevant professional/legal journal articles’, ‘developed under the law practice’s business plan’, ‘recommendation of consultant’ and, ‘law practice has always carried out this practice’.

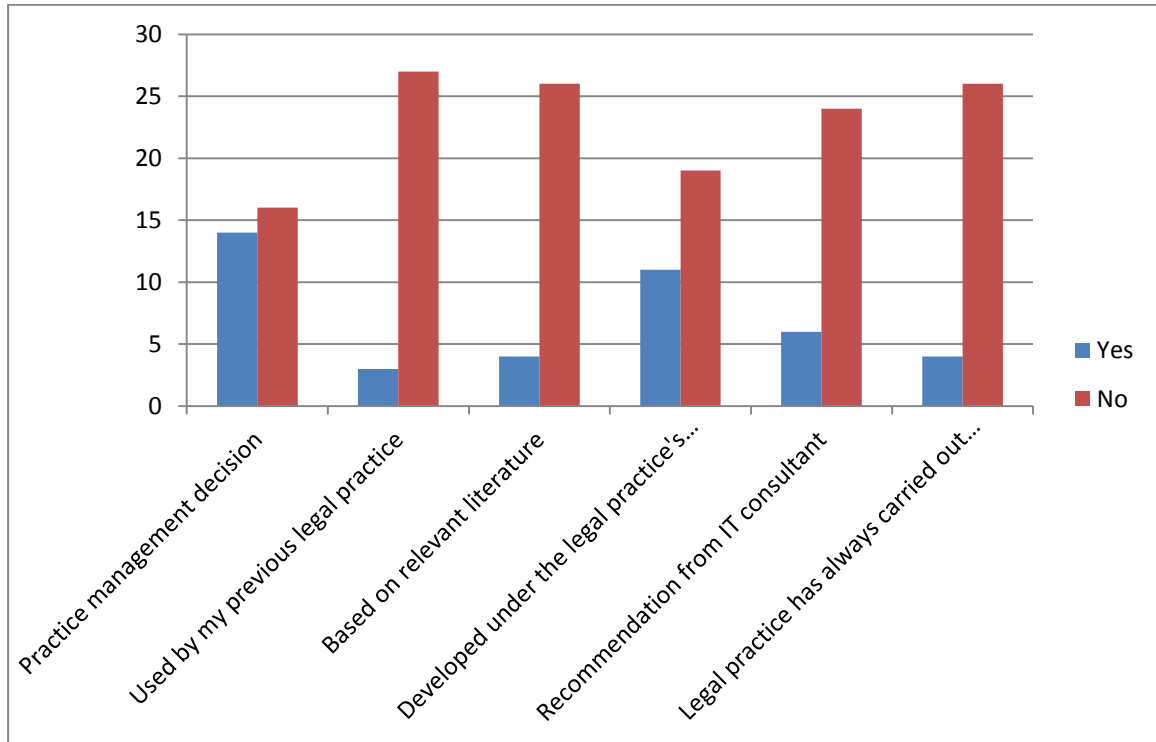


Figure 6.21: Source of information for making information technology decisions

The quantitative data revealed that participants relied upon a practice management decision or that it had been developed under the law practice’s business plan in order to make information technology decisions.

The quantitative data regarding the three decision-making areas – legal staff development, marketing strategy and use of information technology – reveals that participants consistently rely upon a practice management decision or the legal practice’s business plan. Possibly significantly, participants did not state that such decisions were based on professional or legal journals or articles, or that they relied upon the expertise of consultants. The discussion on sources of information driving the use of information technology is taken up in the following chapter.

6.5.2 Use of Strategic Alliances

Part C (*Business Planning Carried out in the Law Practice*) of the structured interview asked participants regarding the extent of the law practice’s use of strategic alliances. The options offered to participants were whether such alliances were, ‘part of the current strategic direction’, or whether they would ‘be included in future strategic direction’, or ‘not included in any practice plans’. The types of alliances were nominated by the structured interview and included: ‘being with another RRR legal practice’, ‘an urban legal practice’, ‘a specialist legal practice’, ‘another professional service firm (such as an accountancy firm)’ or, ‘with a non-professional practice’. The term ‘strategic alliance’ was not defined for participants. The result of that was that the full range of alliances and relationships with other professional and non-professional entities was discussed. Figure 6.22 reports on the participants’ use of such alliances.

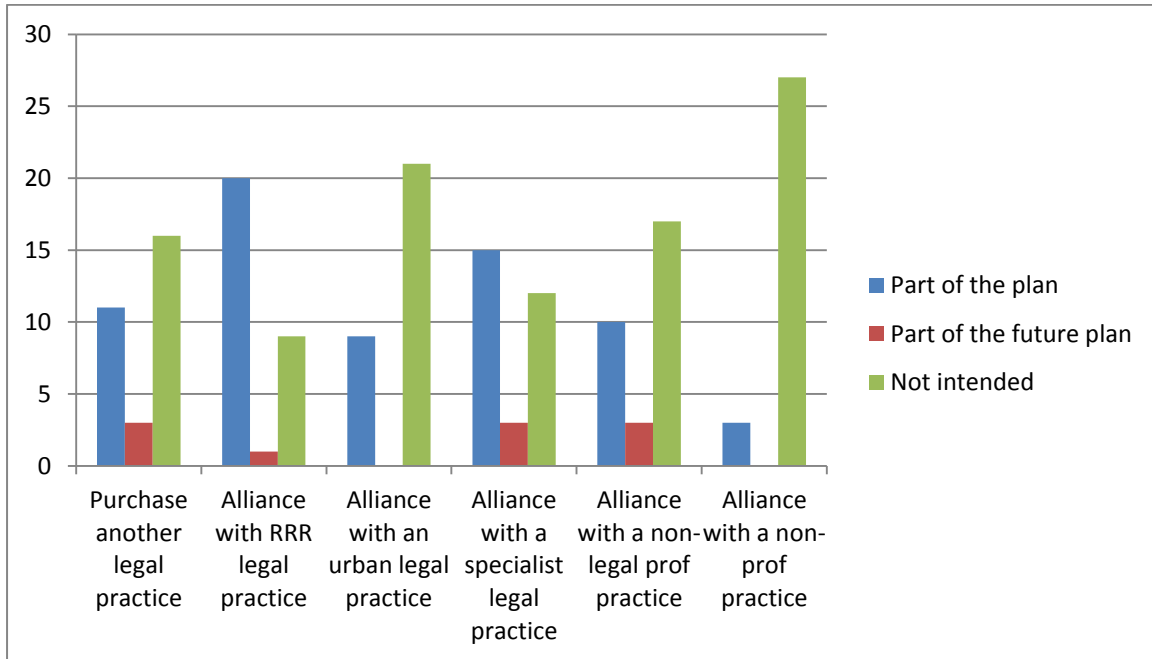


Figure 6.22: The use of strategic alliances

The quantitative data indicates that alliances with RRR legal practices are the most common, followed by alliances with a specialist legal practice. Participants indicated that plans to purchase another legal practice registered as being part of their current strategic planning. Of note is the absence from participants’ plans to ally with either a non-professional practice (for example, real estate firm) or with a non-legal professional practice (for example, an accountancy firm).

Twenty-five participants provided further comments on the use of alliances as part of the life of a RRR legal practitioner. The table below provides some indication of the depth and range of these relationships.

Table 6.14: The use of strategic alliances

Theme	The use of strategic alliances
Alliances used for retaining clients and building legal knowledge	The senior partner was a [regional location] practitioner. I use him for consulting and talking to on trust and estates. If I need advice – I prefer to use [metropolitan law practice] rather than a barrister. They will do a piecemeal job. I will refer for, say, a succession planning and I will learn from it. I use them as a partnership. I also have alliances with accountants – we work very closely together. And with financial planners... for [government agency] and I will refer rural work. There is reciprocity. Also real estate agents. (#10)
Sharing knowledge and experience	I have alliances with government workers who bounce ideas off each other – we regularly discuss and explore. This has recently developed in the last couple of years... it’s very good – fruitful and enables me to canvas others’ views on the topic. We can bounce ideas and come up with something. We share

Theme	The use of strategic alliances
Alliances used to reduce stress	knowledge for practice directions, experiences, wisdom. We talk about once a week – it’s not a partnership. We meet once a month with others and can email. Over the years I try and maintain a friendly and cooperative approach. There are people outside that area that you ring. This reduces the stress levels; I don’t feel stress. I like to come up to the court for duty days – this builds up relationships with other lawyers. This has contributed to the collegiality with other legal practitioners – not with all though! I have access to IT – phones, emails – and face-to-face – it is a conscious matter to go and do this. It allows exchange of ideas. (#11)
Extensive state and national alliances	Alliance with regional, rural, remote legal practice: [rural locations] – we have an alliance with an urban legal practice. We have major alliances with other criminal law firms Australia wide – in each of the other states. (#1)
International alliances	We have an alliance with [international organisation] - we’re trying with mixed results; and the <i>Meritas Alliance</i> . (#8)

The qualitative data provides greater insight into the depth and breadth of the use of alliances by the participants. The alliances were both formal and informal. Alliances were formed with individual lawyers from a range of other law practices that span RRR Queensland, state borders and international borders. Alliances were also formed beyond the profession, with participants indicating they form such associations with non-lawyers including financial planners, accountants, government workers and real estate agents. Further, these alliances were formed to deal with sharing legal knowledge and experience, for finance knowledge and for dealing with stressful situations. They were used as quasi-partnerships in which participants indicate they can obtain specialised legal advice without the threat of losing their client. The importance of ‘reciprocity’ in the alliances was discussed by a number of the participants. The alliances also spanned long periods of time with some participants noting that the relationship stemmed from earlier employment or interaction. Much of the discussion on alliances included relationships that might also be described as ‘mentor/mentored’.

Identified benefits of the alliances included the ability to provide a client with specialist advice but without losing the client, the reduction in stress levels, collegiality, the continued education and knowledge building and, building practice areas. Alliances seemed to be as important for sole practitioners as they did for partnerships. Further discussion on mentoring occurs in Chapter 7 as part of reporting on RI 5 (Recruitment and Retention).

Measuring Strategic Alliances

Part C of the structured interview asked those participants who had responded that they did participate in strategic alliances, the extent to which the practice analysed (in any way) the income derived from such alliances. The options for responding were in terms of ‘high’, ‘moderate’, or ‘low’. Figure 6.23 reports on the findings below.

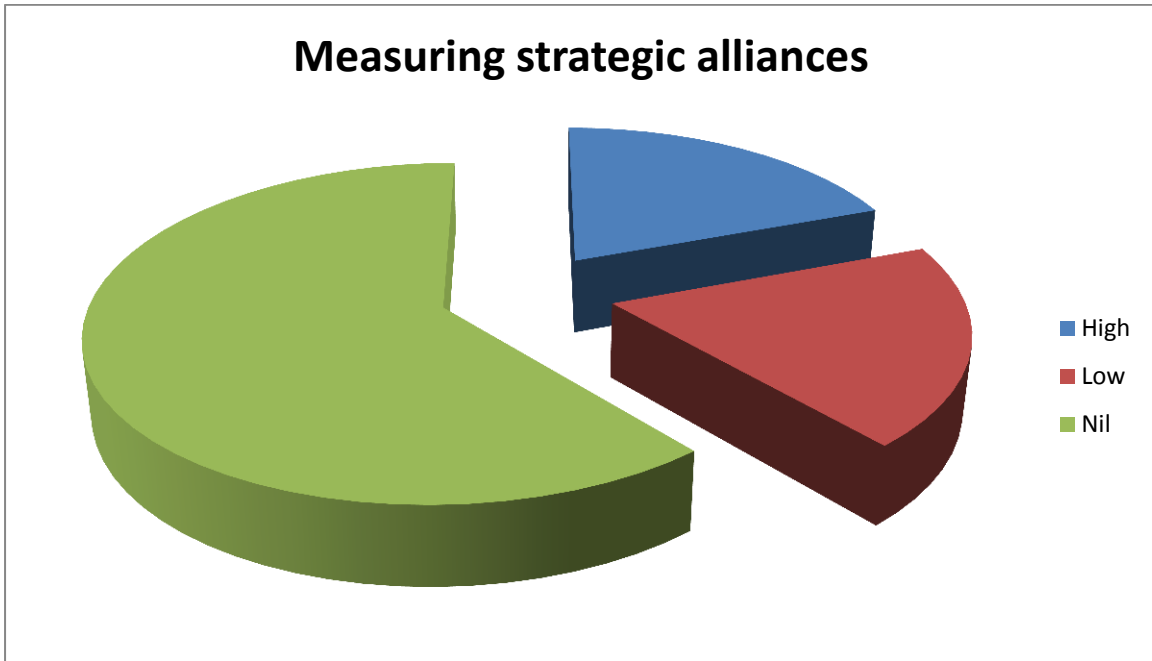


Figure 6.23: Measuring strategic alliances

Six (20%) reported high measurement; six stated moderate and 18 (60%) low or nil measurement. Few participants (who responded to this question) analysed or gauged the income derived from such alliances.

6.5.3 Subject Matter for Current and Future Planning

Throughout the structured interview, participants were asked to respond either ‘yes’ or ‘no’ to a number of questions relating to issues that might be intended to be included in any current or future planning. The questions included (from Part C: *Business Planning Carried out by the Law Practice*,) ‘Does the law practice plan to relocate any part of the legal practice?’, (from Part E: *Business Carried out by the Law Practice*) ‘Does the law practice plan to change the range of work carried out?’, ‘Does the law practice plan to increase the range of work carried out?’, ‘Does the law practice plan to increase the range of work carried out?’ and, ‘Does the law practice plan to change its clientele in terms of their occupation?’, ‘Does the law practice plan to change its clientele in terms of increasing the number of clients?’, ‘Does the law practice plan to change its clientele in terms of decreasing the number of clients?’, ‘Does the law practice plan to change its clientele in terms of the categories of clients?’ and, (from Part C: *Business Planning Carried out by the Law Practice*) ‘Has the law practice developed or implemented a plan to deal with the future retirement of the partners?’. Figure 6.24 reports on the quantitative data.

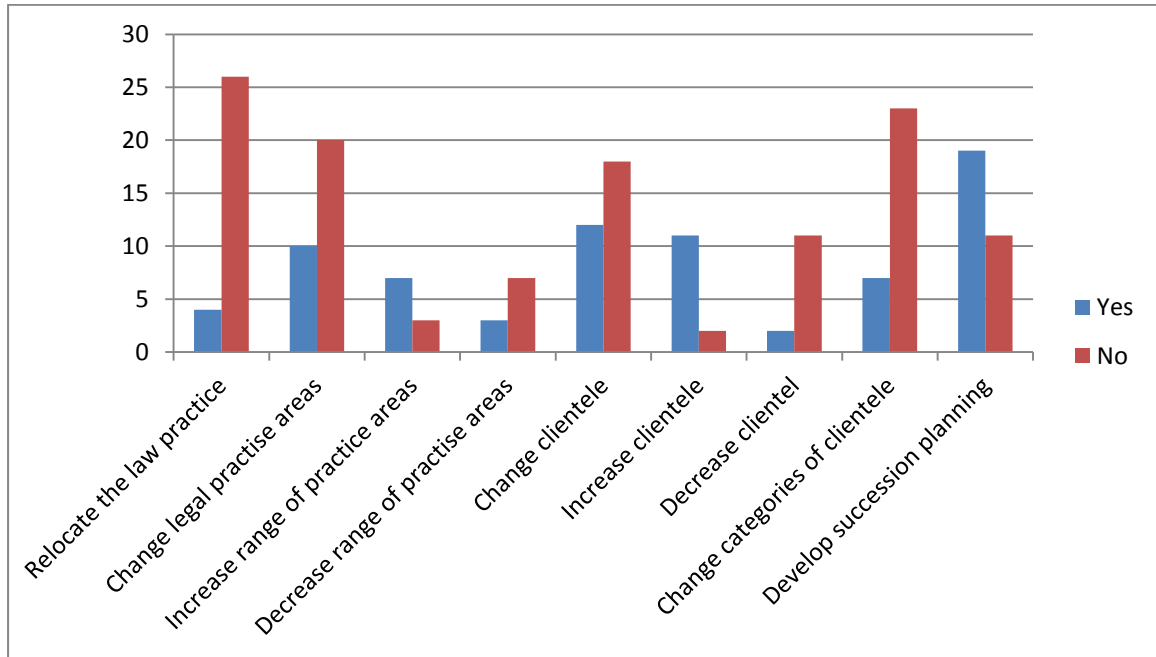


Figure 6.24: Subject matter for future planning

The quantitative data indicates that participants consider succession planning as the most important matter for future planning. Changing clientele – in terms of increasing their numbers – ranked as the second most important matter, followed by changing (increasing) the legal practice areas. Future planning for both legal staffing and administrative staffing is discussed below in this chapter.

Future Plans to Provide for Succession Planning

Twenty-one participants commented specifically on succession planning as being a key subject matter for future planning. The comments reflected some of the difficulties in being able to recruit and retain legal staff, for example, in this comment, ‘If there is an opportunity to put someone on, we need to grab it. This is linked to our long term planning – succession planning.’. Other comments that provide greater insight into the issue of succession planning are summarised in Table 6.15 below.

Table 6.15: Issues and examples relating to future planning

Theme	Issues and examples relating to future planning
Succession planning though merging with another RRR law practice	I had been thinking of succession planning before – that was to either put the practice on the market or offer it to a big [regional location] firm – where we have a lot of overlapping clients. With my employed solicitor – he is a UQ-educated graduate; he too saw the light of getting out of [metropolitan location] and coming up here. (#21)
Walking away from the law practice	I will walk away. Practitioners don’t want to work in the country – they’re mad. I do a seven hour day; no weekend work – I have work/life balance. There are two solicitors that I would give half the business to... The practice has no value in terms of selling. I have a big rural base in my firm. I’ve been

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Theme	Issues and examples relating to future planning
	approached by some big firms to sell to... I put all the figures on paper now. This is essential for selling to the big firms. That process was good. (#22)
Succession planning based around children’s education	The other practitioner I’m in talks with – will have to close his doors. I have a seven year plan; I want to get my kids through school. We have discussed whether other firms would buy the practice. (#20)
Succession planning through transferring files	I will transfer files to another firm, but the other practitioners in [rural location] – they are older than me. About four or five years ago, a solicitor had to close and move. I’d like to sell, but being realistic – I’ll have to transfer the files. (#22)
Mirrors of the partners for replacement	There are ‘mirrors’ of each partner to replicate a senior partner. They are groomed... senior partners are not indispensable.... This is why the need to increase the number of solicitors. The partners are 42 to 50 – we need to address it. (#10)
Problems of RRR legal practitioners attracting staff in order to plan for succession	[Rural location] can’t attract professional staff to buy businesses in rural areas. [Two other partners in other law practices] are both in their sixties and looking to get out. Solicitors are aging – they all have more work than they can handle. (#29)
Premature promotion due to lack of legal staff	We made two solicitors associates before their time for potential partners. [Name of partner] is still on the board part time. He took [junior employed solicitor] under his wing. (#9)
Transitional approach for succession planning	Most senior directors are not planning retirement. We want to bring existing people on board, follow the model of most legal partnerships – quality legal staff that can transition into equity and management. (#1)
Real estate as succession planning	We built a purpose built a two-storey premise. My wife – who is a GP – has the bottom floor; I have the top floor. The property is owned by the Superannuation Fund – this is part of the succession planning. There are separate lots in the building – my wife documents the sources of income. It brings in \$150,000/year.
Succession planning prompted by health issues	I did think about an exit strategy though. I had a heart attack in [metropolitan location] in 2010. I needed to have six to eight weeks off. I had to recover. That brought retirement closer to home. The young chap employed here – I said that if he applied himself he could be the principal of a busy practice. (#21)
Lack of legal staff	There is nobody to take over. We are at a disadvantage with the

Theme	Issues and examples relating to future planning
<p>Loss of surrounding large businesses impacting on work</p> <p>Drought impacting on work</p> <p>Inability to retain legal staff</p>	<p>other firms because of [rural location]. Our competitors are all here five days a week. But we are away... The [rural location] files are growing. [Rural location] had a meat works that employed 500 – 600 people employed. It went bust... the [government] subsidised it] but it closed in 2006. The combination of the meatworks and the drought – these are major negative factors. Water is important... so that farmers can do more intensive agriculture. We thought about a branch office in [rural location] but it’s too far away. [Partners] are within daily driving distance – and the population is big.</p> <p>We’ve had five solicitors since 2003. None have stayed. We hope [employed solicitor] will stay. We would like someone younger to come it. We need someone younger to come in. They would do what they like with the computer systems – it’s a good living. (#25)</p>
<p>The attributes of potential successors</p>	<p>He has a good personality; he is a country boy – from [remote location] and his wife is too. He has a BCom – which is good for his financial knowledge as well as the LLB. He does other study; he did his PLT quickly. I could see the quality in him. We want a young partner – this is part of our succession planning. (#3)</p>

The qualitative data highlights the pressing issue of succession planning. Some of the issues identified by participants related to the lack of suitable legal staff within RRR locations and the inability to retain such staff, the closure of large businesses that impacted on the type of work available necessary to sustain the practice, the drought that had impacted on local farmers and work that they might generate for law practices. Some of the methods of dealing with succession planning were to merge the law practice with another practice (either RRR-located or metropolitan) or to simply transfer the files to another practice. Other participants stated that they ‘would simply walk away from the law practice’ because no-one would be interested in buying a RRR law practice. Some participants were more proactive in dealing with succession planning by putting in place ‘mirrors’ of partners for replacement, or even prematurely promoting young employed solicitors. A number of participants articulated a very clear idea of suitable successors – generally citing youth and good interpersonal skills as being necessary attributes.

Succession planning was not necessarily driven by a strategic approach but in some cases was motivated by health concerns or the changing needs of participants’ families, including the educational needs of their children.

Future Plans to Change Staffing

Part C (*Business Planning Carried out by the Law Practice*) of the structured interview asked participants to indicate any future plans to change staffing – legal and administrative. The options offered were in terms of ‘increase’, ‘no change’ or ‘decrease’. Figure 6.25 reports on the results below.

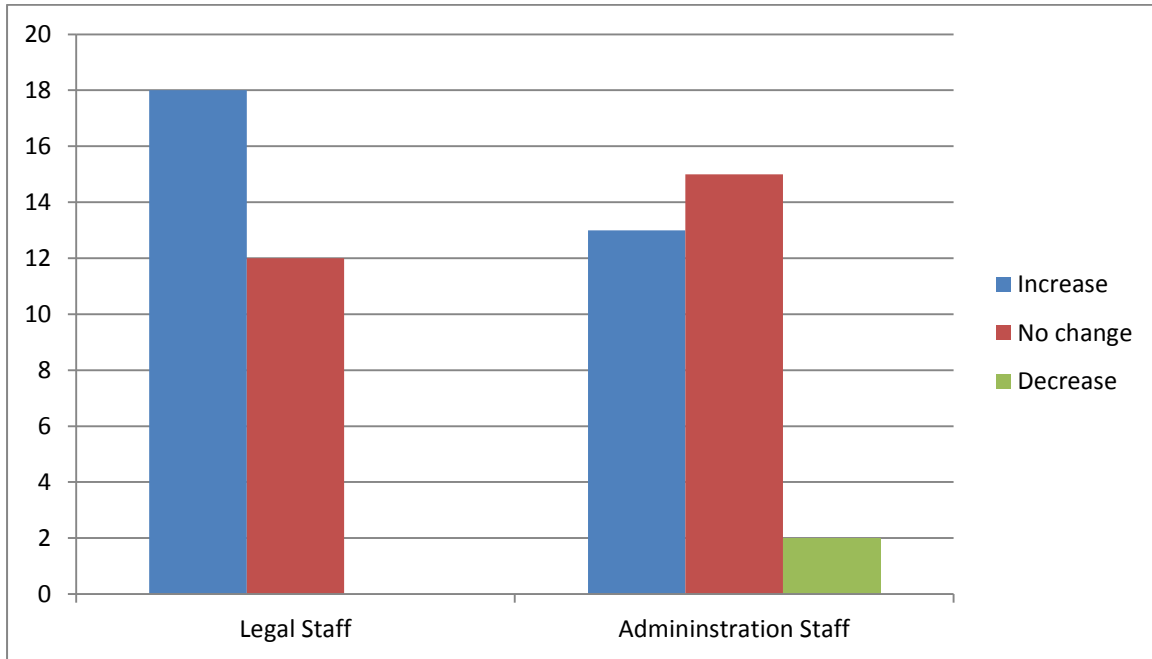


Figure 6.25: Plans to change legal and administrative staff

The quantitative data indicates that participants would like to increase their legal staff. To a lesser extent they would like to also increase their administrative staff. The quantitative data relating specifically to participants’ future plans to increase both legal staff and administrative staff confirms the concerns they have for both being able to meet current needs to be able to service clients as well as the need to plan for the future. Earlier quantitative data relating to the age of participants is of some relevance here in that many of the participants are possibly contemplating retirement and need to consider succession planning. In Chapter 7, more detailed data is provided in relation to issues relating to recruitment and retention.

6.5.4 Budget of Legal Practice Spent on Innovations

The structured interview asked participants two questions relating to the percentage of the budget of the legal practice that was spent on innovations relating to developing new ways of carrying out business (Part E: *Business Carried out by the Law Practice*) and spent on innovations relating to developing people management practices (Part F: *People Management Practices*). In both instances the options were, ‘more than 5 percent of the budget’ or ‘less than 5 percent of the budget’. Figure 6.26 reports on the findings.

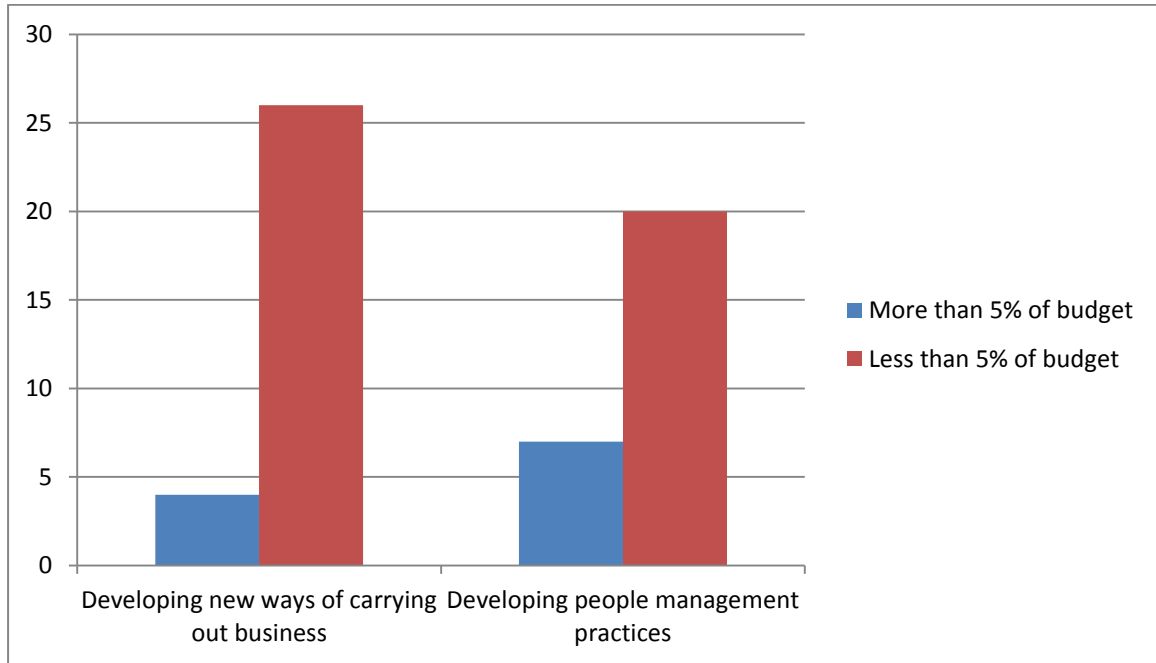


Figure 6.27: Budget of legal practice spent on innovations

Figure 6.27 reports on the budget allocated by the participants to the development of innovations in carrying out the provision of legal advice and the development of human resources. A number of law practices did not have any staff and, therefore, in those instances the question was not responded to.

The quantitative data marginally indicates that participants consider the emphasis on access to staff, rather than developing business, to be the priority for allocating budgetary spending. This data appears to confirm the earlier data relating to succession planning and future plans relating to staffing. More detailed discussions on the issues associated with staff attraction, retention and progression are carried out as part of reporting on RI 5 (Recruitment and Retention) in Chapter 7.

6.6 Summary

This chapter focused on providing the results of the data in terms of RIs 1 to 4. The chapter reported on the participant’s connectedness to the profession and the community, including additional business interests of the participant. It also looked in detail at the business carried out including the legal practice areas, dealing with lack of expertise, methods of fees and billing, profitability and growth of the legal practice. Categories of clients were also reported on including sources of clientele. The chapter reported on business planning practices in terms of frequency, responsibility, scope and topics for future business planning. The chapter also reported on the use of strategic alliances.

The following chapter (Chapter 7) provides further details on the quantitative and qualitative data on RIs 5 to 7 which deal with the topics of recruitment and retention, marketing and the use of information technology.

Chapter 7

Results of the Structured Interview Data (Part 2): 'The Prevalence and Nature of Sustainability Practices'

7.1 Introduction

This chapter continues to report on the data relating to the research question which asks: ‘What is the prevalence and nature of sustainability practices in regional, rural and remote (RRR) law practices?’ Chapter 6 considered four of the seven research issues (RIs) that inform this question (the prevalence and nature of connectedness to the profession and connectedness to the community of the law practice, the business carried out and business planning practices). This chapter reports on the remaining three RIs, 4 to 7, dealing with recruitment and retention and marketing and use of information technology, respectively.

Specifically the chapter reports on staff structures, methods of recruitment, selection and development. It also reports on mentoring and supervision in RRR legal practice, as well as partnership disputes and the resolution of those disputes. The chapter reports on the data relating to marketing with respect to ‘reputation’, methods of increasing business and adverse community reactions to matters the participant’s law practice has been involved in. Finally, the chapter reports on the use of information technology, including training and users of that information technology.

7.2 RI 5: What is the Prevalence and Nature of Recruitment and Retention used by Law Practices in RRR Queensland?

Part F of the structured interview (*People Management Practices*) asked participants to respond to a number of questions dealing with: the extent to which the staff structure had changed in the law practice within the last three years, the extent to which specified methods of advertising were used to seek potential legal staff, the extent to which specified factors were used to select legal staff, the extent to which the law practice used specified practices to develop legal staff and, the extent to which specified staffing programs were used to retain legal staff. The following tables reveal the approach to people management practices within the law practice. The use of people management practices is reported in terms of being a sustainable business management practice.

7.2.1 Staff Structure Changes

Part F (*People Management Practices*) of the structured interview asked participants to indicate the extent to which the staff structure had changed within the last three years in terms of ‘increase’, ‘no change’, ‘decrease’ or ‘not applicable’. Participants were asked the question in terms of both legal staff and administrative staff. Figure 2.1 below reports on the results.

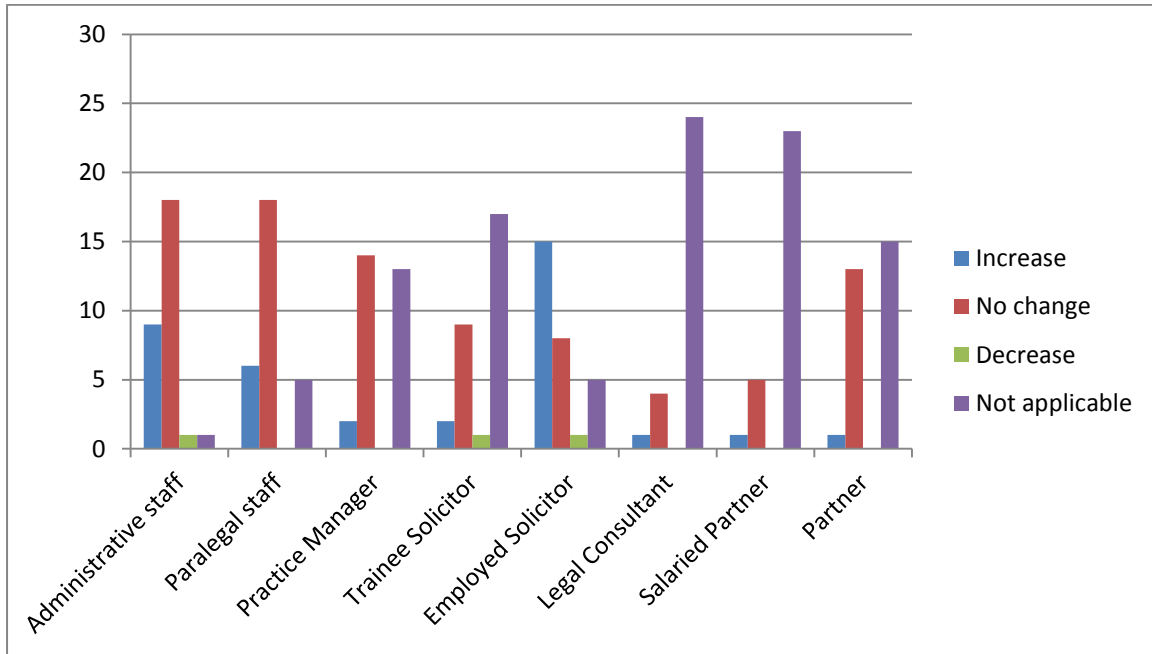


Figure 7.1: Staff structure changes

Figure 7.1 provides information on the extent of staff structure changes in the law practice within the last three years. The staff changes relate to administration staff and legal staff. The figure indicates that administrative staff, paralegal staff and practice managers appear to be relatively static in terms of turnover during the three year period. With respect to legal staff, movement in terms of partners and consultants is irrelevant – they are either not needed or the practice is a sole practice. Some movement, to increase numbers, occurs with employed solicitors. Five participants provided comments into the issues associated with their law practices’ existing staff structure.

Table 7.1: Issues associated with staff structures

Themes	Examples of issues associated with staff structures
The importance of paralegal staff and staff retention	The composition of the staffing is four equity partners; one non-equity partner; one employed solicitor; five paralegals. The paralegals are from within the region and provide enormous community contact – these are the backbone of the firm. Four of the paralegals have been with the law firm for 10 years. Staff retention is important. (#17)
The geographical complexity of staff structures	[Regional location] is a full branch office with a partner and two employed solicitors. It has fully networked offices to [rural location]. All financial services are connected to [rural location]. Another solicitor is coming in here. [Metropolitan location] has a partner in a serviced office – he lives and works in [metropolitan location] and on a monthly basis visits an office in [remote location]. There are two partners in [rural location] – there used to be a consultant. There are two employed solicitors here – one from [remote location] and one from [rural location]. There is an estates paralegal – who has

Themes	Examples of issues associated with staff structures
	been with the firm since 1971 and a conveyancing paralegal. (#3)
Staff structures and the relationship with succession planning	There are ‘mirrors’ of each partner to replicate a senior partner. They are groomed... senior partners are not indispensable.... This is why the need to increase the number of solicitors. The partners are 42 – 50. We need to address this by creating the mirrors. (#8)
The impact of the GFC on staffing	We had 80 people – full capacity. After the GFC we now are at 52 FTE – 60 staff with the partners. With the part time people – we let them go we didn’t replace them. (#9)

The qualitative responses add significant data to the quantitative data in Figure 7.1. They reveal the business decisions relating to the law practice in terms of the type and kind of staff comprised within the practice in terms of the ratio of legal staff to administrative staff, and even the depth of experience sought within the legal staff in terms of junior legal staff to senior legal staff. These sub-themes are discussed in more detail later in this chapter. The qualitative data also provides insight into the staff stability (or lack of stability) and staff retention. These sub-themes relate to the data dealing with staff flexibility and the innovative use of information technology discussed later in this chapter.

7.2.2 Methods of Recruitment of Legal Staff

Figure 7.2 (below) provides information on the methods of recruitment of potential legal staff including trainee solicitors, employed solicitors and consultant solicitors. The participant was asked whether the particular method was used ‘often’, ‘sometimes’ or ‘never’.

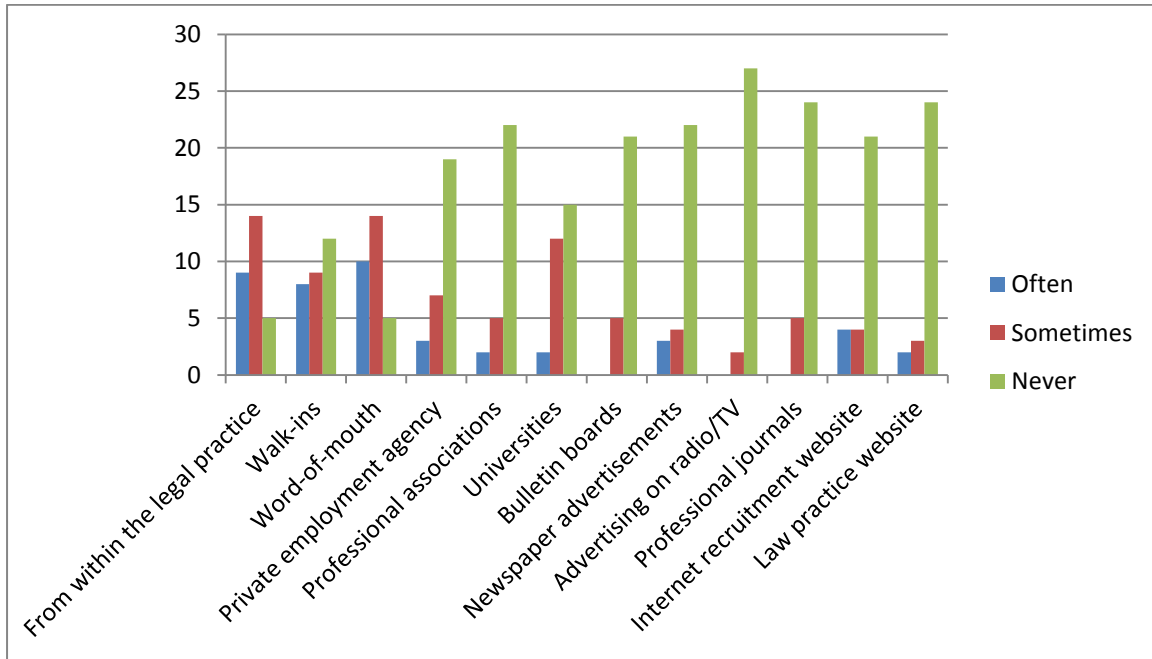


Figure 7.2: Methods of recruitment of legal staff

The figure indicates that recruitment generally occurs from within the law practice, through word of mouth and from universities. Methods of recruitment that require interaction with a professional association or recruitment agency are less popular. The quantitative data seems to support the earlier findings that RRR legal practice relies on personal interactions with people with whom the participants are known or familiar.

Comments from participants confirmed that recruiting legal staff was very difficult. Recruitment opportunities tended to be through ‘personal contacts’ and from local school and university students doing work experience. Recruitment agencies were generally viewed with suspicion and seen as being too expensive. The following comments in Table 7.2 below reflect in more detail these themes.

Twenty-three participants provided additional comments in terms of the issues associated with recruitment; these are summarised below in Table 7.2.

Table 7.2: Issues associated with methods of recruitment

Themes	Examples of issues associated with methods of recruitment
Recruiting from work experience	She came in for two weeks work experience. We convinced her that she should stay – she stayed for six weeks. We talked to her parents and said that she could study externally. She’s been fantastic! Her knowledge now – is better than her uni colleagues – because she’s getting the office experience. (#19)
Difficulties in recruiting	There have been many lawyers at the [DLA] – say it’s difficult to get profession staff (and legal secretaries). This is a constant problem – it hasn’t changed. There is a reduction in the number of firms in the area – due to closing down – due to serious mental health issues [the example of a solicitor who had to close down

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Themes	Examples of issues associated with methods of recruitment
	due to serious mental health issues] and family commitments – there are no private schools. My kids have gone boarding – and with the expense of running a practice. Issue of educational opportunities. (#23)
Approaches to recruitment	We want the best! We don’t worry about graduates going or leaving. People go – because if a partner or wife has been transferred. We have a partner in [metropolitan location] who has great interpersonal skills – we can access him remotely. (#10)
Recruiting local students home from university	There is difficulty getting solicitors up here. There are two local girls studying law – C who works at [name of law practice] and S would does some work in the office. I would encourage local students doing law to come back home. I have told the staff I would encourage training and their studies. (#19)
Recruiting through ‘poaching’ from other law practices	<p>In [rural location] law firms poach each other’s staff. All of my staff have worked either in other law firms or banks. B got a ‘lucrative offer’ from [name of other legal practitioner]. S has been here for three years (20 years with another law firm); T – four years; C nine years; D 14 years. They are not unhappy – they could have left when I look over. I am sure that they have been approached. Good staff – you have to pay them well to make it difficult for another firm to poach them. I realised that you wouldn’t get staff from outside. How would I replace them? Get them off the street and train them. My biggest risk is if T leaves. If others left, then I could do the estates work. Training is time; I would be in strife if I had to do that work. My contingency plan is for my wife – who is a manager with [name of government organisation] to help. (#18)</p> <p>We do give work to a law student – S. She did well in Mooting competition. I’ve given her some advice. We need to invest in any students. C does work in the office in semester breaks.</p>
The importance of connections when recruiting	All of the staff have come through connections. For example, C came through [name of legal practitioner] at the Legal Practice Course. T – I was aware of him – he had joined [name of social club] and I knew he was keen to get back to law. I’ve not had to advertise – but I’d possibly put an advert in Proctor or the regional newspaper. (#21)
Problems with recruitment agencies	Ten to 15 years ago we had problems with recruiting any professional staff. It was difficult to get them out of the South-East corner. This was a problem for a long time. We would offer more money and better conditions than they were getting. We set up a Brisbane office and electronically transferred work, but that didn’t work. We couldn’t get good lawyers. We used a recruitment agency and paid money. We’d get an upstart from

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Themes	Examples of issues associated with methods of recruitment
Taking a ‘multi-pronged’ strategic approach	<p>Brisbane who all they would do, would be to tell us how smart they were. Then after two weeks – after the money was paid to the agency - \$10,000 – they would go. We had a series of disasters.</p> <p>We now have a multi-pronged approach. Five or six years ago – we had a permanent advert in Seek. We are involved with the local high school. We give prizes to the students who do well in the legal studies course and had a passion to study locally. We’d put two students on at a time. This has worked out well. We really hired locally. We targeted the [regional location]. They want to come back to the bush.</p> <p>Every application we get I make sure I interview them all. Some will be available. We get requests for trainees. We hire for local content and put them on. They have a network of friends and family and will stay.</p> <p>We have recruited from within the practice. We have a number of them. We identify good kids doing paralegal work. We help them with their studies. We give them time off; pay them for their study leave. (#30)</p>
Recruiting from within Recruiting from the local high school	<p>I have asked a legal secretary to commence a law degree – but it didn’t work out. The firm provides a law prize to the [rural location] State High School for the Legal Studies program. When we presented the prize to the winner, we gave them the opportunity to work in the firm and to do a law degree – that didn’t work out. But we would consider that again. We use a mixture of approaches for recruiting. Law firms don’t like placement agencies. We get juniors in the mail room; bring them though to secretaries working for the senior associate. (#2)</p>
Recruiting through links to the university and recruitment agencies	<p>We have a close relationship with [name of regional university]. We have people who are tutors and lecturers with [name of regional university]. We can send an ad out and get a response; we use SEEK. We are very competitive and we get the best. We want first class honours. We can’t take the basic degree – it’s not up to scratch. We currently have a third year student – we offer times that suit; we will fit in around the student. (#4)</p>

The issues raised fell into a number of sub-themes relating mainly to problems of recruiting legal staff. The sub-themes of resolving that major issue included: recruiting from within the law practice, recruiting from local universities and, ‘poaching’ from other practices. The qualitative data is consistent with the earlier findings in terms of the importance of ‘connectedness’ to the community as a means of sustaining RRR legal practice. In this case it relates to maintaining the staffing structure. Further, the qualitative data suggests that participants are consistent in their hesitation about using professional (or expert) methods (ie. recruitment agencies) to access legal staff.

7.2.3 Factors Considered Relevant for Selection of Legal Staff

Part F of the structured interview asked participants to identify the extent to which a number of stated factors were important when selecting the practice’s legal staff. Legal staff included trainee solicitors, employed solicitors and consultant solicitors. The participant was asked how important each particular factor was in terms of being: ‘very important’, ‘moderately important’ or ‘unimportant’. Figure 7.3 provides information on the factors considered important for the selection of legal staff

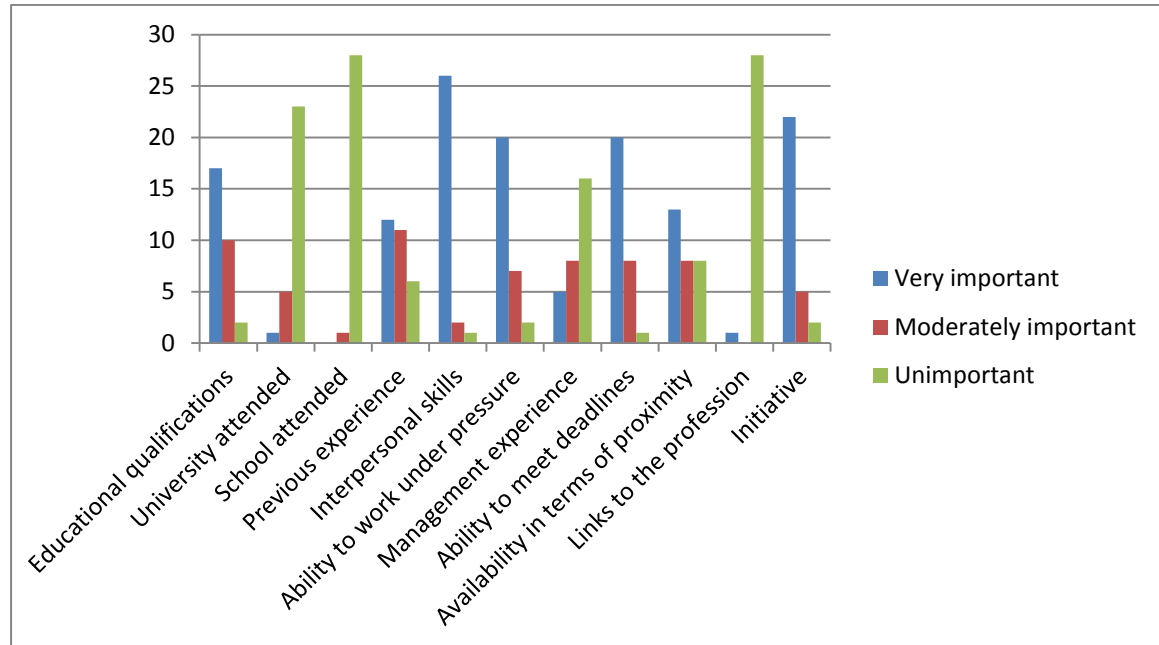


Figure 7.3: Relevant factors for selection of legal staff

The quantitative data clearly indicates that the most relevant factors are interpersonal skills, initiative, the ability to work under pressure (and meet deadlines) and educational qualifications. Factors that may be considered irrelevant included previous experience, links to the profession, the university attended and management experience. Nineteen participants provided further comments relating to relevant factors for the selection of legal staff.

Table 7.3: Examples of Issues associated with relevant factors for selection of legal staff

Theme	Examples of issues associated with relevant factors for selection of legal staff
Preferably married and the right attitude	There is the perception of prestige in the area – they want to be seen in the bigger firms. The country is seen as a backwater. Solicitors who come to [rural location] assume that they want the ‘lifestyle’; that ‘lifestyle’ is more important than service, than the work. We need to weed that out. The firm has had some disasters. We’ve appointed inappropriate people because they are the only ones we can get. If they are single (or in a relationship) I’m

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Theme	Examples of issues associated with relevant factors for selection of legal staff
	<p>sceptical that they won't want to be here in ten years. If they are married then that is better. We get newly qualified solicitors with no experience... There is the perception that young lawyers want to have fun. If law is a way to earn money – they will be gone. If they have the attitude that this is a stepping stone – these are difficult to find – they will be alright. (#23)</p>
Young, flexible, prepared to work and from the area	<p>We did have a law student – working as an articled clerk but he didn't like to read. Some firms prefer students from [name of regional university]. The ideal is someone from the area; someone not too old because they are set in their ways and if could change the dynamics... not too young. They should be flexible. The idea of semi-retirement but we need someone prepared to work; academic. We need a special person who understands the country town with family or links to the area. We are not keen to train people and lose them. They need to like the lifestyle. (#3)</p>
Consultant to assist with assessing applicants	<p>We use psychometric assessment. We have a consultant who assesses applicant in terms of judgment and optimism; the ability to confront; courageous discussion; completers and finishers and the ability to drive a job through; attention to detail and levels of sensitivity ('bruise'). (#4)</p>
<p>Ability to deal with conflict</p> <p>Gen Y has special needs that they will respond to</p> <p>Gen Y and innovation</p>	<p>With recruitment – we recruit for dealing with conflict. I am aligned to the support staff and junior staff. Sometimes staff relations are difficult – they are competent but dysfunctional – difficult to change. The demographics change. We have people here for 40 years – secretaries here for 20 years. Some trainee lawyers stay – those who don't stay – if not changed by their own volition – they leave. Those who go – don't fit the model. They have a path – they know what they have to do. With performance review – they know what needs to be done. There is a detailed explanation in what the expectations are... they need interpersonal skill. There is transparency, clear feedback.</p> <p>Gen Y – they want the website revisited. They want access for people to give a summary of the problem; proformas on line; interface with Facebook. It's a new generation – they want more interaction; updating... modelling on Facebook.</p> <p>The employed solicitors – most are under 30. Young solicitors don't like the phone. Innovation is to include these. We want to recruit the best graduates and so we will respond to them. The older solicitors are more vocal – they are not interested in competition. Innovation is important. (#10)</p>
The importance of life experience	<p>B [name of employed solicitor] came from an unusual background – she didn't think she would get it. I prefer them to have 'life</p>

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Theme	Examples of issues associated with relevant factors for selection of legal staff
and to be non-judgmental	experience’. B brought a wealth of life experience... this is crucial in family law... that and to be able to look beyond... to not judge... to be non-judgmental. (#5)
The importance of interpersonal skills for a small practice	Interpersonal skills – you need this to run a small practice. The dynamics are important. Interpersonal skills very important. Life experience – down to earth. You need networking ability; intelligence; enthusiasm; and an enquiring mind. (#18)
The importance of ‘personality’ Legal staff as an investment	We don’t emphasise the educational aspect. They need a degree. We have a graduate form [name of regional university] – this produces good lawyers. They need a good personality – we need to work with them. We work out their personality from the interview. You can talk to them and take a punt, ‘gut instinct’ from the interview. But you can’t really tell what they are like. We then put them on three months’ probation to make a judgment on their full personality, communication and honesty and good people skills. This is still a short time. We want a country person; someone who wants to raise a family in the country. There is a lot involved in junior legal staff – we’re using the QLS ‘effective supervision of staff’; we do intensive training; it’s a bit investment. (#3)
The importance of being young	We want a young partner – this is part of our succession planning. We have a young partner at the [regional location] office. She is a salaried partner – and we will help her get her equity. She is a country girl with country values; and partnership material. You need to be a good lawyer, with the right attitude. Bring in salaried partner, paid more than the employed solicitor. Partners will sell equity to then. Our senior partner will then reduce his workload and stay on, and then leave at about 60. (#3)
Recruiting through referral The importance of fitting into the firm’s culture Recruiting senior partners only	The professional staff – we recruit through referral or who have approached us. With the professional staff – if they leave it is because we have made an error in our judgment. We ditch. It’s difficult in an interview to determine what will fit. We need to see them in the firm’s culture. We have a solid work force. All the authors have remote access – they can work from home. We work from results not billable hours. Billable hours is last century’s culture. We don’t go for who is spending the most time in the office. We want them to enjoy working. We can find out a lawyer’s performance. There is a generational aspect. We have identified that we are not good trainers. We’re not mentors – we don’t look at leverage. We are top heavy – this works well. The senior partner is working with other senior

Theme	Examples of issues associated with relevant factors for selection of legal staff
	<p>partners. Clients are happy with getting the senior partner. At other law firms, he would have had the junior partner. With contact with the younger generation. We had a girl who came in as a secretary; she did law. She’s now in an area where we are mentoring her.</p> <p>We don’t recruit into the firm until they have had ten years’ experience. The last lawyer – T – joined at partner level. We have support staff; the IT and technology levels are fantastic. (#17)</p>
<p>Earlier difficulties in recruiting</p> <p>Problems with metropolitan graduates</p> <p>Multi-pronged approach</p> <p>The importance of connections – family and friends</p>	<p>Ten to 15 years ago we had problems with recruiting any professional staff. It was difficult to get them out of the South-East corner. This was a problem for a long time. We would offer more money and better conditions than they were getting. We set up a [metropolitan location] office and electronically transferred work, but that didn’t work. We couldn’t get good lawyers. We used a recruitment agency and paid money. We’d get an upstart from [metropolitan location] who all they would do, would be to tell us how smart they were. Then after two weeks – after the money was paid to the agency - \$10,000 – they would go. We had a series of disasters.</p> <p>We now have a multi-pronged approach. Five or six years ago – we had a permanent advert in Seek. We are involved with the local high school. We give prizes to the students who do well in the legal studies course and had a passion to study locally. We’d put two students on at a time. This has worked out well. We really hired locally. We targeted the [regional location] areas. They want to come back to the bush.</p> <p>Every application we get I make sure I interview them all. Some will be available. We get requests for trainees. We hire for local content and put them on. They have a network of friends and family and will stay.</p> <p>We have recruited from within the practice. We have a number of them. We identify good kids doing paralegal work. We help them with their studies. We give them time off; pay them for their study leave. (#30)</p>

The more detailed responses from the participants sheds further light on how the selection process occurs in RRR legal practice. Common responses included the need for interpersonal skills and that the applicant is ‘a country person with country values’ and that ‘you need to be a good lawyer, with the right attitude.’ This data again emphasises the importance of either being connected to the community, or displaying qualities that indicate the potential to develop that connectedness.

Almost all of the participants commented on ‘young lawyers’ and wanting to select young lawyers. The quantitative data that previous experience was not considered a very

important factor possibly confirms that being young and inexperienced was a preference. It might be inferred that these qualities would better facilitate the young lawyer in adapting to the normative environment with the legal practice. Further, a number of participants saw young lawyers as having the potential to offer innovative approaches and that they were willing to work with them; other participants saw young lawyers as needing to be flexible in order to change to suit the practice.

The qualitative data on the factor of ‘youth’ was not purely seen as a positive factor. The qualitative data also revealed that a number of participants saw ‘youth’ or being ‘Gen Y’ as being a source of concern in terms of a lack of work ethic, being unstable, having poor values and showing a lack of commitment.

7.2.4 Methods for Legal Staff Development

Part F of the structured interview asked participants the extent to which a range of practices were used to develop legal staff. They included ‘leadership and development courses for partners’, ‘mentoring’, ‘coaching’, ‘rotation to different areas of law’, ‘training courses on information technology’, ‘training courses on research skills’, ‘training courses on legal practice areas’ and, ‘funding and access to further education’. Participants were asked to rate the extent of how each option was used in terms of ‘often’, ‘sometimes’ or ‘never’.

Figure 7.4 reports on the quantitative results. Two participants did not have staff; this may account for the missing frequencies.

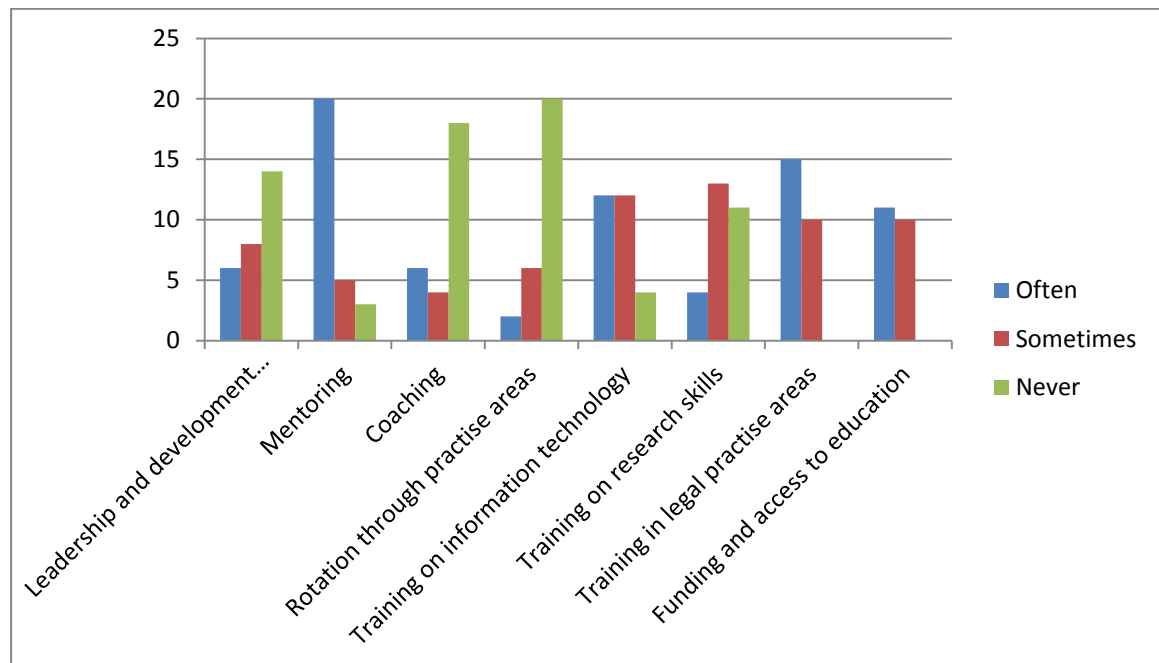


Figure 7.4: Methods available for legal staff development

The quantitative data clearly indicates the importance of mentoring as being a method frequently used for legal staff development, and the qualitative comments (below at Table 7.4) support this method as being highly important for a number of reasons. Provision of training courses in the use of information technology and in legal practice areas and

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providing funding and access to further education were also identified as being important methods for legal staff development. The earlier discussion on the difficulty for RRR law practices to specialise was a key reason identified by the participants for the inability to provide legal staff with rotation programs.

Many of the participants (who had legal staff) commented that they encouraged and funded attendance at continuing legal educational programs, especially to gain CPD points. Seventeen participants provided further comments in relation to the question on the methods available for legal staff development. The Table 7.4 below summarises some of those issues.

Table 7.4: Themes and issues associated with methods available for legal staff development

Themes	Issues associated with methods available for legal staff development
Staff need basic training Ties attached to any development	A massive part of my job is teaching basic skills to my staff – English and the appropriate use of apostrophes and commas. Funding and access to further education but there are ties attached. I’d need returns! (#22)
The need for office experience, books and leave	I knew that C needed the experience – she will eventually be a fantastic solicitor – but she has no office work training. C is 33, doing law from [regional university]. We also give C her books as well. We have another law student – B who is working in the firm. We give him two extra weeks leave a year – for study. We identify good kids doing paralegal work. We help them with their studies. We give them time off; pay them for their study leave. (#19)
Some opportunities for rotation upon request IT training occurs at induction Preference for local training – senior solicitors go to the conferences	We have rotation to different areas of law with trainees only. We go for specialisation of the lawyer. Rotation wouldn’t occur unless initiated by the lawyer. Partners however respect that trainees wanted that area of law. We have training courses on information technology – this occurs at induction. With research skills – the library or reception can find that material. We have training courses on specific areas of law dealt with by the law practice – both internal and external – conference on family law and commercial law. We like local training. The senior lawyers go to conferences. We have subscriptions all round. (#8)
Training is dependent on profit	When we have the money, we will have training sessions. (#6)

Themes	Issues associated with methods available for legal staff development
Training and development is linked to relevance and impact	We have a policy of this – they must show relevance. We have a tabled plan on how does it impact on work; the benefits to self and [name of legal practice]; the cost to [legal practice]. [Law practice] will contribute. If the person leaves within 12 months, they must refund the costs. (#22)

Two key sub-themes arose out of the discussion with participants on staff development; mentoring and legal supervision.

Mentoring and Supervision

Fourteen of the participants discussed mentoring in terms of how they mentored their own legal staff as well as how they (the participants) were mentored by others including ex-employers, other lawyers and other non-lawyers. Much of the discussion in terms of how the participants discussed ‘mentoring’ from their own perspective moved into the earlier topic of ‘alliances’. Participants were asked about both ‘mentoring’ and ‘coaching’. Only one participant discussed ‘coaching’ as an action in its own right. Only four participants, however, discussed legal supervision as an activity. It is noted that the size of the sample was too small to draw any conclusions in terms of linkages between mentoring and supervision, with the organisational structure and size of the firm. The table below provides some of the qualitative data that reveals the importance and complexity of both sub-themes.

Table 7.5: Issues on mentoring and legal supervision

Themes	Examples and issues on mentoring and legal supervision
Mentoring of the participant Knowledge sharing and referrals Alliances Gender as an aspect of seeking support	<p>X is my mentor [senior partner in a large metropolitan law practice]. I use him for consulting and talking to on trusts and estates. If I need advice – I prefer to use him rather than a barrister. They will do a piecemeal job. I will refer for, say, a succession planning and I will learn from it. I use them as a partnership. I also have alliances with accountants – we work very closely together. And with financial planners... and I will refer rural work. There is reciprocity. Also real estate agents.</p> <p>The senior solicitors – they are willing to help. A woman will ask... I’m not afraid to ask... (#22)</p>
Mentoring of the participant by previous employer Knowledge sharing	<p>I am mentored by my previous law firm – one of the partners. I still ring him and contact him. I’m also very close to my previous law clerk – S. He is in [off-shore location] and we still have a very close relationship. There is ten years difference in our age – we still swap knowledge – we swap IT knowledge, legal knowledge. It keeps work fun! (#22)</p>

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Themes	Examples and issues on mentoring and legal supervision
Mentoring program for partner	I am part of a mentoring program – there are not enough role models. I had a great role model in government – good leaders – growth. There were good people but look at how they do things. (#10)
Mentoring of junior law staff as a negative	I wouldn't take on a first year lawyer. I'm not good at explaining things to someone else or at mentoring. (#29)
Mentoring of law staff determined by personality	Mentoring and coaching – different directors add to that depending on their personality. They will help the staff members with problems. A junior director who has aptitude in coaching and mentoring will spend time with the professional staff. (#8)
Informal mentoring at social occasions Legal supervision a cause of stress	I am always available; morning tea goes for 45 minutes and during this time we talk about legal issues. We encourage staff to make an appointment if I'm really busy and they need to speak to me. I'm very stressed about the recent QLS supervision of legal staff documents. (#3)
Mentoring in law Mentoring in the practice of law Knowledge sharing Measuring mentoring Passive involvement of law staff in formal meetings	There is mentoring within the practice teams. The associates meet monthly with two junior partners to use as a forum to pass information up and down the practice. We mentor in law and in practice of law. Partners spend time to pass on their knowledge. We are about to implement KPIs (time based measurement tools). One KPI is linked to mentoring. This is rated very highly and measured. With coaching... this is not formal – it's on the job. This is not a culture that is highly structured. Non-partners will attend formal meetings – junior partners see how the partners interact when networking. Everyone gets measured by the same criteria – just different targets... (#8)
Legal supervision	I was fortunate to get work in a country practice with good guidance and skills. X gave me good supervision and guidance.... (#5)
	All lawyers are supervised... Each division – family, litigation, commercial – has a partner. They may have junior lawyers under them. The partner's role is as supervisor. (#8)
Open discussion of files – informal knowledge sharing	The approach is that all solicitors talk about their files. There is not a sense of solicitors having to deal with an issue by themselves. Lots of conversations. (#2)

7.2.5 Use of In-House Staff Programs

The structured interview (Part F) also asked participants about specific programs that were available to assist with staff development, retention and progression. Figure 7.5 below reports on the use of in-house staff programs within the law practice including: provision of a structured career path for trainee solicitors through to partnership, access and funding for education, structured salary review processes and flexible work arrangement. Participants were asked about the frequency of use of each program in terms of: ‘often’, ‘sometimes’ and ‘never’.

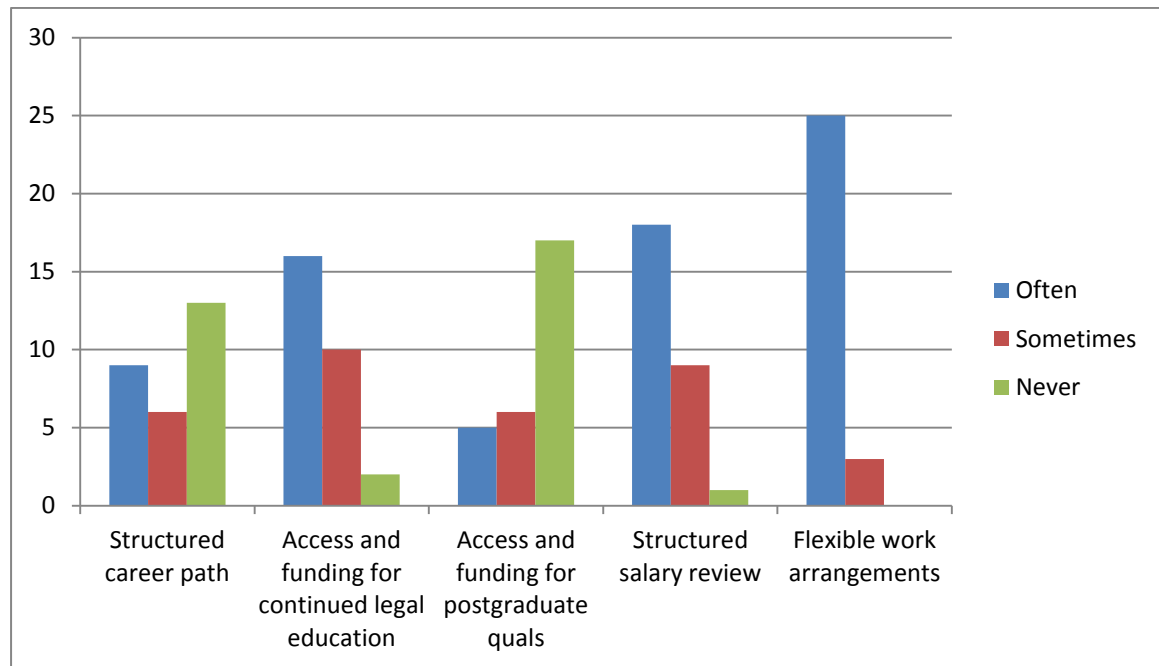


Figure 7.5: Use of in-house staff programs

The quantitative data indicates that the use of flexible work arrangements is the most common form of staff program used. The qualitative results also reflect the importance and creativity of such arrangements. Twenty-one participants provided a range of comments on this topic. Structured salary reviews and access to funding for professional training and continued legal education were the next most commonly used in-house staff programs. Structured career paths and funding for postgraduate qualifications were the least important – and that result perhaps emphasises the current business structures of sole practitioners and small partnerships of three or fewer legal practitioners, coupled with the more general nature of the practice areas covered and the scarcity of specialisation.

Nineteen participants provided additional comments in relation to the use of in-house staff programs. The qualitative data reveals significant creativity and flexibility in terms of the arrangements RRR Queensland law practices are willing to put in place to retain legal staff. The table below considers some of the themes and the issues.

Table 7.6: Issues associated with the use of in-house staff programs

Themes	Examples and issues associated with the use of in-house staff programs
<p>Financial incentives</p> <p>Social events</p> <p>Recognition of staff contribution</p> <p>Low staff turnover</p>	<p>At the end of the financial year I give financial incentives. They all go over and above – I give a financial reward, pay rises, social events, and weekends away, Christmas financial bonus and Christmas present and Christmas party. I give flowers and gifts. I value the staff. The firm wouldn't exist to the standard it does without the staff. We don't have a high staff turnover. (#5)</p>
<p>Flexibility to retain good staff</p> <p>Gen-Y have different values</p>	<p>If we are flexible with staff – we keep good staff – loyal staff – then we want to keep them. I was in [regional location] for six weeks and working part-time. This was allowed for my health. The firm is very flexible. The partners value staff. The partners have been burnt with their loyalty. The partners have old school values and expectations. Gen Y are non-understanding about work. The partners have the approach that if they like you then they like you. They have compassion for illness. They allow staff to work from home; maternity leave; part-time work. I did six weeks away in [regional location] and worked remotely. They are flexible with children. There is a natural attrition – if they stay because of the flexibility then they will progress. (#4)</p>
<p>The culture within the law practice</p> <p>Social events</p>	<p>We don't socialise with the partners out of work or with me. We have a strong social environment and we all get on well. Morning teas are rostered. Each quarter there is a social function. We invite everyone. There is the understanding that we all have families and commitments. We do a lawn bowls or have a professional's dinner once a year. We try to engage the staff so that when we are doing long hours they get a repayment but it's not compulsory. The firm is very social with each other. We do a bake-off at Easter and Christmas; a staff Christmas party; and Christmas Lunch. (#4)</p>
<p>Maternity leave</p>	<p>We have good staff retention. We have a solicitor – she's on maternity leave. She did two days a week – she does property work from [metropolitan location]. (#3)</p>
<p>Geographic flexibility</p>	<p>We have a solicitor travelling around [international location] for a year – he does 15 hours' work a week. We have people all over the place. We have a PA who lives in [another state]; a partner in [metropolitan location]; we have job sharing for paralegals. The emphasis is on doing the job and looking after the client. We've kept staff that are valued and</p>

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Themes	Examples and issues associated with the use of in-house staff programs
	valuable. (#10)
<p>Putting in place a work structure to attract and retain staff</p> <p>The partner who doesn't fit the culture</p> <p>Two factors responsible for doubling the profit – the partner relations and specialising</p>	<p>In the last ten years we've established the workgroups. First we wanted to develop a high level of service – we needed to have the work structure to attract for recruitment and the stress levels.</p> <p>Secondly with law claims – not many can go to this partner. He doesn't fit the model so we accommodated him. He had 40 years' experience and strengths. [Law practice] in 2000 had 20 people. We now have 50 people. The profit has doubled. There are two factors... first, the partners... getting these relationships right. And secondly, specialising. Recruitment into particular areas – there is no rotation, but some progression. (#9)</p>
<p>Staff review process</p>	<p>We have a staff review process – quarterly – and a 360 degree review with professional staff and with support staff. This is very effective to assist professional staff achieve their personal goals and to give direct and frank feedback. This is in a 'safe environment'. They can have a level of honesty and frankness. If staff is uncertain... they want affirmation and areas of improvement in behaviour and skills ... and an action plan. We have a low staff turnover. (#8)</p>
<p>The importance of the partners quickly dealing with staff issues for staff retention</p>	<p>Staff retention is very good. If there are any problems then the partners will quickly deal with it. We value all our staff and look after them. For example, the partners buy morning teas, put on a Christmas party, provide uniforms, and provide very generous sick leave. (#4)</p>
<p>Career path and social life</p>	<p>The law firm is now getting to a size that they can offer a career to their staff, although probably about two too many staff for the work</p> <p>Now that the practice has expanded they can have a social life within the firm. (#2)</p>
<p>Performance reviews</p>	<p>The demographics change. We have people here for 40 years – secretaries here for 20 years. Some trainee lawyers stay – those who don't stay – if not changed by their own volition – they leave. Those who go – don't fit the model. They have a path – they know what they have to do. With performance reviews – they know what needs to be done. There is a detailed explanation in what the expectations are... they need interpersonal skills... There is transparency, clear feedback – it's balanced. (#10)</p>

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Themes	Examples and issues associated with the use of in-house staff programs
Telecommuting	We allow staff to work remotely (ie. telecommuting); it depends on the personality. We also allow staff to work part-time. (#3)
Flexibility to balance work and family	It’s relaxed in appearances and approach. People understand my use of time. They understand that if I say I’m open at nine but I want to spend time with my kids – then people will understand. They’re not hanging around my door – angry. Of course if I have an appointment at nine – then I’m there. There’s flexibility in carrying out the business. I have a one year old and a seven year old. If there is a special event – I can close the doors and be back – and not feel guilty. But if I was in a large firm or partnership – I’d feel guilty. Both are important – work and family. The balance... (#29)
Maternity leave Social culture	The staff are women, some with children. The practice allowed maternity leave. The other mechanism in place was to provide a happy atmosphere with drinks and social functions. (#15)
Partner who has combined work and a family through part-time work	I was admitted at 23 – had first child at 25. I’ve not worked eight to five since. Worked part time – with child friendly hours. (#10)
Partner works from home Flexible geographic locations	[Partner] works one day a week from home – also in [metropolitan location] and at [rural location] office. (#17)
Flexibility in dealing with partner’s spouses issues	There were four partners in [rural location] including one partner from [metropolitan mid-tier firm]. His wife became sick and so he wanted to move to the coast to help with her health. The firm valued clients and partners so highly that they decided to open a branch office. For five to 10 years the [regional location] office was not viable, but has now begun to contribute their share. (#3)
Flexibility in dealing with partner’s spouses issues	[Partner] runs this – he moved to [regional location] rather than split after his wife indicated that she wanted to leave [rural location]. Rather than split the partnership, they accommodated [partner’s] needs. (#8)
Providing minimal structure	They don’t maintain time sheets – staff need some lifestyle. We previously had a strong male imbalance. Now they have more gender balance. One of the salaried partners is on

Themes	Examples and issues associated with the use of in-house staff programs
	maternity leave. (#2)
Flexibility in dealing with partner’s spouses issues	I live in [metropolitan location] – since January. It was a family decision to move to [metropolitan location] for well-being and health... kids’ education. I do three or four a week in [rural location] – no weekends in [rural location]. I’m not sure how long for... 2010 or 2011. My legal staff are in the [rural location] office. The move has changed the dynamics for the better. [Rural location] has an airport. It’s a two hour flight. I fund it and the accommodation... We have three firms. I have been here 20 years. Two of our best partners are interstate. [Rural location] is a transitory place. If you are investing in a career for longevity – there is a limit. (#8)

The qualitative data corresponded with the quantitative data in that participants responded most frequently to providing flexible working arrangements. Two of the most common sub-themes here related to providing maternity leave for female legal staff, and providing highly creative flexible working arrangements to provide for the needs of partners and their spouses. With respect to the latter, the following examples illustrate the extent of that flexibility. One rural law practice established a law practice at a regional location, remotely accessible by the rural location, to accommodate for the ill-health of one of the partner’s spouse. A second law practice put in place working arrangements for a partner of a large regional law practice to allow the partner to fly-in for the week and fly-out at weekends from the metropolitan location that the partner’s spouse had wanted to relocate the family to. A third example related to the establishment of another location of a law practice to a regional location (in addition to a rural location) to accommodate a potential spousal split on the basis that the spouse was unhappy in the rural location.

In the discussions with the participants on these examples, common themes had been the value of the partner and the need to retain their skills. In the first and third instances the participants reported overall benefits to the business by increasing the number of locations of the law practice.

A further theme from the discussion on in-house staff programs related to the law practice providing a social culture that was positive and one that actively sought to retain staff, for example, morning teas, social events outside of the practice and gifts. A sub-theme that a number of participants spoke of was that, with the growth of the law practice, a social culture was able to develop and this was good for law staff attraction, retention and progression.

Most participants who had law staff spoke of access and funding to professional training and continued legal education and, to a lesser extent, programs for performance review. Two participants spoke of access to structured career paths or financial rewards.

7.2.6 Motivation for Providing Methods and Programs for Legal Staff Development

The structured interview (Part F) asked participants to indicate the reason why the law practice made use of the various legal staff development programs and offered a number of options to respond to with either ‘yes’ or ‘no’. The options included to ‘minimise loss of staff’, ‘reward legal staff’, ‘develop practice expertise’ or ‘build capacity for client base’. Figure 7.6 reports on the quantitative data.

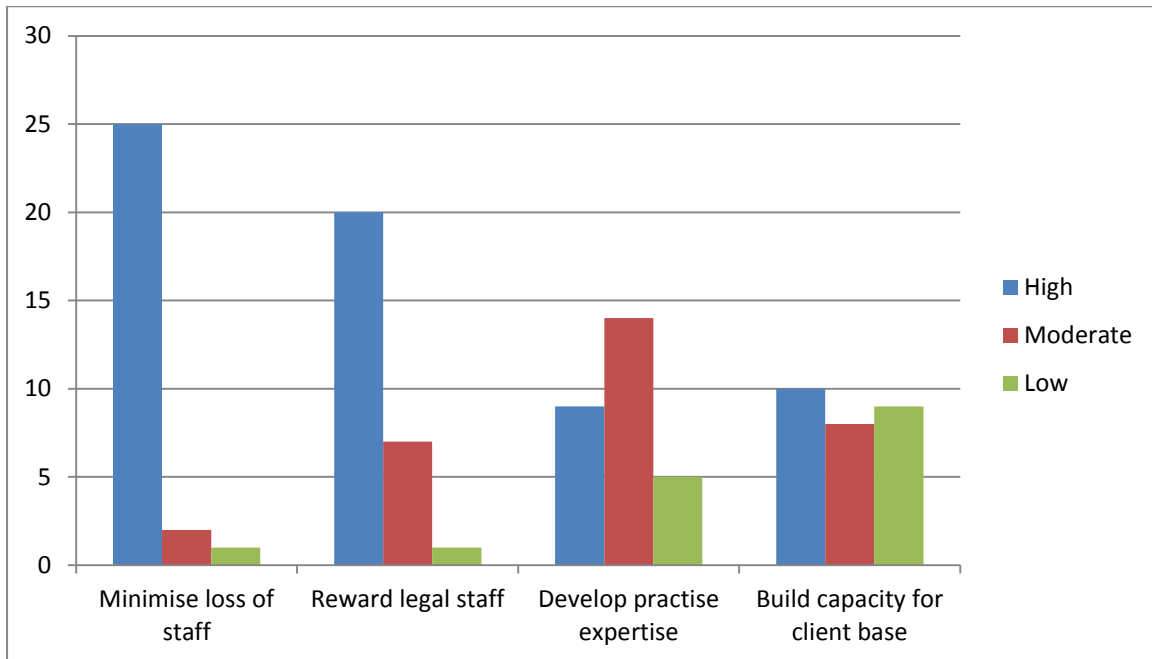


Figure 7.6: Motivation for providing methods and programs for legal staff development

The quantitative data clearly indicates that the most important reason to put in place legal staff development programs is for the retention of legal staff. The qualitative data already put forward in this part of the chapter confirms the issue of law staff retention as being a key issue faced by RRR Queensland law practices.

7.2.7 Disputes and Dispute Resolution

The structured interview at Part D (*Principals/Directors’ Characteristics and Relationships*) included two questions on disputes and dispute resolution. Under Part D participants were asked ‘has a dispute with another partner been the predominant reason for a decision to leave a partnership?’ and, ‘as a principal, how would you describe your level of satisfaction in resolving grievances or disputes?’.

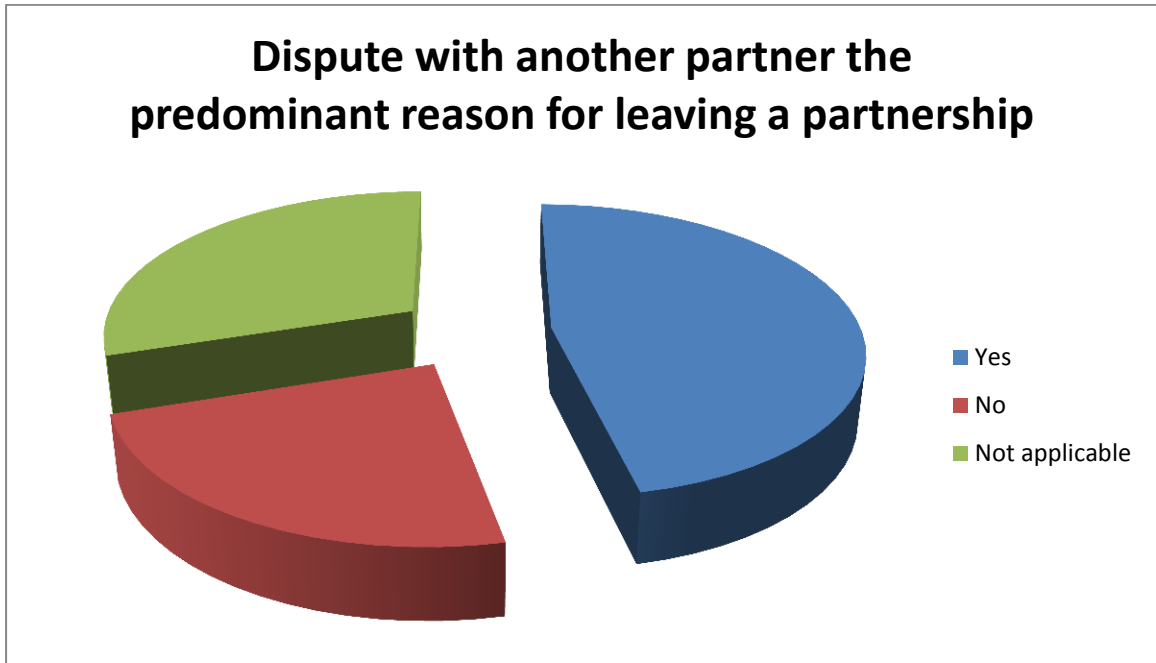


Figure 7.7: Dispute with another partner the predominant reason for leaving the partnership

Fourteen (47%) participants stated that a dispute with another partner was the reason for leaving a partnership. Seven (23%) said that the reason for leaving a partnership did not relate to a dispute and for nine participants the question was not applicable.

The second question asked participants to provide information on the levels of satisfaction principals/directors have with the resolution of disputes within the law practice. The dispute resolution applies to partners, other staff and clients.

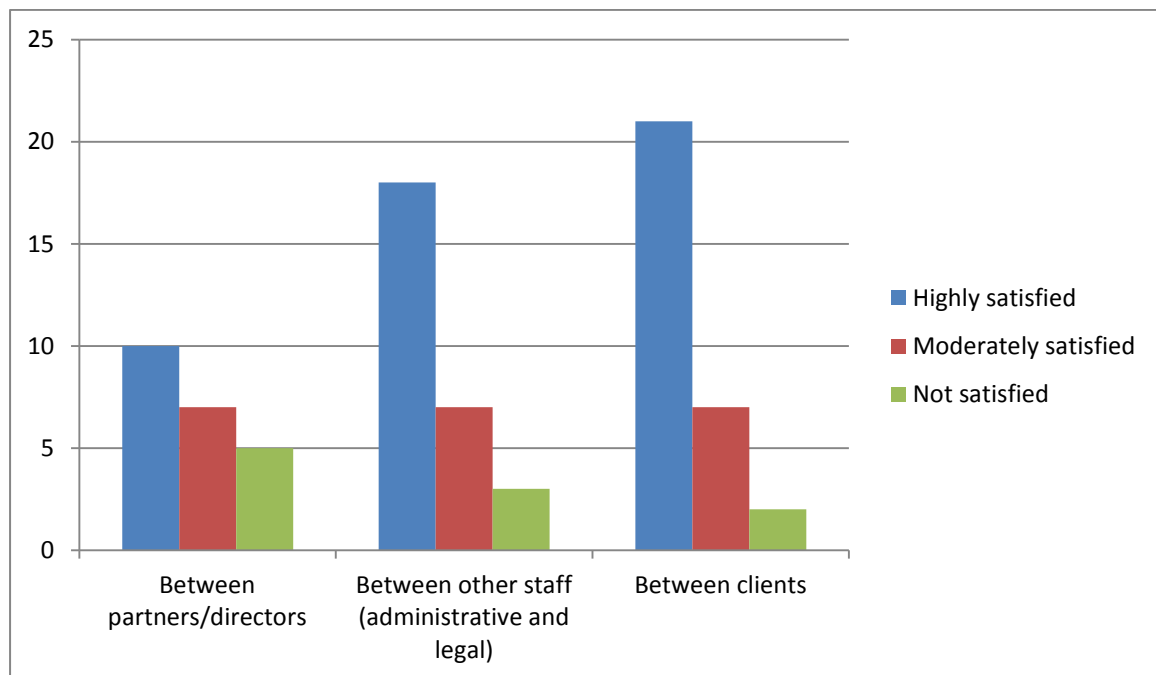


Figure 7.8: Levels of satisfaction of dispute resolution with specified relationships

The quantitative data reveals that participants who have been involved in partnership disputes indicate considerably less satisfaction in their ability to resolve such disputes than in being able to deal with clients and their staff.

The qualitative data on the relationships between partners is not found solely in response to these two questions, but is indirectly available in terms of responding to other questions - including those relating to the business structures, the selection of legal staff, longevity of the law practice and, business planning (all previously discussed in this chapter and Chapter 6).

Twenty-four participants provided comments on the issue of partnership disputes, which indicates that it is an important topic for sustainable RRR legal practice. The following themes and examples of issues were identified.

Table 7.7: Issues relating to partnership disputes

Themes	Examples of issues relating to partnership disputes
Partnership is like marriage	With the partnership – [partner] has been on his own for so long – it is frustrating – like a marriage. My husband though is the opposite of [partner]. [Partner] has got better since we have split our offices up. He’d walk in and touch things on my desk.
Criticism of the partner’s approach to dealing with legal issues	If [partner] has a court day in [metropolitan location], I wouldn’t phone him up and ask him about the results. [Partner] will phone me and ask ‘what happened?’. When I tell him, he then questions the decision, the results... I settle a lot of matters. He asks ‘why did I settle? I wouldn’t have settled!’
Sense of personal invasion	I am learning how to deal with [partner] but he has not changed that much. I align to him, rather than vice versa. When he comes into my office, he would comment on the coldness of my room, and ask if I had just got in. It’s like an invasion of my space. He is domineering – he has changed a lot. He was not sleeping before the partnership. He comes in to work on a Saturday and Sunday – he’d ask me which days I would be coming in. I work Monday to Friday – nine to five. With [partner] – he thinks if you are a solicitor in a country town – then it is your life.
Gender issues between partners	We have worked through a lot of personal things. We have a good working relationship. The differences with a male/female partnership. For example the drop-offs at school. I drop my kids off at eight (even a bit before they are meant to be at school). Recently [partner] wife was away for a week. [Partner] was getting in at nine-thirty/ten because he had to do the school drop-offs. We have now negotiated that he takes his Wednesday afternoon off – to go and play school; I will take an afternoon off a week – to be with my kids. (#19)
Importance of negotiating issues	
External consultant	One month before the AGM the consultant talks to the partners. It all comes out. The consultant works out ways to come forward. He

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Themes	Examples of issues relating to partnership disputes
brings out the dispute issues at the AGM	sets up an agenda. The consultant can talk in confidence with the partners. They are more inclined to open up. He can bring out any undercurrent. (#8)
<p data-bbox="240 421 504 521">Partners have respect for each other</p> <p data-bbox="240 544 504 611">Clearly state the issues</p> <p data-bbox="240 790 504 857">Partner involved in embezzling</p> <p data-bbox="240 992 504 1059">Benefits of a consultant</p>	<p data-bbox="504 421 1417 600">Three of the partners have been in partnership since 1985. For over 25 years. The others for about 20 years. We know each other. We respect each other. We tend to front someone about an issue – usually through a face-to-face. It can be mediated by a senior partner. We share values.</p> <p data-bbox="504 622 1417 723">Before.... the firm was run by a partner acting like a character from Charles Dickens. The senior partners wouldn't allow us to ring a real estate agent. We were the laughing stock in town.</p> <p data-bbox="504 745 1417 779">I was a partner in a bankrupt firm at 25 – it was making no money.</p> <p data-bbox="504 801 1417 1305">The partners and I over a 12 year period turned the firm around. We went from strength to strength. Our backs were against the wall. It turned out one of the partners had embezzled money. His brother is still with the firm. We had difficulties with the police and auditors. When you go through that... We had to build something against other firms. We had a combination of factors. First that we had a brilliant consultant from [metropolitan location] who had left a legal practice and started out as an innovative consultant. Secondly, we took it on as a personal quest. Thirdly, we had my father who had been with the practice since he was 14. If the other partner had not died we wouldn't have been able to do it. [Consultant] brought in major changes. He turned everything upside down. It was like that for five years – very innovative stuff. Dad would be the first to do it. This was a big factor. Finally, everyone got behind it. (#30)</p>
Role of managing partner to deal with disputes	<p data-bbox="504 1346 1417 1525">The elements of it – the partnership makes money. I isolate the partners from the day-to-day rubbish. They want to practise law. They hate confrontation with staff. We have a unified aspect. I involve the partners – we have a partners' meeting once a year. It's a lunch – a get together – nothing formal – no meeting.</p> <p data-bbox="504 1547 1417 1615">I will get them together if there is an issue with a solicitor or a client. I go in immediately. I have a good history of success. (#17)</p>
Sources of dispute – financial issues	<p data-bbox="504 1653 1417 2018">The other partner induced me to go in to the partnership. We lasted for some years – he did sugarcane at [remote location]; I did tourism at [remote location]. We split for financial reasons; it didn't work out. He went in for crazy schemes – freehold offices – all were financial disasters. I realised that we were not doing well. The income from the legal partnership was being used for the property and real estate issues. The second partnership involved a fellow who is now a [political position]. I was asked to set up [remote location]. I found out that none had any technical knowledge about IT. The cost of running the three practices was prohibitive. I put</p>

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Themes	Examples of issues relating to partnership disputes
Decision to never go into partnership again	myself in debt. [Remote location] was in a slump – at the end of three years I said, ‘enough’. I was always at meeting. I said that this was no good, and we parted amicably. I decided never to go into partnership again. When this offer [remote location] came up I merged the practice – the business with [partner]. I wanted to be free of the practice management. I was doing 80 percent administration (staff and BAS) and 20 percent law. (#23)
Source of dispute – personality clash Gender issues Other opportunities arose	There was a partnership dispute – it was underlying for a while – for many years. The other partner ejected me. There was a dispute with one partner. He said “women should not be lawyers”. He was a strong personality in the partnership – it was kept under control. This partner’s views and personality – clash. They had a meeting with me – at the end of the financial year. Other opportunities were offered once it was known that I was leaving. I wanted to look after my mum and the property. I had flexibility; I’m not motivated by money if there is sufficient to keep afloat. (#11)
Successfully resolving disputes Speedy resolution	It’s robust and honest; being with the group for a long time – we don’t allow dead elephants in the room. They are difficult to deal with. We have a meeting every Monday. We are able to come to the table to discuss. This wasn’t in the original culture – father with two sons. For 20 years some partners had been making more money than others. (#10)
The difficult role of the CEO	Tough part of practising. I was pissed off with a partner. It was difficult to be CEO – you can’t please everyone. I make a decision for the staff – then the partners are upset – and vice versa. I need to make a decision for the firm as a whole – this led to disputes – that they were not looked after. I withdrew from the role. The hardest part is to work well with partners. Two years ago we had a dispute within the partnership. One partner upset another – they fell out. We thought they could work together and then there was another falling out – over a trust issue. The two partners then said they did not want to be in partnership. It was hard and went on for a long time. An agreement was reached and a partner walked. It took its toll. [Current CEO] mediates – [current CEO] will have disputes because the decision is made in the best interests of the firm as a whole. It’s the toughest thing – the egos of lawyers. There are seven different motivations of why we are in partnership. The strongest motivation can outweigh that of another – that can create conflict. The single biggest issue is the firm versus individual issues ... or values... Values of different generations – have different expectations; different work ethic. It’s difficult to make a cohesive team – to find

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Themes	Examples of issues relating to partnership disputes
<p>Gen Y staff - source of disputes</p> <p>Importance of a partnership agreement</p>	<p>a middle ground. For example, for a solicitor review – the salary increase – the issue of pay...</p> <p>We have a stringent partnership agreement – clear protocols – clear on expectations and what the partner would get. This was a very drawn out process. It’s positioned so that if there is a partner’s dispute – there are mechanisms in place. The partnership agreement is established – this was a source of dispute about trust issue. We had formal mechanisms and information mechanisms – both were present. The partners fell out on the first issue; the second issue had happened before at a partners meeting. We had information mediation – we appointed another partner to do the mediation. That if it happened again – [current CEO] would take a leading role. The down time – the impact on the ability of the partners to make other partnership decisions – was extensive. (#9)</p>
<p>Source of disputes - relationships</p>	<p>We were together for 18 years. His wife worked in the practice. He had an affair... he wasn’t working. That was due to a dispute that he left. It got difficult with all the relationships. His wife was working at one end of the office; his girlfriend was at the other end of the office. The fact that he wasn’t working... there were negative views... in a small town. The other partner and I we couldn’t support it all. (#25)</p>
<p>Values and strength in the partnership</p>	<p>An action won’t proceed unless they look at ‘the benefit of the firm’. If there is strong opposition then they will not proceed. If there is a majority then they will go ahead. In a partnership you need to respect the opinions of others. We always have plenty of discussion and take a professional approach. There is a sense that the partners would die for you. Good partners – they rely on you. If I got sick then they would carry me. We have full insurance (death and disability), but there is the sense that if I couldn’t work that they would look after me. (#3)</p>
<p>The importance of talking about issues and using a third party</p>	<p>If problems develop then we quickly deal with it. One of the partners from [regional location] comes up regularly and talks to the staff about any issues. The fact that he is ‘from outside’ means staff can say things to him that they might not be able to say to one of the [remote location] partners.</p> <p>Each of the partners recruits though for their own offices. [Partner] is the staff Partner; he is an independent party; he can make decisions and cause action. (#3)</p>
<p>Indulging the other partners</p>	<p>If we have a dispute we talk things through to work through the tensions. We also indulge each other, for example [partner’s] ‘Youth program’. We also think alike; we share the same values. We have things in common and similar backgrounds. We are in it for the long term. (#2)</p>

Themes	Examples of issues relating to partnership disputes
The importance of a third party to assist with resolving disputes	A third party would moderate between the groups... like magic – out of the shadow – tend to be two or three people who smooth over – with skill, patience and confidence of the partners. We prioritise any disputes with clients. Generally that is my job or the general manager or a relevant key partner. With disputes between staff HR will lead that resolution with an appropriate partner. (#8)

The qualitative data provides the insight into partnerships – why they work and why they don’t work. This was one topic that was discussed at some length during the interviews. Parallels with marriage were made by a number of the participants. Almost all the participants commented on the occurrence of partnership disputes for a range of reasons including financial, personality clashes, problems with staff, unfair allocation of work and partners acting unethically. The partnerships that spoke more positively of their arrangements spoke in terms of their ‘respect’ and ‘value’ for their partners. One participant spoke of ‘indulging each other’ in terms of areas of legal interest. This group of participants described how they still experienced conflict and dispute, but that they resorted to methods to deal with such disputes. These included using the mediation skills of a third party who was either a consultant or a partner from another location who had ‘distance’ from the issues, indulging the other party’s areas of interest; referring disputes to their CEO/managing partner and, having a partnership agreement that provided dispute resolution mechanisms.

7.3 RI 6: What is the Prevalence and Nature of Marketing Carried Out by Legal Practices in RRR Queensland?

The structured interview, Part G (*Marketing Practices*) asked participants to respond to a series of questions on how the law practice marketed its legal services to the public. The first question offered participants a range of statements dealing with the reputation of the law practice. Participants were asked to nominate whether each statement was ‘accurate’, ‘moderately accurate’ or ‘inaccurate or false’. The second question asked participants to state the extent (‘often’, ‘sometimes’ or ‘never’) to which they used a series of options to increase business.

7.3.1 Reputation of the Legal Practice

The structured interview (Part G) asked participants to respond to a series of statements describing the reputation of the legal practice and to gauge the accuracy of the statements in terms of ‘accurate’, ‘moderately accurate’, or ‘inaccurate or false’. The statements were: ‘The legal practice provides expert legal advice in areas of law that are new, developing and innovative’, ‘the legal practice provides legal advice based on years of experience in established fields of complex legal matters’, ‘the legal practice consistently provides efficient advice on areas of law’, ‘members of the legal practice contribute to professional/academic journals on legal practice matters’, ‘members of the legal practice are considered experts in their fields based on speeches, newspaper contributions and other public interaction’, ‘individual principals/directors within the legal practice have

reputations within the community’, ‘the legal practice’s reputation is communicated through targeted and specialised brochures’, ‘the legal practice’s reputation is communicated through selected advertisements in the media’, ‘the legal practice’s reputation is associated with other institutions of substance and long-standing’ and, ‘the legal practice’s reputation is communicated through client interactions and referrals only’. Figure 2.1 provides information on how the principal/director describes the reputation of the legal practice.

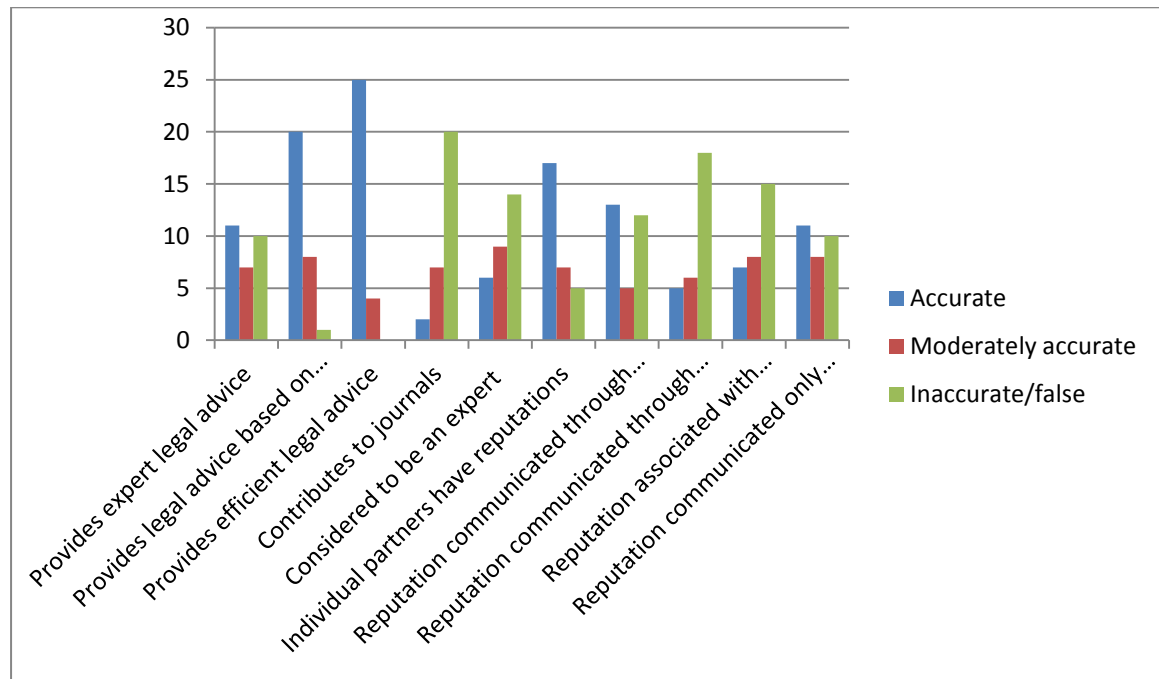


Figure 7.9: Communication of the reputation of the law practice

The quantitative data suggests that the participants’ law practices focus on providing efficient advice based on experience and that individual partners have reputations for the provision of legal services within the community. However, the concept of ‘expertise’ did not register highly – either in terms of the legal advice given or that the participant is an expert. The response that participants did not contribute to journals would emphasise the point that they did not consider themselves ‘experts’. The data confirms the earlier discussion on specialisation and the difficulty of being able to specialise in RRR Queensland. Participants are more likely to be general practitioners who can cover a broad range of areas rather than be able to provide expert advice in one particular area. Participants also indicated a limited use of media for communicating the reputation of the law practice; they stated some use of brochures to advertise, but did not make high use of the media or other institutions. One third of participants relied only on client interactions to communicate their reputation.

7.3.2 Methods Used to Increase Business

Participants were then asked the extent to which the legal practice uses a range of methods to increase business, including: reputation, word-of-mouth (eg from clients), professional contacts (eg. from accountants), internet, professional organisations (eg. district law association), advertising on television, radio or yellow pages, professional engagements (eg. seminars), associations with non-professional organisations (eg.

schools, churches), referrals from other lawyers and, referrals from other businesses (eg. real estate agents). Figure 7.10 below reports on the results.

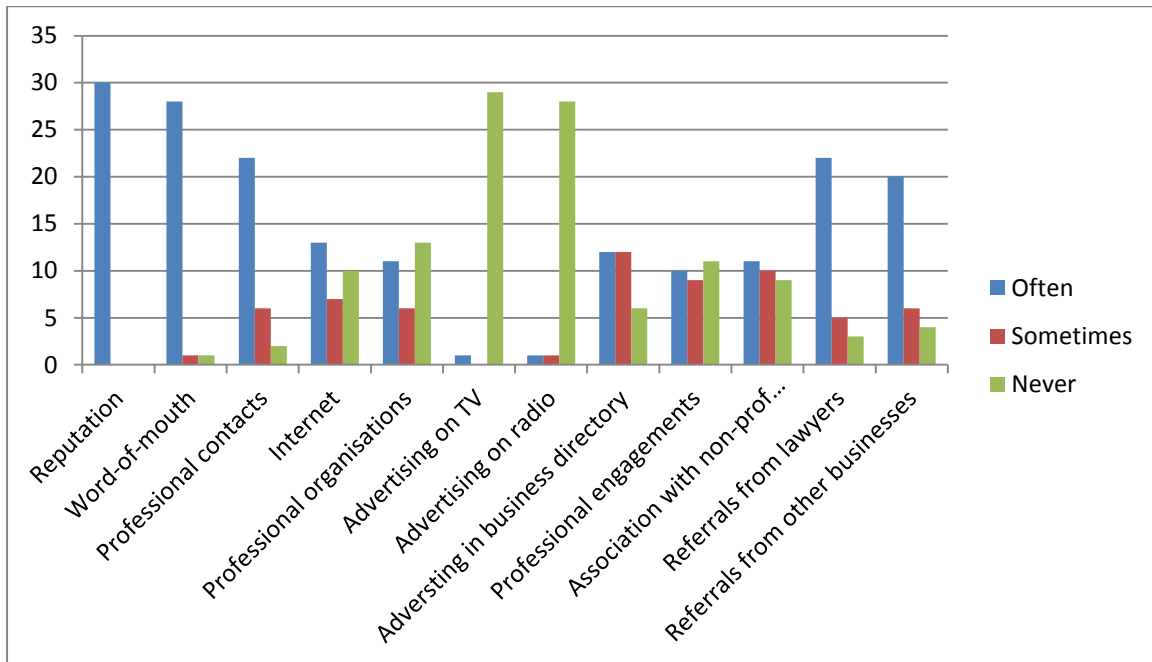


Figure 7.10: Methods used to increase business

The quantitative data strongly indicates that reputation and word-of-mouth are the most important methods used to increase business. These are closely followed by referrals from other lawyers, professional contacts and referrals from other businesses. Advertising is seen as a method that is not used.

Twenty-one participants provided additional qualitative data that provides further insight. The qualitative data is consistent with the quantitative data regarding the importance of reputation, word-of-mouth and referrals as sources of business.

Table 7.8: Methods used to increase business

Themes	Examples and issues associated with methods used to increase business
Branding	We brand [law practice]. We ran a trivia night – the prize packs, hats, shirts, umbrella – everything was branded. I have a locked cupboard with it all in. On Golf Days we take sunscreen and hat and water bottle – all branded. (#4)
Business through developing/maintaining client relationships	The Partners are given a budget to take clients to lunch – it’s more about the relationship with the clients. There is a budget for Christmas gifts too - \$50. We like to give something that they will keep and value – for example a tool kit – something sophisticated and well-targeted. We have done some newspapers – but it was ‘ungauged’. (#4)
The individual	M has been in [remote location] for over 20 years. Most

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Themes	Examples and issues associated with methods used to increase business
<p>reputation of the principal to develop business – personal loyal following</p> <p>Continuity of service</p> <p>Reputation is important</p>	<p>people used [name of large law practice in regional location] but as time has gone on people go to M. Because M endured he has a loyal following. With [rural location] – we have some repeat business. The reason for the change – M is reliable and provides good service for members of the community. At [large law practice in regional location] you might get a junior solicitor – or a different solicitor from the time before – the next time that solicitor may not be there. Your reputation is very important. M is very social; people warm to him. He draws in the business and repeat business. (#6)</p>
<p>Using a marketing consultant</p>	<p>We employed [name of consultant] at \$800 per advert and a marketing budget. The TV commercials cost \$1000 per month. This wasn’t effective – you know that yourself. (#16)</p>
<p>Reputation through connections with community organisations</p>	<p>We do advertising in the local paper and have published in organisations we’re the presidents of. (#9)</p>
<p>Marketing and branding</p> <p>Word-of-mouth and client satisfaction</p>	<p>We’re marketing [law practice] later in the year – re-branding. We push the brand as the law firm of choice – just known. In regional towns it’s very important to have that relationship with the clients. We give clients attention – the client is fundamental to the practice... client surveys are carried out. [CEO] takes care of any dissatisfaction with respect to the relevant partner. We train the secretaries about filling in who referred. With conveyancing – it’s all input – the real estate agent etc... 62 percent are from previous clients; 11 percent are client referrals; 10 percent are staff referrals. [We are] very strategic – we haven’t created any exclusive relationships – but some are stronger than others. (#9)</p>
<p>Yellow pages and local papers</p>	<p>We have an ad in yellow pages and an ad in the local town papers for [rural location] – but not the [rural location] [name of newspaper] – it’s too expensive. We do radio ads. This is a small community. Everything is word of mouth – good or bad!</p>
<p>Strong opposition to marketing the firm – business is based on referrals and reputation</p>	<p>I am strongly opposed to ‘marketing’ the firm. Clients used the firm based on referrals and reputation. We have used bottles of water that we buy and donate to events – ‘proudly donated by [name of law practice]’ at school and sporting events. We also put notices in school and church newsletters and the [rural location] magazine. We have a</p>

Themes	Examples and issues associated with methods used to increase business
	profile – we let people know who is here. We don’t hawk the fork. (#6)
Strategic marketing	This is extensive; we have signature events; industry seminars; spot marketing – lunch/coffee. We encourage client visits; we have a presence at networking functions... participation in community events – disability... sporting, legal services. We have high visibility; we are supportive of community events. We are visible in the city. (#9)
Sponsorship using the criteria of being local	We don’t do any advertising, but will sponsor locals. If the ambulance asks, I say “yes”. If [name of metropolitan hospital] asks – I say “no”, because it’s not local. I support the community – local races. (#7)
Recording referrals Focus on clients not profit	We record the referrals – the [software] program could be manipulated to provide this data. I have designed the practice to double in size. I don’t focus on the money... If you’re chasing the money, then you are not focusing on the clients. (#18)

The quantitative data highlights the participants’ reliance on their reputation and personal contact with other lawyers and other businesses. The data reveals that reputation and word-of-mouth is the most important method for developing and maintaining business in RRR Queensland law practices. Reputation is developed through a number of avenues including the individual principals and people within the practice, the name of the law practice and its location in terms of continuity and longevity (discussed earlier in this chapter) and the quality of the work carried out. Clients and associations of the law practice are seen as the transporters of that reputation.

The reliance upon reputation confirms the earlier data in which the RRR Queensland lawyers indicate connections to the community, in particular with civic, service and school organisations. Very few participants used either radio or television advertising.

There was some reliance on the Internet, business directories and dealings with professional and non-professional organisations. Further it is noted that approaches to ‘marketing’ through targeted avenues as a means of developing business are quite extreme. These ranged from allocating significant financial resources to branding and marketing, to viewing ‘marketing’ as something to be avoided.

7.3.3 Marketing Consultant

Part G of the structured interview also asked participants if they employed the services of a professional marketing consultant and if they measured the effectiveness of any marketing strategies. Nine participants (30%) reported that they had engaged a marketing consultant and 21 (70%) participants had not.

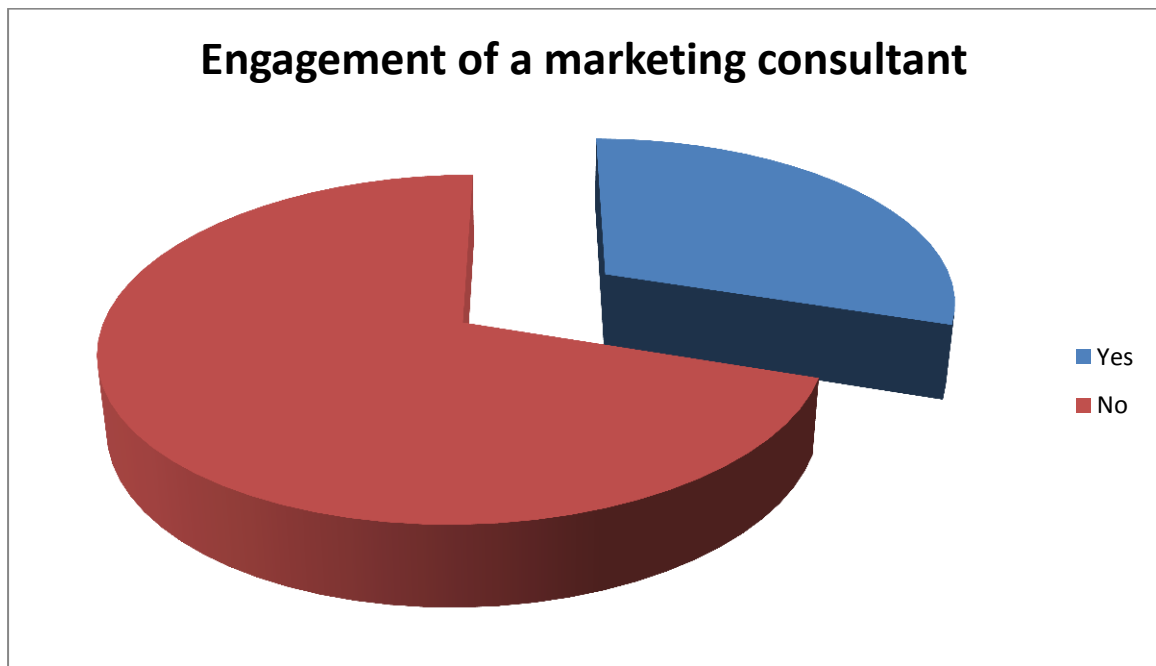


Figure 7.11: Engagement of a marketing consultant

The hesitant approach of the participants to marketing consultants appears to be consistent with the earlier data that marketing is considered to be related to reputation rather than ‘hawking the fork’.

7.3.4 Measuring Marketing Strategies

Part G of the structured interview asked participants if they measured the effectiveness of any of the marketing strategies used. If participants responded ‘yes’, then they were asked if they measured in terms of ‘profit’, ‘client services’ or ‘profile of the legal practice’. The responses could include all three options.



Figure 7.12: Measurement of marketing strategies

Figure 7.12 reports on the type of measurement of marketing strategies use. The quantitative data on the measurement of the effectiveness of marketing strategies is limited but suggests that the emphasis was slightly more weighted to profit rather than on the two aspects that participants had earlier stressed as being of most importance in RRR Queensland; which the reputation of the principals and the law practice (profile of the legal practice) and, the approach to clients (client services).

7.3.5 Adverse Community Reactions

The structured interview, Part E (*The Business Carried out by Law Practice*) asked participants if their law practice had experienced any adverse community reaction to cases or clients the law practice has represented either ‘frequently’, ‘moderately’ or ‘never’. The results are tabled below.

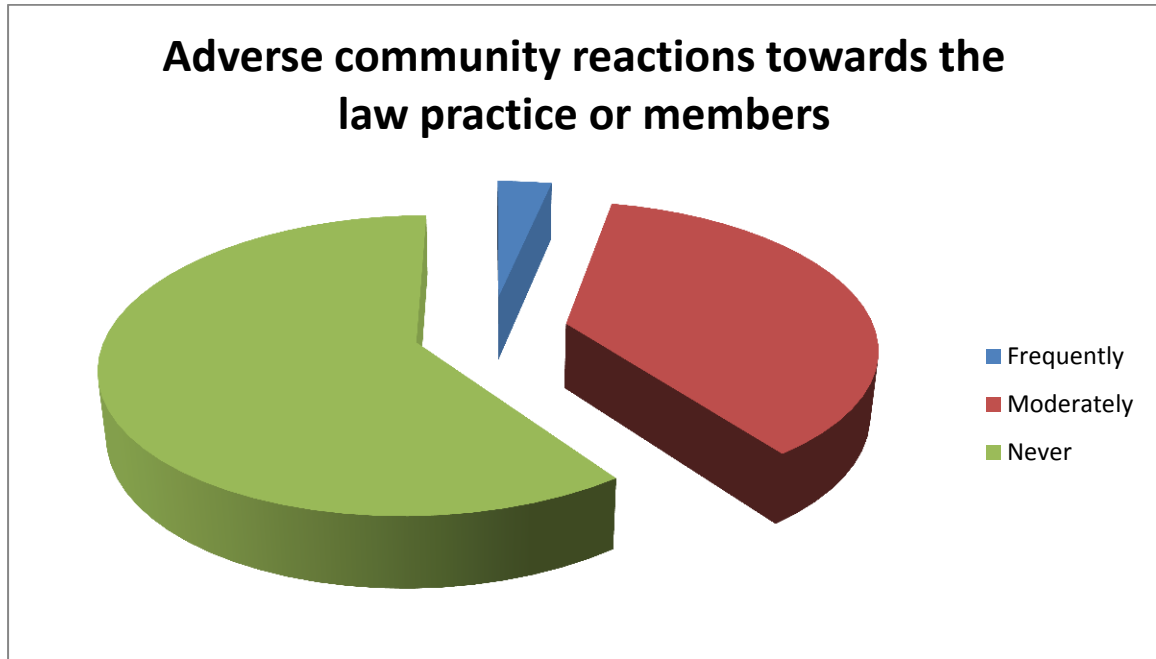


Figure 7.13: Adverse community reactions towards the law practice or its members

One participant reported that they frequently experienced adverse community reactions towards the law practice, or members of the law practice, because of matters that have been pursued by the law practice. Eleven participants (37%) stated that this occurred regularly and 18 (60%) that they had never had such an experience. The qualitative data provides further details on this report as shown in Table 7.9 below.

Table 7.9: Examples of issues associated with adverse community reactions towards the law practice or its members

Theme	Examples of issues associated with adverse community reactions towards the law practice or its members
Deliberately seeking adverse cases for the profile	We get the high profile for no fee – we have one or two always. In employment law – we will do pro bono that gets an adverse reaction. (#10)
Long term impact of the reaction	I acted in a criminal matter for the defendant in a matter of a grazier’s son who was killed. The grudge lasted for 20 years. This impacted on that practice. The irony is that they are now clients of this practice. The matter is now resolved. (#2)
Safety impact linked to the reaction	Years ago – the parent of a child said that I was not doing enough for her daughter. There was a matter where the other party had me on a death list. The police were involved to protect me ... this lasted six months. The problem is that the person was a local – they knew where I lived and where my parents... This is the disadvantage of living in a small community – targets! (#11)
Minimising the	The community reaction here was that two of our biggest clients

Theme	Examples of issues associated with adverse community reactions towards the law practice or its members
impact of the reaction	asked us to stop what we were doing. They came into the office and bailed me up for over an hour. I explained with raised voice what I was doing and why. We persevered and ultimately the clients remained with us even though they did not agree with what we were doing. (#2)

Eight participants provided further comments on the issues associated with adverse community reactions towards the law practice or its members. The data is included at this point from the perspective that such actions impacted directly on the reputation of the law practice. The qualitative data reveals a broad range of approaches including deliberately seeking cases that the community may have a reaction to, for the purpose of increasing the law practices profile, to the long term negative impact on the reputation of the law practice, to issues of safety for individual members of the law practice.

7.4 RI 7: What is the Prevalence and Nature of the Use of Information Technology in Legal Practices in RRR Queensland?

The structured interview, Part H (*Use of Information Technology*) asked participants a series of questions relating to the level of access and use of information technology that are available in the law practice; the quality of the Internet presence of the law practice; levels of training for information technology; who were the main users of information technology; and future plans for the use of information technology.

7.4.1 Use of Information Technology

The structured interview (Part H) asked participants to rate their use of information technology (specifically emails, voice recognition technology, subscription databases, non-subscription databases and, web-cam technology) in terms of being either ‘high’, ‘moderate’ or ‘low’.

Figure 7.14 reveals the approach to and the use of information technology within the legal practice.

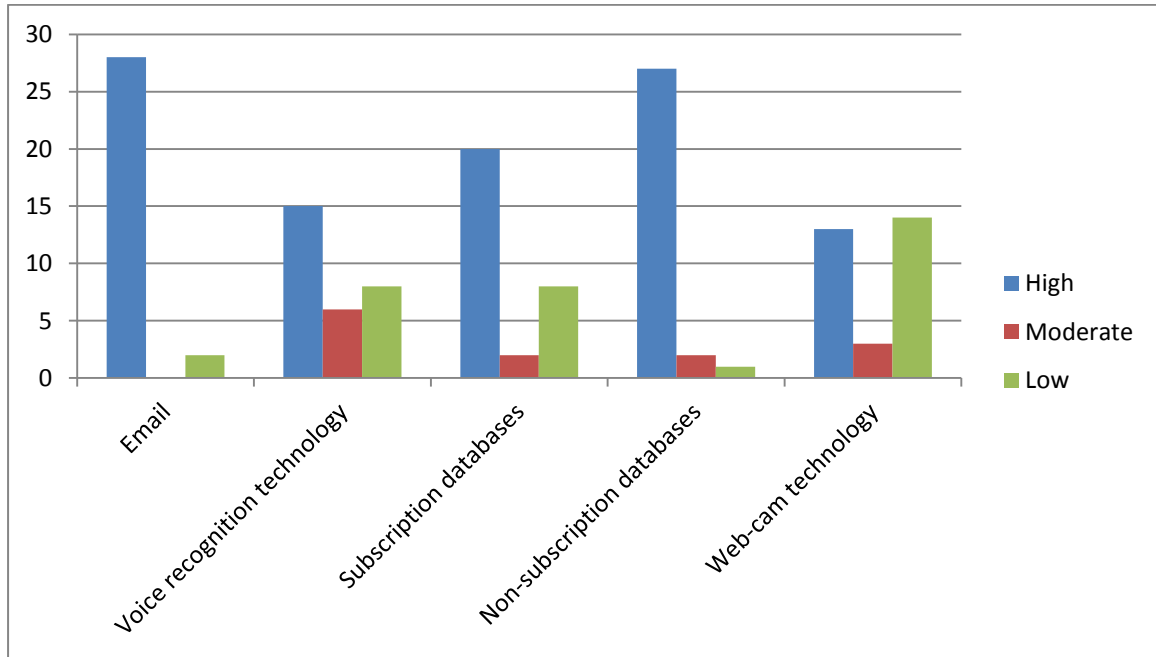


Figure 7.14: Use of information technology

The quantitative data shows that emails and non-subscription databases are the most common uses of information technology. Twenty-six participants provided further qualitative data on the use of information technology within their legal practice.

Table 7.10: Uses of information technology

Themes	Examples of uses of information technology
Modernising by putting in IT	I've been building the IT resources – putting systems in place. When I bought the business, the IT died. All the customers' information went. I had to rebuild the database. I use [software program] because I had used it before. I had relationships with my previous firm that helped fantastically. I was keen to get the practice – but had to modernise it. We need an Internet site – I'm not a visual person. I know what I want. I have a portfolio of what I want it to look like... I have just got to do it! (#22)
Video-conferencing and phones Grants to assist	There is innovation occurring – it's not fully supported... from the [regional location] Court House end. We've used the video conferencing for two months – for Federal Magistrate Court Family Court appearances. We can do mentions by phone. IT infrastructure at the court is not as good. We set up the video conferencing facilities through the Law Foundation grant of \$30,000. We asked to put it in and have made it available for other practitioners to use it. (#5)
E-lodgement transferring work back to law practices	We have no software such as [software program] – I want to keep it simple. Nowadays all stamping is by the web – this causes work. All the details are put in by the law firm – this shifts the work back to the law firms. There are three staff in [regional location] – five

**Chapter 7 – Results of the Structured Interview Data (Part 2):
‘The Prevalence and Nature of Sustainability Practices’**

Themes	Examples of uses of information technology
	in [second regional location]. But I write to them that they need to do it right otherwise there are issues. This adds to the stress and there are work issues on my staff. The Queensland Government Court site hadn't updated their website. I'd filled out the form they had on it, but I had to do it again because their own website wasn't up-to-date. They are not contributing. (#7)
Email Young lawyers – the innovators	We have email, no website though. All the staff have a work station. We can research online – [name of employed solicitor] is big on that. We don't use LexisNexis subscription – but I subscribe to the loose-leaf services on paper. We don't have [software program] or [software program]. [Name of employed solicitor] got us onto accessing the non-subscription sites – with his Bachelor of Computer Science qualification – he's the innovator – he does research on line. (#21)
Absence of software Trust accounts on paper QLS provide recommendations	I can cope with other people having them, but I'm not used to it. But other partners have them. We don't use any legal software – we're using MYOB. We are looking at alternatives. Our trust accounts run as a paper system. We have looked, but it's too expensive. The QLS doesn't recommend a computerised system. It would be good if the QLS could provide an endorsement of a few of them... trust accounting... [if they could] put that information on the Internet. (#25)
Sceptical of computers	[Name of partner] uses a computer – that won't solve the problems. The problems of the practice are lack of demand. [Name of employed solicitor] has his own laptop. Computer systems are not relevant. If he took over the practice he could overhaul the IT. (#29)
Internet impacting on client knowledge and expectations	The role of lawyers used to be that they were the educated one. Now clients have a better insight due to the Internet and usually then know a lawyer – either a brother-in-law or a friend of a friend. This is the enemy of the country lawyer. We need to be across the issues. (#3)
Costs associated with legal software	With the computers we are about to embark on [software program] in late July – this is costing me \$25,000. [Software program] will assist with trust accounting; general accounting. It has 5000 precedents family court forms; billing – both quotes and time costing. [Software program] have guaranteed I will have technology assistance. The installation, training and ongoing support. At the moment I use [software program] for account and banking and trust accounting and precedents. (#5)
Innovative use of information	We won an award. Law is a business – you need to sell it at the end. The IT is unbelievable. The speed of service,

**Chapter 7 – Results of the Structured Interview Data (Part 2):
‘The Prevalence and Nature of Sustainability Practices’**

Themes	Examples of uses of information technology
technology	<p>communication, precedents, documents and research. Our approach is that the IT must be the same – in the office in [metropolitan location]; in [remote location]; at home; with the client; overseas. It gets delivered as the same resource. Every solicitor has a desktop, a lap top, a smart phone – from a consol. Our biggest development is the smart phone – monitor while in court. The attitude with IT is very different. [Name of partner] focus is IT driven. What it can do for us is to drive the business and lessen the risk. The benefit is to the bottom line. Then there is no holding back – it’s constant development.</p> <p>Even though we were in the GFC, we kept increasing our profits due to our ability to produce. I don’t have an office!</p> <p>With a business – with our turn-over, the product produced is document production. At the end of the day we need a medium to provide that to the client. We are in the business of providing high quality advice. In the legal business – how many staff do you need before you can justify an IT person?</p> <p>With an IT manager, we can now run training programs; risk management; induction programs. This is an example of the processes ... needed for the staff. [Name of law practice] has that focus because we can deliver the product well – we got quicker and smarter as a result of staff training and IT – and improving this by having the system. This is not seen as something important... but a regional law firm needs IT more than a CBD law firm. In the region though you are stuck with the slow speed!</p> <p>As areas become bigger, law firms do get serviced, but not until the service comes to town. These firms need a fake office in [regional location] the IT services could be provided. They underestimate the services needed for IT. [Name of law practice] has nothing of value in [rural location] – three computers – it all logs into [metropolitan location]. If I wanted to leave [metropolitan location] I would still keep [metropolitan location] for the IT support. This allows for sustainability and growth. (#17)</p>
Combination of more traditional technology and recent technology	<p>Typing is sent to a lady in [another State]. I dictate into a digital dictator and email it to her. She sends the typed document – it is efficient and cheap. The advantage – with my practice I may not need admin support. This is her specialty, in legal offices. With web-cam technology – I have used it... its available... With electronic lodgement of documents – I will sign with the Family Court Portal – I can lodge electronically and view any that have been filed. (#3)</p>
Impact of information technology and	<p>They want the website revisited. They want access for people to give a summary of the problem; proformas on line; interface with Facebook. It’s a new generation – they want more interaction;</p>

**Chapter 7 – Results of the Structured Interview Data (Part 2):
‘The Prevalence and Nature of Sustainability Practices’**

Themes	Examples of uses of information technology
attracting legal staff	updating... modelling on Facebook. The employed solicitors – most are under 30. Young solicitors don’t like the phone. Our innovation is to include these. We want to recruit the best graduates and so we will respond to them. The older solicitors are more vocal – they are not interested in competition. Innovation is important. (#10)
Speed of good technology	On the property we had satellite – there is no comparison. We use IT all the time. When faxing – it took a week to get a big document through; now it takes a day. (#24)
Knowing the right people to assist with infrastructure	We were lucky that we had a woman on Telecom so that we have broadband before the others. She was on the board – and we were part of a pilot project. (#24)
Innovative use of technology	<p>[Name of partner] moved to [metropolitan location] and spends only some of his time at [rural location]. Again this was accommodated because the firm value the partner. With the IT available – iPhone, emails, he is always available. Distance is no longer a tyranny.</p> <p>There is movement of work between [rural locations] and [metropolitan location]. Files can be sent electronically - conveyancing files. When the [rural location] went quiet, we sent files to [metropolitan location]. This is now moving back the other way. Clients can still access [name of law practice] from [rural location] though they work in [metropolitan location].</p> <p>At [regional location] they use emails in place of letters – I’m not sure if this was appropriate. You can get inundated by emails. All legal staff have iPhones, laptops. All staff have desktops. Three out of four partners are very confident at IT. TAFE was brought in from [regional location] to carry out an IT training day and our software is updated when needed. (#3)</p>

The qualitative data provides some important insights into the use of information technology by RRR Queensland law practices. These include the extremes of highly innovative use of information technology to an absence of technology; the impact of Gen Y lawyers in providing information technology support; the strategic uses of information technology; problems with information technology in terms of publicly funded infrastructure and services; an understanding that use of information technology may be a source of legal staff attraction and retention; and the impact of subscriptions for law practices in terms of increased productivity and regulatory compliance.

In terms of the uses of information technology, the discussion was wide in terms of participants being rather polarised in what they considered ‘information technology’. The highly innovative users of information technology confidently spoke of a full range of technologies including laptops, iPhones and subscription databases, with the underlying

sub-theme of increasing access to legal services and improving the relationship between client and legal staff. Most participants responded to the question from the perspective of discussing the use of various software programs that had been brought to their attention through the software company approaching the participant’s legal practice directly. On the final point of subscriptions the twenty participants who indicated they had invested in subscription databases nominated software such as LEAP, LawMaster, MYOB and LexisNexis.

7.4.2 Information Technology Training and Updating

Part H of the structured interview (*Use of Information Technology*) asked participants ‘what level of training and up-dating on information technology is available in the law practice’ in terms of ‘high’, ‘moderate’ or ‘low’. Nineteen participants (63%) reported that they engaged in high levels of information technology training and updating, six (20%) that this was moderate and, five (17%) that this was low or absent.

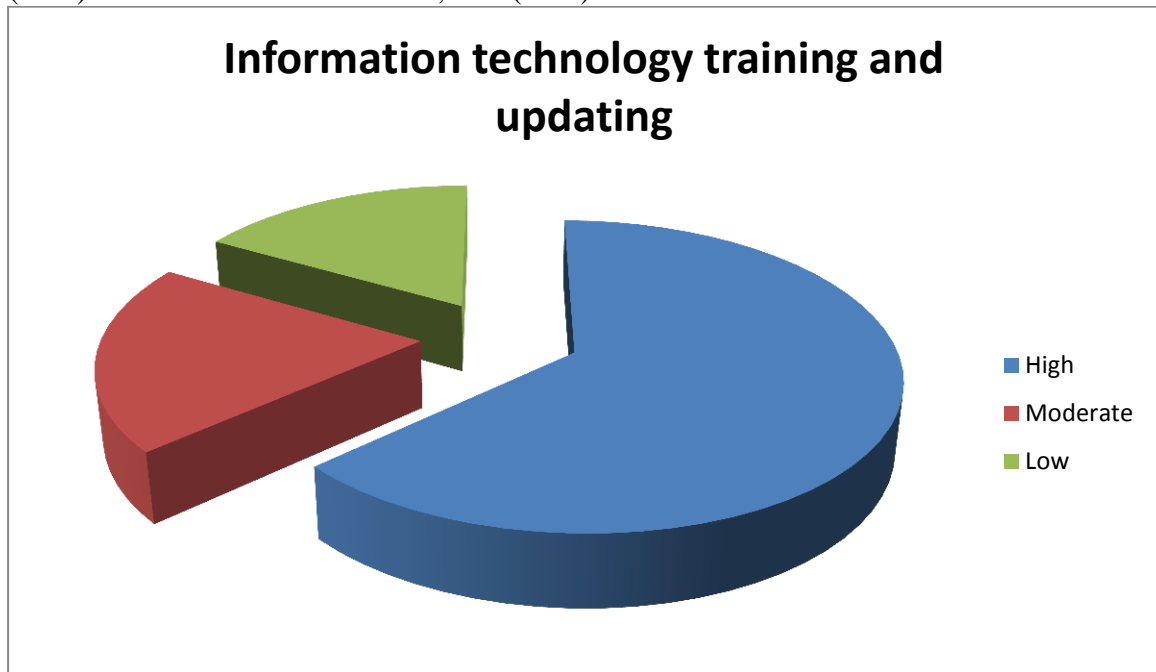


Figure 7.15: Information technology training and updating

The quantitative data for this question suggests that most participants are engaged in the use of information technology as well as training and updating needs. Participants, through general discussion, revealed a number of examples and issues relating to training and updating that occurred through both formal and informal methods as summarised in Table 7.11 below.

Table 7.11: Examples and issues relating to information technology training and updating

Themes	Examples and issues relating to information technology training and updating
Installing	I’ve been building the IT resources – putting systems in place.

**Chapter 7 – Results of the Structured Interview Data (Part 2):
‘The Prevalence and Nature of Sustainability Practices’**

Themes	Examples and issues relating to information technology training and updating
<p>information technology can involve down-time in the legal practice</p> <p>Assistance with IT research and knowledge through alliances</p>	<p>When I bought the business, the IT died. All the customers’ information went. I had to rebuild the database. I use [name of software] because I had used it before. I had relationships with my previous firm that helped fantastically. I was keen to get the practice – but had to modernise it. (#22)</p>
<p>Lack of IT knowledge generally</p>	<p>I was asked to set up [rural location] – it was an old Northern practice. I found out that none had any technical knowledge about IT. (#23)</p>
<p>Installing information technology can involve down-time in the legal practice</p>	<p>The original plan was that I would transfer all the software over, and in 12 months I would organise for new software. I found out three days from settlement that I couldn’t transfer the software. I needed to do it all manually until I could organise new software. I had to then learn the new software. (#18)</p>
<p>A prospective role for QLS in providing IT information</p>	<p>The QLS doesn’t recommend a computerised system. It would be good if the QLS could provide an endorsement of a few of them... trust accounting... If they could put that information on the Internet. (#21)</p>
<p>Future innovations in IT through employed young solicitor</p>	<p>[Employed solicitor] has his own laptop. Computer systems are not relevant. If he took over the practice he could overhaul the IT. We hope he will stay. We would like someone younger to come in. We need someone younger to come in. They would do what they like with the computer systems – it’s a good living. (#25)</p>
<p>IT knowledge of clients impacting on RRR legal practice</p>	<p>Now clients have a better insight due to the Internet and usually then know a lawyer – either a brother-in-law or a friend of a friend. This is the enemy of the country lawyer. We need to be across the issues. (#2)</p>
<p>Software company being the source of training and updating IT resources</p>	<p>[Software company] have guaranteed I will have technology assistance. The installation, training and ongoing support... it’s in the contract...</p> <p>[Software company] are doing a refresher course next week. (#5)</p>
<p>IT expert providing training and updating</p>	<p>With an IT manager, we can now run training programs; risk management; induction programs. This is an example of the processes ... needed for the staff. The IT manager does IT – who is employed full-time... excellent. (#7)</p>
<p>Government resources lagging in IT</p>	<p>The Queensland Government Court site hadn’t updated their website. I’d filled out the form they had on it, but I had to do it again because their own website wasn’t up-to-date. They are not contributing. (#7)</p>

Themes	Examples and issues relating to information technology training and updating
Recognition of the role of experts in IT	You do what you are good at and employ people to do what you are not an expert at. The IT guy was great. (#5)

The qualitative data indicated a broad range of approaches to researching information technology and the provision of training and updating. A number of participants identified that expert information technology resources were available in the law practice whose role included training and updating and that this was carried out as part of a strategic and innovative approach. Other participants acknowledged that the role of providing information technology updating and training fell to other legal practitioners (either partners or employed solicitors) to carry out this role. This method relied upon an ad hoc approach. The discussion below identifies who is the most innovative user of information technology within the law practice.

A sub-theme arose in relation to the lack of suitably up-to-date information technology resources being provided by government legal services. A further sub-theme was that the QLS could be a provider of research and information on information technology options.

7.4.3 Quality of the Legal Practice Internet Presence

The structured interview at Part H asked participants to rate the quality of the law practice’s Internet presence in terms of ‘high quality webpages and links that has been designed by the legal practice’, ‘moderate quality of webpages with input from the legal practice’ or, ‘low quality Internet presence provided through third parties (eg. Yellow Pages)’. Nine participants (30%) had a high quality Internet presence, nine had a moderate presence and, 12 (40%) had a low quality Internet presence.

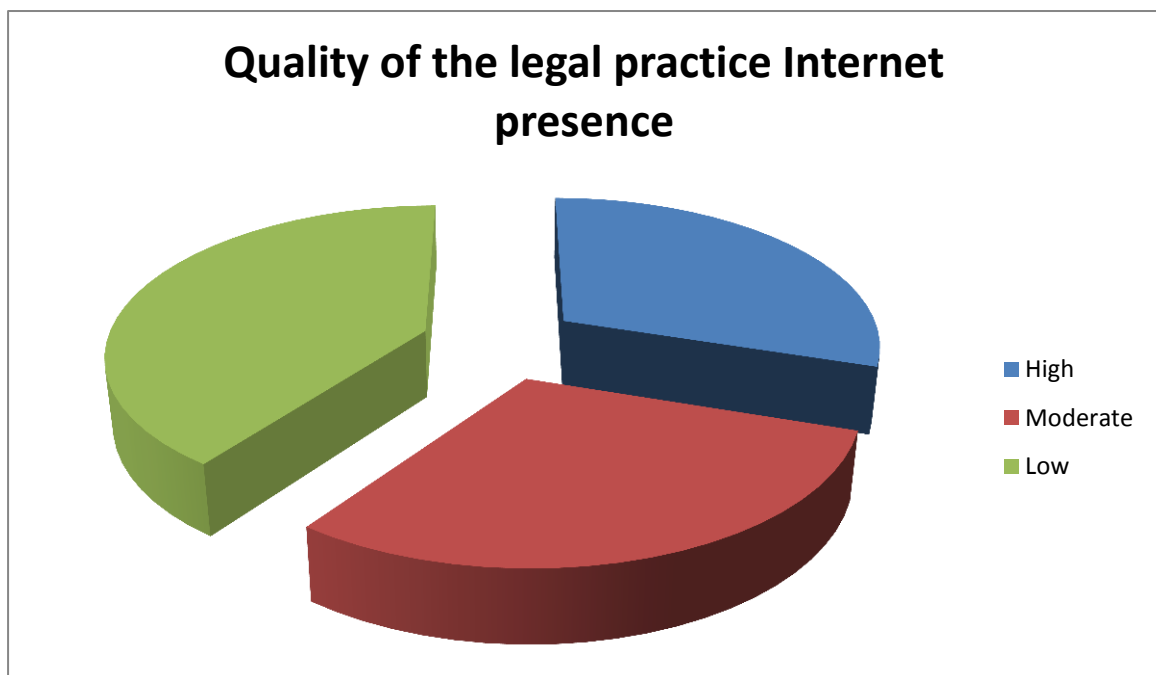


Figure 7.16: Quality of the legal practice internet presence

Some triangulation of this data was possible through a direct search on the participant’s Internet presence. This search verified the participant’s response. Of the twenty-six participants who responded with further comments on the use of information technology only seven provided specific comments regarding their websites. Table 7.12 below provides a summary of some of those comments.

Table 7.12: The legal practice Internet presence

Themes	Examples and issues relating to the legal practice’s internet presence
Updating an existing internet site to make it more innovative	They want the website revisited. They want access for people to give a summary of the problem; proformas on line; interface with Facebook. It’s a new generation – they want more interaction; updating... modelling on Facebook. The employed solicitors – most are under 30. Young solicitors don’t like the phone. Innovation is to include these... we want to recruit the best graduates and so we will respond to them. The older solicitors are more vocal – they are not interested in competition. Innovation is important. (#10)
Pending internet presence	We need an Internet site – I’m not a visual person. I know what I want. I have a portfolio of what I want it to look like... I have just got to do it! (#22)
Engagement of an expert web designer	Have engaged a marketing consultant on a full-time basis to write the website and now have on a retainer. (#1)

Participants’ responses to discussions about an Internet presence were widely varied extending from an existing website that was regularly updated and seen as a means of fulfilling a range of purposes including: marketing the reputation and areas of legal services of the law practice as well as attracting legal staff, to an absence of any Internet presence.

7.4.4 Most Predominant Users of Information Technology

The structured interview asked participants ‘who are the predominant users of information technology within the law practice?’. The structured interview listed administrative staff, paralegal staff, trainee solicitors, employed solicitors and principals/directors as options that the participants could respond to a ‘yes’ or ‘no’ answer.

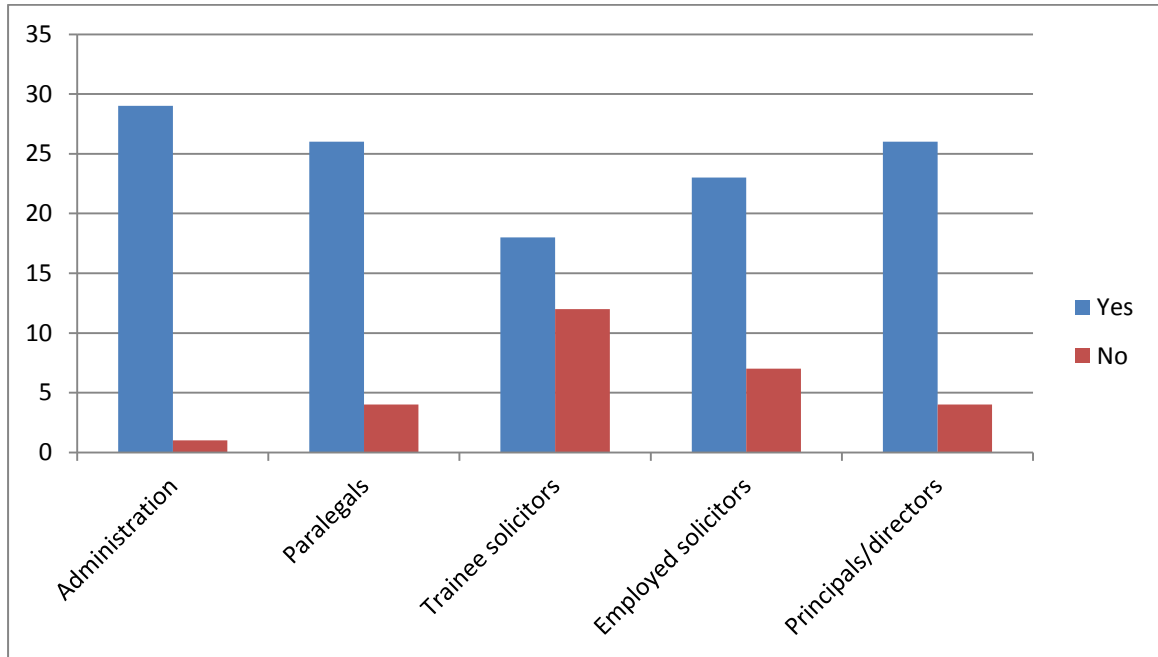


Figure 7.17: Who are the predominant users of information technology within the legal practice

There are limitations to what can be drawn from this particular data because not all of the participants had access to the full range of groups of people. A third category – not applicable – should have been included. What can be suggested is that administrative staff and paralegals were noted as being the most predominant users.

7.4.5 Most Innovative Users of Information Technology

The structured interview asked participants a similar question in terms of identifying the most innovative users of information technology as above in 3.4.

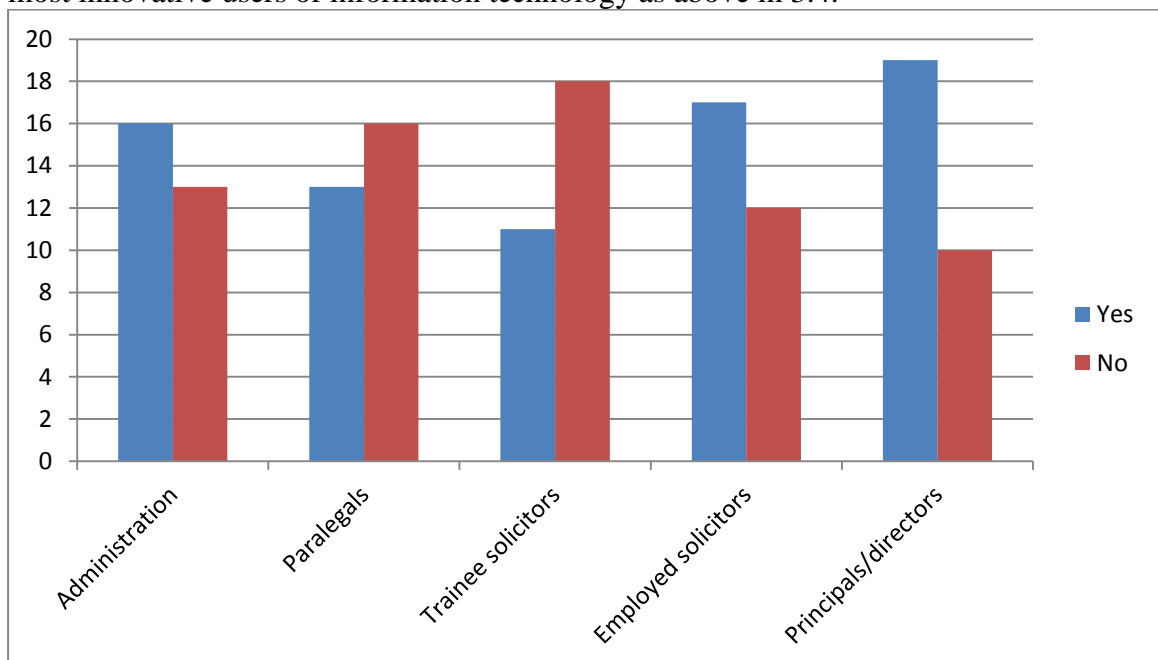


Figure 7.18: Who are the most innovative users of information technology within the legal practice?

The quantitative data when compared to the previous data, suggests that while administrative staff and paralegals are the predominant users of information technology, it is the employed solicitors and principals who are the most innovative users of that technology. Twenty-six participants provided responses to the discussion on the uses (including innovative uses) of information technology. These responses were polarised and covered a wide range of themes and sub-themes that are summarised below in Table 7.13.

Table 7.13: Examples and issues of the most innovative users of information technology

Theme	Examples and issues of the most innovative users of information technology
Reliance on the young employed solicitor to provide IT innovations and training	<p>We can research online – [employed solicitor] is big on that. We don’t use [subscription database] – but I subscribe to the loose-leaf services on paper. We don’t have [software]. [Employed solicitor] got us onto accessing the non-subscription sites – with his Bachelor of Computer Science qualification – he’s the innovator – he does research on line.</p> <p>There is 10 years difference in our age – we still swap knowledge – we swap IT knowledge... (#25)</p>
One partner being the IT innovator	<p>[Partner] is the most innovative – she has done the research and implementation for IT – including [software program]. (#19)</p>
Innovation through responsiveness to the needs of younger staff of the principles	<p>They want access for people to give a summary of the problem; proformas on line; interface with Facebook. It’s a new generation – they want more interaction; updating... modelling on Facebook. The employed solicitors – most are under 30. Young solicitors don’t like the phone. (#10)</p>
Innovation through strategic implementation of the principles	<p>Law is a business – you need to sell it at the end. The IT is unbelievable. The speed of service, communication, precedents, documents and research. Our approach is that the IT must be the same – in the office in [metropolitan location], in [rural location]; at home; with the client; overseas. It gets delivered as the same resource. Every solicitor has a desktop, a lap top, a smart phone – from a consol. Our biggest development is the smart phone – monitor while in court. The attitude with IT is very different. [Partner’s] focus is IT driven. What it can do for us is to drive the business and lessen the risk. The benefit is to the bottom line. Then there is no holding back – it’s constant development.</p> <p>We would have to reflect on our use of technology. It would need some slight tweaking. We are meeting our goals of... We are the employer of choice. When succeeding in what we are doing, we would rather improve than get bigger. (#17)</p>
Innovation through reliance on expertise	<p>You do what you are good at and employ people to do what you are not an expert at. The IT guy was great. (#8)</p>

Theme	Examples and issues of the most innovative users of information technology
A cautionary approach to innovation	They are relying on software to fill in the gaps – so when push comes to shove – they can’t do it. I use it with caution. (#29)

The comments from the participants confirmed the importance of young employed solicitors as a means for RRR law practices gaining access to the innovative use of technology. The comments also provided additional sub-themes that included some participants noting that the innovative use of information technology was also in part driven by the need to be relevant to the younger generation of legal staff. A number of participants in their role as principals also took a proactive (top-down) approach to the innovate use of information technology rather than a responsive approach. In some of the comments above it is apparent that their approach was to consider a full range of technologies and to implement their use for the purposes of developing business and driving profit. A number of participants spoke of allocating funding to information technology experts to determine the innovative use of technology. Equally, there were a number of participants who were sceptical and hesitant about the use of any information technology, preferring to ‘use it with caution’.

Again, the data reveals that some RRR legal practitioners rely on ad hoc (inexpert) resources with which they have connections in order to develop key aspects of their business. Only some practitioners actively sought the input of expert advice to research and resource innovative uses of information technology.

7.4.6 Future Plans for Use of Information Technology

The structured interview (Part G) asked participants about proposed future plans for the use of information technology within the legal practice.

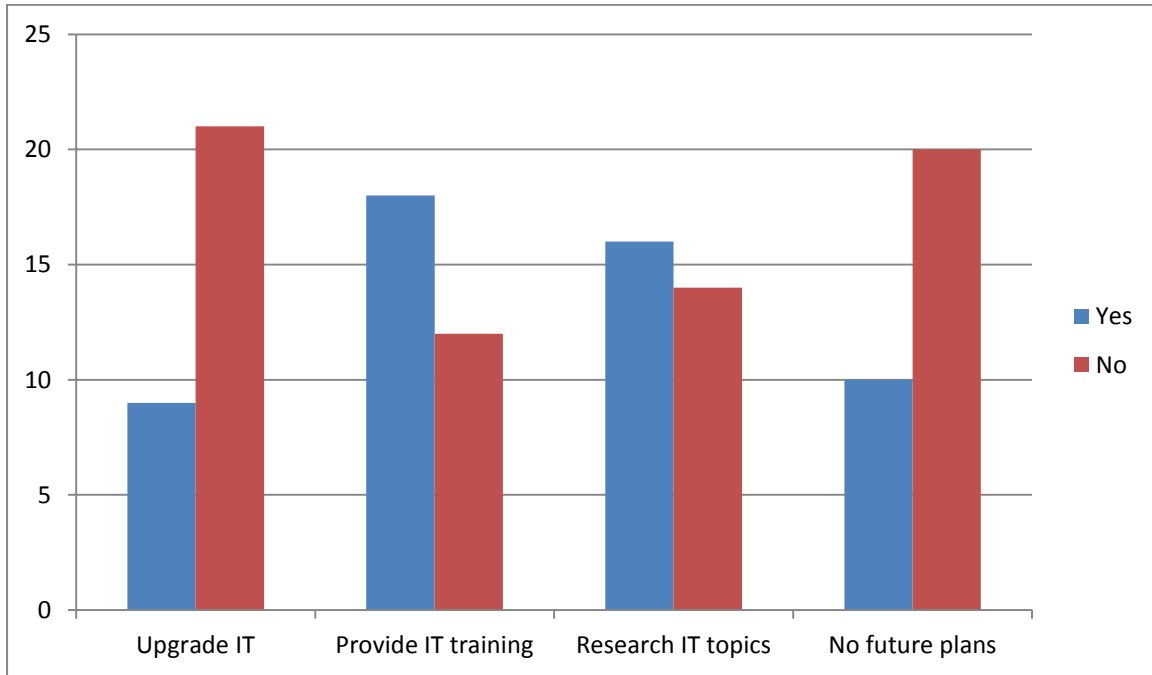


Figure 7.19: Future plans for use of information technology

The quantitative data provides some indication about the intentions of participants to make future use of information technology and their approach to it. The data suggests that information training is the most likely plan. This fits with the qualitative data. The earlier data about the use of information training by administrative staff and paralegals, coupled with the figures that this group of staff are the largest in the participants’ law practices, suggests that well trained staff, capable of using sophisticated legal software, may be filling some gap in the provision of legal services within RRR Queensland law practices. Participants also recorded that they were researching information technology topics. This may be a step that required completion prior to upgrading information technology. There still remained a significant number of participants who had no plans to use information technology at all. This last item does not appear consistent with the earlier data about the most predominant and innovative users in which the participants had nominated themselves.

Fourteen participants provided additional qualitative data in response to the questions on current and future plans for use of information technology. Much of that discussion related to the legal software companies that approached RRR law practices in terms of costs, features and follow-up services. A number of participants commented that it was too expensive.

Table 7.14: Issues associated with the current and future plans for use of information technology

Themes	Examples and issues associated with the current and future plans for use of information technology
Customised subscriptions	[Software program] was tailored – customised for business. We can put in budget and times and charges. I put in the budgets and solicitors put in time and charges. Solicitors can monitor against the budget. (#4)

Themes	Examples and issues associated with the current and future plans for use of information technology
Software as a major investment	With the computers we are about to embark on [software program] in late July. This is costing me \$25,000. [Software program] will assist with trust accounting; general accounting. It has 5000 precedents Family Court forms; billing – both quotes and time costing. [Software program] have guaranteed I will have technology assistance. The installation, training and ongoing support. It’s in the contract. At the moment I use [Software program] for account and banking and trust accounting and precedents. (#5)
Software as a means of consistency in client dealings	I know how all the precedents and accounts are. [Name of partner] doesn’t use [software program]. [Software program] are doing a refresher course next week. When I took over the firm – there was no consistency. Now we have one letter – there is consistency of letters to all the clients. [Name of employed solicitor] and [name of partner] would send out different letters – [name of employed solicitor] would be two or three pages and [name of partner’s] would be much briefer. This was an issue especially if the next door neighbours were comparing letters they had been sent on a similar matter. (#17)

The research into, installation and updating of information technology and software was seen by participants as a major source of financial commitment as well as a future commitment to ensure that staff (both legal and administrative) were trained. A number of participants stated a need for more information and guidance in this area and expressed that this might be a role for the QLS.

7.5 Summary

This chapter reported on the data relating to the research question which asked ‘What is the prevalence and nature of sustainability practices in RRR law practices?’. This chapter completed the reporting on the remaining three research issues that informed this question with respect to recruitment and retention, marketing and use of information technology. The chapter reported on staff structures, methods of recruitment, selection and development. It also reported on mentoring and supervision in RRR legal practice, as well as partnership disputes and resolution of those disputes. The chapter reported on the data relating to marketing with respect to ‘reputation’, methods of increasing business and adverse community reactions to matters the participant’s law firm has been involved in. Finally, the chapter reported on the use of information technology, including training and users of that information technology.

The following chapter discusses the research findings from the quantitative and qualitative data from the structured interviews (reported on in Chapters 5, 6 and 7), and integrates those findings with the relevant literature (reviewed in Chapters 2 and 3).

Chapter 8

Discussion of the Results (Part 1): 'The Prevalence and Nature of Sustainability Practices'

8.1 Introduction

This chapter discusses the research findings from the quantitative and the qualitative data and integrates it with the relevant literature with respect to the research question (RQ) which asked: 'what is the prevalence and nature of sustainability practices in regional, rural and remote (RRR) law practices?'. This chapter focuses on discussing the data relating to the research issues (RIs) one to four relating to connectedness to the profession and the community, business carried out and business planning carried out. The chapter also includes references to the definition of 'sustainability' that comprised the elements of longevity of the practice, profit, controlled growth, renewable resources (including legal staff and clients) and the normative environment within the law practice. The definition was outlined in Chapter 4. Specific conclusions and recommendations are also given in view of the research findings. Chapter 9 continues the discussion of the results with respect to the remaining three research issues relating to recruitment and retention, marketing practices and use of information technology.

8.2 RIs 1 and 2: The Prevalence and Nature of Connectedness to the Profession and Connectedness to the Community by Legal Practices in RRR Queensland

The discussion of the results regarding RIs 1 and 2 are dealt with together because the literature compares and contrasts the level of connectedness of RRR legal practitioners with their profession and their community.

8.2.1 The Literature

The literature (Landon,⁶¹³ Economides⁶¹⁴ and Franklin and Lee⁶¹⁵) described social scientific theories based on empirical analyses of the 'environment' in which RRR legal practitioners work. Landon⁶¹⁶ concluded that RRR legal practice is highly contextual and that there may be 'an ecology of legal practice' (Landon's phrase). Landon stated that there is an assumption from the legal profession that lawyers are socialised into their professional role in law school and that they will take that orientation, including the norms of the profession, into the setting in which they practise and these norms will determine their professional work.⁶¹⁷ Landon compared this orientation to the profession and to the community amongst rural lawyers, stating that in reality it is the rural setting and community, and not the profession, that has greater influence because this is the more important source of 'recognition and reward'. It is more important for the rural lawyer to be recognised as a contributing member of the community than to be recognized by the professional community. It is the community's own economic strength that impacts on the success of the rural lawyer's own practice.⁶¹⁸ 'Therefore given the option of

⁶¹³ Donald D Landon, *Country lawyers: The impact of context on professional practice* (Praeger 1990).

⁶¹⁴ Kim Economides, Mark Blacksell and Charles Watkins, *Justice outside the city: Access to legal services in rural Britain* (Longman's Scientific and Technical, 1991).

⁶¹⁵ Alex Franklin, and Robert G Lee 'The embedded nature of rural legal services: sustaining service provision in Wales' (2007) 34(2) *Journal of Law & Society* 218.

⁶¹⁶ Landon (1990), above n 613, 16.

⁶¹⁷ *Ibid* 120.

⁶¹⁸ *Ibid* 151.

involvement in intraprofessional concerns or community concerns, the rural lawyer is going to choose the latter as a matter of self-interest.'⁶¹⁹

Franklin and Lee similarly found that '[t]he most prominent feature of the solicitors... was their connection to place'.⁶²⁰ They came from the immediate area in which they practised and many had family connections to their law firm.⁶²¹ The reward of this was in a sense of responsibility towards the community and an ensuing status.⁶²²

Franklin and Lee's findings were that rural embeddedness, from the perspective of the smaller rural law firm, allowed solicitors to establish strong relationships with their clients.⁶²³ It also gave these solicitors an advantage against competitors originating from new law practices which were 'never accepted'.⁶²⁴ The Resource-based Theory, in its identification of 'relationship capital', also emphasised the importance of this intangible resource for any entrepreneurial organisation.⁶²⁵ Dollinger created a subset from human capital, of 'relationship capital' which 'refers not to what the organisation's members know but rather who the organisation's members know and what information these people possess'.⁶²⁶

The identification of 'relationship capital' overlaps with the concept of 'embeddedness' which is seen as being of considerable importance for RRR legal practice.⁶²⁷ The Law Council of Australia's 2009 Report⁶²⁸ confirmed in its data how RRR legal practitioners relate to the community in which they practise. Results from the survey revealed that lawyers are an integral part of RRR communities based on the pro bono and voluntary work they are involved in.⁶²⁹ The data affirms the literature in terms of the importance of the 'containing community'⁶³⁰ and their commitment to local institutions.⁶³¹

⁶¹⁹ Ibid.

⁶²⁰ Franklin and Lee (2000), above n 302, 227.

⁶²¹ Ibid.

⁶²² Ibid 227.

⁶²³ Ibid 230.

⁶²⁴ Ibid 233.

⁶²⁵ Marc J Dollinger *Entrepreneurship: Strategies & Resources* (Prentice Hall Upper Saddle River, 3rd ed, 2003) 36.

⁶²⁶ Dollinger above n 625, 36.

⁶²⁷ Refer to the earlier work of Landan, above n 613, in which the 'containing community' and involvement in it is seen as important for the RRR legal practitioner as a source of 'relationship capital' for the US RRR legal practitioner; Franklin and Lee above n 302 for their discussions on the importance of 'embeddedness' as a form of 'relationship capital' for the UK RRR legal practitioner; and Brian Uzzi, Ryon Lancaster and Shannon Dunlap 'Your client relationships and reputation: Weighing the worth of social ties: embeddedness and the price of legal services in the large law firm market' in Laura Empson (ed) *Managing the Modern Law Firm* (Oxford University Press, 2007) 93 – 106 for a more general discussion on 'embeddedness' as a form of 'relationship capital'.

⁶²⁸ Law Council of Australia and the Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey*, July 2009.

⁶²⁹ Law Council of Australia, *Recruitment and Retention of Legal Practitioners to Rural, Regional and Remote Areas Strategy: Discussion Paper: Recruitment and Retention Working Group Working Draft*, September 2009.

⁶³⁰ Landon (1990), above n 613, 4.

⁶³¹ Ibid 88 and LCA Survey (July 2009), above n 628.

8.2.2 The Quantitative and Qualitative Data

Connectedness to the Community

The quantitative data of the current research indicates that the highest community involvement was with civic organisations, service clubs and school organisations. Political organisations had the lowest involvement. The qualitative data consistently expressed that participants had high involvement with a wide range of community organisations, in particular, organisations that involved schools, sporting and community service purposes. This community involvement was significantly higher than with professional organisations. This finding is consistent with Landon's research.⁶³²

The extent of community involvement included both monetary support and pro bono legal advice. It also included connectedness with decision-making and influential organisations including, chambers of commerce, advisory committees and, to a lesser extent, political organisations.

The stated motivation for the involvement was diverse, including as a replacement for advertising, access to recruitment for the law practice and assistance with community building without any need for advertising. There was a sense from many participants that such involvement was simply a necessary part of the 'job of being a local solicitor'.

Connectedness to the Profession

The quantitative data on the prevalence and nature of connectedness to the profession by RRR legal practices indicated that the most significant involvement, among the participants, was with the district law associations and the Queensland Law Society (QLS), with only some involvement with family law associations and mediation law associations (consistent with the areas of specialisation among the participants). The extent of that connectedness was significantly lower than with connections to the community. Although involvement with political organisations appeared minimal in the quantitative data, in two instances the political involvement was at the high end and included parliamentary representation.

In terms of the qualitative data on professional connections it suggests that RRR legal practitioners rely on local professional connections rather than any broader professional connections.⁶³³ Many of the participants reflected that they felt detached and unsupported by the QLS, particularly in terms of it being an advocate for RRR legal practitioners.

The qualitative data indicated that the district law associations were a source of legal education and that the meetings were an opportunity for members to meet and 'get on'. In contrast the qualitative data indicated that with the QLS there was a disappointment 'with the level of help to the profession' and that the 'QLS shows no leadership' and that there was a lack of support for its members. One area that the QLS was seen as operating effectively in was in relation to the provision of continuing legal education. This supports Landon's findings that what is good for the community is good for the individual RRR lawyer.⁶³⁴

⁶³² Landon, above n 613, 151.

⁶³³ Ibid 88.

⁶³⁴ Ibid 120.

8.3 RI 3: The Prevalence and Nature of Business Carried Out by Legal Practices in RRR Queensland

This part of the chapter discusses the structured interview results in terms of the legal practice areas dealt with by RRR legal practitioners, the difficulties in specialising within those areas, and the ensuing problems with developing expertise. It also discusses the possibility of expanding (or developing) legal practice areas and the impact of societal and technological changes on the work carried out by the RRR legal profession. Finally, this part includes a discussion on the extended role of RRR legal practitioners, beyond that of providing legal advice.

8.3.1 Legal Practice Areas

The business carried out by legal practices (in RRR Queensland and in urban locations) is subject to regulations in which a number of restrictions are placed upon how that practice can be carried out.⁶³⁵ The reservation of conveyancing work and court work continues to be held by legal practitioners.⁶³⁶ To some extent the areas that are the sole reserve of legal practitioners are protected through legislation. For example, the *Legal Profession Act 2007* (Qld), reserves certain work to be carried out by legal practitioners.⁶³⁷ Within that regulatory framework legal practitioners are free to practise in all areas of law irrespective of location.

Landon's research showed that the fields of law that most rural lawyers spent time on included family law, estate and probate law, negligence law (for the plaintiff), real estate and criminal defence law.⁶³⁸ This is consistent with the Law Council of Australia (LCA) and the Law Institute of Victoria's *Report into the Rural, Regional and Remote Areas Lawyers Survey*⁶³⁹ in which the most common areas of practice for RRR Queensland legal practitioners were commercial/business law (65.8%), wills and probate (63.2%), conveyancing (61.5%), property law (57.6%), general practice (54.6%) and family law (53.3%).⁶⁴⁰ The next groupings of practice areas were litigation (49.8%), personal injury (34.6%), criminal law (35.1%) and taxation law (6.5%).⁶⁴¹ The quantitative data was consistent with the LCA and Landon's findings. It reveals that the most common areas of practice for RRR law practices include probate and estates, commercial and contract, conveyancing and family law. Some areas of law, it seems, are not practised at all including taxation, administrative law, insurance and industrial relations.

The qualitative data was minimal with comments reiterating the practice areas being conveyancing and wills and probate. Some of that qualitative data indicated the growth of 'rural law' that took into account the interests of the rural sector. Other comments included that practitioners were practising in more areas of law but for less income.

⁶³⁵ *Legal Profession Act 2007* (Qld), s 25.

⁶³⁶ For a more detailed discussion on the continued Queensland solicitors' conveyancing reservation, refer to Mark Byrne and Reid Mortensen, 'The Queensland Solicitors' Conveyancing Reservation: Past and Future Development – Part II' (2010) 29(2) *University of Queensland Law Journal* 245.

⁶³⁷ *Legal Profession Act 2007* (Qld), Part 2.2 – Reservation of legal work, including conveyancing.

⁶³⁸ Landon, above n 613, 60.

⁶³⁹ LCA Survey (July 2009), above n 628

⁶⁴⁰ *Ibid* Table B7 – Participants' main area of practice, 30.

⁶⁴¹ *Ibid* 30.

Landon commented that most rural lawyers do not consider themselves to specialise in any particular field of law.⁶⁴²

Specialisation

Landon's data indicated that rural lawyers were less specialised in the practice areas they carried out and that there was a 'higher probability of specialisation in the urban setting'.⁶⁴³ Mayson identified the increasing complexity and specialisation that was occurring in commercial legal advice as one method of improving the efficiency and quality of legal services. This, he concluded, led to 'enormous growth in private law firms'.⁶⁴⁴ The literature suggests that RRR legal practice is geographically disadvantaged from the ability to be efficient in terms of such specialisation.

The quantitative data indicated that RRR Queensland lawyers do not specialise. This was supported by the quantitative data that very few participants had any specialist legal accreditation (only 13%) and where this was the case, it was in the area of family law specialist accreditation. Fewer still had some specialist accreditation in the areas of personal injury law and mediation law.

The qualitative data supported the inability to specialise with most participants responding by stating that it was simply not possible to specialise in a RRR law practice.⁶⁴⁵ Instead, it was remarked 'we're always doing something different'. Only a few participants indicated some degree of specialisation and that was in the areas most commonly practised in RRR Queensland: 'We have a large conveyancing practice. We specialise in rural properties and succession. There is another firm in town that does legal aid and another one that does family and legal aid.' Landon's research indicated that where some specialisation occurred it was generally by older lawyers who only carried out estate and probate work, or who were trial lawyers.⁶⁴⁶ Similarly, the qualitative data indicated that as a function of time and experience, participants gained some increasing ability to narrow their practice areas or adapt their practice areas due.

Lack of Expertise

The corollary of the inability to specialise is that RRR legal practitioners are confronted with requests for legal advice in areas of law with which they are not familiar.⁶⁴⁷ The question for the participants was how do they deal with areas of legal practice for which they have very little experience?

The quantitative data indicated that most participants would rather research a matter outside of their expertise rather than confer with other practitioners, or refer it to a specialist. The qualitative data provided further insight into how the participants dealt with the dilemma of a lack of expertise (and therefore inefficiency) due to the inability to specialise. Participants commented that they would seek the services of the QLS to assist them in terms of asking for research materials or for names of other solicitors who could deal with the matter. Another common response was that the participant would not

⁶⁴² Landon, above n 613, 129.

⁶⁴³ Ibid 129.

⁶⁴⁴ Stephen Mayson has been writing about the development of the legal profession since 1992: Stephen Mayson, 'The Future of the Legal Profession' (1992) 1 *Nottingham Law Journal* 1, 3.

⁶⁴⁵ Landon, above n 613 and LCA Survey (July 2009), above n 628.

⁶⁴⁶ Landon, above n 613, 28.

⁶⁴⁷ Landon above n 613; Economides et al, above n 614.

provide advice on the matter – that they would get them to see someone else. One participant indicated that they would seek 'piecemeal advice' so that they could learn from the situation for future reference. The qualitative data also indicated that 'strategic alliances' and 'mentoring' (both discussed in detail below) were used to build and share legal knowledge and experiences as one means of retaining clients.

The issue of lack of expertise is a complex one for the RRR legal practitioner. It impacts on balancing the competing requirements of running a law practice that involves the need to retain clients and generate work, with the competing risks of increasing stress and breaching ethical standards due to providing legal advice in areas in which participants were not knowledgeable.

Expanding Practice Areas

Two areas that were put forward as possible growth areas for RRR legal practitioners by the LCA were e-commerce and government work. The LCS's *2010: A Discussion Paper: Challenges for the Legal Profession*⁶⁴⁸ had anticipated that potential growth areas of practice for legal practitioners would be in the areas of e-commerce and cyber law.⁶⁴⁹ However, the subsequent LCA Survey 2009 did not include questions for determining whether or not e-commerce or cyber law had been sources of practice area growth.⁶⁵⁰

Another possibility for growth for RRR legal practitioners was in government work. In the earlier investigation into legal practice areas by the Senate Legal and Constitutional Affairs Committee, *Inquiry into the Australian Legal Aid System, Third Report (2009)*⁶⁵¹ it was submitted by the Law Council of Australia, that 'governments could purchase legal services from RRR law practices rather than their metropolitan counterparts, thereby bolstering the need for legal practitioners in RRR areas...'⁶⁵²

The data generated from the current research indicated that neither electronic commerce nor cyber law nor government work was carried out by participants.

Societal and Technological Changes Impacting on Work Available

The law management literature has indicated that there is a shift in the work available to legal practitioners due to subtle changes which are the result of dynamic, societal⁶⁵³ and technological changes.⁶⁵⁴ These changes are occurring for all legal practitioners, not just within the RRR context. They include the increasing use of intermediaries who provide access to law, for example, through websites and social networking on how to make legal purchases and decisions and, provision for asking legal questions and using the answers for

⁶⁴⁸ Law Council of Australia, *2010: A Discussion Paper: Challenges for the Legal Profession*, September 2001, 92.

⁶⁴⁹ Ibid 71.

⁶⁵⁰ LCA Survey (2009), above n 628, 25.

⁶⁵¹ Senate Legal and Constitutional References Committee, *Inquiry into Legal Aid and Access to Justice*, June 2004.

⁶⁵² Ibid 28 – 29.

⁶⁵³ Thomas D Morgan *The vanishing American lawyer* (Oxford University Press, 2010); Stephen Mayson *Law firm strategy: Competitive advantage and valuation* (Oxford University Press, 2007); and Empson, above n 627 generally; and Marc Galanter and Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (University of Chicago Press, 1991).

⁶⁵⁴ Richard Susskind, *The future of law: Facing the challenges of information technology* (Oxford University Press, 1996); Richard Susskind *The end of lawyers: Rethinking the nature of legal services* (Oxford University Press, 2008).

giving advice and taking action. There is also increasing client involvement in the process of providing legal advice and lawyers are increasingly adopting market norms and becoming more corporate.⁶⁵⁵

The literature has proposed that areas of legal practice are opening up to competition from other sources. The impact of this changing regulatory and evolutionary environment was identified as early as 1992 by Mayson in his comments that most lawyers were content to provide domestic conveyancing while their clients were becoming more informed and wealthier and needed advice on matters including personal tax, estate planning, investment and pensions. Instead this work went to accountants and banks. Only when there was increased competition for conveyancing did lawyers realise that clients no longer considered them as their first option for financial advice.⁶⁵⁶

Legal practitioners who are able to anticipate changes to the regulatory environment may be more likely to be able to sustain their practice. Conversely, legal practitioners who lament possible regulatory change, or who do not consider it, may be more likely to be adversely affected by it.

Mayson commented that much of the work that lawyers do is not legal and could be done by anyone. What remains for lawyers is real legal work that can only be performed by lawyers.⁶⁵⁷ Clients need the legal expertise of lawyers to be customised to their business or personal situation and that requires an understanding of the client’s business and being able to communicate with the client about decisions rather than legal analysis. This requires experience and knowledge-time to develop. This is what clients value.⁶⁵⁸

There were only two qualitative comments that indicated any strategic approach to practice areas. The first related to the participant being able to see gaps in legal practice areas and the second involved diversifying in order to sustain a small practice. This may indicate that changes being identified above are not yet being responded to by RRR legal practitioners. Such a conclusion would be consistent with Franklin and Lee’s characterisation of RRR legal practitioners and their reluctance to respond strategically to outside threats.⁶⁵⁹

In terms of responding to the use of non-lawyers (including para-legals) assisting with legal work, participants identified the related sub-theme of staff structuring (dealt with in Chapter 9 under *Recruitment and Retention*) that strategically delegated ‘non-legal work’ to non-lawyers, therefore freeing up the time and resources of legal staff to pursue either ‘legal work’ or development of the business and development of client relations.

The Extended Role of RRR Legal Practitioners

A further impact on RRR legal practitioners due to the context of their practice is in ‘the complex interweaving of professional and community roles’.⁶⁶⁰ The RRR legal

⁶⁵⁵ David Wilkins, *David Wilkins on Globalisation, Technology and the Legal Profession* (12 August 2010) David Wilkins Blog <http://lawprofessors.typepad.com/mass_tort_litigation/2010/08/david-wilkins-on-globalization-technology-and-the-legal-profession.html>, and Susskind, above n 73.

⁶⁵⁶ Mayson, (1992), above n 391, 2.

⁶⁵⁷ *Ibid.*

⁶⁵⁸ *Ibid* 5.

⁶⁵⁹ Franklin and Lee, above n 302.

⁶⁶⁰ Landon, above n 613, 81. The discussion of this ‘interweaving’ is at 81 – 96.

practitioner participates in, and is committed to, community organisations⁶⁶¹ and carries the status of being a 'local expert'⁶⁶² not just on legal matters, but on a range of issues beyond law. RRR legal practitioners are expected to fill an extended role.⁶⁶³ Most RRR legal practitioners were raised in the country so that the 'local view has been internalized'.⁶⁶⁴ Impacts for the RRR legal practitioners can be both positive and negative including 'the pervasiveness of multiple-interest relationship [to the effect that] the small town conducts most of its affairs within a context of intimacy'.⁶⁶⁵

The data is consistent with Landon's comments. The quantitative data indicated that for most participants this extended role could take up to 20 percent of their time. The qualitative data indicated that there was an expectation that they provide personal advice, including marriage counselling, parenting, problem solving, personal advice and general life skills counselling and, that this extended role would be provided with the full confidentiality expected of a 'professional'.

The amount of personal advice was most recorded in the areas of family law and criminal law matters. Participants commented that they could not charge out time for such advice yet it took up a significant amount of time. Participants commented that the issue of providing personal advice was an issue they had improved on over time and experience in terms of knowing that they could refer clients to a qualified counsellor.

8.4 RI 4: The Prevalence and Nature of Business Planning Carried Out by Legal Practices in RRR Queensland

This part of the chapter discusses the implications of the three theories (discussed in Chapter 3) and their impact on if and how RRR legal practitioners engage in any business planning activities. The discussions focus on the theories that RRR legal practice is influenced by the concepts of 'embeddedness' and location and that 'law as business' is influenced by the choice of governance structure. It then discusses the strategic management of the law practice, with considerations of who is involved in the business planning, measuring performance of business planning decisions and sources of information for making those decisions. Clients of the RRR law practice are discussed in terms of types of clients, dealing with clients, sources of clients and strategic alliances. Finally, this part discusses fees and billing, profitability and growth.

8.4.1 The Impact of Embeddedness and Geography on Business Planning

'Embeddedness' relates to the way in which social relations shape economic action. For RRR legal practitioners, embeddedness allows them to establish strong relationships with their clients giving them an advantage over competitors establishing new law practices.⁶⁶⁶ Franklin and Lee suggested that 'structural embeddedness' may impact negatively on RRR

⁶⁶¹ Ibid 86 – 90.

⁶⁶² Ibid 90 – 91.

⁶⁶³ Ibid 11.

⁶⁶⁴ Ibid 136.

⁶⁶⁵ Ibid 127.

⁶⁶⁶ Franklin and Lee, above n 302, 236.

legal practitioners in their ability to sustain RRR law practice, particularly in light of their lack of proactivity towards management practices and attitudes towards business collaboration and dealing with events such as threats to traditional patterns of work.⁶⁶⁷ They concluded that such strategic approaches were not pursued by RRR legal practitioners.⁶⁶⁸ They used the example of the regulatory reforms to conveyancing work – a primary source of work for rural solicitors, finding that RRR legal practitioners had a 'general lack of foresight' in how they would approach it.⁶⁶⁹ In short, rural embeddedness provided both an advantage to RRR legal practitioners in terms of their 'connectedness' to the community (discussed above), and conversely, a disadvantage in terms of their inability to foresee threats or to exploit opportunities to deal with them. Franklin and Lee's empirical data showed 'a lack of proactive approach – towards change.'⁶⁷⁰ They concluded that the relevance of indicators relating to the:

*sustainability of rural legal services... [was] that levels of profit do not appear to be the greatest driving influence behind solicitors' decision making. ... [T]he vast majority undertake pro bono work, will happily visit clients at home, seek to offer bilingual services as needed, retain less profitable work areas, and exchange opportunities to earn more for a better quality of life.*⁶⁷¹

This part of the chapter presents the qualitative data and suggests that RRR legal practitioners are divided in their ability (rather than being unable) to exploit opportunities. The discussion on the literature later in this chapter on *Fees and billing, profitability and growth* highlights those characteristics of a RRR legal practitioner necessary for sustainable RRR legal practice, including entrepreneurial skills and the desire to not only practise law, but also to want to strategically develop (and 'grow') the practice. Franklin and Lee's data emphasises the absence of this desire in some RRR legal practitioners.

Franklin and Lee's empirical research into the importance of 'spatial geography' is supported by Mayson⁶⁷² who stated that service and clients flow from geography. He used geography to define types of legal practices in terms of being 'local', 'regional' or 'national',⁶⁷³ stating that it is legitimate to give geography strategic primacy because services, clients and profitability flow from this pillar. While this has been noted in some detail in Chapter 2 in the work of Landon,⁶⁷⁴ Economides⁶⁷⁵ and Franklin,⁶⁷⁶ it was the first time that it had appeared in the legal practice management literature.

⁶⁶⁷ Ibid.

⁶⁶⁸ Ibid.

⁶⁶⁹ Ibid. Franklin and Lee found that the impact of embeddedness led to a complacency about business planning and dealing with the possibility of future threats (including regulatory reform that might impact on legal practice areas; an absence of the need to develop marketing strategies because work was created through word of mouth and reputation; and limited planning on expansion in part due to the problems of finding qualified staff.

⁶⁷⁰ Ibid 240

⁶⁷¹ Ibid 240, 241.

⁶⁷² Stephen Mayson, *Law Firm Strategy: Competitive Advantage & Valuation* (Oxford University Press, 2007) 99.

⁶⁷³ Mayson, above n 672, 99.

⁶⁷⁴ Landon, (1990), above n 613; Donald Landon 'Clients, Colleagues, and Community: The shaping of zealous advocacy in country law practice' (1985) 4 *American Bar Foundation Research Journal* 81; and Donald Landon 'Lawyers and localities: The interaction of community context and professionalism' (1982) 2 *American Bar Foundation Research Journal* 459.

⁶⁷⁵ Economides, Blacksell and Watkins (1986), above n 614, 161 – 181; Kim Economides, Mark Blacksell and Charles Watkins 'The Distribution of Solicitors in England and Wales (1988) 13(1) *Transactions of the Institute of British Geographers*, 39 – 56; and Kim Economides 'The Country

8.4.2 'Law as Business' and the Choice of Governance Structure

The concept of the professional service practice being treated as a 'business' was pursued by Maister.⁶⁷⁷ While the theory (and application) of a law practice being treated as a business may appear obvious, the approach is in tension with a traditional and widely-held belief that the practice of law as a 'profession' denies its simultaneous characterisation as a business.⁶⁷⁸ The reliance on the theory of 'legal practice as a business' changes the direction of research into the question of 'how and why are regional law practices sustained?' from looking into a law practice as a profession solely required to comply with a strong formal and informal regulatory regime (which may have been accurate historically), into the research of a dynamic, organic structure that is capable of growth and profit, that is able to promote and market itself and that can enter into alliances with other service-practices.

The qualitative data on the governance structure chosen by individual participants provided considerable data in terms of views on the respective advantages and disadvantages of sole practice, partnership or incorporated legal practice. Each type of governance structure is discussed in turn below.

The Risks for the Sole Practitioner

The literature identifies the risks for the sole practitioner as being present in the market place which may shift against the sole practitioner and the legal services he or she offers. The risks also come from clients who do not pay bills, and from the sole practitioner's own personal circumstances.⁶⁷⁹ The threats to the sole practitioner may be either external⁶⁸⁰ or internal. What is needed, according to Mayson, is a strategic approach to recruitment and retention of staff.⁶⁸¹

The quantitative data reflects that many RRR Queensland legal practitioners practise as sole practitioners without any other support either from other legal staff or administrative staff. Sixty-three percent⁶⁸² (172) of RRR practitioners in RRR Queensland practice are

Lawyer: Iconography, Iconoclasm, and the Restoration of the Professional Image' (1992) 19 *Journal of Law and Society* 115, 123.

⁶⁷⁶ Franklin, and Lee (2007), above n 302, 218.

⁶⁷⁷ David H Maister, *Managing the Professional Service Firm* (The Free Press, 1993).

⁶⁷⁸ Refer also to Sir Daryl Dawson who commented upon the commercialisation of legal practice with the inclusion of business ethics at the expense of legal ethical traditions, as stated in *The Legal Services Market*, (1995) 5 *Journal of Judicial Administration*, 147. Refer also to the documentation of similar concerns on the increasing commercialisation of legal practice by other members of the judiciary in Justice Geoffrey Nettle's journal article, 'Ethics – The adversarial system and business ethics', (2005) 10(1) *Deakin Law Review*, 67, including the views of Justice Michael Kirby that a culture of loyalty and self-respect should be balanced with the interests of commercialisation. The Honourable Justice Michael Kirby's comments were made in his article, *Legal Professional Ethics in Times of Change, Forum on Ethical Issues*, Sydney 23 July 1996, 5. Refer also to Thomas D Morgan, *The Vanishing American Lawyer* (Oxford University Press, 2010) Chapter 2 in which Morgan asserts that 'American lawyers are not part of a profession'. The Chapter outlines the distinction between the historical (and ethical) developments of lawyers in both America and England; the American rejection of the English approach to law and lawyering; and the role of American lawyers into the future.

⁶⁷⁹ Mayson, above n 672, 30.

⁶⁸⁰ Franklin, and Lee (2007), above n 302, 233.

⁶⁸¹ Mayson, above n 672, 30.

⁶⁸² Based on the 2008 data from Legal Service Commissioner, the total number of legal practitioners in Queensland is 1363. Based on the adapted ARIA Index, 271 of those practices can be termed to be located in RRR Queensland. Of the 271 RRR legal practices, 172 are practices in which there is one

sole practitioners. One hundred and two of those sole practitioners are the only holders of a practising certificate within the law practice. Of the thirty participants interviewed, nine (31%) were sole practitioners. Of these nine, five similarly were the only holder of a legal practising certificate.⁶⁸³ The qualitative data revealed some movement (to-ing and fro-ing) from sole practice to partnership and back again. A number of participants deliberately remained sole practitioners due to previous experiences with partnership - including a disappointment with partners and their characteristics; drinking, having affairs, unreliable ethics, being unprofessional, poor money management and, a lack of shared vision and values for the law practice. The results were described in terms of increasing stress and fear for the negative impact on the reputation of the law practice due to operating in a 'small town'. Other sole practitioners remained 'solo' on the grounds of their own desire for autonomy and independence and lacking trust in others.

The qualitative data also revealed levels of stress associated with legal practice both on the grounds of being a sole practitioner, including the inability to get away from the practice to have a holiday, fear of 'being run over by a bus', not being able adequately to comply with regulatory impacts and lack of professional collegiality to discuss legal issues.

The Importance of Partnership

The literature asserts that partnership as a governance structure for law practices works because it balances the competing needs of lawyers and clients (and owners.)⁶⁸⁴ The needs of lawyers relate to seeking high levels of autonomy⁶⁸⁵ and freedom to exercise independent judgment to provide expertise in their work. The needs of the client relate to trusting that the lawyer will focus on service rather than maximising profit.⁶⁸⁶ Partnership satisfactorily balances these needs.

The quantitative data reported that most of the participants had had some involvement in partnership during their legal careers; 50 percent of participants had had only one partnership, 33 percent had between two and three partnerships and, 17 percent had not been involved in any partnership. Partnership, as a governance structure, is also important for other reasons. The legal form of partnership⁶⁸⁷ that includes unlimited liability creates a tension within the partnership.⁶⁸⁸ This tension is relieved, however,

principal. Some of these practices include an employed solicitor. The 2008 data reveals that within 102 of these practices there is only one practising certificate held, and that is by the principal. These 102 practices are indeed operated by a 'sole' practitioner.

⁶⁸³ The earlier comment that a significant proportion of sole practitioners contacted (10%) actively declined to be interviewed; however, most of the sole practitioners were encouraged to be interviewed, chiefly by scheduling the interview after their working day. In contrast, most of the interviews with the partners were scheduled during their working day and generally at a time and day that fitted the author's schedule.

⁶⁸⁴ Empson, above n 627 'Your partnership: Surviving and thriving in a changing world: the special nature of partnership' in Laura Empson (ed), *Managing the modern law firm: New challenges, new perspectives* (2007) 10.

⁶⁸⁵ Ibid 11.

⁶⁸⁶ Ibid 15: The third need is that of 'the owner' of the partnership. Empson states that the interests of the owners which are geared towards the generation of income are best served when aligned with the interests of the professionals.

⁶⁸⁷ Ibid 13 – 15: The legal form, Empson states, is based upon its composition of an elite group, educated and formally recognised by the profession, and bound by unlimited personal liability through regulatory means.

⁶⁸⁸ Ibid 20.

through the ethos of partnership⁶⁸⁹ in which ‘the interests of the individual are reconciled with those of the collective’.⁶⁹⁰

The qualitative data revealed the depth of the partnership-ethos with participants with experience of partnership commenting on concepts such as ‘trust’, ‘shared values’, ‘partnership as a marriage’, ‘respect’, ‘partners would die for you’, ‘partners would carry you’, ‘a sense they would look after you’, ‘indulge my partner’ and ‘partners complement each other’.

Mayson proposes that the reduction in constraints and risk associated with sole practice occurs through the employment of legal assistance within a structure evolving into partnership.⁶⁹¹ However, there is also risk associated with partnership – economic, social and regulatory,⁶⁹² - including the impact of changing social trends (for example, the shifts in priorities of younger lawyers as potential partners).⁶⁹³ Partners must know why they are in business together and that knowledge should be gained through strategic thinking and business planning.⁶⁹⁴ The earlier discussion on *Strategic Management* is relevant in terms of how RRR legal practitioners perceive one of the functions of that process in terms of the partnership.

Partners also need to be able to negotiate and compromise; they need to be able to rely on fellow partners to perform duties that will limit professional and economic risk and exposure and partners need to be able to bear the consequences of the under-performing partner.⁶⁹⁵ Clearly, these risks involve the quality of the relationship between the partners and the ability to deal with variation of approaches to managing these risks. The discussion below – *Partnership Dispute Resolution* – follows through on discussing how RRR legal practitioners manage some of these risks.

Partnership Dispute Resolution

The significance of ‘partnership’ is clearly important for sustainable RRR legal practice. The theme of ‘partnership dispute resolution’ is at the heart of managing human capital and there are overlaps with the discussions on that topic in Chapter 9. It is contained here on the grounds that the stability of the partnership links with the discussion on *Governance Structure*, and as part of *Strategic Management*. Maister asserted that ‘[O]f all the ways of improving a professional firm’s success, partner performance counselling is one of the most powerful’.⁶⁹⁶

The data on this topic was varied and frank. The quantitative data reported that 47 percent of participants were currently in a partnership governance structure. The stability of partnership was reported in terms of the number of partnerships noted above; 50 percent of participants had had only one partnership, 33 percent had between two and three partnerships and, 17 percent had not been involved in any partnership. The

⁶⁸⁹ Ibid 22.

⁶⁹⁰ Ibid.

⁶⁹¹ Mayson, above n 672, 33 - 35. For further discussions on the ethos and dynamics of partnership, refer to Empson, above n 627, 10 – 36.

⁶⁹² Empson, above n 627, 23.

⁶⁹³ Ibid.

⁶⁹⁴ Mayson, above n 672, 35.

⁶⁹⁵ Ibid.

⁶⁹⁶ Maister, above n 677, 245.

significance of partnership dispute resolution for the stability of the legal practice is evident from the quantitative data that 47 percent of participants stated that a dispute with another partner was the reason for leaving the partnership and, that participants who had been involved in a partnership dispute indicated that they were considerably less satisfied in their ability to resolve such disputes, than in being able to deal with client or staff disputes.

The qualitative data provides insight into partnerships – why they work and why they don’t work. This was discussed at length and with great frankness during the interviews. Parallels with marriage were made by a number of the participants. Almost all of the participants commented on the occurrence of partnership disputes for a range of reasons, including criticism of the partner’s approach to dealing with legal issues, a sense of personal invasion into their office space, gender issues between partners of different sexes, different views on the purpose of the law practice and its priorities, partner embezzling practice funds, financial disputes, personality clashes, variation of values of different generations, extra-marital affairs of the partner with staff and/or others, unfair allocation of work, partners acting unethically and, partners acting unprofessionally. One participant simply declared that they had ‘had a better offer’.

Participants who spoke positively of their partnership did so in terms of both informal and formal methods of maintaining the partnership. Their informal methods included the ‘values’ and ‘respect’ they had for their partners, that there was ‘strength’ in the partnership, the need to state the issues clearly, being robust and honest with each other and resolving disputes speedily. One participant spoke of ‘indulging each other’ in terms of areas of legal interest. A number of participants likened partnership to being ‘a marriage’ (‘frustrating – like a marriage’). This group of participants described how they still experienced conflict and disputes, but that they also resorted to formal methods to deal with such disputes. These included the importance of negotiating issues among the partners, using the mediation skills of a third party who was either a consultant or a partner from another location and who had ‘distance’ from the issues, referring disputes to their CEO/managing partner and, having a partnership agreement that provided dispute resolution mechanisms. Not all disputes were capable of resolution. A few participants vowed never to go into partnership again.

Despite the pressures, Empson comments ‘If partnership is the optimal method of balancing the competing claims of its professionals, owners and clients, then it is logical to conclude that professional service firms should make every effort to retain partnerships’⁶⁹⁷ even to the extent of ‘imitating partnership’.⁶⁹⁸ The discussions below on *Incorporated Legal Practice* and *Strategic Alliances*⁶⁹⁹ are both methods to ‘imitate partnership’.

Incorporated Legal Practice

The theory of ‘legal practice as a business’ can be supported on a number of grounds including the legislative amendments that now permit law practices in Queensland to

⁶⁹⁷ Empson, above n 627, 29.

⁶⁹⁸ Ibid.

⁶⁹⁹ Refer also to Caroline Hart ‘Sustainable Regional Legal Practice: The importance of alliances and the use of innovative information technology by legal practices in regional, rural and remote Queensland’ (2011) 16(1) *Deakin Law Review* 225, 247 – 253.

incorporate.⁷⁰⁰ The statistical data on incorporation of legal practices in Queensland shows an increasing trend towards incorporation.⁷⁰¹ Incorporation provides the law practice with the legal mechanism to be able to exist as a separate legal entity, to limit its liability and to raise capital,⁷⁰² which enhances a law practice’s opportunities to be enterprising.

The provisions for incorporated legal practices (ILPs) now mean that a law firm can become a private or public company and can take advantage of the benefits of limited liability of directors and shareholders (who may be legal practitioners within the new company), along with a number of other potential financial and organisational benefits (including the sharing of receipts with non-lawyers).⁷⁰³ The new ILP structure has the potential to offer key advantages for legal practitioners, as articulated by Mark and Cowdroy,⁷⁰⁴ that include the holding of shares in an ILP may be a good investment, there is transferability of shares, the company continues in existence independently of the members and directors, capital-raising opportunities such as granting of security over its assets, issuing unsecured debentures, bills of exchange raising equity by floating on the stock exchange or, retaining profits rather than distributing dividends to shareholders. There are also financial benefits for example, companies are taxed at 30percent; in contrast, a partner must include net income from the partnership in their individual tax return where their tax rate can be 47percent. The management benefits include the division of decision-making power between directors, shareholders and employees can be tailored to the needs of the ILP; there is the possibility of the creation of a CEO’s role. For employees the benefits can include increased motivation and loyalty on the grounds of staff incentive schemes such as bonus share or options that can be offered to employees.⁷⁰⁵ It has also been proposed that ILPs can be used as a method of succession planning.⁷⁰⁶

New partners can be brought into equity gradually according to their performance or capacity to purchase shares ... Younger solicitors are likely to be heavily

⁷⁰⁰ Refer to Christine Parker, ‘Law Firms Incorporated: How Incorporation Could and Should Make Firms More Ethically Responsible’ (2004) 23 *University of Queensland Law Journal*, 347 on how the use of a corporate structure has the potential to increase the ethical responsibility of legal practices. Refer also to the concept of ‘ethical capital’ referred to by Umair Haque in his economic writings – *The New Capitalist Manifesto: Building a Disruptively Better Business* (Harvard Business Review Press, 2011) in which the demands of capitalism at the expense of ethics is critically analysed.

⁷⁰¹ For example, in 2008 out of a total of 1347 legal practices, only 29 were incorporated (ie. 2%), four of which were from RRR Queensland (0.3%). In 2008, there were 258 RRR legal practices, therefore 1.5% of those RRR practices had incorporated. By mid-2012, out of a total of 1589 legal practices in Queensland, 421 practices had incorporated (26%), and 75 RRR legal practices had incorporated (5%). The total number of RRR legal practices in 2012 was 308, therefore 24% of RRR legal practices had incorporated.

⁷⁰² Philip Lipton and Abe Herzberg, *Understanding Company Law* (Thomson Law Book Co, 13th ed, 2006) 3. Refer to the discussion in Mark Byrne and Reid Mortensen, ‘The Queensland Solicitors’ Conveyancing Reservation: Past and Future Development – Part I’ (2009) 28(2) *University of Queensland Law Journal*, 251, 258 in which it was stated that the ILP provides a business structure for lawyers that is a business structure for lawyers that is radically different from the traditional partnership. For example, it is not restricted to undertaking only legal practice, but it cannot conduct managed investment schemes – s112(2); the other directors need not be lawyers; there is no requirement that the ILP be owned even in part by a lawyer; receipts can be shared therefore it is possible that the resulting ILP could properly share profits with a clerk or non-lawyer conveyancer under referral or outsourcing arrangements (similar to those disciplined in *Adamson v Qld Law Society* [1990] 1 Qd R 498).

⁷⁰³ *Legal Profession Act (2007)* Qld. Refer to Chapter Two for a full discussion.

⁷⁰⁴ Steven Mark and Georgina Cowdroy ‘ILP – A New Era in the Provision of Legal Services in the State of New South Wales’ (2004) 22(4) *Penn State International Law Review* 671.

⁷⁰⁵ Mark and Cowdroy, above n 704, 676.

⁷⁰⁶ Anne Susskind ‘Incorporation is Here, Now, Says Carter New CEO’ (June 2008) *Law Society Journal* 18.

*burdened by HECS debts and home mortgages and therefore in no position to buy out a full partnership share. They can take up shares gradually ... This gives a firm a greater capacity to retain ... lawyers ... It is an easier way to allow entry and exit of partners.*⁷⁰⁷

As part of the status of being an ILP, legal practitioner directors must ensure that 'appropriate management systems'⁷⁰⁸ are put in place.⁷⁰⁹

The qualitative data provided important reflections on the use of ILPs from both those participants who had incorporated, as well as those participants who commented on the pre-ILP era. The latter group expressed frustration at the earlier limited governance structures that did not offer tax advantages. The benefits of using ILPs focused on perceived financial benefits, particularly the taxation benefits, improved practice management systems and, opportunities to attract, retain and progress legal staff and, succession planning.

The qualitative data did not include any references to ILPs being linked with ethical compliance, which was one of the original rationales for enabling ILPs.⁷¹⁰

Despite this lack of explicit discussion of ethics, it could be implied that the conflict between the practice of law and the managing of business is an ethical issue. That is, good business management never forgets that the practice of law is within the context of professional and ethical standards; at the very core of a successful law firm are strong, clear ethics. Mayson notes the relationship between law as a competitive business structure and the need for ethical compliance, seeing them as both being important objectives.⁷¹¹

⁷⁰⁷ Ibid 19.

⁷⁰⁸ The 'appropriate management systems' were included in Chapter 2 (*Literature Review*). The 'Appropriate management systems' identified by the Queensland Law Society include: competent work practices to avoid negligence; effective, timely and courteous communication; timely delivery, review and follow up of legal services to avoid instances of delay; acceptable processes for liens and file transfers; shared understanding and appropriate documentation from commencement through to termination of retainer, covering costs disclosure, billing practices and termination of retainer; timely identification and resolution of the full extent of conflicts of interests; records management, including registers of files, safe custody, financial interests; undertakings to be given with authority including compliance with notices, orders, rulings, directions of other requirements of regulatory authorities such as the LSC, QLS, courts or costs assessors; supervision of the practice and staff; and avoiding failure to account for trust monies. These are taken from Queensland Law Society, *QLS Guide to Appropriate Management Systems* (March 2009), 2, <<https://www.qls.com.au/content/lwp/wcm/connect/resources/file/ebfe674b5616c06/AMS%20Guide%20WEB.pdf?MOD=AJPERES>>. The Queensland Law Society also includes information on ILPs: Queensland Law Society, *Information Kit: Incorporated Legal Practices ('ILPs') Practice Support* Version 7.0 (7 July 2007) <www.qls.com.au/.../lwp/wcm/resources/file/ebc41904ec70fc3/QLS_Guides%20-%20ILP%20Information%20Kit.pdf>, viewed on 03 October 2012.

⁷⁰⁹ *Legal Profession Act*, s 117(3).

⁷¹⁰ Refer generally to Mark (2004), above n 704, John Briton and Scott McLean 'Incorporated practices: Dragging the regulation of the legal profession into the modern era' (2008) 11(2) *Legal Ethics* 241; and Parker (2010), above n 700. Refer also to Caroline Hart 'Business structures and sustainable regional legal practice: The use of incorporated legal practice by regional, rural and remote legal practitioners' (2012) 2 *International Journal of Rural Law and Policy*, 1.

⁷¹¹ Mayson (1992), above n 391, 4.

It is likely that the governance structure of the ILP will become increasingly used by RRR legal practitioners. There is still a strong ‘emotional attachment’⁷¹² to the ethos of professional partnership referenced in both the literature⁷¹³ and expressed through the qualitative data.

8.4.3 Strategic Management

Strategic management refers to the whole pattern of decisions that sets the long term direction of the organisation.⁷¹⁴ ‘There tends to be a concern not with a specific decision, although some specific decisions may be critically important, but with the pattern over time.’⁷¹⁵ Sustained competitive advantage is a fundamental business management concept that has been developed and linked to strategic management by researchers such as Barney.⁷¹⁶ Barney is cited throughout much of the law firm management literature and particularly by Mayson.⁷¹⁷ The key concepts relate to putting in place strategic management processes,⁷¹⁸ developing strategic alliances⁷¹⁹ and measuring firm performance,⁷²⁰ discussed below.

⁷¹² Ibid 322.

⁷¹³ Maister above n 677, Mayson above n 672 and Galantar above n 72.

⁷¹⁴ Jeremy Davis and Timothy Devinney, *The Essence of Corporate Strategy: Theory for Modern Decision Making* (Allen & Unwin Australia, 1997) 7.

⁷¹⁵ Ibid.

⁷¹⁶ J Barney ‘Firm resources and sustained competitive advantage’ (1991) 17 *Journal of Management* 99 and J Barney, *Gaining and Sustaining Competitive Advantages* (1997); and Jay Barney and William Hesterly, *Strategic Management and Competitive Advantage* (Pearson-Prentice Hall, 2008).

⁷¹⁷ Barney, *Gaining and sustaining competitive advantage* (Upper Saddle River NJ Prentice Hall, 2nd ed. 2002), cited by Mayson, above n 672, 46 in terms of competing successfully; and Barney, (1991), above n 716, cited by Mayson, above n 672, 267 in terms of the elements of competitive advantage. Mayson devotes a chapter – Chapter 8, The nature of competitive advantage, above n 672, 119 – 136. Also cited by Peter D Sherer, ‘Your competitors: Mapping the competitive space of large US law firms: a strategic group perspective’ in Empson, above n 627, 162, 168 - 184.

⁷¹⁸ Barney (2008), above n 716, Chapter 1.

⁷¹⁹ Ibid Chapter 9; and D Ernst, and J Bleeke, *Collaborating to compete: using strategic alliances and acquisition in the global marketplace* (John Wiley, 1993) and J Barney and H Hansen, ‘Trustworthiness as a source of competitive advantage’ Winter 15 *Strategic Management Journal* 175 – 190; G Lorenzoni and A Lipparini (1999), ‘The leveraging of inter-firm relationships as a distinctive organisational capability: A longitudinal study’ (1999) 20(4) *Strategic Management Journal* 317. See also Barney (1996), above n 716, Chapter 9. In particular, at 284 dealing with cooperative strategies and strategic alliances; at 286 dealing with the economic value of strategic alliances; and at 300 dealing with strategic alliances and sustained competitive advantages. Refer also to Antonia Albani and Jan LG Dietz, ‘Current trends in modelling inter-organisational cooperation’ (2009) 22 (3) *Journal of Enterprise Information Management* 275, 297, in which it was concluded: ‘there is a clear trend in business and industry that companies increasingly participate in cooperative networks for their own benefit. These networks may be temporary... or more or less permanent. Either way they are dynamic: during the existence of the network, members may join and leave. In order to meet the requirements and challenges of participating in networks, companies must be able to cooperate effectively and efficiently.’ Refer also to Joseph L Badaracco, *The knowledge link: How firms compete through strategic alliances* (Harvard Business School Press, Boston, 1991). Refer also to Brian Uzzi, Ryon Lancaster and Shannon Dunlap, ‘Your client relationships and reputation: Weighing the worth of social ties: Embeddedness and the price of legal services in the large law firm market’, in Empson above n 627.

⁷²⁰ Barney (1996), above n 716, at Chapter 2 discussing ‘measuring firm performance’ and firm survival as a measure of performance. Refer also to Robert S Kaplan and Robin Cooper, *Cost & effect: Using integrated cost systems to drive profitability & performance* (Harvard Business School Press, Boston Massachusetts, 1998); and Robert Kaplan and David P Norton, *Alignment: Using the balanced scorecard to create corporate synergies* (Harvard Business School Press, Boston Massachusetts, 2006); and Robert Simons, *Performance Measurement & control systems for implementing strategy* (Prentice Hall, Upper Saddle River, New Jersey, 2000); and Azhdar Karami, *Strategy Formulation in*

The quantitative results indicated that participants had a slightly increasing trend or desire to be involved in business planning in terms of considering this activity being carried out 'last year', 'this year' and 'next year'. It might be suggested that their involvement in this research had piqued their interest in the relevance of business planning.

It was clear from the qualitative data that the approach to business planning was polarised in terms of those law practices that implemented strategic business planning and those that did not carry out any business planning. The qualitative data included the reflection that RRR legal practitioners do not plan to the same extent that metropolitan legal practitioners do; that only informal business planning occurs and that there is simply no time to carry out this activity. One participant was motivated into business planning only after experiencing severe health issues. In contrast, a significant number of the comments included that detailed business planning occurred which involved the services of external consultants, and further, that lawyers are running a business and required a dedicated CEO role to carry out that aspect.

Who is Involved in Business Planning?

The literature indicates that it is essential for effective strategic management that employees be involved in the formulation of such strategies. Whilst 'strategy is formulated at the top ... it must be executed at the bottom.... If employees do not understand the strategy or are not motivated to achieve it, the enterprise's strategy is bound to fail.'⁷²¹

The quantitative data reported that most business planning was carried out by principals (or directors). The qualitative data gave further insight, with a number of participants indicating that expert external resources were used to assist with business planning including external consultants, accountants and financial advisors. One participant commented that business planning was also assisted by relying on continued education. Only a few participants indicated the presence of a dedicated person within the law practice who took on the role of business planning. In one instance it was described as a 'dictatorship'.

Almost all of the responses acknowledged that this was time-consuming and would effectively remove the participant from the ability to be generating income from legal work.

In terms of the involvement from within the legal practice in business planning, most participants indicated that this remained at the principal level – that it was only partners (or the sole practitioner) involved in business planning. The quantitative data on the responsibility for the management, direction and leadership relating to the topics of strategic management (and profitability) of the law practice among principals (or directors) indicated that there was a split between these roles being the predominant responsibility of only one of the principals (or directors) and conversely, that this role was equally shared. (In contrast, in the areas of client satisfaction, marketing and innovation and development – such responsibilities were usually equally shared.) In a few instances

Entrepreneurial Firms (Ashgate, England, 2007) in which firm performance measurement is discussed at 124: 'Performance measures are a common control mechanism. They communicate desired outcomes or behaviour to employees and are used to evaluate the degree of success in achieving goals.'

⁷²¹ Kaplan and Norton, above n 720, 261.

participants commented that discussion involved solicitors and administrative staff in the planning process. In most cases that discussion process followed a hierarchical approach that involved first solicitors and secondly administrative staff. In only one instance, the participant noted that business planning had been delegated to a junior employee.

Again the approach to business planning and who is involved appeared to be highly polarised, with high level strategic planning involving all members of the law practice (to varying degrees) contrasted with minimal informal business planning carried out with little or no input or consultation, followed by minimal communication on the results.

Measuring Performance

Kaplan emphasised the importance of measuring the elements that an organisation wants to manage, 'You can't manage what you don't measure'.⁷²² The literature suggests that the best performance measures are those that are linked to a firm's strategy.⁷²³ They are a common control mechanism that can be used to communicate outcomes or behaviour to employees and are used to evaluate whether the goals have been achieved.⁷²⁴ The question that usually arises when attempting to define the indicators to be used is, 'do the factors have an impact on producing a sustainable profit and how can they be quantified?'.⁷²⁵

From the areas of revenue, profit, customer satisfaction and market share, the quantitative results indicated that 'profit' and 'customer satisfaction' were the most commonly used indicators to measure the law practice's performance. The importance of measuring customer satisfaction is consistent with data discussed in Chapter 9 (*Reputation and Embeddedness*) in which client satisfaction was seen as being a key aspect for maintaining and bringing in work for the practice.

The qualitative data indicates that participants were polarised in terms of their levels of confidence in using indicators to measure performance. A number of participants confidently and comprehensively used indicators to measure the performance of the law practice and stated that this was part of the processes in place from the moment a client walked in. Such processes were embedded in identification and measurement of client referrals, author details and client satisfaction. Some participants indicated that this aspect of business planning was the result of having worked in large metropolitan law firms (as opposed to colleagues who had only had RRR legal practice experience). Other participants used no such processes.

Sources of Information for Making Decisions

In order to make decisions on strategic management, recruitment and retention, marketing and information technology decisions, the quantitative data revealed that participants

⁷²² Kaplan (2006) above n 720, 245.

⁷²³ Kaplan and Norton, above n 720, 261.

⁷²⁴ Karami, above n 720, 124.

⁷²⁵ Ibid 124. Refer also to William R Lasher, *Strategic thinking for smaller businesses & divisions* (Blackwell Publishers Inc, Oxford UK, 1999) 122 in which he stated that 'measurability' can include revenue and profit also customer satisfaction. He indicated at page 122, that it is also important to have supporting strategic information. 'A firm has to be able to collect strategically relevant information to manage strategy well. However some strategic information isn't likely to be collected as a matter of routine, for example, customer satisfaction where the firm needs to take surveys and track the results to create a system in which the firm's performance on the issue can be measured.'

relied upon a practice management policy or that it was developed under the legal practice's business plan rather than professional or legal journals, or the expertise of consultants. This is consistent with Franklin and Lee's conclusion that RRR law practitioners are not strategic.⁷²⁶

8.4.4 Number of Locations of the Legal Practice

The literature acknowledges that there is a strategic rationale for the local firm to add other locations, including where clients themselves suggest to add other practice areas in order to serve their own legal needs, to share core competencies so that where a law practice has developed a depth of knowledge they can leverage into a new service and, to diversify the risk associated with one practice area or location and to offset against another location.⁷²⁷

Mayson's perspective on increasing the number of locations possibly fits more accurately with the qualitative data relating to the use of strategic alliances, in which client needs, depth of knowledge and the diversification of risk are met through loose, informal alliances that span the RRR spectrum. That discussion occurs later in this chapter under *Strategic Alliances*.

The quantitative data revealed that 57 percent of participants practised from one location only, 40 percent from two to three locations and only one operated from more than four locations. The qualitative data revealed that with those who did operate from other locations, in some instances they spanned the Access to Legal Services Index in terms of rural, remote and regional. The reasons for the multiple locations included that it provided a method of distributing types of legal work – that a metropolitan office would deal with business services and litigation and that a regional office would specialise in not-for-profit work and agribusiness. Multiple locations were also used to accommodate partners with health, personal or family needs.

8.4.5 Strategic Alliances

The literature acknowledges the importance of strategic alliances as part of sustainable competitive advantage.⁷²⁸ Strategic alliances are recognised as being diverse,⁷²⁹ of economic value⁷³⁰ and as needing to be managed⁷³¹. They are also seen to be a source of knowledge for an organisation,⁷³² extending organisational capability,⁷³³ and for

⁷²⁶ Franklin and Lee, above n 302.

⁷²⁷ Mayson, above n 672, 114.

⁷²⁸ See Badaracco, above n 397 at Chapter 5 for the importance of strategic alliances for knowledge links, Chapter 6 on how to manage alliances and Chapter 9 for types of strategic alliances and their economic value. See also Lorenzoni and Lipparini, above n 397, 317, and Davis and Devinney, above n 714, Chapter 8 for a discussion on strategic alliances and the creation of 'vertical integration' from linking with the referrers of work.

⁷²⁹ Barney, (1996), above n 720, 284.

⁷³⁰ Ibid 286.

⁷³¹ Badaracco, above n 397, Chapter 5.

⁷³² Ibid.

⁷³³ Lorenzoni and Lipparini, above n 397, 317.

providing work through referrals⁷³⁴. Alliances and cooperative networks are also an increasing part of many organisations.⁷³⁵

The literature⁷³⁶ discussed above in *Number of Locations* acknowledged the strategic rationale in a law firm being involved in more than one practice location on the grounds that it has the potential to meet client needs, allows sharing of core competencies and diversify risk. The data is consistent with the literature. The quantitative data indicates that alliances with other RRR law practices are the most common, followed by alliances with a specialist legal practice. Participants indicated that plans to purchase another law practice registered as being part of their current strategic planning. Of note is the absence from participants’ plans to ally with either a non-professional practices (for example, real estate firm) or with a non-legal professional practice (for example, an accountancy firm).

The qualitative data provides greater insight into the depth and breadth of the use of alliances by the participants. The alliances were both formal and informal. Alliances were formed with individual lawyers from a range of other law practices that span RRR Queensland, state borders and international borders. Interestingly, the qualitative data conflicted slightly with the quantitative data, in that participants spoke of alliances formed also beyond the profession, with participants indicating they form such associations with non-lawyers including financial planners, accountants, government workers and real estate agents. The earlier quantitative data suggested the absence of such alliances. These alliances were formed to deal with sharing legal knowledge and experience, financial knowledge and for dealing with stressful situations. They were used as quasi-partnerships in which participants indicated that they could obtain specialised legal advice without the threat of losing their clients. The importance of ‘reciprocity’ in the alliances was discussed by a number of the participants.

The alliances also spanned long periods of time with some participants noting that the relationship stemmed from earlier employment or interaction. Much of the discussion on alliances included relationships that might also be described as ‘mentor/mentored’. Identified benefits of the alliances included the ability to provide a client with specialist advice but without losing the client, reduction in stress levels, collegiality, continued education and knowledge building and, building practice areas. Alliances seemed to be as important for sole practitioners as they did for partnerships.

8.4.6 Fees and Billing, Profitability and Growth

Both Maister and Mayson identified the link between profitability and fees and billing. Maister⁷³⁷ and Mayson⁷³⁸ considered strategic billing as the basis of profitability and took into account leveraging. Both agreed that the link with growth and profitability went beyond billable hours: ‘What you do with your billable time determines your current income, but what you do with your non-billable time determines your future.’⁷³⁹

⁷³⁴ Davis and Deviney, above n 714, Chapter 8.

⁷³⁵ Antonia Albani ‘Current trends in modelling inter-organisational cooperation’ (2004) 22 (3) *Journal of Enterprise Information Management* 275, 297.

⁷³⁶ Mayson, above n 672.

⁷³⁷ Maister, above n 677, 8.

⁷³⁸ Mayson, above n 672, 202.

⁷³⁹ Maister, above n 677, 46 and cited by Mayson, above n 672, 307.

Fees and Billing

In recent times, current methods of billing, particularly hourly billing, have been the subject of criticism.⁷⁴⁰ The issue of fees and billing is perhaps one of the most important features that highlights the competing interests of legal practitioners in terms of satisfying the professional and ethical regulatory requirements under the *Legal Profession Act 2007* (Qld) and the necessity 'to make a profit' in order to keep the legal practice sustainable.

The quantitative data indicated that more than 50 percent of participants relied on moderate fees based on billing due to greater use of less skilled staff. There was diversity in the approach to billing ranging from the ad hoc approach that compared it to 'throwing a dart at a dart board' to the understanding that legal staff needed to be educated into the need for appropriate and competitive billing. Most participants distinguished between the amount billed upon the basis of qualifications and expertise of the staff carrying out the legal work. One participant commented that employed solicitors were 'not taught how to time bill; they do not know how to run a business ... to keep the work flow going'. One participant stated that conferences were a source of finding out what other solicitors do in billing.

Common to a number of participants was the comment that fees needed to be justified to both the practitioner and to the client. This point was made in terms of creating a benefit to the client and the likelihood of the bill being paid because the client knew (and appreciated) the work carried out and, from the practitioner's point of view, it reduced stress, increased reputation and assisted with ethical compliance.

The lack of client understanding about the work carried out by solicitors – and hence the inability to charge a particular fee – was a common complaint even from participants who had taken a sophisticated practice management approach to billing. The comment extended to a negative comparison between RRR and metropolitan legal practitioners, as well as between legal practitioners and other occupations (ie. plumbers). There was a sense that RRR legal practitioners were always on call and available to provide legal advice and yet not able to expect recompense. A number of participants commented that they factored in the work needed to deal with 'difficult clients' through billing methods that were given derogatory titles, for example 'the arsehole rate'.

A number of participants commented that billing depended on the legal practice area; some had even analysed practice areas to determine the most lucrative. There were only a few comments in terms of the timing of sending out bills in order to maximise cash flow within the legal practice. One comment related to an understanding that RRR life is cyclical in terms of the client's own cash flow situation.

There was considerable criticism of the regulatory bodies associated with legal practice (including both Lexon and the QLS) in terms of having imposed unreasonable demands upon legal practitioners about how and when to advise clients about disputing bills.

⁷⁴⁰ Mayson above n 391, 4. Mayson commented that: 'In retrospect, a reliance on hourly charging was probably the single largest error of the profession in its recent history. ... [I]t is inevitable that lawyers will try to create as many chargeable hours as possible. Here is a system that rewards the inefficient, the ignorant, and probably even the downright incompetent. Client satisfaction and service become secondary issues.'

Another complaint about these organisations was that the QLS had impacted negatively upon legal practitioners' incomes through regulatory changes to legal practice areas.

Profitability

Kaplan acknowledged the tensions between growth, profit and the ability to manage both aspects of a business organisation. He stated that 'an excessive emphasis on profit and growth can lead to danger. Employees may engage in behaviours that put the business at risk. They may misconstrue management's intentions and innovate in ways that present unnecessary risks to the business.'⁷⁴¹

Both Maister and Mayson gave considerable attention to the need for 'profitability'.⁷⁴² Maister's strategic approach emphasised the need for profitability⁷⁴³ to the extent of determining a calculation of profit/partner. Maister relied upon a model of leveraging profit based on a hierarchy of fee-earners to partner ratio. He did not specifically discuss 'business planning' or 'strategy'. Instead, he pointed to the actions needed to bring about profitability.

Approaches to Profitability

The quantitative data on profit indicated an increasing trend in profitability in terms of 'last year', 'this year', 'next year'. A number of points need to be made about this data that limit conclusions that can be drawn. First, the estimation of profit was self-assessed and therefore subjective without any verification of the data being made. A number of participants provided specific figures about the profitability of their legal practice but these were not able to be cross-referenced (triangulated). A second point is that the quantitative data was drawn from interviews that spread across two years and that the 'years' were not aligned among the participants.

There was great diversity with respect to the qualitative data relating to profitability. The need for profitability was almost universally commented upon by the participants. However, surrounding the need for profitability was a number of other considerations to the extent that profitability was considered secondary to other aspects. A number of participants put forward the following views that qualified the need for profitability. Profitability needed to be considered over a period of time rather than merely annually, that it was only one consideration of a sustainable RRR legal practice – a balanced life for the partners and opportunities for staff development (and happy staff) were also important, the overriding importance of retaining clients rather than seeking mere profit, that it was more important to pursue sustainability by limiting growth in the interests of providing service as well as capping fees to retain clients. One participant commented that they employed more staff than necessary in order to pursue sustainability over profit.

⁷⁴¹ Kaplan (2006), above n 397, 8.

⁷⁴² Maister, above n 677, discusses 'profitability' in terms of 'leverage' and the firm structure at 8 and 31 to 36, and 41; for compensation for staff, at 27; with reference to billing, at 25; and the role of the partner's supervision in increasing profit, at 246. Mayson, above n 672 defines 'profitability' as now have to acknowledge 'the prospect of external investment and ownership ... becoming a reality..., profit could in future be shared with investors who are not necessarily equity-owning lawyers engaged in the delivery of a firm's professional services. Their focus will be on the return to entrepreneurial risk. This is arguably a truer measure and comparator of profit than the usual measure of total net profit in law firms', at 281.

⁷⁴³ Maister, above n 677, Chapters 3 and 4.

A number of participants commented that profitability was something to be 'averaged' against multiple law practice locations or other entrepreneurial pursuits (ie. a grazing property) rather than considered solely the outcome of a single RRR law practice location. Allied to this notion were the comments that some diversity of legal practice areas countered downturns in one area to provide upswings in others and therefore providing profit. Legal practice areas that had provided profit included property during the property boom, family law (divorces) as part of the mining boom and fly-in/fly-out locations and, unfair dismissals during the global financial crisis (GFC).⁷⁴⁴

External and Internal Impacts on Profitability

Participants saw external factors as being both a positive aspect of profitability as well as a negative aspect. The previously mentioned areas of the property boom, mining and the GFC were seen as positive impacts on profitability. External factors that were seen as being a negative influence, included the GFC (again), recessions, regulatory changes, for example, the GST and income tax generally, and elections.

For the RRR legal practitioner, the Australian literature also acknowledges⁷⁴⁵ that the reduction in the availability of legal aid has resulted in 'changing patterns of activity within the legal services industry'.⁷⁴⁶ RRR legal practices are usually sole or small practices, earn less than their metropolitan counterparts and 'rely on work in areas of practice that attract considerable competitive pressures (such as conveyancing, wills and estate and family law)'.⁷⁴⁷ The reduction in the availability of legal aid has also been identified as a contributing factor in the picture of falling profitability of rural practice.⁷⁴⁸

The qualitative data supported the competitive nature of legal practice areas, in particular the comments focused on the negative impacts on fee structures that were regarded to be the result of decisions by the QLS, for example, in relation to conveyancing. The literature indicates some external intervention to assist the RRR legal practitioner that included financial incentives to the private sector under the *Regional Solicitor Program through Legal Aid Qld* (2004),⁷⁴⁹ taxation incentives via zone tax offsets and HECS rebates and, increasing opportunities for clinical placements in law through the *Regional Summer Clerkships Project in Victoria* and the *Law Graduates for Community Legal Clinics* (available nationally).⁷⁵⁰

⁷⁴⁴ For further details on the meaning of the Global Financial Crisis, and factors involved, refer to Robert J. Shiller, *The subprime solution: How today's global financial crisis happened, and what to do about it* (Princeton University Press, 2008). Shiller describes issues associated with US sub-prime mortgage market in which factors including dishonesty among mortgage lenders and mistakes by the former Federal Reserve Chairman, Alan Greenspan as having negative financial impacts upon the US economy, which then spread throughout other countries, causing the Global Financial Crisis.

⁷⁴⁵ Trish Mundy, *Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW: A Literature Review* (Northern Rivers Community Legal Centre, 2008) 17.

⁷⁴⁶ Mundy, above n 745, quoting Martin and Verbeek Marks, *National Competition Policy: A discussion paper*, Law Society of New South Wales, March 2002.

⁷⁴⁷ Ibid 2.

⁷⁴⁸ J Dewar, J Giddings and S Parker, 'The impact of changes in Legal Aid on Criminal and Family Law Practice in Queensland', *Executive Summary*, 1998 73 – 74.

⁷⁴⁹ Refer also the D Adams, *Review of the Regional Solicitor Scheme*, Legal Aid Queensland, June 2007 and F Guthrie and Watters, *Evaluation of the Regional Solicitor Program*, Legal Aid Queensland, July 2005, both referred to by Mundy, above n 745.

⁷⁵⁰ Mundy, above n 745. See also Mundy for references to reviews of these schemes by Law Institute of Victoria, Working Paper: Attraction and Retention of Legal Practitioners to Rural and Regional Areas Strategy, 2008; RL Miles, C Marshall, J Rolfe and S Noonan, *Attraction and Retention of Professionals*

The qualitative data indicated that some participants relied upon attracting legal staff who would carry out legal aid work and so be eligible for legal aid funding in order to supplement the ability to fund employed solicitors. The qualitative data also indicated that some participants supplemented the ‘profitability’ of their legal practices through the pursuit of other businesses that included paid employment such as lecturing, property investments and farming.

Some of the internal factors that were seen as being a negative influence on profitability included the infrastructure costs of running a practice and the unethical behaviour of partners. One of the areas seen to be sacrificed to profitability was that of professionalism and collegiality. Some participants considered that there were factors within their control that might enable them to maximise profitability. These participants listed factors such as developing high levels of service and staff, gaining business management knowledge, strategic choice of legal practice areas, resilience and, educating legal staff on components of profitability and creating a competitive internal environment.

Growth

The theory that a firm has organic properties including the potential for growth was identified by Penrose.⁷⁵¹ Consistent with the elements of ‘sustainability’ as identified by this research (refer to Chapter 3), Penrose stated that firms do not have opportunities for infinite growth, but rather there is an optimal size firm.⁷⁵² Penrose stated that the question she wanted to investigate in terms of analysing the growth of firms was to determine ‘whether there was something inherent in the very nature of any firm that both promoted its growth and necessarily limited its *rate* of growth’.⁷⁵³ Further, this discussion is relevant for the development of the elements of ‘sustainability’, including the concept that growth can (and possibly should) be limited.

The Timing of Growth

The concept of ‘growth’ is complex as identified in both the economic and management literature. Some acknowledgement of the importance of growth in terms of timing is evident in the work of Greenbank who found that the most important period for any small business tends to be during the initial stages.⁷⁵⁴ This point emphasises the limitations on the current research in terms of the collection of the data and the point in the cycle of the different RRR legal practices.

Limiting Growth

The management literature⁷⁵⁵ distinguished between ‘entrepreneurs’ and ‘small business owners’, concluding that the objectives of entrepreneurs tend to be growth related, while those of small business owners normally relate to personal goals. Once the firm reaches a

to Regional Areas, produced for Queensland Department of State Development and Innovation, 2004; and Standing Committee on Regional Development, *Attracting and Retaining Skilled People in Regional Australia: A Practitioners’ Guide*, Perth, February 2004.

⁷⁵¹ E Penrose, *The Theory of the Growth of the Firm* (Oxford University Press, 3rd ed, 1959/1995). Penrose’s work considered firms in general rather than either law firms specifically, or even professional service firms.

⁷⁵² *Ibid* Chapter 6.

⁷⁵³ *Ibid* xi. See also Chapter 10 where Penrose referred to small firms as being distinct and having special features in comparison to large firms, including access to finances.

⁷⁵⁴ P Greenbank, ‘Objective setting in the micro-business’ (2001) 7(3) *International Journal of Entrepreneurial Behaviour and Research* 108, 120.

⁷⁵⁵ Greenbank, above n 754.

certain level at which the owners might lose personal control, further growth was not sought. Watson⁷⁵⁶ found that money was not the main motivator, but that the satisfaction of owning a business and the desire to remain in control was found to be a major factor limiting growth. Franklin and Lee's findings were similarly that RRR legal practitioners will sacrifice profit (and growth) in exchange for a 'better quality of life'.⁷⁵⁷

Growth of the law practice through mergers with other practices in other towns was also found to be unappealing on the basis that the 'supervisory and regulatory responsibilities effectively doubled'.⁷⁵⁸ Solicitors continued to 'resist opportunities for moving beyond anything other than loose informal collaborative arrangements with other local professional service providers' and that the desire for personal autonomy was too high.⁷⁵⁹ The data revealed that the most common method of growth for RRR legal practitioners was through the formation of alliances. *Strategic Alliances* have been discussed earlier in this chapter, under *Strategic Alliances*.

Almost all of the participants who provided comments on growth viewed the concept with caution. None of the participants spoke in terms of wanting to expand and grow purely for its own sake. A number of participants commented that growth needed to be prefaced by consolidation and then to be strategic and based upon expert advice. Growth was also discussed in terms of being controlled and only pursued if it meant profit and increased competitiveness. In some circumstances, growth was not sought at all. Rather, the desire to improve what was already being offered in terms of service was seen as being more important. The qualitative data also supported the literature in terms of the importance of autonomy, work flexibility, not wanting to bring in a partner and quality of life as being motivators for not pursuing growth of the legal practice.

Strategic Growth and Entrepreneurial Characteristics

The law management literature⁷⁶⁰ consistently expressed a connection between profitability and growth. Growth is seen as being 'essential for professional firms in order to motivate and retain the firm's best staff who generate the income and profit. 'Without growth much of the dynamism of the practice will be lost.'⁷⁶¹ The law management literature (focusing on institutional law) however, needs to be read in the context of the small/medium enterprise-management ('SME-management') literature on the grounds that most RRR legal practices are 'small businesses' and not 'institutional'. The SME-management literature is consistent in identifying links between the sustainability of growth and, the role of the entrepreneur, who is responsible for making the strategic choices for the organisation.⁷⁶² Leaders of high-performance organisations are constantly seeking profitable growth. To do so, they are continually innovating, developing new services, or

⁷⁵⁶ K Watson, S Hogarth-Scott, N Wilson, 'Small business start-ups: success factors and support implications' (1998) 4(3) *International Journal of Entrepreneurial Behaviour and Research* 217.

⁷⁵⁷ Franklin and Lee, above n 302, 236.

⁷⁵⁸ Ibid 242.

⁷⁵⁹ Ibid.

⁷⁶⁰ Maister above n 677 and Mayson above n 672.

⁷⁶¹ Maister above n 677, 36.

⁷⁶² Colm O'Gorman, 'The sustainability of growth in small and medium-sized enterprises' (2001) 7(2) *International Journal of Entrepreneurial Behaviour & Research* 60, and Richard Choueke and Roger Armstrong, 'Culture: a missing perspective on small to medium sized enterprises' (2000) 6(4) *International Journal of Entrepreneurial Behaviour and Research* 227. See also Penrose, above n 751 in which the growth of the firm is linked to factors such as entrepreneurial ambition (page 39) and judgment (page 40).

developing new ways of carrying out internal tasks. ‘Over time, successful innovation finds its way into sustained profitability and growth.’⁷⁶³

The SME-management literature emphasises the role of ‘the entrepreneur’ as being vital to the sustainability of the organisation. The importance of this role is consistent with Landon’s conclusion that the role of the RRR legal practitioner must be entrepreneurial. The literature highlights the difficulties in achieving sustainable RRR legal practice for those practitioners studied by Franklin and Lee who sought ‘quality of life’ over strategically developed profit and growth.

The literature assists with explaining the qualitative data in terms of the diversity in approaches towards growth, profit and entrepreneurial characteristics. For example, the data indicates some polarisation between participants who perceived their role primarily to be that of developing the legal practice and who actively sought out opportunities for new clients, new areas of law and developing staff, in contrast with those participants who saw their role as primarily being lawyers providing legal services only. Participants who were the principal partners in the biggest law firms expressed a similar view that ‘they hated the law’ but enjoyed the management of the law practice. Other participants - who were involved with large, long-running law firms who enjoyed ‘the law’ -, installed practice managers to assist with the business of the law practice. In both instances there was either express or implied acknowledgement of ‘law as business’.

Growth and the Work Culture (the ‘Normative Environment’)

The qualitative data also indicated that growth was seen as being a factor in fostering other aspects linked to the law practice being sustainable, for example, offering an attractive work culture and the potential to provide a social life to for staff. The practicalities of growth were viewed by a number of participants in terms of needing to provide a physical location for the growth of the law practice. For example, one participant’s law practice relocated the practice from a CBD location to a suburban location in order to bring about growth and to provide staff accommodation. Growth was also considered in terms of the non-physical environment, with one participant seeking to grow via use of the internet.

External Impacts on Growth

Some participants commented that external factors had an impact – both negative and positive – on growth. The negative related to the lack of population that necessarily limited growth and the positive aspects related to new economic developments that increased legal work opportunities and therefore promoting growth.

8.5 Summary

This chapter began the discussion of the research findings from the quantitative and the qualitative data and integrated it with the relevant literature, including the elements of the definition of ‘sustainability’. Specific conclusions and recommendations were also given in view of the research findings. The chapter focused on the research question, what is the prevalence and nature of sustainability practices in RRR law practices? The chapter

⁷⁶³ Simons, above n 720, 7.

**Chapter 8 – Discussion of the Results (Part 1):
‘The Nature and Prevalence of Sustainability Practices’**

discussed the research from the structured interviews with reference to the seven research issues that dealt with RRR legal practitioners’ connectedness with the profession and the more important connectedness with the community. The chapter discussed the nature of the business carried out, including the legal practice areas, the difficulty of specialising, issues of lack of expertise in some legal practice areas, opportunities for expanding legal practice areas and the extended role of RRR legal practitioners. The chapter discussed the nature of business planning carried out and as part of that discussion considered the impact of ‘embeddedness’ and geography on business planning, ‘law as a business’ and the choice of governance structures taken up by RRR legal practitioners, strategic management and the importance of strategic alliances. The chapter also discussed how RRR legal practitioners deal with fees and billing, profitability and growth. The following chapter continues the discussion of the results with reference to the remaining three RIs dealing with recruitment and retention, marketing practices, and the use of information technology.

Chapter 9

Discussion of the Results (Part 2): 'The Prevalence and Nature of Sustainability Practices'

9.1 Introduction

This chapter continues the discussion of the research findings from the quantitative and the qualitative data and integrates it with the relevant literature, focusing on the data relating to the research issues (RIs) 5 to 7 dealing with recruitment and retention, marketing practices and use of information technology. The discussion in this chapter also includes references to the definition of 'sustainability' that comprised the elements of longevity of the practice, profit, controlled growth, renewable resources (including legal staff and clients) and the normative environment within the law practice. The definition was outlined in Chapter 3.

9.2 RI 5: The Prevalence and Nature of Recruitment and Retention Used by Legal Practices in RRR Queensland

The legal practitioner operates within a regulatory environment in which a number of restrictions are placed upon how that practice can be carried out (as discussed in Chapter 2). This highly regulated regime that determines the suitability for legal practice means that legal practitioners invest time, money and other resources in gaining their qualifications. The impact on regional, rural and remote (RRR) legal practice is that these practices must be able to attract, retain and develop appropriately qualified legal staff in order to sustain RRR legal practice.

Susskind emphasised the importance of the links between information and knowledge for lawyers⁷⁶⁴ and the need for law firms to recruit suitable legal staff (ie human capital). The management literature identified the value of the knowledge-based global economy in which intangible assets including human capital account for nearly 80 percent of an organisation's value.⁷⁶⁵ 'Converting intangible assets to tangible results represents a new way of thinking for most organisations. Those who master this process, generally emanating from the HR organisation, can create substantial competitive advantage.'⁷⁶⁶

9.2.1 The Issue of Recruitment and Retention for RRR Legal Practice as Identified by Earlier Surveys

The literature, particularly commissioned surveys, indicated that the key issues for RRR law practise is the ability to recruit and retain appropriately qualified legal staff⁷⁶⁷ in

⁷⁶⁴ See generally, Richard Susskind, *The future of law: Facing the challenges of information technology* (Oxford University Press, 1996); Richard Susskind, *Transforming the Law: Essays on Technology, Justice and the Legal Marketplace* (Oxford University Press, 2000); Richard Susskind *The end of lawyers: Rethinking the nature of legal services* (Oxford University Press, 2008).

⁷⁶⁵ Robert S Kaplan and David P Norton, *Alignment: Using the balanced scorecard to create corporate synergies* (Harvard Business School Press, Boston Massachusetts, 2006) 87.

⁷⁶⁶ *Ibid.*

⁷⁶⁷ Law Council of Australia, *Recruitment and Retention of Legal Practitioners to Rural, Regional and Remote Areas Strategy: Discussion Paper: Recruitment and Retention Working Group Working Draft*, September 2009.

The LCA had earlier carried out a report on the challenges to lawyers [Earlier, in 2001, the Law Council, mined data from law societies and the Australian Bureau of Statistics to prepare its discussion paper *Challenges for the Legal Profession, Law Council of Australia, 2010: A Discussion Paper: Challenges for the Legal Profession*, September 2001 .

particular that they did not have enough lawyers to service their client base, that succession planning was their biggest concern, and they hold fears for their ability to attract lawyers to the firm.⁷⁶⁸

In the Law Council, Australia Survey 2009, the extent of the problem of a lack of legal practitioners in RRR Queensland was identified by participants as being the second most important concern (second only to succession planning).⁷⁶⁹ The details of the extent of the issue can be gauged by considering the break-down of Queensland law practices in terms of their staffing. For example, 42 percent of participants had one principal legal practitioner; 22 percent of participants worked in legal practices with three to five principals. Thirty-one percent of RRR Queensland legal practices stated that they only have one or two employee legal practitioners, and 29 percent stated they had three to five employees. The number of non-legal staff in the participant-RRR legal practices was stated to be 36 percent having between six to fifteen employees.⁷⁷⁰

Recommendations to deal with the issue of recruitment and retention have included the reduction of tertiary graduates’ higher education load debts through voluntary or paid employment in RRR areas and a skills audit of RRR areas to identify where there is a labour and skills shortage.⁷⁷¹ The Senate Report 2004 merely noted the issues of recruitment and retention but did not act upon them, as acknowledged later in the Senate Report 2009.⁷⁷² The latter report recommended that a ‘coordinated national approach, aimed at attracting and retaining lawyers to live and work in rural, regional and remote areas of Australia’⁷⁷³ be carried out. That recommendation was not supported by the Australian Government on the grounds that the proposed solution involving subsidies and other incentives would be costly and ineffective to administer at the national level. It was stated that the matter would be best addressed by the states and territories taking into account local considerations.⁷⁷⁴ Responses that focused on the provision of services through the use of technology and networks do not take into account that legal professionals have an economic and social role participating in regional communities as residents.⁷⁷⁵ That involvement is well researched and documented, as discussed throughout this current research.

More recently, detailed data on the demographics of RRR legal practitioners has been gathered on the issues associated with recruitment and retention,⁷⁷⁶ ‘innovation in rural

⁷⁶⁸ LCA, Discussion Paper (2009), above n 767. The LCA had earlier carried out a report on the challenges to lawyers. Earlier, in 2001, the Law Council, mined data from law societies and the Australian Bureau of Statistics to prepare its discussion paper *Challenges for the Legal Profession, Law Council of Australia, 2010: A Discussion Paper: Challenges for the Legal Profession*, September 2001 .

⁷⁶⁹ Law Council of Australia and the Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey*, July 2009, Table B23, 38.

⁷⁷⁰ Ibid Table B10, 32.

⁷⁷¹ LCA Discussion Paper (2009), above n 767, 6.

⁷⁷² Senate Legal and Constitutional Affairs Committee, *Inquiry into the Australian Legal Aid System*, Third Report, 2009 acknowledged the Senate Legal and Constitutional References Committee, *Legal aid and access to justice*, June 2004, Recommendation 37, p. xxviii.

⁷⁷³ Ibid.

⁷⁷⁴ Ibid 26, acknowledged the Government Response, *Senate Hansard*, 7 February 2009, 76).

⁷⁷⁵ Jennifer Waterhouse and Professor Neal Ryan, *Retention of professional services in regional Queensland: Preliminary Research Component – Report to the Regional Communities Engagements*, Department of the Premier and Cabinet, Queensland University of Technology (2004).

⁷⁷⁶ Paul Martin, Jacqueline Williams, Amanda Kennedy, ‘Professional Services and Rural Services Poverty’, (2011) 16(1) *Deakin Law Review* 57.

services, networked services delivery, training and education, lifestyle and family, isolation, economic issues, risk issues, gender issues and opportunities for innovation'.⁷⁷⁷ However, more data is still needed on the 'generational change issues facing the legal profession and how these might be best addressed to ensure the continued viability of RRR practice'.⁷⁷⁸ The qualitative data below includes some discussion on the impact and importance of Gen-Y in RRR Queensland legal practice.

Despite the literature identifying recruitment and retention as being one of the major issues for RRR legal practice, the Law Council of Australia in its 2001 Discussion Paper⁷⁷⁹ only noted the issue in passing, stating that difficulties remain in recruiting practitioners in some regional areas.⁷⁸⁰

9.2.2 The Issue of Recruitment and Retention for RRR Legal Practice

The issue of recruitment and retention is complex. For example, the issue, in RRR New South Wales, has been considered within the context of 'diversity' among RRR Australia, concluding that different RRR areas have their own unique characteristics in which some RRR areas have recruitment and retention difficulties and others do not.⁷⁸¹ Some RRR areas are experiencing economic, social, population and service decline including legal services and private solicitor numbers.⁷⁸² There are significant disparities in the salaries of equivalent solicitor positions across the public legal assistance services, which would almost certainly contribute to the movement of solicitors from such services in more remote areas to inner regional areas and urban areas.⁷⁸³

The quantitative data indicates that participants would like to increase their legal staff. To a lesser extent they would like to also increase their administrative staff. The quantitative data relating specifically to participants' future plans to increase both legal staff and administrative staff confirms the concerns they have for both being able to meet current needs for being able to service clients as well as the need to plan for the future. The quantitative data reveals that 27 percent of participants were aged under 45 years, while 73 percent were over 45, and that many of the participants are possibly contemplating retirement and the need to consider succession planning.

⁷⁷⁷ Ibid 67.

⁷⁷⁸ Trish Mundy, *Recruitment and Retention of Lawyers in Rural, Regional and Remote NSW: A Literature Review* (Northern Rivers Community Legal Centre, 2008), 29. See also Rachael Castles, 'Recruitment and retention of young lawyers in remote, rural and regional Queensland' (2003) 23(3) *Proctor* 32 and Kim Cull, 'Young rural solicitors in decline: New blood needed in bush', *Law Society of New South Wales*, 8 February 2002.

⁷⁷⁹ LCA Discussion Paper (2001), above n 141 .

⁷⁸⁰ Ibid 155.

⁷⁸¹ Suzie Forell and Michael Cain, 'Recruitment and Retention of Lawyers in Regional, Rural and Remote New South Wales: Summary Report', *Justice Issues Paper 13* September 2010, Law and Justice Foundation of NSW. The full report is by Suzie Forell, Michael Cain and Abigail Gray, *Recruitment and retention of lawyers in regional, rural and remote New South Wales* (2010) <<http://www.lawfoundation.net.au/publications>> viewed on 04 October 2011. See also Michael Cain and Suzie Forell, 'Recruitment and Retention of Community Sector Lawyers: Regional Differences within New South Wales', (2011) 16(1) *Deakin Law Review* 265.

⁷⁸² Forell, (2010), above n 781, ix.

⁷⁸³ Ibid ix.

Almost all of the participants expressed a view on the topic of legal staff that provided insight into the ability of law practices to be sustained into the future. The qualitative data revealed some of the problems associated with attracting legal staff including perceptions of geographical isolation, the lack of services and perceptions of what RRR legal practice entailed. The qualitative data also found that participants looked to sourcing legal staff from within their own ranks as a means of replenishing staff and succession planning, and sourcing staff from within other RRR legal practices (ie 'poaching'). Only a few participants expressed the view that attracting legal staff as not being a problem due to the desire to not employ any staff.

Succession Planning

The qualitative data from the current research reflects some of the difficulties in being able to recruit and retain legal staff, for example, in this comment 'If there is an opportunity to put someone on, we need to grab it. This is linked to our long term planning – succession planning'.

The qualitative data highlights the pressing issue of succession planning with many comments of participants being made relating to the lack of suitable legal staff within RRR locations and the inability to retain such staff. Associated with the issue are other issues including the closure of large businesses that impacted on the type of work available necessary to sustain legal practice and the drought that has impacted on local farmers and the work that they might generate for law practices.

Some of the methods of dealing with succession planning have been to merge the law practice with another practice (either RRR-located or metropolitan) or simply to transfer the files to another practice. Other participants stated that they 'would simply walk away from the law practice' because no-one would be interested in buying a RRR law practice. Some participants were more proactive in dealing with succession planning by putting in place 'mirrors' of partners for replacement, or even prematurely promoting young employed solicitors. A number of participants articulated a very clear idea of suitable successors – generally citing youth and good interpersonal skills as being necessary attributes.

Succession planning was not necessarily driven by a strategic approach but in some cases was motivated by health concerns or the changing needs of participants' families - including educational needs of their own children - necessitating leaving a RRR area and moving to a metropolitan area.

9.2.3 Recruiting Human Capital

The management literature asserts 'that a firm's growth⁷⁸⁴ and competitive advantage⁷⁸⁵ are a function of the unique bundle of resources that it possesses and deploys'.⁷⁸⁶ Mayson

⁷⁸⁴ E Penrose, *The Theory of the Growth of the Firm* (Oxford University Press, 3rd ed, 1959/1995, cited by Aradhana Khandekar and Anuradha Sharma 'Managing human resource capabilities for sustainable competitive advantage: An empirical analysis from Indian global organisations' (2009) 33(5) *Journal of European Industrial Training* 628, 629.

⁷⁸⁵ B Wernerfelt, 'A resource-based view of the firm' (1984) 5 *Strategic Management Journal* 171 – 80, cited by Khandekar and Sharma, above n 785, 629. See also AA Lado and MC Wilson, 'Human resource

contended that 'much of the competitive success of a law firm is derived from ... types of capital [including human capital] which are not all capable of ownership in the legal sense and are not recorded on its balance sheet'.⁷⁸⁷ Kaplan, however, did place a value on these intangible assets, including human capital within the context of the knowledge-based global economy, stating that it now accounts for almost 80 percent of an organisation's value.⁷⁸⁸

*Converting intangible assets to tangible results represents a new way of thinking for most organisations. Those who master this process, generally emanating from the HR organisation, can create substantial competitive advantage.*⁷⁸⁹

Since human capital cannot be owned, Mayson asserted that the key issues for a law practice involve access to human capital and protecting that access.⁷⁹⁰ Given the associated issues already identified with the RRR legal practice's ability to secure such human capital, the significance of the key element of 'sustainability' becomes apparent. Mayson identified a number of methods of access including external access from consultants and internal access from recruitment, as well as through development from training and personal advancement.⁷⁹¹ The current research provides insight into these methods of access and are discussed below under the headings of 'staff selection', 'staff recruitment'⁷⁹² and 'staff development'.⁷⁹³

9.2.4 Staff Recruitment

The issue of recruiting suitable legal staff is not only experienced by RRR Queensland law firms. Maister, writing about institutional metropolitan law firms, identified 'the people crises'.⁷⁹⁴ His solutions included mentoring by senior legal professionals,⁷⁹⁵ sharing practice knowledge and sharing legal knowledge⁷⁹⁶ and substitution in which he

systems and sustained competitive advantage: A competency-based perspective' (1994) 19(4) *Academy of Management Review*, 699.

⁷⁸⁶ Jay Barney 'Firm resources and sustainable competitive advantage' (1991) 17(1) *Journal of Management*, 99, and cited in Khandekar and Sharma, above n 338, 629.

⁷⁸⁷ Stephen Mayson, *Law Firm Strategy: Competitive Advantage & Valuation* (Oxford University Press, 2007), 138.

⁷⁸⁸ Kaplan and Roberts, above n 765, 87. See also Kaplan and Norton, *Strategy Maps: Converting intangible assets into tangible outcomes* (Boston: Harvard Business School Press, 2004).

⁷⁸⁹ Ibid.

⁷⁹⁰ Mayson, above n 787, 143.

⁷⁹¹ Ibid.

⁷⁹² Marc Galanter and Thomas Palay, *Tournament of lawyers: The Transformation of the Big Law Firm* (The University of Chicago Press, 1991) reveal an evolution in terms of the methods of recruitment into the US legal practices, commencing, at 14, with the 'casual apprenticeship and nepotism' industry standard, moving through to the '[h]iring of top law graduates soon after their graduation [as being] one of the building blocks of the big firm. Most hiring [being] from a handful of law schools. By ... 1960... most firms had a 'hiring partner' in charge of recruitment, and firm members made recruiting visits to law schools.': Here, Galanter and Palay citing Erwin Smigel, 'The impact of recruitment on the organization of the large law firm', (1960) 25 *American Sociological Review*, 56 – 66, 59. Finally, Galanter at 57, citing Tamar Lewin, 'The new national law firms', *New York Times*, April 18, 1984 stated that with the increasing number and size of large law firms, recruitment has had to become more competitive leading to changes in the social composition of the new recruits so that '[b]arriers against Catholics, Jews, women and Blacks have been swept away.'

⁷⁹³ Mike Simpson, Nicki Tuck, Sarah Bellamy, 'Small Business Success Factors: the Role of Education and Training' (2004) 8/9 (46) *Education & Training*, 481.

⁷⁹⁴ David H Maister, *Managing the Professional Service Firm* (The Free Press, 1993) Chapter 8.

⁷⁹⁵ Ibid 196

⁷⁹⁶ Ibid Chapter 18.

recommended the use of para-professional staff and seeking legal staff from non-traditional candidates.⁷⁹⁷

The qualitative data highlights some of the issues of access to legal staff experienced by the participants. For example, 60 percent of the participants had no trainee solicitors, 27 percent had one trainee solicitor and 13 percent had between two and three trainee solicitors.

In support of Maister’s ‘solutions’, including ‘substitution’ in which participants utilised paralegal staff 17 percent had between one and two paralegals and 73 percent had three or more administrative or paralegal staff. Three participants (10%) had neither administrative nor paralegal staff.

The quantitative data reported that the most common form of substitution by participants was through the drawing upon personal relationships (including family, marital, personal or intimate) to be involved in carrying out tasks within the legal practice. Sixty-three percent of participants relied upon such relationships to contribute to the tasks of the legal practice. The qualitative data revealed that these relationships involved husbands and wives, parents, children and other relatives. In many cases a single law practice drew from a number of such relationships to support the legal practice. The intimacy of the relationships in the work-environment also created some issues. In one instance, the participant found it to be a source of dissatisfaction on the grounds that the daughter of a partner created an imbalance of access to decision-making which impacted upon other (non-related) staff. In another instance, the uncomfortableness arose when the family member had to be ‘put-off’.

In terms of knowledge-sharing, the earlier discussion in Chapter 8 *Strategic Alliances* and the discussion later in this chapter on *Mentoring* reveal how participants have attempted to use this method to solve the issue of access to legal staff.

Recruitment and Retention as Part of Strategic Alignment

The management literature calls for the strategic alignment of the organisational strategies with human capital strategies.⁷⁹⁸ Maister saw the need to recruit suitable staff as being as important as the need to attract clients.⁷⁹⁹ He relied heavily upon the recruitment and retention literature and applied it to the context of the professional service firm.

Responsibility for Recruitment and Selection

Maister saw the role of the partner as being significant in terms of providing counselling and coaching and it was part of the senior professional’s role to be involved in recruitment.⁸⁰⁰

Consistent with Maister, the quantitative data indicated that the responsibility relating to the management, direction and leadership of the law practice with respect to recruitment, selection and progression was more weighted towards one partner/director having

⁷⁹⁷ Ibid 200.

⁷⁹⁸ Kaplan and Norton, above n 765, 261.

⁷⁹⁹ Maister, above n 794, Chapter 18.

⁸⁰⁰ Ibid 309.

predominant responsibility. Of all the elements of management (including strategic direction, client satisfaction, marketing and promotion and profitability), recruitment and progression, and innovation and development tended to be allocated to a single partner/director.

The qualitative data revealed that a number of participants expressed the view that they interviewed potential legal staff themselves; that psychometric testing was carried out by a number of law practices; that such testing (by a consultant) assessed applicants for 'judgment and optimism; the ability to confront; courageous discussion; completors and finishers; ability to drive a job through; attention to detail and levels of sensitivity' and 'dealing with conflict'.

The Importance of the Law Firm Culture (the 'Normative Environment')

Maister concluded that the law firm culture demanded loyalty,⁸⁰¹ team work and conformity⁸⁰² and a sense of mission⁸⁰³ through long hours and hard work⁸⁰⁴ for the purpose of client service.⁸⁰⁵ Mayson is consistent with Maister in acknowledging the importance of the law practice culture, as developed by the senior partners, in that Mayson begins his analysis of law firm strategy by identifying the firm's 'normative environment'⁸⁰⁶ as being a factor in sustainability.⁸⁰⁷ The qualitative data similarly revealed the importance of 'culture' through comments including that the workplace culture was something to be 'protected'; that prospective lawyers 'could change the dynamics'; that 'those who go – don't fit the model'; that 'we need to see them in the firm's culture' and that 'we want them to enjoy working here'.

Mayson similarly incorporated the need for acquiring and building 'human capital' heavily into the level of sustainability of a legal practice. He linked the level of sustainability with factors including whether or not there is an 'emphasis on firm-specific human capital, organisational capital, [or] internal social capital...'.⁸⁰⁸

Recruitment and Selection of Staff

The quantitative data indicated that despite the participants' desire for more legal staff (and to a lesser extent administrative staff), the staff structure of their law practices appeared to be relatively static in terms of staff turnover during the three year period (last year; this year; next year). The literature⁸⁰⁹ indicates the difficulties experienced in the recruitment and selection of legal staff and that they vary from region to region.⁸¹⁰ Some RRR areas tend to attract only relatively inexperienced solicitors or solicitors prepared to stay for a fixed and relatively short period of time. However, having a more senior

⁸⁰¹ Ibid 305.

⁸⁰² Ibid 306.

⁸⁰³ Ibid 307.

⁸⁰⁴ Ibid 306.

⁸⁰⁵ Ibid 307.

⁸⁰⁶ Mayson above n 787, 47, defines 'normative environment' as being 'one or more of the overall purpose, concept, culture, and climate of the business. All organisations have a normative environment. It results from what ought to happen (purpose and culture) as well as what does happen (climate) – and they are not always the same.

⁸⁰⁷ Ibid Chapter 5.

⁸⁰⁸ Ibid 341.

⁸⁰⁹ Forell, above n 781; Mundy, above n 778; J Dewar, J Giddings and S Parker, 'The impact of changes in Legal Aid on Criminal and Family Law Practice in Queensland', *Executive Summary*, 1998, 73, 74.

⁸¹⁰ Forell, above n 781.

solicitor in more remote areas may be preferable given the nature of the work and the work conditions.⁸¹¹ The data below provides an insight into the methods of recruitment and selection used by some RRR legal practitioners.

Methods of Recruitment

The quantitative data indicated that the most popular method of recruitment occurred from within the legal practice (ie. non-legal staff currently working within the legal practice, including legal secretaries, administrative staff and paralegal staff who were encouraged to pursue legal qualifications), through word-of-mouth and from universities. The quantitative data supports the earlier findings that RRR legal practice is connected to the community and that it relies on interactions with people with whom the participants are known or familiar.⁸¹² Recruitment agencies were generally not used. The qualitative data reveals that participants viewed such agencies with suspicion on the grounds that the agencies were expensive, were not successful in providing legal staff and that the type of candidates was not suitable. For example, one participant commented 'we'd get an upstart from [metropolitan location] who all they would do, would be to tell us how smart they were'.

The qualitative data provides further details on the method of recruitment, including recruiting students on work experience; through 'poaching' from other law firms and through connections with people known to the participant. One participant expressed a 'multi-pronged' approach that included providing prizes to the local school and work experience opportunities, traineeships and relying on family and friends.

Methods of Selection

The quantitative data clearly indicates that the most relevant factors for selection are interpersonal skills, initiative, the ability to work under pressure (and meet deadlines) and educational qualifications. Factors that may be inferred to be considered irrelevant included previous experience, links to the profession, the university attended and management experience.

The qualitative data provides more detailed insights that included that prospective legal staff were preferably married and 'with the right attitude', that they are young, flexible and prepared to work in the location, that they be able to deal with conflict and that they have life experience and be non-judgemental. Common responses included the need for interpersonal skills and that the applicant be 'a country person with country values', that 'you need to be a good lawyer, with the right attitude' and that 'you need networking ability, intelligence, enthusiasm and an inquiring mind'. This data again emphasises the importance of either being connected with the community, or displaying qualities that indicate the potential to develop that connectedness.

Youth was seen as both an advantage and a disadvantage. Almost all of the participants commented on wanting to select young lawyers. The quantitative data that previous experience was not considered a very important factor possibly confirms that being young

⁸¹¹ Ibid 11.

⁸¹² Donald D Landon, *Country lawyers: The impact of context on professional practice* (Praeger 1990) and Alex Franklin, and Robert G Lee, 'The embedded nature of rural legal services: sustaining service provision in Wales' (2007) 34(2) *Journal of Law & Society* 218.

and inexperienced was a preference. It might be inferred that these qualities would better facilitate the young lawyer in adapting to the normative environment of the law practice.

Most participants saw Gen-Y as potentially being able to contribute certain skills including information technology skills and a keenness for innovation (see the discussion under *The Innovative Use of Information Technology*). Being young was also important in terms of being potential 'partnership-material'. These participants saw 'young' legal staff as 'an investment' that required resources being allocated to young lawyers. The qualitative data on the factor of 'youth' was not purely seen as a positive factor. The qualitative data also revealed that a number of participants saw 'youth' or being 'Gen Y' as being a source of concern in terms of a lack of work ethic, being unstable, having poor values and showing a lack of commitment. Only a few participants declared they recruited only 'senior' partners on the grounds that young lawyers required mentoring and training – skills that were lacking in the law practice.

Some participants wanted graduates from regional law schools; a number of participants expressed disappointment at metropolitan law school graduates who had 'used them' for gaining legal practice experience before returning to the city. Other qualities that were sought after in the selection process included being able to fit into the firm's culture; personality and being well connected to their family and friends.

Development of Legal Staff

As discussed earlier, the literature – both management⁸¹³ and legal management⁸¹⁴ – emphasises the importance of human capital. There are benefits to be gained, including financial benefits, from 'leveraging intangible assets'⁸¹⁵ through to leadership and organisation development,⁸¹⁶ human capital development⁸¹⁷ and knowledge sharing.⁸¹⁸ The management literature is detailed and specific with material on motivation, distinguishing between intrinsic and extrinsic motivation.⁸¹⁹ The next part looks at the following methods of development available to legal staff; training courses, mentoring and in-staff staff programs.

Training Courses

The quantitative data showed that the provision of training courses in the use of information technology and in legal practice areas and providing funding and access to further education were identified as being important methods for legal staff development. The earlier discussion on the difficulty for RRR law practices to specialise was a key

⁸¹³ Kaplan and Norton, above n 765.

⁸¹⁴ Refer generally to Maister, above n 794, Mayson above n 787, and Laura Empson (ed) *Managing the modern law firm* (Oxford University Press, 2007).

⁸¹⁵ Kaplan and Norton, above n 765, 87.

⁸¹⁶ Ibid 91.

⁸¹⁷ Ibid 93.

⁸¹⁸ Ibid 95.

⁸¹⁹ Ibid 263. 'Intrinsic motivation' – 'when people engage in an activity for its own sake'. 'IM is generally associated with those who engage in more entrepreneurial and creative problem solving; compared with those who are motivated only by extrinsic rewards or consequences, intrinsically motivated employees consider a wider range of possibilities, explore more choices, share more knowledge with co-workers and pay more attention to complexities, inconsistencies and the long-term consequences.' (263) and 'extrinsic motivation' – arises from the carrot of external rewards or the stick of avoiding negative consequences. Positive rewards include praise, promotions, and financial incentives.

reason identified by the participants for the inability to provide legal staff with rotation programs to various areas of law. Many of the participants (who had legal staff) commented that they encouraged and funded attendance at continued legal educational programs, especially to gain CPD points.

The qualitative data provided more detail on the provision and criteria for training courses including that access to training and further education required a return on profit, that training occurred at induction and that training must be shown to be relevant.

Mentoring

In terms of the recruitment of professional legal human capital, Maister stated that it was 'sensible to ensure that potential recruits know what they are letting themselves in for'.⁸²⁰ He noted that the professional psyche was insecure, needed constant checking and repeated feedback. From this assessment of professionals, Maister stated the importance of motivation and the need for supervision.⁸²¹ 'Motivating professionals is akin to being the coach of an athletic team; both roles involve trying to bring out the best possible performance in talented individuals.'⁸²² A less than fully motivated workforce was seen as a competitive disadvantage.⁸²³

Mentoring and coaching⁸²⁴ have been more recently adapted by the law firm management researchers.⁸²⁵ The literature is extensive on mentoring and distinguishes between mentoring for professional development, and for personal development.⁸²⁶

The quantitative data clearly indicates the importance of mentoring as being a method frequently used for legal staff development, and the qualitative comments support this method as being highly important for a number of reasons.

Two key themes arose out of the discussion with participants on mentoring and legal supervision that possibly suggested a difference between personal development and

⁸²⁰ Ibid 167.

⁸²¹ Ibid 169.

⁸²² Ibid 170.

⁸²³ Maister, above n 794, 165.

⁸²⁴ Brian J Caldwell and Earl MA Carter (eds), *The Return of the Mentor: Strategies for Workplace Learning* (Falmer Press, London, 1993). In particular, refer to Chapter 2 in which the principles and practice of mentoring are defined as being in two categories: 'those [who] emphasise the professional development of the protégé; and those [who] emphasise professional and personal development of the protégé'. Refer also to Chapter 10 in which coaching trainers for workplace performance are discussed. At 146 'coaching' is defined as being: 'one who has performed under operational conditions in all areas to be covered in the training program. The most critical components of the coach's role will be the capacity to demonstrate skills, communicate knowledge and demonstrate appropriate attitudes within a well-planned performance review and improvement strategy. A coach must also expect trainees to perform at their best and share a common goal of winning. ... Coaching is about having clear performance objectives, a plan for achieving them and a strategy of maintaining their relevance.' See also, Kevin Cashman, 'Transformational coaching: home and practice three core skills' (2003) 20(11) *Executive Excellence* 11; and Clare Rigg, Jim Stewart, Kiran Trehan (eds) *Critical human resource development: Beyond orthodoxy*, (Pearson Education, England, 2007).

⁸²⁵ See F Kay, J Hagan and P Parker 'Principals in Practice: The Importance of Mentorship in the Early Stages of Career Development', (2009) 31(1) *Law & Policy* 69; and Terrence Lee 'How great firms create high performance cultures' (2001) *Australian Legal Practice Management Journal* 11; and Bastiann Sparreboom 'The role of coaching in a legal firm' (2001) *Australian Legal Practice Management Journal* 2.

⁸²⁶ Caldwell, above n 824.

professional development – the latter being more involved with legal supervision. Participants discussed mentoring in terms of how they mentored their own legal staff as well as how they (the participants) were mentored by others – including ex-employers, other lawyers and other non-lawyers. Much of the discussion in terms of how the participants discussed 'mentoring' from their own perspective moved into the earlier topic of *Strategic Alliances* (Chapter 8). Participants were asked about both 'mentoring' and 'coaching'. Only one participant discussed 'coaching' as an action in its own right.

The qualitative data indicated the importance of mentoring across a range of aspects of RRR legal practice. For example, the relationship of mentor-mentored was described as extending across many years in circumstances where the participant continued to be 'mentored' by a previous employer. In this way the relationship was relied upon as a source of continued advice (and education) on legal matters. The qualitative data indicated that 'mentoring' was highly useful for knowledge sharing and referrals and as a type of 'strategic alliance'. (Indeed much of the qualitative data on strategic alliances related to its benefits for knowledge sharing.) One participant described mentoring as linked to gender from the viewpoint that 'a woman is not afraid to ask' for advice from her mentor.

Mentoring occurred informally at social occasions such as morning teas as well as formally as part of a planned approach. The choice of mentor from within the legal practice was in some instances determined by the personality of the mentor in terms of having a predisposition to want to help staff with their problems or if the mentor had an aptitude for mentoring. The role of mentor for RRR legal practitioners was seen as being important, however, for principals of RRR law practices, the role of being 'the mentored' was commented upon as being 'under-utilized among private law firms when compared to the public sector' where role models and mentoring among leaders were considered to be well-resourced programs. Only a few comments related to measuring the benefits of mentoring.

Mentoring junior legal staff had some negative implications in which the participants expressed a lack of confidence in their own ability to provide guidance. The role of mentoring was considered to be merged with 'legal supervision'. While most of the qualitative data on mentoring indicated a positive response, in contrast, the topic of legal supervision, almost consistently raised more negative responses in terms of it being 'a cause of stresses' due to the QLS requirements to provide such supervision of legal staff. The exploratory nature of the study did not permit relating mentoring and legal supervision to the size law practice structure. However, mentoring and linkages to alliances has already been discussed earlier in this chapter.

In-house Staff Programs

The quantitative data indicates that the use of flexible work arrangements was the most common form of staff program used. Structured salary reviews and access to funding for professional training and continued legal education were the next most commonly used in-house staff programs. Structured career paths and funding for postgraduate qualifications were the least important. That result perhaps emphasises the current business structures of sole practitioners and small partnerships of three or fewer legal practitioners, coupled with the more general nature of the practice areas covered and the scarcity of specialisation.

The qualitative data reveals significant creativity and flexibility in terms of the arrangements RRR Queensland law practices are willing to put in place to retain legal staff. The qualitative data corresponded with the quantitative data in that participants responded most frequently to providing flexible working arrangements. Two of the most common programs here were providing maternity leave for female legal staff, and providing highly creative flexible working arrangements to provide for the needs of partners and their spouses. With respect to the latter, the following examples illustrate the extent of that flexibility. One rural law practice established a law practice at a regional location, remotely accessible by the rural location, to accommodate for the ill-health of one of the partner’s spouse. A second law practice put in place working arrangements for a partner of a large regional law practice to allow the partner to fly-in for the week and fly-out at weekends from the metropolitan location to where the partner’s spouse had wanted to relocate the family. And a third example related to the establishment of another location of a law practice to a regional location (in addition to a rural location) to accommodate a potential spousal split on the basis that the spouse was unhappy in the rural location.

The discussions on this topic included that of the ‘value of the partner’ and the need to retain their skills. In the first and third instances the participants had reported on the overall financial benefits to the business by increasing the number of locations of the law practice and, therefore, increasing sustainability.

A further theme from the discussion on in-house staff programs related to the law practice providing a social culture that was positive and one that actively sought to retain staff, with for example, morning teas, social events outside of the practice and gifts. A number of participants spoke of the ‘culture’ in terms of the growth of the law practice and that a social culture was able to develop and that this was good for law staff attraction, retention and progression. Most participants who had law staff spoke of access and funding to professional training and continued legal education and, to a lesser extent, programs for performance review. Two participants spoke of access to structured career paths or financial rewards.

Developing Entrepreneurial Skills

The second aspect of recruiting and retaining human capital in the research, deals with entrepreneurship.⁸²⁷ The basis for relying on literature on this topic is Landon’s theory that RRR legal practice is an ‘entrepreneurial business’ as opposed to an ‘institutional one’.⁸²⁸

Entrepreneurship is discussed in the literature⁸²⁹ in which the growth of the firm is linked to factors such as entrepreneurial ambition⁸³⁰ and judgment.⁸³¹ This has been discussed in detail earlier in Chapter 8 (*Strategic Growth and Entrepreneurial Characteristics*).

⁸²⁷ Refer to Marc J Dollinger, *Entrepreneurship: Strategies & Resources* (Prentice Hall Upper Saddle River 3rd ed, 2003), in which Dollinger, at 9, characterises the ‘new entrepreneur’ who is ‘emerging today [as] a class of professional entrepreneurs who rely more upon their brains than their guts – and who have been trained to use both methods and technology to analyse the business environment’. Also refer to Robert D Hisrich, Michael P Peters and Dean A Shepherd, *Entrepreneurship* (McGraw-Hill Irwin, US 7th ed, 2008); Azhdar Karami, *Strategy Formulation in Entrepreneurial Firms* (Ashgate, England, 2007).

⁸²⁸ Landon (1990), above n 812, 223.

⁸²⁹ Penrose, above n 338; Dollinger, above n 827.

⁸³⁰ Penrose, above n 338, 39.

⁸³¹ Ibid 40.

Dollinger identified characteristics of entrepreneurs as including the ability to deal with risk and uncertainty, to see advantageous opportunities, to maintain knowledge of technologies in order to advance the organisation, to deal confidently with social situations, to exercise judgment and insight, to be creative and have vision, to use legal intelligence, to develop rapport with clients and to lead.⁸³² Dollinger provides a definition of entrepreneurship as being 'the creation of an innovative⁸³³ economic organisation (or network of organisations) for the purpose of gain or growth under conditions of risk and uncertainty'.⁸³⁴ Maister asserts that 'of all the ways of improving professional firms' success, partner performance counselling is one of the most powerful'.⁸³⁵ The current research indicates that there are no programs provided for or utilised by principals/directors for RRR legal practitioners. The earlier discussion, Chapter 8 (*Partnership Dispute Resolution*) highlighted the importance of retaining the stability of the 'partnership relationship' for sustainability.

9.3 RI 6: The Prevalence and Nature of Marketing Carried Out by Legal Practices in RRR Queensland

This part of the chapter considers the regulatory environment of law practices in terms of marketing and the importance of reputation and embeddedness. This part also discusses clients in terms of types of clients, dealing with clients and sources of clientele through acquaintanceship.

9.3.1 The Regulatory Environment

The regulatory context of legal practice centred on ethical dilemmas associated with 'marketing'⁸³⁶ and on the 'professional' characterisation of legal practice. These two elements may have worked to create a resistance to the idea of marketing legal services among many law practices. Nevertheless, the legal practice management literature draws from marketing literature to adapt it to the professional context. In particular, the legal practice management literature draws upon the concept of 'reputational resources'.⁸³⁷

⁸³² Dollinger, above n 827, 5 – 7. Penrose, above n 338 devoted Chapter 3 to an analysis of the characteristics (or qualities) of the entrepreneur within 'the firm', beginning with the distinction between entrepreneurial versus managerial competence, at 34; the versatility of the entrepreneur, at 36; fund-raising ingenuity (at 37); entrepreneurial ambition, at 39; and entrepreneurial judgement, at 40.

⁸³³ Robert Simons, *Performance Measurement & control systems for implementing strategy* (Prentice Hall, Upper Saddle River, New Jersey, 2000), 7, identified the competing tensions associated with the need of the organisation to be constantly seeking profitable growth. That need had to be balanced, as part of one of the roles of those who manage or lead high-performance organisations. In pursuit of that profitable growth, such managers (or leaders) are continually innovating. 'Innovation may take many forms. It may be in developing new ... services, or it may appear as new ways of doing internal tasks related to order-processing and manufacturing. Over time, successful innovation finds its way into sustained profitability and growth.'

⁸³⁴ Dollinger, above n 827, 3.

⁸³⁵ Maister, above n 794, 245.

⁸³⁶ *Legal Profession Act 2007 (Qld)*, s 126.

⁸³⁷ Dollinger (2003), above n 827, 33 included 'reputational resources' among the range of resources and capabilities available to an organisation.

9.3.2 Reputation and Embeddedness

Maister was very particular in his discussions on marketing, identifying (but not defining) the specific importance of 'reputation' as being one of the 'keys to winning clients'.⁸³⁸ In addition, he dissected the strategic approach to marketing into activities such as 'listening to clients',⁸³⁹ marketing to existing clients,⁸⁴⁰ attracting new clients,⁸⁴¹ and managing the marketing effort.⁸⁴²

Mayson was more detailed in his analysis of the value of 'reputation' than Maister. Mayson also used the term 'reputation'⁸⁴³ in his discussions in terms of building capital.⁸⁴⁴ He extended Maister's discussions on reputation and considered the law practice's 'identity, image and reputation'⁸⁴⁵ as being categorised into elements relating to human capital attributes that had effects on the law practice's labour market, the way in which the quality of the practice's client base was perceived and perceptions on how easy or difficult it would be to deal with the practice.⁸⁴⁶

The value of 'reputation', discussed by Maister and Mayson in terms of large urban law practices, was explored more deeply through an economic analysis by Uzzi through the concept of 'embeddedness'. 'Embeddedness' is defined by Uzzi as referring to the fact that the 'players in an economic transaction do not exist in a vacuum, but rather in a system of social relationships.'⁸⁴⁷ Uzzi identified the economic benefits of embedded ties with clients as being due to mutually beneficial social relationships that allow a firm to maintain or increase its profit margin while at the same time providing an incentive for client retention. That incentive can occur through charging such clients lower prices because of the ties.⁸⁴⁸ Embeddedness can be developed through network structures and status.⁸⁴⁹

The United Kingdom research is consistent with the United States research in terms of the relationship between solicitor and client. Franklin and Lee's term is 'embeddedness' with the community;⁸⁵⁰ Landon refers to it as the 'containing community'.⁸⁵¹ Franklin and Lee identified the bond between the local firm and its clients; its effect being in terms of the

⁸³⁸ Maister, above n 794, 23. Chapter 5 on practice development; Chapter 6 on listening to clients; Chapter 9 on marketing to existing clients; Chapter 11 on attracting new clients; and Chapter 12 on managing the marketing effort. Maister approach to marketing – client attraction and retention – was driven by his initial classification of the type of professional service firm (ie. The expertise practice; the experience-based practice; or the efficiency-based practice, outlined earlier in this Chapter).

⁸³⁹ Ibid Chapter 6.

⁸⁴⁰ Ibid Chapter 9.

⁸⁴¹ Ibid Chapter 11.

⁸⁴² Ibid Chapter 12.

⁸⁴³ Mayson, above, n 787, 132.

⁸⁴⁴ Ibid Chapter 9.

⁸⁴⁵ Maister, above, n 794, 164 – 165.

⁸⁴⁶ Ibid 164 – 165.

⁸⁴⁷ Brian Uzzi, Ryon Lancaster, Shannon Dunlap, 'Chapter 5: Your client relationships and reputation: Weighing the worth of social ties: embeddedness and the price of legal services in the large law firm market' 91 – 116, in Empson, above n 814, 93.

⁸⁴⁸ Ibid 106.

⁸⁴⁹ Ibid 97.

⁸⁵⁰ Refer generally to Franklin and Lee, above n 812.

⁸⁵¹ Refer to Landon's work generally at above n 812, and 'Clients, Colleagues, and Community: The shaping of zealous advocacy in country law practice' (1985) 4 *American Bar Foundation Research Journal* 81; and 'Lawyers and localities: The interaction of community context and professionalism' (1982) 2 *American Bar Foundation Research Journal* 459.

impact on the work the solicitors provide to the clients (described above), but also worked to the advantage of the solicitors in that ‘the connections and word of mouth recommendations brought in the work – virtually all of it from the immediate locality.’⁸⁵² The impact of this was that solicitors did not need to advertise for business.⁸⁵³

The theory of ‘embeddedness’, discussed earlier within the context of RRR legal practitioners in Wales,⁸⁵⁴ can be seen to apply to both US and UK mega-practices (described by Maister and Mayson), as well as in the RRR legal services context.

The quantitative data suggests that the participants’ law practices focus on providing efficient advice based on experience and that individual partners have reputations on the provision of legal services within the community. In the quantitative data, the need for ‘expertise’ did not register highly – either in terms of the legal advice given or that the participant is an expert. The quantitative data that participants did not contribute to journals would emphasise the point that they do not consider themselves ‘experts’. This data might also confirm the earlier discussion on the difficulty of being able to specialise in RRR Queensland. Participants are more likely to be general practitioners who are able to cover a broad range of areas rather than being able to provide expert advice in one particular area.

Participants also indicated a limited use of media for communicating the reputation of the law practice; they stated some use of brochures to advertise but did not make high use of the media or other institutions. One third of participants relied only on client interactions to communicate their reputation. The quantitative data strongly indicates that reputation and word-of-mouth are the most important methods used to increase business. These are closely followed by referrals from other lawyers, professional contacts and referrals from other businesses. Of note, advertising was expressly stated as being a method that is not used. The qualitative data is consistent with the quantitative data regarding the importance of reputation, word-of-mouth and referrals as sources of business.

It is noted that approaches to ‘marketing’ through targeted avenues as a means of developing business are quite extreme. These ranged from allocating significant financial resources to branding and marketing, to viewing ‘marketing’ as something to be avoided. The hesitant approach of the participants to marketing consultants appears to be consistent with the earlier data that marketing is considered to be related to reputation rather than ‘hawking the fork’.

9.3.3 Clients

Types of Clients

The literature on ‘clients’ again begins with Landon’s analysis of the rural ‘containing community’ in which he contrasts this with the setting of urban legal practice, where the

⁸⁵² Ibid 241. Refer also to the UK research that confirmed Landon’s findings that referrals were through ‘family friends’, in Mark Blacksell, Kim Economides, and Charles Watkins. *Justice outside the city: access to legal services in rural Britain* (Longman Scientific & Technical, 1991) 64 – 69, in which the theoretical model described emphasises the importance of family and social networks for rural lawyers.

⁸⁵³ Ibid.

⁸⁵⁴ Franklin and Lee, above n 812, 218.

clients are 'powerful actors'.⁸⁵⁵ In the rural setting, 'clients are predominantly persons. Such clientele bring in a large number of small matters to attorneys – wills, real estate contracts, divorces'.⁸⁵⁶ Client characteristics, Landon notes, are merely 'the obverse side of practice types' for lawyers.⁸⁵⁷ 'In the rural setting the norm is a heterogeneous practice.'⁸⁵⁸

In contrast, the legal management literature of Maister⁸⁵⁹ and Mayson⁸⁶⁰ reflects the 'institutional' law firm practice in which client engagement can be fine-tuned depending on the type of law firm. One of the key impacts on the country lawyer was that country law practice involved 'entrepreneurial practice'⁸⁶¹ rather than being 'institutional or firm practice', which Landon asserted to be an invention to satisfy the needs of metropolitan clients who 'are corporations, large businesses and powerful individuals.'⁸⁶²

The quantitative data supports Landon's findings in terms of indicating that the participants had a broad range of clients from almost all categories. In particular, clients who are 'managers of small businesses' and 'large farm owners/managers' registered quite highly. Participants also indicated a moderate number of 'mixed' and 'unemployed' clients – although neither of these comprised the largest category of clients. It is difficult to draw any conclusion from this data. Possibly the question might have been differently phrased in order to determine the 'predominant' category of client.

Dealings with Clients

The qualitative data reveals that participants indicated a dilemma in terms of their dealings with clients. Clients were needed in order to sustain the legal practice and yet they were also considered a source of stress in terms of the demands they made. Participants commented that as they gained confidence and experience, they were able to be more selective in terms of who they dealt with. Participants also indicated that RRR clients tended to be loyal to a legal practitioner, even to the point of tolerating sub-standard legal work, simply because they (and their family) had always used a particular law practice. A number of the participants emphasised their desire to look after their clients, going as far as refusing some clients because the knowledge amongst the community that a law practice had taken on that client may be counter-productive in attracting other clients. In other words, these participants took a strategic approach to client selection on the grounds of its impact on reputation. The importance of reputation of the legal practice was discussed above in *Reputation and Embeddedness*.

The qualitative data indicated that clientele was also seen to respond to the economic climate within the location. Changes to the economic basis of the location were seen to impact on the type and kind of clientele. An understanding of the geographic and economic basis of the clients was seen as important to foster – that is, local knowledge.

⁸⁵⁵ Landon, (1990), above n 812, 33.

⁸⁵⁶ Ibid 24.

⁸⁵⁷ Ibid.

⁸⁵⁸ Ibid 62.

⁸⁵⁹ Maister, above n 794, 23.

⁸⁶⁰ Mayson, above n 787, 29.

⁸⁶¹ Ibid 51 – 65.

⁸⁶² Ibid 63.

Attending to client needs was also seen as being important in terms of being flexible in meeting with them and socialising with them. In some instances, these demands were seen as being unreasonable and clients were considered to fail to understand the busy nature of being a lawyer. Some client demands were seen as having unreasonable expectations that urban lawyers would not tolerate, for example, expecting the rural lawyer to complete forms or be available at all times or socialise extensively prior to discussing the legal issues.

Sources of Clientele through Acquaintanceship

Landon's research indicates that in rural legal practice, clients consider themselves to be 'friends' of the legal practitioner, rather than being merely 'clients' when they seek legal services from the country lawyer.⁸⁶³ Most of the participants remarked that many clients had some level of prior acquaintanceship with them, adding that many were known either socially or through family friends. Again, this emphasises the importance of the legal practitioner's connectedness to the community and the relevance of embeddedness.

The qualitative data provides further insights into the connectedness between participants and their clients. The comment 'They know you or they know someone else who does,' was common. Participants expressed a positive approach to this prior acquaintanceship in terms of acknowledging that many clients were known and the importance of this and, the need to foster it for the purposes of building the law practice. A negative approach was also reported in terms of limiting clients who were known socially particularly when the area of legal advice sought was personal or intimate and had the effect of making the participant feel 'uncomfortable' - for example, in family law matters.

9.4 RI 7: The Prevalence and Nature of Use of Information Technology by Legal Practices in RRR Queensland

9.4.1 Use of Information Technology

This part of the chapter discusses the data on the prevalence and nature of the use of information technology by law practices in RRR Queensland. The discussion first identifies the general lack of data on the use of information technology by RRR legal practitioners, secondly, that there is some evidence of the innovative use of information technology and finally, that there is some evidence of training and future planning in the use of information technology.

9.4.2 The Lack of Data on the Use of Information Technology by RRR Legal Practitioners

The impact of information technology on lawyers, in terms of the type and kind of work they will do and the way in which they will deliver that work, has been well-documented.⁸⁶⁴ Much of that literature was relied upon by the LCA Discussion Paper

⁸⁶³ Landon, above n 812, 122. Refer also to Kim Economides, Mark Blacksell and Charles Watkins, *Referrals to solicitors in rural areas with particular reference to Cornwall and Devon* (Law Society Research Study Series, London, 1991).

⁸⁶⁴ Susskind (1996), above n 764; Susskind (2008), above n 764; Thomas D Morgan, *The vanishing American lawyer* (Oxford University Press, 2010); and David Wilkins, *David Wilkins on Globalisation*,

2001.⁸⁶⁵ The Law Council of Australia’s Survey did not include any questions about the use of information technology. This is surprising given its earlier *2001 Discussion Paper: Challenges for the Legal Profession*⁸⁶⁶ in which it was seen that potential growth areas of practice were listed as e-commerce and cyberlaw.⁸⁶⁷

The literature has clearly identified issues with the infrastructure to support the use of information technology - ‘Regional and remote areas lag behind urban areas largely because of lower average incomes and higher connection charges. Forty-seven percent of adults in capital cities accessed the internet compared to 37 percent in other areas.’⁸⁶⁸ And, ‘[A]lthough in theory country and regional practices would benefit most from on line services, it is the large city law practices that have the resources to facilitate on line learning’.⁸⁶⁹ RRR legal practitioners have themselves identified the importance for the use of information technology.⁸⁷⁰

The management literature identified ‘intellectual capital’ as a firm resource.⁸⁷¹ In this part, ‘use of information technology’ also includes knowledge management, information management, and training on these aspects. Drucker⁸⁷² identified the impacts of the changing nature of workers – from being unskilled to being ‘knowledge workers’ – and the impacts upon management, innovation and organisational structures. Law is chiefly involved in the management of knowledge and information; as such this area has grown in response to the issues for legal services.⁸⁷³

9.4.3 The Innovative Use of Information Technology

The impact of information technology for the practice of law is that ‘lawyers are in the information business’.⁸⁷⁴ ‘Lawyers acquire information through education and training, capture and retain information as part of their stock-in-trade, and sell information to clients who ask for it to be applied to their circumstances. Lawyering is, arguably, more information intensive than any other industry or profession’.⁸⁷⁵ There was an inevitability

Technology and the Legal Profession (12 August 2010) David Wilkins Blog <http://lawprofessors.typepad.com/mass_tort_litigation/2010/08/david-wilkins-on-globalization-technology-and-the-legal-profession.html> viewed on 13 October 2010.

⁸⁶⁵ LCA Discussion Paper 2001, above n 141 .

⁸⁶⁶ Ibid.

⁸⁶⁷ Ibid 71.

⁸⁶⁸ LCA Discussion Paper 2001, above n 141, 56. , citing Barker, Garry, “Digital Divide Widening”, *Sunday Age*, 10 December 2000, 61.

⁸⁶⁹ LCA Discussion Paper 2001 above n 141, 92 citing Mary Byrne ‘Net popular for ongoing education’ *Australian Financial Review*, 16 February 2000, 44.

⁸⁷⁰ Graham Ballard ‘Growth areas of practice and IT – the relationship’ (2002) 22(8) *Proctor* 14; e-Law Practice, ‘Have Justice – Will Travel’ (2002) 13 *e-Law Practice* 46.

⁸⁷¹ Thomas A. Stewart, *Intellectual capital: the new wealth of organisations* (Nicholas Brealey Publishing, 2003). Refer also to Joseph L Badaracco, *The knowledge link: How firms compete through strategic alliances*, (Harvard. Business School Press, Boston, 1991), who has written on the importance of knowledge management in organisations.

⁸⁷² Refer generally to Peter F Drucker, ‘The Coming of the New Organisation’ (1988) *Harvard Business Review* 3 – 11; *The New Realities* (Harper & Row, New York, 1989); *Managing for the Future* (Butterworth-Heinemann, Oxford, 1992); *Managing in a Time of Great Change* (Truman Talley Books/Dutton, 1995); and *Management Challenges for 21st Century* (Harper Business, New York, 1999).

⁸⁷³ Susskind (1996), (2000) and (2008) all above n 764. See also Morgan (2010), above n 864.

⁸⁷⁴ Susskind (2008), above n 764, 79.

⁸⁷⁵ Ibid.

then that technology would impact on any profession whose function it is to collect, manage, advise and manifest that knowledge and information to its clientele. Law practices that were quick to recognise these implications would certainly have an early competitive advantage.⁸⁷⁶ The use of information technology by law practices for innovation is one of the greatest challenges faced by lawyers.⁸⁷⁷

For other law practices, there may be inertia to overcome:

*... some might want to argue that lawyers' conservatism is the key factor here [for the take up of IT] an inertia which extends well beyond that of most professionals, and, it might be said, is institutionally enshrined and bolstered in the legal psyche by precedent, the very lifeblood of the common law.*⁸⁷⁸

For RRR legal practitioners there may be two compounding reasons that might foster a reluctance or inertia to the use of information technology; first, the conservatism to be found in the law, noted above and secondly, the lack of foresight of rural lawyers to take advantage of opportunities (or conversely deal with threats).⁸⁷⁹

There may be valid reasons for hesitancy in using information technology on the ground that such innovation may be disruptive, or may result in reducing the effectiveness of the practice.⁸⁸⁰ Not all change leads to increasing sustainability and competitive advantage. Additionally, research indicates that an integrated approach, rather than a fragmented approach for introducing innovation, can improve performance.⁸⁸¹ Both points support a strategic approach, rather than a reactive one, to the introduction of information technology.

The use of information technology by legal practitioners must take into account a number of factors if it is going to provide genuine innovation and ultimately adaptation to the changing environment. First, that information should be used for innovation not merely automation.⁸⁸² This approach would influence and shape wider business objectives,⁸⁸³ such as enabling legal practices to attract legal staff by allowing more flexible working conditions.⁸⁸⁴ Second, lawyers needed to focus their initiatives according to what they

⁸⁷⁶ For a discussion of competitive advantage, refer to Barney (1991), above n 786, 119 – 120.

⁸⁷⁷ Susskind (2010), above n 764, 77.

⁸⁷⁸ Susskind, (2010) above n764, 246.

⁸⁷⁹ Refer to Franklin, and Lee, above n 812 , 218.

⁸⁸⁰ Paul Hyland and Ron Beckett, 'Engendering an innovative culture and maintaining operational balance' (2005) 12(3) *Journal of Small Business and Enterprise Development* 336.

⁸⁸¹ Mile Terziovski 'Achieving performance excellence through an integrated strategy of radical innovation and continuous improvement' (2003) 7(2) *Measuring Business Excellence* 78.

⁸⁸² Susskind (1996), above n 764, 227. Drucker noted the need for innovation rather than mere automation in his article, 'The Coming of the New Organisation' (1988), above n 464, in which he stated 'most computer users still use the new technology only to do faster what they have always done before, crunch conventional numbers. But as soon as a company takes the first tentative steps from data to information, its decision processes, management structure, and even the way its work gets done begin to be transformed.'

⁸⁸³ Susskind (1996), above n 764, 227.

⁸⁸⁴ The critical issue of attraction, selection, retention and progression of suitably qualified legal staff is complex. This paper proposes the innovative use of information technology as one means of dealing with the issue. It is certainly not the only means. Further research into this issue is being carried out in terms of strategies being used by RRR legal practices. An example of alternative methods that has been taken up by a number of RRR legal practices is the recruitment from within local communities; and the recruitment and training from within legal practices.

consider as the more beneficial uses of such systems,⁸⁸⁵ for example, to use information technology for research, improved communications and systematised client file management – rather than mere word processing.

The quantitative data shows that the most common use of information technology is emails and non-subscription databases, followed by subscription databases and some significant use of voice recognition technology and web-cam technology.

The qualitative data provides much greater insight into the use of technology that indicates that it can be used innovatively by RRR legal practitioners. Its most common use by RRR legal practitioners reflects the literature that describes the strategic use of information technology as providing opportunities to be a ‘major enabler’ to reduce geographical differences.⁸⁸⁶ A number of participants indicated that ‘valued’ partners and legal staff who did not want to be located in the RRR practice but wanted to be metropolitan-based, were retained through the use of a combination of iPhones, emails and video-conferencing. This use of information technology has allowed a small law practice to continue its legal practice as a single ‘virtual legal practice’ under one ‘virtual’ roof⁸⁸⁷ rather than to be fragmented with the loss of the partner who did not want to remain in the RRR location. In this way the technology has enabled the small law practice to aggregate work and to remain sustainable and competitive.⁸⁸⁸

The qualitative data also provides other examples of the innovative use of information technology, including the use of video-conferencing for Federal Magistrate Court Family Court appearances and e-lodgement in order to reduce travelling time. Participants also reported the innovative use of ‘basic’ technologies, including a digital dictator combined with emails to retain the services of administrative staff located in another state, and the use of the telephone to do ‘mentions’.

The literature also indicates that information technology is relevant because the law staff and clients may judge a law practice on the quality of the information flowing from it through information technology, including the presentation of documents and the ‘look and feel’ of its website.⁸⁸⁹ This may give an advantage to a RRR law practice that can have a high quality ‘virtual office’ on the Internet without the expense of a city lease.

The qualitative data supports this view; that judgments by both clients and prospective legal staff are made about a law firm based on their use of information technology. A number of participants commented that they sought to brand the law practice through their documentation and to maintain a consistent approach in all aspects of their communication, precedents, documents and research - no matter where the practice was located. ‘Law is a business – you need to sell it at the end’. For a number of participants that ‘selling’ of the law was through their use of information technology.

From the perspective of legal staff, especially ‘young’ legal staff, the innovative use of technology was seen as a source of attracting this demographic. iPhones and interactive

⁸⁸⁵ T du Plessis ASA du Toit ‘Knowledge management and legal practice’ (2006) 26 *International Journal of Information Management* 360 – 371.

⁸⁸⁶ Susskind (1996), above n 764, 227.

⁸⁸⁷ Susskind (2008), above n 764.

⁸⁸⁸ Ibid.

⁸⁸⁹ Susskind (1996), above n 764, 230.

websites were seen as being methods of attracting and retaining young employed solicitors. 'We want to recruit the best graduates and so we will respond to them.'

From the qualitative data, then, the use of information technology is important for a number of reasons, including the retention of valued legal staff (partners/directors), flexible working conditions for administrative staff, attraction and retention of young employed legal staff and marketing to clients.

There is an argument that adaptation through the use of innovative information technology is more readily available to smaller practices than it is to larger practices on the grounds that they are simpler, cheaper and less complex.⁸⁹⁰ Participants provided significant qualitative data in terms of the costs associated with investing in subscription databases and the costs of modernising (in particular) old buildings to enable suitable information technology infrastructure (cabling) to be installed.

9.4.4 Information Technology Research and Training

In response to questions on research and training on information technology, the quantitative data suggests that most participants are engaged in researching the use of information technology as well as training and updating needs. The qualitative data revealed a number of examples and issues relating to training and updating that occurred through both formal and informal methods.

For the use of information technology to be effective and to enhance sustainability, RRR legal practitioners should take into account 'critical factors'⁸⁹¹ including 'hybrid management'.⁸⁹² 'Hybrid management' refers to the assumption of responsibility by unqualified members of the law firm, to fill a void. When decisions occur through such hybrid management, they are not always well researched nor do they necessarily fit strategically within the business planning,⁸⁹³ for example, decisions relating to choices of information technology.

Both the quantitative and qualitative data indicated that young employed solicitors were the most innovative users of information technology. Participants consistently commented that they relied on the young employed solicitor to provide information technology innovations and training, or that innovation was in response to the needs of the younger staff. The research did not explore the full impact of this reliance upon young employed solicitors, but it could be an area for future research.

A number of participants identified that expert information technology resources were available in the law practice and their role included training and updating and that this be carried out as part of a strategic and innovative approach. Other participants acknowledged that the role of providing information technology updating and training fell

⁸⁹⁰ Ibid 229.

⁸⁹¹ Ibid 223 – 267.

⁸⁹² Ibid 238.

⁸⁹³ Ibid.

to other legal practitioners (either partners or employed solicitors) to carry out this role. This was an ad hoc approach.

The quantitative data, when compared with the previous data, suggests that while administrative staff and paralegals are the predominant users of information technology, it is the employed solicitors and principals who are the most innovative users of that technology.

The comments from the participants confirmed the importance of young employed solicitors as a means for RRR legal practices gaining access to the innovative use of technology. The comments also provided additional sub-themes that included some participants noting that the innovative use of information technology was also in part driven by the need to be responsive to the younger generation of legal staff. A number of participants in their role as principals also took a proactive (top-down) approach to the innovative use of information technology. In some of the comments above it is apparent that the approach of participants was to consider a full range of technologies and to implement their use for the purposes of developing business and driving profit. A number of participants spoke of allocating funding to information technology experts to determine the innovative use of technology. Equally, there were a number of participants who were sceptical and hesitant about the use of any information technology, preferring to 'use it with caution'.

Again, the data reveals that some RRR legal practitioners rely on ad hoc (inexpert) resources with which they have connections, in order to develop key aspects of their business. Only some practitioners actively sought the input of expert advice to research and resource innovative uses of information technology.

The quantitative data provides some indication about the intentions of participants to make future use of information technology and their approach to it. The data suggests that information training is the most likely plan. This fits with the qualitative data. The earlier data about the use of information training by administrative staff and paralegals, coupled with the figures that this group of staff are the largest in the participants' law practices, suggests that well trained staff, capable of using sophisticated legal software may be filling some gap in the provision of legal services within RRR Queensland law practices. Participants also recorded that they were researching information technology topics.

There still remained a significant number of participants who had no plans to use information technology at all. This last item does not appear consistent with the earlier data about the most predominant and innovative users in which the participants had nominated themselves.

Much of the qualitative data related to the legal software companies who approached RRR law practices in terms of costing, features and follow-up services. A number of participants commented that information technology was too expensive.

The research into installation of, and updating of, information technology and software was seen by participants as a major source of financial commitment as well as a future commitment to ensure staff (both legal and administrative) were trained.

A number of participants stated a need for more information and guidance in this area and expressed that this might be a role for the QLS. A sub-theme arose in relation to the lack of suitably up-to-date information technology resources being provided by government legal services. And a further sub-theme was that the QLS could be a provider of research and information on information technology options.

9.5 Summary

The chapter discussed the earlier commissioned surveys into RRR legal practice and the identification of the issue of recruitment. The chapter considered the importance of recruitment for the sustainability of RRR legal practice, the risks for sole practitioners and the pressures of partnership with respect to 'human capital'. The chapter discussed how RRR law practices recruit, select and develop legal staff, including the importance of mentoring. The chapter discussed the importance of entrepreneurial skills for RRR legal practitioners.

The chapter considered the extent to which RRR law practices market their services and the importance of reputation and embeddedness. Finally the chapter focused on the use of information technology by RRR law practices. The chapter identified that there is a lack of data on this topic. It also discussed the innovative use of information technology by RRR law practices and training opportunities. The discussion in this chapter also included references to the definition of 'sustainability' that comprised the elements of longevity of the practice, profit, controlled growth, renewable resources (including legal staff and clients) and the normative environment within the law practice.

The following chapter draws some conclusions from the research and also identifies some proposed areas for future research.

Chapter 10

Conclusions and Directions for Future Research

10.1 Introduction

This chapter considers the research question which asks ‘What is the prevalence and nature of sustainability practices in regional, rural and remote (RRR) Queensland law practices?’. The chapter reflects upon each of the research issues (RIs) in terms of the literature, the findings of the quantitative and qualitative data and, the conclusions that can be drawn from these sources. The chapter also provides some conclusions in terms of the definition of ‘sustainable’ that follow from reflections upon the data.

From the conclusions, recommendations are made in terms of implications for future research, identification of areas for the development of evidence-based policy and implications for legal education both through legal education, the Queensland Law Society (QLS) and district law associations (DLAs). The chapter also considers whether the original justifications for carrying out the study (noted in Chapter 1) have been met.

10.2 Conclusions

10.2.1 RIS 1 and 2: The Prevalence and Nature of Connectedness to the Profession and Connectedness to the Community by Legal Practices in RRR Queensland

Connection to the Community

The findings of the study are consistent with that of the literature in terms of the strong connectedness RRR legal practitioners have with the community. That connectedness with the community has both positive and negative implications. Possibly the key positive implication is with respect to the opportunities for marketing the law practice and some opportunities for recruitment through this connectedness. However, not all RRR law practices experience (or exploit) that connectedness in the same way. Some RRR law practices are more sophisticated in their connectedness, for example, their connectedness is with organisations with decision-making powers, while other RRR legal practitioners connect with schools and sporting associations. Both appear to be motivated by similar purposes, which include building reputation and as an alternative to marketing.

The most prominent negative implication relates to the lack of anonymity and resulting stress possibly caused by the high levels of connectedness.

Connection to the Profession

The quantitative and qualitative data, and the literature, confirm that RRR legal practitioners are not as connected to the profession as they are to the community. However, the qualitative data indicates that within the connectedness to the profession there are differences between the level of connection with the QLS, and that of the DLAs - detailed below.

Connection to the Queensland Law Society

The QLS is seen as a source of legal knowledge and therefore relied upon by the RRR legal practitioner. Conclusions concerning RI 3 (Business of the Legal Practice) and the inability to specialise, emphasises the dependence of RRR legal practitioners upon the QLS for that knowledge.

The QLS is also seen as a source of ‘disappointment’ and to some extent, the cause of the plight of RRR legal practitioners who are ‘stressed’. This was owing to the requirements of the QLS for legal practitioners to participate in executing the QLS’s role of ‘consumer protector’ through having to advise their clients upon how they can take up complaints against the RRR legal practitioner to the QLS. The other source of stress generated by the QLS relates to the ongoing regulatory reforms that impact on ‘the legal profession’.

There are dual roles for the QLS – that of ‘holder of knowledge’ and that of ‘demander of client-standards’. In terms of responding to these roles, some RRR legal practitioners perceive the role of the QLS negatively while others simply utilised the organisation for their own ends. Either way, there is possibly work to be done to improve the relationship between RRR legal practitioners and the QLS. This may occur through the DLAs.

District Law Associations

The DLAs offer the combination of a professional body within the context of the community. As such, they have the potential to be important sources of knowledge and support for RRR legal practitioners if they can be more fully resourced by the QLS and more dynamically utilised by RRR legal practitioners.

10.2.2 RI 3: The Prevalence and Nature of Business Carried out by Legal Practices in RRR Queensland

Legal Practice Areas

The data (quantitative and qualitative) indicates the reliance of RRR legal practitioners upon certain legal practice areas that include succession, conveyancing and family law. There is great difficulty specialising in any particular area of law in RRR legal practice (possibly only in family law). As such, RRR legal practitioners are faced with operating their practices in areas where they lack expertise.

There are a number of conclusions that can be drawn from the discussions on this particular research issue relating to specialisation and lack of expertise. These conclusions are detailed below.

Specialisation

In pursuit of building legal practice areas and creating some specialisation, some RRR legal practitioners actively developed new areas of law that they could specialise in, for example, ‘rural law’ and areas of business law that were responsive to growth areas within their location. These practitioners were in the minority. The ability to be proactive in this area requires initiative, creativity and a willingness to take some level of risk. It also is at odds with the belief of RRR legal practitioners that the QLS (and regulation) is responsible for the creation and protection of legal practice areas – an environment in which most legal practitioners have been raised. The fostering of a more entrepreneurial approach to seeing an opportunity and acting upon it to their own advantage may be an aspect that can be promoted by legal education and the QLS/DLAs.

Lack of Expertise

A second conclusion that can be drawn concerns the issue of ‘lack of expertise’ and how RRR legal practitioners can deal with this. The findings from the qualitative data were that some RRR legal practitioners are proactive in effectively dealing with this through

the use of strategic alliances, a strong reliance upon the QLS Library, the development of research skills and a reliance on subscription databases. The conclusion that can be drawn here is that such RRR legal practitioners who are faced with exactly the same predicament as all other RRR legal practitioners perceive the same societal and technological changes not as threats, but as opportunities to advance their law practices and to provide assistance.

It is also worth noting that while earlier investigations into legal practice areas available to RRR legal practitioners have suggested changes in government policies to outsource government work to RRR legal practitioners, such a policy might only work in the short term. The legal environment is changing for lawyers whether they practise in metropolitan or RRR areas. What is needed is a change in the training of lawyers so that they can anticipate change and respond to it effectively. Sustainable legal practice must include the ability to adapt to the changing environment. Adaptiveness is an important element included in the definition of ‘sustainable’. The inclusion of that element also suggests some explanation as to why there did not appear to be any single explanation for what was a sustainable practice. The complexity of the RRR legal practice environment suggests that it is having to deal with a range of forces including changing staff, changing regulations, economic factors within the community and, the legal practitioners themselves facing personal and professional challenges.

A possible conclusion from this research is that a determining factor for sustainability rests in the ability of the RRR legal practitioner to adapt to the circumstance and to effectively exercise some of the characteristics of an entrepreneur, including the ability to deal with risk and uncertainty, as well as being creative.

The Extended Role of Lawyers

RRR legal practitioners experience the delivery of legal services on a personal level within their communities. The qualitative data and the literature confirm the close proximity in which law is practised in RRR locations. As discussed above, in many instances it is experienced as a positive aspect; it is also experienced as a source of great stress for a number of reasons. For example, it was overwhelmingly acknowledged that there is a lack of anonymity involved with being a lawyer in a RRR location. There is simply no getting away from the role of being a lawyer no matter what the circumstances are – there is no separation between the RRR legal practitioners’ professional life and their personal life. There is also the expectation of a deep involvement in the lives of the RRR legal practitioners’ clients – whether they want that or not, being a RRR legal practitioner is a ‘vocation’. The expectation includes that RRR legal practitioners will want to befriend their clients, that they can assist solving their clients’ problems including social, family, personal, technology, career and health. This places enormous strain upon RRR legal practitioners for the reasons that such practitioners are not trained to deal with problems other than ‘legal problems’; RRR legal practitioners cannot bill for time spent trying to solve these problems and attempting to deal with these problems costs time away from solving the problems for which they can bill.

RRR legal practitioners need to be aware of this dynamic and be prepared to deal with it. The QLS can offer advice and support in this area in terms of recommending RRR legal practitioners refer matters outside of legal problems to the appropriate professional services. A comparison with other professionals faced with similar circumstances might be useful. The key conclusion in terms of this is that there needs to be acknowledgement

of this role, transparency and opportunity for recompense. If the RRR legal practitioner is a valuable member of the community, beyond the provision of legal advice, then that needs to be acknowledged and duly supported.

10.2.3 RI 4: The Prevalence and Nature of Business Planning Carried Out by Legal Practices in RRR Queensland

The exploratory investigation into this aspect of RRR legal practice was perhaps one of the most important, and revealed a polarised approach amongst RRR legal practitioners. In terms of carrying out the interviews, the responses indicated either a full knowledge of business planning based on the principles of business management, or a complete lack of knowledge and an indication that this was a major source of concern and stress.

The data (both quantitative and qualitative) and the literature suggest that RRR legal practitioners do not actively or strategically deal with threats or opportunities. Even though the study was too small to draw any conclusions on business planning, on reflection and within the context of the employment history of the participants, it might be concluded that RRR legal practitioners who have moved directly into RRR legal practice without exposure to the idea that a law firm is operated within the context of a business environment, appeared to have difficulties understanding the importance of business planning. Rather it was treated ad hoc. Conversely, RRR legal practitioners who have been involved in large law firms and have been exposed to systems and methods of business planning, appeared to have a more confident, professional approach to business planning that included involving experts in this area.

A Role for Legal Education

The most useful time for prospective RRR legal practitioners to gain business planning knowledge and skills is while they are at law school. RRR legal practitioners need this knowledge in terms of recognising its value for ‘law as business’ rather than as an activity that may or may not have any benefit for them, or considered as a burden. The content of any *Business Planning for Lawyers* course would need to include topics such as governance structures available to legal practitioners (including the option of incorporated legal practices [ILPs]), fees, billing and profitability, entrepreneurship and, work culture. In other words, a general business planning course may not be sufficient to meet the specific needs of RRR legal practitioners. It is worth reflecting on the suggested topics of such a course with direct reference to conclusions from the study.

Governance Structures

The quantitative data indicated that the sample, although small, was reasonably representative of the types of governance structures available – sole practitioner, partnership and ILPs. Clearly, there are formal implications from the choice of governance structure in terms of liability and access to equity. These have been fully discussed within the thesis at Chapter 2 (*Literature Review*) and Chapter 8 (*‘Law as Business’ and the Choice of Governance Structure*). The beneficial financial and organisational aspects of IPLs need to be clearly articulated and promoted through law school and through the QLS and DLAs.

At an informal level, these governance structures appear to be assisted by the use of strategic alliances that have had an impact on the dynamics of each of these structures in terms of enabling individual RRR legal practitioners to informally access additional

resources particularly, legal knowledge. In this way, strategic alliances offer RRR legal practitioners with a potential solution to the problems of inability to specialise and the lack of expertise. It is suggested that this is an indication of an adaptation of a formal structure that is potentially able to increase an individual RRR legal practitioner's opportunities for sustainable RRR legal practice. Additional conclusions on the definition of 'sustainable' are detailed later in this chapter.

A second conclusion in terms of the chosen governance structure relates to the qualitative data that consistently indicated the importance of the ability to resolve partnership disputes. The movement into and out of partnership dominated much of the discussion in terms of governance structure. The conclusion was not that disputes should be avoided, but rather that they need to be managed constructively. Experience was clearly important, but it was also costly. In terms of maximising sustainability, this is a skill that prospective RRR legal practitioners can be introduced to as part of law school training.

Fees, Billing and Profitability

At the core of sustainability lies the need to generate profit. The findings from the literature and the qualitative data indicate that RRR legal practitioners may seek 'lifestyle' and 'autonomy' over profit. The conclusion in this thesis is that a sustainable RRR legal practice can include profit as well as lifestyle and autonomy. The qualitative data revealed that law graduates who then practise in RRR areas are not taught (adequately) about the need to bill or how to keep the work flowing in order to generate profit. The data also revealed a wide range of approaches to billing – mostly ad hoc and very little of it relating to regulatory or business planning principles. Knowledge on methods of billing is needed.

The prospective RRR legal practitioner requires this knowledge that is grounded in their regulatory obligations. Once the RRR legal practitioner has this basic knowledge, further and more detailed knowledge (and later experience) will assist the RRR legal practitioner in seeing the implications of how fees and billing can be used to maximise profit and how that can in turn impact on growth.

What is apparent from the study and can be quite confidently concluded is that RRR legal practitioners are self-taught in terms of creating sustainable legal practices. That knowledge is gained through hard-fought experience and in some cases has come at the cost of stress and disillusionment. Experience is valuable; in the pursuit of sustainability, however, formally acquired knowledge that is readily, easily and cheaply obtained through teaching mechanisms, is required. Experience then, becomes even more valuable when it takes that knowledge and adapts it in response to the multitude of situations that no law school can anticipate.

Allied to the concept of profitability is growth. Conclusions relating to growth are dealt with below as part of entrepreneurship because the determination of when, how and why to grow require the skills of an entrepreneur.

Entrepreneurship

This thesis has only superficially touched on entrepreneurship. The literature (socio-legal, legal management and business management) is clear about the need for a RRR legal practitioner to be an entrepreneur. The data from the participants indicates that the skills of an entrepreneur are not fully understood, acknowledged or developed by RRR

legal practitioners. Again, the conclusion drawn here is that prospective RRR legal practitioners need to be aware of what will be demanded of them within the context of RRR legal practice. The discussion on whether entrepreneurs are born or made is not taken up, instead, the conclusion reached is that select knowledge on entrepreneurial skills can be identified and taught to prospective RRR legal practitioners.

Other disciplines, including commerce and business management, effectively identify the characteristics and skills needed to be an entrepreneur within the context of small, medium and large organisations. The literature is extensive and can readily be adapted to apply to RRR legal practice.

Some of the characteristics are already the subject of (and highly relevant to) lawyers including judgment and insight and, a keen intelligence. Other characteristics are equally vital for the RRR legal practitioners including being able to see opportunities, a knowledge of technology to advance the law practice, ability to deal confidently with social situations and an ability to develop a rapport with clients. Given the existing environment in which RRR legal practitioners find themselves, the ability to demonstrate creativity and vision is a characteristic that can be initially identified and over time fostered as a skill to deal with the challenges (regulatory, social, economic, technological) that daily confront the RRR legal practitioner. In particular, the skill of creativity has been recognized as one that is exercised within highly adaptive systems.

Knowledge gained in law school is vital; expertise in exercising entrepreneurial skills is then developed through experience, including knowing when to use creativity, leadership, judgment and vision to determine when, how and why to grow the RRR law practice.

Normative Environment

The literature and the qualitative data were also consistent in their identification that the normative environment (the work culture) was an important aspect for sustainable RRR legal practice. Conclusions in terms of RRR legal practice are that this environment is complex and comprised of formal and informal elements. It appeared to be strongly influenced by the attitudes and values of the participants. It is included as potentially part of a law school's curriculum for the reason that the qualitative data indicated that this element permeated and influenced many aspects of sustainable RRR legal practice, including 'growth' (discussed in Chapter 8 under *Growth and the Work Culture*), recruitment and retention (Chapter 9 under *The Importance of the Law Firm Culture*), and the use of information technology (Chapter 9 under *The Innovative Use of Information Technology*).

In terms of the inclusion of this aspect in any legal education institution, it needs to be done from both the perspective of the prospective RRR legal practitioner as an employee, and from the perspective of the prospective RRR legal practice-principal. Both are participants in the culture, but with different expectations that need to be acknowledged.

The formal requirements of the normative environment for RRR legal practice relate first to the regulatory need for legal supervision of RRR law graduates. Both parties to this relationship need to be aware of the regulatory requirements; how supervision can be done effectively and, the implications of not carrying this out appropriately. The informal elements of this relate to mentoring, effective communication and development of interpersonal skills.

10.2.4 RI 5: The Prevalence and Nature of Recruitment and Retention Used by Legal Practices in RRR Queensland

One of the primary motivations for carrying out this research was the urgent need for legal staff in RRR Queensland legal practice. The data (quantitative and qualitative) has provided some clear insights into some potential methods for opportunities to increase access to legal staff.

Informing RRR Legal Practitioners about Recruitment and Retention of Legal Staff

The research has revealed some important aspects that increase opportunities for recruitment and retention of (and access to) legal staff in RRR legal practice. The key aspects relate to opportunities for legal work in RRR Queensland, recruiting from within the law firm, legal supervision and mentoring, career progression, use of information technology, law firm culture, use of ILPs and, flexible working arrangements.

Opportunities for Work

The research has revealed that there is some innovation in responding to areas of legal work amongst some RRR legal practitioners. Prospective RRR legal practitioners with the appropriate entrepreneurial skills will be able to see opportunities for further developing profitable legal practices. This has already been discussed as a conclusion, above.

Recruiting from Within

The literature and data all point to the advantages of recruiting legal staff from within the law firm. This responds to the literature in terms of investing in human capital that the RRR legal practitioner already has access to.

Legal Supervision and Mentoring

The literature and data indicates that appropriate legal supervision and mentoring are important for both retaining and maximising the potential of legal staff. The research highlighted some variation among RRR legal practitioners in terms of their responsibilities to provide legal supervision to their staff. The perspective of this study was that of RRR legal practitioners who owned the law practice. Therefore, the full extent of the issue of inadequate legal supervision was not fully exposed. That would need to be the subject of future research. However, there was a hesitancy and uncertainty about the responsibilities associated with legal supervision. Participants did provide qualitative data in terms of their own experiences of legal supervision when they were recent law graduates.

Further, the qualitative data revealed the positive influences of being well mentored. Participants spoke of this experience (when done well) as having long term effects in terms of providing access to ongoing legal knowledge and support. Given the earlier comments in relation to the stress associated with RRR legal practice and the concerns with lack of expertise, mentoring (that may extend into strategic alliances) has a key role to play in retaining access to legal staff.

Career Progression

The data (quantitative and qualitative) indicated that the RRR legal practitioners did not have a strategic approach to the career progression of their legal staff. For obvious reasons the participants from larger law firms were more articulate at stating the career

structure available to their legal staff, but smaller RRR legal practitioners did not consider this as an aspect that might attract suitable legal staff. Further, there was almost nil response in terms of offering training for leadership. The conclusion that can be drawn here is that RRR legal practitioners need to offer prospective legal staff a pathway for progression as part of a package for attraction, recruitment and progression. In particular, given the earlier comments about the need for entrepreneurship, short programs on leadership and other skills then need to be offered to ensure legal staff are appropriately trained.

Use of Information Technology

The literature indicated that information technology is important in terms of how prospective legal staff might judge a particular legal practice. There was some indication from the qualitative data that ‘young’ legal staff were attracted to a particular law firm based on their perceptions of how information technology might be used, including interactive websites, Facebook and IPHones. For many RRR legal practitioners, the use of information technology was either (accidentally) overlooked, spurned or used for word processing only. Only a few RRR legal practitioners saw the use of information technology as a means of recruiting for legal staff (and marketing for clients). Further conclusions are drawn about the use of technology. For its part here, it is discussed in terms of how it can be used to recruit and retain legal staff. The conclusion about its use also flows into the ‘culture’ of the law firm in terms of how responsive the law firm is to ‘young’ recruits, how dynamic it is – all of which is discussed directly below.

Culture

The management literature and the legal practice management literature are consistent in terms of stating the importance of culture as a means of retaining legal staff. This has been discussed above. The qualitative research indicated a wide range of views on the importance of culture. Some RRR legal practitioners recognised its importance and sought to foster a particular culture within the firm. Some had the approach of wanting to respond to legal staff, others wanted the legal staff to do the adapting, while other participants made no mention of it.

The conclusion can be confidently drawn that culture in a law firm is important, particularly as a method of retaining legal staff. As a feature of the normative environment, working at improving the culture within a law firm is likely to increase its ability to remain sustainable.

Use of Incorporated Legal Practices

The quantitative data indicated that small RRR legal practitioners have taken up the use of ILPs. This research did not investigate the motivation for the choice of that governance structure, however, the qualitative data indicated it was primarily for financial reasons that included a lower tax rate and also limited liability. The use of ILPs also offer RRR legal practitioners the opportunity to provide employment benefits that include offering staff incentive schemes and as a method of succession planning that would enable new partners to obtain equity gradually through the buying of increasingly more shares in the practice. RRR legal practitioners need to be more fully informed of all of the benefits of ILPs and to promote this as part of attracting legal staff.

Flexible Staffing Arrangements

Perhaps one of the most surprising findings of this research was in relation to the range of flexible staffing arrangements RRR legal practitioners offer their staff. Chapter 9 (*In-House Staff Programs*) outlines some of the flexible staffing arrangements offered. In this regard, RRR legal practitioners demonstrated innovation, creativity and a keen understanding of the importance of valuing and looking after their staff. The responsiveness of RRR legal practitioners to the challenges of limited access to staff indicated that RRR legal practitioners have the potential to be highly adaptive. The qualitative data on this topic revealed an understanding of the complexity of the issue of access to legal staff (and staff generally). The ‘solutions’ used to retain legal staff frequently offered a broad range of benefits to the legal practitioners including offering additional opportunities for access to legal work and clients, building motivation and increasing profitability. Further, the methods for achieving the flexible staffing arrangements included the innovative use of information technology, sometimes basic technologies, for example, telephones and digital voice recorders.

The conclusion that can be drawn here is that RRR legal practitioners are capable of being highly adaptive and innovative. More information sharing about the challenges and solutions needs to be made available to RRR legal practitioners.

10.2.5 RI 6: The Prevalence and Nature of Marketing Carried Out by Legal Practices in RRR Queensland

The legal management literature is specific in its discussions about the importance of ‘reputation’ for lawyers as a method of attracting and retaining clients, as opposed to the use of ‘marketing techniques’ to achieve the same end. It is as though this is one area within the management literature that is at some variance with the legal profession, and not least of all because it is grounded in a ‘profession’ with notions of ‘ethics’ and ‘professional standards’ that for centuries have been, until recently, heavily regulated.

The quantitative and qualitative data is consistent with the legal management literature in its (almost) rejection of marketing, however, the data indicates a keen understanding by RRR legal practitioners of the importance of reputation. Indeed, many of the findings in relation to ‘connected to the community’ discussed earlier (and in detail in Chapter 8) is consistent with, and motivated by the importance and value of reputation.

The conclusion put forward regarding this research issue relates to the possible implications that may occur from the increased use of ILPs in terms of that governance structure offering access to capital that may be available to ‘market’ and differentiate law firms in an increasingly competitive market. Further, there may be effects from the increased use of information technology that may see the expansion of the range of any RRR legal practices beyond its own community and into other locations where its connectedness to the community is minimal. Again, this may make ‘marketing’ more attractive as a method of filling any void created through an absence of connectedness to the community. It is likely that reputation will always be important, however, reputation may become a more aggressively marketed commodity.

10.2.6 RI 7: The Prevalence and Nature of the Use of Information Technology by Legal Practices in RRR Queensland

The transformative potential of the use of information technology has been emphasised in the literature for a number of years now. The investigation into RRR legal practice was informative to see how effective the use of information has been ‘on the ground’. There are a number of conclusions that can be made in relation to the reality of the use of information technology for RRR legal practitioners. The four that this study can make relate to the general use of information technology, the lack of expert advice, some highly innovative uses and, the impact of government use of information technology for RRR legal practitioners.

The General Use of Information Technology by RRR Legal Practitioners

The quantitative and qualitative data indicate that at the moment of the interviews, RRR legal practitioners were not fully taking advantage of the innovative use of information technology to assist with the delivery of legal services. In particular, there was low uptake of information technology regarding the use of a website, emails, and subscription and non-subscription databases.

The qualitative data revealed that RRR legal practitioners would like more information and advice on the use of information technology (especially regarding subscription databases) from the QLS. There were a number of RRR legal practitioners who were using information technology in highly innovative ways and it may be that the use of such technologies may create some divergence between sustainable and unsustainable RRR legal practice because it affects not only the delivery of legal services, but also attracting legal staff and clients.

The Need for Expert Advice

The legal management literature is consistent with the quantitative and qualitative data that legal practitioners (including RRR legal practitioners) rarely seek out ‘expert advice’ on the use of information technology. Instead, it is often ‘young lawyers’ who are relied upon to provide that advice. One conclusion that can possibly be drawn here is that once again, it demonstrates that once RRR legal practitioners leave law school, they do not engage in formal continuing education concerning the sustainability of their legal practice.

Flexible Working Arrangements

The earlier conclusions relating to RRR legal practitioners’ approaches to flexible working arrangements relied upon highly innovative uses of information technology – some of it through rather basic information technology. This is an area in which many RRR legal practitioners are making effective and strategic use of information technology. The conclusion is that this needs to be promoted and possibly further investigated. It may be that the approach or triggers for this could be replicated into other areas of RRR legal practice.

Government Use of Information Technology

The qualitative data revealed that the government’s poor use of information technology – both in terms of infrastructure and services – is having the effect of hampering efficient e-government and reducing the ability of RRR legal practitioners to take full advantage of cost-saving information technology uses. This was a topic outside of the scope of the

study. However, the qualitative data was consistent among the participants in terms of the costs that were borne by RRR legal practitioners in instances where the state government had replaced face-to-face legal services with information technology services and infrastructure that were inadequately supported. Participants raised this consistently and of their own volition.

The qualitative data was consistent in terms of expressing concerns that impacted upon the extra work placed upon RRR legal practitioners to cover for the government's poor service (including errors, lack of knowledge, inadequate infrastructure and inconsistencies).

The conclusion that is drawn from this is that further data is needed to investigate the extent of this problem. This is an appropriate area for the QLS to take a role in ensuring RRR legal practitioners are not disadvantaged by the inadequate use of information technology by government.

10.3 Conclusions on the Definition of 'Sustainable'

10.3.1 The Impact of the Data

From the process of analysing and reflecting upon the qualitative data combined with a further exploration into the literature, two conclusions were reached concerning the definition of 'sustainable'. The first related to the element of 'controlled growth' and the second to the inclusion of a sixth element, 'adaptiveness'. These conclusions are now presented below.

Controlled Growth

The review of the literature (Chapter 2) considered controlled growth as an element of sustainability. Upon reflection of the qualitative data, it is apparent that the element may not necessarily relate to a law practice expanding numerically in terms of staff, but may include such controlled growth in terms of 'reach' and 'influence' that can be achieved through informal mechanisms. These include the RRR legal practitioner creating informal strategic alliances that enable controlled growth via access to legal staff (and legal knowledge) not represented or noted in any formal way within the legal practice.

A second way that such controlled growth can occur, which does not necessarily mean expansion in size or numbers of the legal practice, may be through the innovative use of information technology. This method allows the RRR legal practitioner to extend the reach of the RRR law practice beyond its geographical boundaries into areas in which it is not physically located.

Through both methods, the RRR law practice is increasing its opportunities for sustainability through controlled growth that is not manifested through growth in terms of increasing in size or number.

Adaptiveness

The second conclusion drawn concerning the definition of 'sustainability' relates to the ability of the RRR law practice to adapt. The systems literature sees adaptiveness as being linked to growth (breakdown, reorganisation and renewal). It is a positive result of

the entrepreneur who is able to bring about creative solutions to challenges (or able to harness or influence that from others).

From the qualitative data, it was apparent that from within the same environment some RRR legal practitioners were able to create new legal practice areas that were overlooked or not considered by others. Factors such as the size of the law practice, governance structure or location did not appear to have a bearing on the ability of the legal practitioner.

In terms of the RRR law practice, it appears to suggest an additional element through which sustainability might be improved. Accordingly, the definition of sustainable was amended to incorporate this element.

10.4 Conclusions on the Justification for the Study

Chapter 1 outlined four justifications for the study that included increased access to justice, benchmarking legal practice and assisting with development of future policy options. Conclusions on each of the justifications are noted below.

10.4.1 Increased Access to Justice through Additional Literature

It is evident from the richness of the data detailed in Chapters 5, 6 and 7 that the study has been able to obtain more detailed data on RRR Queensland legal practice. This data will be useful in contributing new knowledge with respect to the specific and unique issues experienced by law practices in RRR Queensland. The concerns that participants may not fully participate were not realised.

10.4.2 Benchmarking Legal Practice

Again, the extensive qualitative data obtained will contribute to the development of law practice management.

10.4.3 Assisting with Development of Future Policy Options

The extensive qualitative data will contribute to developing evidence-based policies and directions relating to strategies for government and initiatives of the legal profession that may assist with continued access to justice in RRR Queensland. The exploratory study with a socio-legal methodology may provide a template for future, more in-depth studies.

10.5 Future Research

This part of the chapter identifies areas that require further and more detailed research for the purpose of gaining data so that future policies, schemes, programs and education can be based upon evidence. The nominated research topics link directly to the RIs that have been covered by this study and are identified below. Briefly, it is also noted that, in view of the methodological limitations of this study, future research could include methodologies that would enable a more exhaustive study or more in-depth case studies.

10.5.1 The Use of Information Technology

Further and more detailed research needs to be carried out into the use of information technology by government in terms of the provision of both infrastructure and services to determine the full impact of the this use. Specifically, it needs to acknowledge the deep connectedness of RRR legal practitioners to the community and how that use might affect that connectedness. This research would extend RI 7 (Use of Information Technology) beyond that of the RRR legal practitioner into government use of information technology. This research topic would also link with the current RI 2 (Connectedness to the Community) which has been explored through the current study.

10.5.2 Legal Practice Areas

Research into legal practice areas dealt with by RRR legal practitioners needs to be continued in more detail. In particular, new practice areas that are opening up (including rural law, environmental law, coal seam gas contracts, rural succession law and small business law) need to be researched in terms of the extent of these areas and how RRR legal practitioners might be better prepared and trained to provide advice on these areas. This research would extend the current RI 3 (Business Carried out in RRR Legal Practices).

10.5.3 Use of Incorporated Legal Practices

More detailed data is needed on the use of ILPs by RRR legal practitioners in terms of the numbers of RRR legal practitioners who are using this structure, the impacts of the appropriate management systems on business management and, the impacts of the structure in terms of succession planning, marketing and accessing additional finances. This research would follow through on RI 4 (Business Planning Carried Out).

10.5.4 Methods of Fees and Billing

Research is needed into the methods used by RRR legal practitioners for calculating fees and billing. This research might include a comparison with other professions; how to include non-legal work carried out by RRR legal practitioners as a result of their ‘extended role’ in the community and the ethical implications. Research might also include levels of stress associated with regulatory and ethical compliance associated with fees and billing. This research would extend the research conducted as part of RI 4 (Business Planning Carried Out).

10.5.5 Mentoring and Legal Supervision

Research into the topics of mentoring and legal supervision in RRR law practices needs to be conducted to determine how these methods of continued legal education can better be delivered. Benefits from that research might possibly include increased opportunities for recruitment and retention and increased knowledge sharing. That research extends RI 5 (Recruitment and Retention).

10.5.6 Staff Recruitment in RRR Law Practices

More detailed research is needed in terms of the use of alternative methods of recruiting legal staff. In addition, research into the importance of the normative environment and culture of RRR law practices is needed. Both areas relate to one of the major justifications for this study. The research would extend RI 5 (Recruitment and Retention).

10.5.7 Review of Existing Policies and Schemes for Recruitment and Retention

A review into existing policies and schemes for recruitment and retention of RRR legal practitioners needs to be carried out to determine their effectiveness. This review might also include RRR legal practitioner awareness of the schemes, whether such policies and schemes are based upon current data and, how the policies and schemes might be improved. This research would extend RI 5 (Recruitment and Retention).

10.6 Legal Education

This part of the chapter considers how legal education (law schools) might be improved so that the RRR legal practitioner is appropriately prepared and trained for legal practice, rather than relying on experience to gain that knowledge. The study indicated that the RRR legal practitioner relies on experience rather than expertise. There is an opportunity for legal institutions to adapt or offer new courses that deal with the context of RRR legal practice either as part of undergraduate or postgraduate programs.

10.6.1 Areas of Legal Practice Carried Out

Legal education needs to facilitate expertise in legal practice areas that the RRR legal practitioner is most likely to practise in the RRR context. This includes probate and estates, commercial and contract, conveyancing and family law. This can be done by adapting existing courses to include the RRR context. RI 3 (Business Carried Out) supports this action. The content of a proposed business management course for RRR legal practitioners has been outlined above.

Regional law schools in particular might explicitly address the importance of collegial networking amongst law students – while they are in an identifiable group – prior to going out into practice. If law students fully recognised the importance of their ‘reputation’ and associations with fellow students while within the university, they might more effectively utilise these connections for the purposes of building strategic alliances and for mentoring. These connections could also be strengthened through student law associations that enable closer fraternisation among law students

10.6.2 Business Planning

Legal education needs to include access to courses on business planning for prospective RRR legal practitioners. Such a course needs to deal with topics including business

planning, governance structures (sole practice, partnership and ILP) and the benefits and disadvantages of each. Relevant course also need to provide preparation and training on fees and billing in the RRR context. Courses that provide this material are supported by the findings from RI 4 (Business planning carried out).

10.6.3 Staff Recruitment and Retention

Legal education needs to prepare and train prospective RRR legal practitioners with knowledge on the management of people. Law students intending to practise in RRR Queensland need to be aware of the needs of legal staff in terms of mentoring and legal supervision. This extension of legal education is supported through the findings of RI 5 (Recruitment and Retention).

10.6.4 Use of Information Technology

Law students intending to practise in RRR Queensland need preparation and training in the use of information technology. Courses in e-commerce law in the RRR context need to be part of the curriculum. This action follows through from research into RI 7 (Use of Information Technology).

10.7 Queensland Law Society

The study identified a number of practical implications relating to the role of the Queensland Law Society in terms of its role in providing continuing legal education and its role in supporting RRR Queensland legal practitioners.

10.7.1 Continuing Legal Education through the Queensland Law Society

RRR legal practitioners require continuing legal education on, in particular, how to deal with lack of expertise and with societal, technological and regulatory changes to existing legal practice areas. This support follows from the findings from RI 3.

Dealing with Lack of Expertise

The findings from RI 3 (Business Carried Out) highlighted the reliance RRR Queensland legal practitioners have on the QLS in terms of providing research materials and links to other solicitors when faced with a legal issue they are not familiar with. The findings from the study also noted the importance of strategic alliances from RI 4 (Business Planning Carried Out) for assisting with a lack of expertise.

Extended Role of RRR Legal Practitioner

The findings from RI 3 (Business Carried Out) also identified the extended role of RRR legal practitioners as part of the process of providing legal advice. This extended role was a source of stress to RRR legal practitioners on a number of grounds, including providing counselling. The QLS might assist with acknowledging this role of RRR legal practitioners and to provide support services.

Law as Business

The findings from RI 4 (Business Planning Carried Out), RI 5 (Recruitment and Retention) and RI 7 (Use of Information Technology) indicate that RRR legal practitioners require more continuing educational opportunities from the QLS with respect to maintaining skills for being a ‘principal’ or ‘director’

Business Planning

The findings from RI 4 indicated that many RRR legal practitioners would benefit from short training courses on business planning, alternative governance structures, strategic alliances, fees and billing, partnership dispute resolution and entrepreneurship.

Recruitment and Retention

The findings from RI 5 revealed that RRR legal practitioners need to build their knowledge in terms of alternative methods of staff recruitment, legal supervision, mentoring, building their own leadership and management skills and, the importance of culture within the law practice.

Use of Information Technology

The findings of RI 7 indicated that RRR legal practitioners are seeking further information and guidance on the use of the information technology. The practical implications relate to legal practitioners wanting access to information on practice management software to assist with making informed choices, encouragement and information on establishing an Internet presence and, avenues for providing feedback on their (sometimes negative) interactions with government use of information technology relating to the provision of legal services and infrastructure.

10.7.2 Protection of RRR Queensland Members

Throughout the study, the role and responsibilities of the QLS was both supported and criticised by participants. The ways in which the QLS provide support to its members have been articulated above in terms of providing continuing legal education. The QLS’s role in terms of supporting, protecting and promoting opportunities for its members is something that requires further review by the QLS. In terms of the QLS being a champion of legal practitioners, rather than being seen as a champion of clients’ rights, needs to be more clearly articulated and acted upon by the QLS.

10.8 Implications for District Law Associations

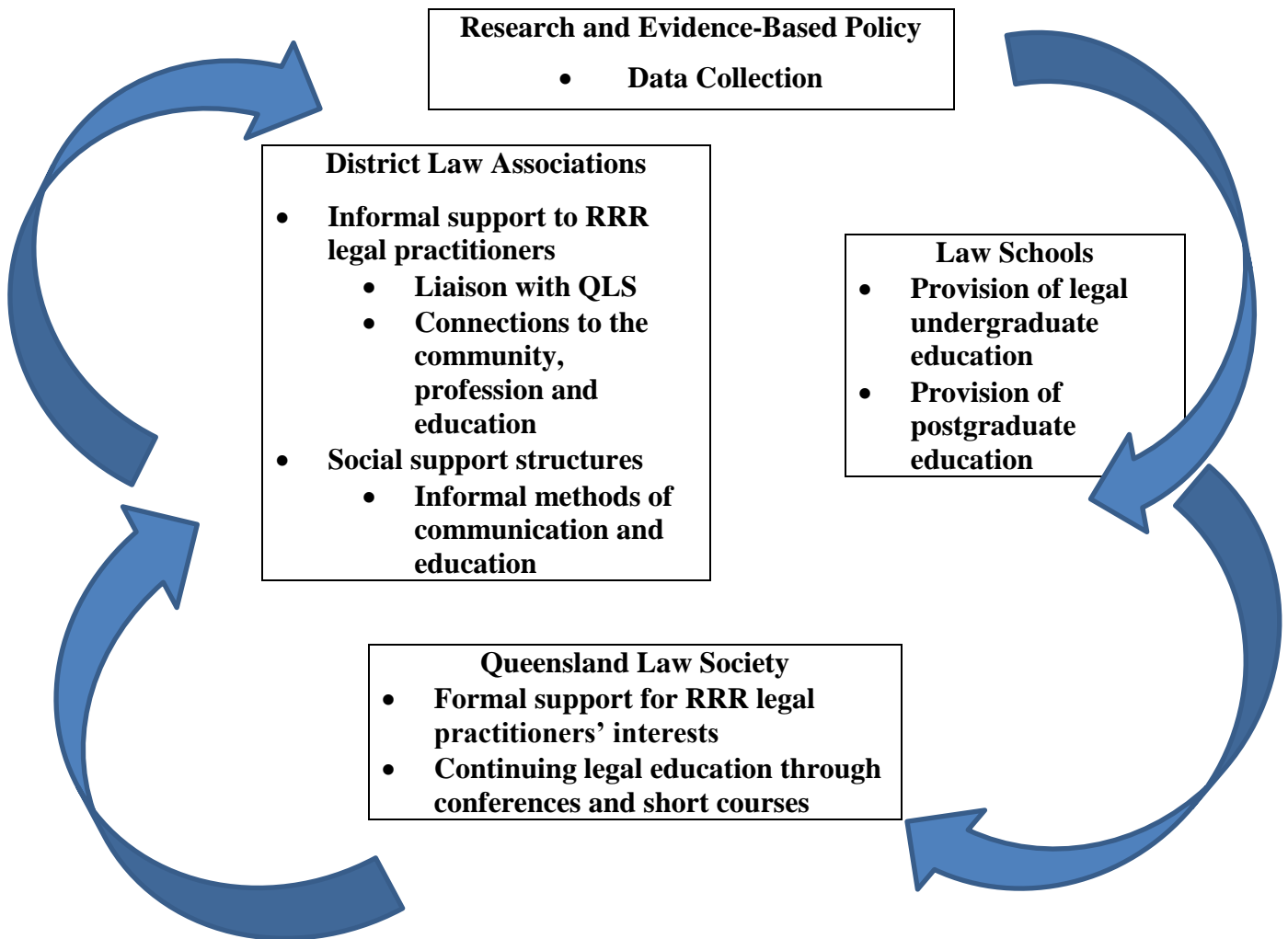
10.8.1 Connectedness to the Community

The findings from RIs 1 and 2 (Connectedness to the Profession and Connectedness to the Community) emphasised the importance of the community over the profession for RRR Queensland legal practitioners. The practical implications of this finding is that the DLAs may have a stronger role to play in the professional lives of RRR legal practitioners. It is suggested that the DLAs have the opportunity to provide a source of informal support to RRR Queensland legal practitioners and as a method of liaison with the QLS on behalf of RRR members in terms of advocating for RRR members. The DLAs offer the ‘community-based’ connection to RRR legal practitioners. Areas in which DLAs may offer support might include informal continuing education, social support networks and

liaison between the QLS and RRR members. Another suggestion is that there may be opportunities for law students to be more involved with DLAs as a method of introducing prospective RRR legal practitioners to the benefits of a strong DLA.

10.9 Cyclical Relationship between the Key Organisations Impacting on RRR Legal Practitioners

The diagram below illustrates the cyclical relationship between how the key organisations can relate to each other in order to best meet the needs of RRR Queensland legal practitioners in terms of facilitating sustainable RRR legal practice.



10.10 Summary

The findings of this study have confirmed that RRR legal practitioners benefit from connections to the community in terms of access to a client base and local knowledge and that they also benefit from connections to the profession. The findings also show that RRR legal practitioners continue to experience difficulties in specialising and in developing new areas of legal practice. The resulting lack of expertise is dealt with through connections to the QLS and through strategic alliances.

The findings also reveal disadvantages experienced by RRR legal practitioners in terms of developing business planning and strategically responding to external threats to their business, including regulatory changes. Generally, the study found that in many instances RRR legal practitioners developed their knowledge through experience acquired over the duration of their time as RRR legal practitioners. Many RRR legal practitioners did not have access to 'institutional' knowledge or resources for the business management aspects of legal practice in the same way that legal practitioners who practised in large metropolitan law firms did. RRR legal practitioners are very often isolated geographically and professionally. Many are at the beginning of the 'growth cycle' of their law practices, which requires considerable entrepreneurial effort to develop the

business. It was concluded that, in order to better prepare prospective RRR legal practitioners, formal preparation, training, knowledge and support in carrying out the role of establishing a RRR law practice is needed.

The chapter also concluded that RRR legal practitioners continue to experience problems with the recruitment and retention of legal staff. It was concluded that RRR legal practitioners need to promote the opportunities for work in RRR Queensland, recruit legal staff from within the practice, improve standards of legal supervision and mentoring, articulate clearer career progression opportunities, pay attention to the importance of the law practice culture and consider the succession planning benefits of ILPs. It was also concluded that RRR Queensland legal practitioners are relatively innovative in the use of flexible staffing arrangements.

The chapter concluded that RRR Queensland legal practitioners are hesitant in their use of marketing techniques to promote their law firms and prefer reputation as a method of promotion. The chapter also concluded that, generally, the innovative use of information technology was quite low. The exception was in the area of providing flexible staffing arrangements. The chapter concluded that with respect to information technology, RRR Queensland legal practitioners need more expert advice in selecting information technologies and that the government use of information technology is frequently a burden for the RRR legal practitioner.

The chapter also provided conclusions on the definition of ‘sustainable’ in relation to the inclusion of the element of controlled growth involving the concept of an ‘extended reach and influence’, rather than mere ‘physical expansion’; and secondly, to include a sixth element relating to ‘adaptiveness’.

The chapter outlined areas for future research and also concluded that legal education may prove to be a method of assisting prospective RRR legal practitioners with sustainable RRR legal practice. The chapter also found implications for expanding the role of the QLS and DLAs to assist with RRR legal practitioners achieving sustainable legal practice.

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APPENDICES

Appendix 1: Matrix of Sources of Interview Instrument

A: The Partners & the law firm	Location	Geographical demographics of firm	Landon (1985) 85		1. Where is the head office of the law firm located?	
			Hart (2009)	Single choice Multiple choice	2. In how many locations does the firm operate?	1 only 2 – 3 4 – 6 7 – 9 10 or more
	Personal attributes	Personal attributes	Landon (1982) 464	Single choice Multiple choice	3. What is your background?	Age Place of birth Law school attended
	Education	Educational qualifications	Landon (1982) 464	Single choice Multiple choice	4. What is your undergraduate qualification?	LLB Dual Degree Other
			Landon (1982) 464	Yes/No	5. Did you obtain honours	
			Landon (1982) 464	Yes/No	6. Have you undertaken a higher degree?	
			Landon (1982) 464	Single choice Multiple choice	7. If you have completed a law society specialist accreditation, please indicate:	Family law Personal injuries law Property law Succession law Mediation law Taxation law Other
			Landon (1982) 464		8. Indicate which best describes the way in which you were admitted as a solicitor?	Legal practice course Trainee solicitor Articles Bar practice Mutual recognition – Other state/NZ/Overseas Government lawyer Other
				Professional background		
	Parents		Landon (1982) 464	Yes/No	9. Was either of your parents	

					involved in legal practice?	
	Structure of legal practice	Structural demographics of the law firm	Landon (1982) 477	Single choice Multiple choice	10. Which categories best describe the law firm?	Sole practitioner Group practice Partnership Partnership interest under trust Incorporated partnership Incorporated legal practice Multi-disciplinary partnership Other
	Staffing		Landon (1982) 465	Single choice Multiple choice	11. How many solicitors does the firm employ?	Sole practitioner 2 lawyers 3 – 4 lawyers 5 – 7 lawyers 8 – 14 lawyers 15 – 49 lawyers 50 or more
	Intra-firm relationships		Landon (1982) 477	Single choice Multiple choice	12. Which statement best describes any family, marital, personal or intimate relationships that exist between people working in the firm?	No personal relationships Members of the same family Married couples Other family/marital/intimate relationships
B: The partners, the community & the profession	Community involvement	Community involvement	Landon (1982) 477	3 point Likert Scale Well connected Not at all connected	1. To what extent are you involved with professional organisations?	Well connected Somewhat connected Not at all connected [list of professional organisations including 'other', given]
			Landon (1982) 477	3 point Likert Scale High Moderate Nil	2. To what extent are you active in the following organisations and clubs?	High Moderate Nil [list of organisations and clubs including 'other', given]
	Location of business	Geographical demographic of law firm		3 point Likert Scale High Moderate Low	3. To what extent were the premises chosen for the following characteristics?	Quality & prestige of premises Proximity to surrounding businesses Proximity to a commercial centre Proximity to other professional services Proximity to court
C: Strategic direction in the law firm	Business planning	Business Planning	Kaplan & Norton (2006)		1. To what extent does planning on the direction & outcomes to be attained by the law firm occur?	Last year This year Next year

			Hart (2009)		2. How often does planning, including setting strategic directions occur in the law firm?	Six-monthly Yearly No planning Other
			Wiesner & Hart (2009)		3. Who is involved in planning discussions?	Partners Practice Manager Associate/trainee solicitor Paralegals Administrative staff Shareholders (if ILP) Other
			Simons (2006) Kaplan & Cooper	3 point Likert Scale Not at all Moderately High	4. To what extent are the outcomes identified as part of a planning process?	
			Simons (2006) Kaplan & Cooper (1998)	3 point Likert Scale Not at all Moderately High	5. To what extent are indicators to measure success identified and numerical targets set for the purpose of measuring achievement of outcomes?	
			Result of pilot survey (2009)	3 point Likert Scale Not at all Moderately High	6. To what extent is benchmarking used to determine the best processes to achieve a result?	
			Result of survey Simons (2006) ? Kaplan & Cooper (1998)	3 point Likert scale High Moderate Low/Nil	7. To what extent are the following indicators used to measure performance by the law firm?	Revenue Profit Customer satisfaction Market share Other
	Information sharing	Sharing of intellectual capital	Stewart (2003)	3 point Likert scale High Moderate Low/Nil	8. To what extent are the following kinds of information and knowledge shared within the firm?	
	Strategic analysis	Strategic analysis for location	QPILCH RRR – use of partnerships with metro firms to provide pro bono services to RRR Result of pilot survey	Implemented as part of current strategic plan Included in future strategic plan Not included in any firm plans	9. Please indicate the firm's 'alliances' with other legal practices and future plans?	Purchase additional legal practice Alliance with RRR legal practice Alliance with urban legal practice Alliance with specialist legal practice Alliance with allied professional service firm Alliance with non-professional firm Other
			Result of pilot survey (2009)	3 point Likert Scale Low Moderate High	10. If alliances: To what extent does the firm analyse the income derived from any strategic	

					alliances?	
			Landon (1990)	Yes/No	11. Does the firm plan to relocate any part of the legal practice?	
			Landon (1990)	One choice	12. If yes: then how will the relocation occur?	Move to metropolitan/urban location Move to more expensive premises Move to cheaper premises Other
		Strategic analysis of people management	Landon (1990)	Increase Decrease	13. What level of change does the firm plan to adopt to improve the staffing of the practice?	Professional staff Administrative staff
		Succession planning	Hart (2009)	Yes/No	14. Has the firm developed or implemented a plan to deal with the future retirement of the partners?	
D: Partner relationships	Duration	Partnership demographics	Hart (2009)	??? – not sure about the question – too ambiguous	1. What year did you first become a partner at a law firm?	
			Hart (2009)		2. How many partnership positions have you occupied?	
	Ability to resolve disputes	Partnership dispute resolution capability	Result of pilot survey (2009)	Single choice Yes/No	3. Has a dispute with another partner(s) been the predominate reason for a decision to leave a partnership?	
	Entrepreneurship	Subjective judgment of entrepreneurial capability	Hisrich (2008)	5 point Likert Scale Never Sometimes Always	4. To what extent do you think you display any of the following characteristics?	Able to deal effectively with risk and uncertainty Able to see opportunities to the firm's advantage Able to maintain a knowledge of methods & technologies to advance the law firm Able to deal confidently with social situations Demonstrates judgment & insight Demonstrates creativity & vision Demonstrates a keen legal intelligence Develops a rapport with clients Is considered a strong leader
	Business management	Partnership allocation of responsibility for management of business	Result of pilot survey (2009)	3 point Likert scale Strong division Moderate division All partners contribute	5. To what extent does the law firm divide responsibilities relating to the management, direction &	One partner is predominantly responsible for determining the strategic direction of the firm One partner is predominantly responsible for determining the recruitment & progression of

					leadership of the firm?	<p>staff</p> <p>One partner is predominantly responsible for ensuring client satisfaction</p> <p>One partner is predominantly responsible for setting & reviewing profitability of the firm</p> <p>One partner is predominantly responsible for researching & implementing innovative developments in carrying out the firm's business</p> <p>Overall, most aspects of the law firm are dealt with as jointly and in collaboration by the partners</p> <p>All aspects related to the law firm are dealt with by the partners as a consensus</p>
	Dispute resolution	Subjective judgment for partnership dispute resolution capability	Result of pilot survey (2009)	3 point Likert scale Low satisfaction Mod satisfaction High satisfaction	6. As a partner, how would you describe your level of satisfaction in resolving grievances or disputes?	<p>Between partners</p> <p>Between staff</p> <p>With clients</p>
E: The business of the law firm	Legal expertise	Legal expertise	Landon 1982, p 483	Single choice	1. What proportion of the firm's day-to-day practice is work for which law school training has given you specific expertise?	<p>Less than 20%</p> <p>20 – 39%</p> <p>40 – 59%</p> <p>60 – 74%</p> <p>75% or more</p>
	Business content	Business conducted	Landon 1982, 483 Landon 1985, 93	???? ? How many to choose?	2. What activities consume the highest proportion of the firm's time?	<p>Conferring with clients</p> <p>Research & preparing briefs</p> <p>Negotiating on behalf of clients</p> <p>Developing clientele & public relations</p> <p>Updating case files</p> <p>Reading to 'keep up'</p> <p>Conferring with colleagues</p>
	Time management	Proportion of legal expertise to non-legal expertise activities	Landon 1982, 466 Landon 1985?	Less than 10% 25 – 49% More than 50%	3. Indicate the time spent by the firm in the following activities	<p>Probate, wills & estate planning</p> <p>Business, commercial & contract law</p> <p>Conveyancing & property law</p> <p>Debt recovery</p> <p>Family law</p> <p>Negligence & personal injury</p> <p>Criminal law</p> <p>Taxation law</p> <p>Litigation</p> <p>Administrative law</p> <p>Environmental law</p> <p>Insurance law</p> <p>Industrial relations law</p> <p>Corporations law</p> <p>Local government</p>

						Other
	Business strategy	Strategy for business of the firm	Landon (1990)	Yes/No Increase/Decrease	4. Does the firm plan to change the range of work carried out?	
	Clients	Demographics of clients	Landon 1982, 467	Single/Multiple choice	5. How would you categorise the law firm's clients?	Professionals Owners or managers of large businesses Owners or managers of small businesses Clerical, sales Trades person Labourers Large farmer owner-operator Mixed – no majority in any category Unemployed
	Business strategy	Strategy for dealing with demographics of clients	Landon 1982, 467 – check this	Yes/No Increase/decrease	6. Does the firm plan to change the clientele of the law firm	Occupation Number of clients Increase/decrease
	Community involvement	Community involvement	Landon 1982 – 479 & 480 Landon 1985 – 93	Single choice	7. What proportion of the firm's clients was personally acquainted with partners prior to giving legal service to them?	0 – 25% 26 – 49% 50 – 75% Over 75%
	Time management	Proportion of legal expertise to non-legal expertise activities	Landon 1985 – 93	Single choice	8. What proportion of the law firm's time is spent in giving personal advice in contrast to legal advice to clients?	0 – 5% 6 – 10% 11 – 20% 21 – 30% 31 – 40% 41 – 50% 51 – 60% 61 – 70% Over 70%
	Business strategy	Dealing with absence of legal expertise	Result of pilot survey (2009)	Single choice	9. If a matter referred to the law firm was not within a partner's area of expertise, how would the law firm deal with it?	Research the matter within the law firm Seek the support of other practitioners within the law firm Referral to specialists in that field from another practice Other
		Developing business strategy	Kaplan & Norton (2006)	Single choice	10. What proportion of the law firm's income is spent on developing new ways of carrying out the business of the law firm?	0 – 5% 6 – 10% 11 – 15% 16 – 20% Over 21%
		Sources of financial income	Landon 1982 - 473	Single/multiple choice	11. What other businesses or enterprises (other than the law firm) are partners within the law	Real estate (including investments) Banking Insurance University/TAFE

					firm engaged in?	Farming Accountant Public Office (eg. local, state, federal) Mortgage financing before 1 July 2007 Other None
			Landon 1982 - 473	Single choice	12. What proportion of your total income comes from the practice of law?	0 – 25% 26 – 50% 51 – 74% 75 – 90% 91 – 99% All
	Billing	Subjective judgment of billing	Maister (1993)	Single choice	13. Which statement best describes how service fees are determined?	High billing rates based on the criticality, complexity and risk in client engagement Moderate billing rates based on greater use of less skilled professionals and para-legals Strong reliance on highly competitive billing based on maximum use of para-legals Other means
	Negative community involvement	Negative community involvement	Landon (1990)	Single choice	14. Has the law firm experienced any adverse community reaction to cases or clients the law firm has represented?	Never Seldom Occasionally Frequently
F: People management practices	Staff motivation	Demographics of staff structure	Wiesner (2009)	Single/multiple choice Decrease No change Increase Not applicable	1. To what extent has the staff structure changed in the law firm within the last 3 years	Administrative Support Para-legal staff Practice manager Trainee solicitor Employed solicitor Consultant solicitor Partner Salaried partner Other
	Staff ratios		Maister (1993)	Single input	2. What ratio exists between: Partners : employed solicitors : para-legals	
	Recruitment	Methods of recruitment, retention & progression	Diana Du Plessis – 2003, 261	Single/multiple choice Always Sometimes Never	3. To what extent are the following methods of advertising used when seeking potential legal staff	From within your firm Walk-ins Word-of-mouth Private employment agencies Professional associations Universities Bulletin boards

						<p>Newspaper advertisements</p> <p>Advertising on the radio/TV</p> <p>Professional journals</p> <p>Internet</p> <p>Law firm website</p> <p>Other</p>
	Selection		<p>Landon (1990)</p> <p>Result of pilot survey (2009)</p>	<p>Single/multiple choice</p> <p>Unimportant</p> <p>Moderately important</p> <p>Very important</p>	<p>4. To what extent are the following factors important when selecting the firm's legal staff</p>	<p>Educational qualifications</p> <p>University attended</p> <p>School attended</p> <p>Previous experience</p> <p>Interpersonal skills</p> <p>Ability to work under pressure</p> <p>Management experience</p> <p>Ability to meet deadlines</p> <p>Availability in terms of proximity</p> <p>Links to the profession</p> <p>Initiative</p> <p>Other</p>
	Staff development		<p>Cashman (2003); Caldwell & Carter (1993); Sparreboom (2001)</p> <p>Wiesner & Hart (2009)</p>	<p>Single/multiple choice</p> <p>Always</p> <p>Sometimes</p> <p>Never</p>	<p>5. To what extent does the firm use any of the following practices to develop the firm's legal staff?</p>	<p>Leadership & development courses for partners</p> <p>Mentoring</p> <p>Coaching</p> <p>Rotation to different areas of law</p> <p>Training courses on information technology</p> <p>Training courses on research skills</p> <p>Training courses on specific areas of law dealt with by the firm</p> <p>Funding & access to further education</p> <p>Other</p>
	Business strategy	People management strategies	Mortensen (2009)	Single/multiple choice	<p>6. Indicate reasons why the law firm chose the practices in Qn 5</p>	<p>Practice management decision</p> <p>Used by previous law firms</p> <p>Based on relevant professional/legal journal articles</p> <p>Developed under the firm's business plan</p> <p>Law firm has always carried out this practice</p> <p>Other</p>
	Staff progression		Wiesner (2009)	<p>Single/multiple choice</p> <p>Always</p> <p>Sometimes</p> <p>Never</p>	<p>7. To what extent are the following staffing programs used in the firm?</p>	<p>Structured career paths</p> <p>Access and funding for professional training & development</p> <p>Access and funding for postgraduate qualifications</p> <p>Structured salary review to allow extra remuneration for improved performance</p> <p>Flexible work arrangements</p> <p>Other</p>
	Business strategy	Business planning, strategy & human	Franken	<p>3 point Likert Scale</p> <p>High; moderate; low</p>	<p>8. Indicate the reasons why the law</p>	<p>Minimise loss of staff</p> <p>Reward legal staff</p>

		resource management			firm uses these programs	Develop firm expertise Build capacity for client base Other Not applicable
			Mortensen & Wiesner (2009)	Single choice	9. What percentage of the firm's budget is allocated to people management practices?	0 – 1% 2 – 3% 4 – 5% 6 – 7% Over 7%
G: Marketing practices	Reputation	Subjective judgment of firm's reputation	Maister (1993)	Single/multiple choice 3 point Likert scale Accurate Moderately accurate Inaccurate/false	1. To what extent do the following statements describe the reputation of the law firm and how it is communicated?	The law firm is renowned for its ability to provide expert legal advice in areas of law that are new & innovative The law firm is renowned for its ability to provide legal advice based on years of experience in established fields of complex legal matters The law firm is renowned for being able to provide consistently efficient advice on areas of law The law firm is renowned for contributing to professional/academic journals on legal practice matters The law firm is considered an expert in its field based on speeches; newspaper contributions & other public interaction individual partners within the law firm have reputations within the community The law firm's reputation is communicated through targeted & specialised brochures the law firm's reputation is communicated through selected advertisements in the media The law firm's reputation is associated with other institutions of substance & long-standing The law firm's reputation is communicated through client interactions & referrals only
	Business strategy	Marketing strategy	Landon (1990) & results from pilot study (2009)	Single/multiple choice 3 point Likert Scale Always Sometimes Never	2. To what extent do you use any of the following to increase business?	Reputation Word-of-mouth Professional contacts Internet Professional organisations Advertising on TV

						Advertising on radio Advertising in business directory (eg. yellow pages) Professional engagements – eg seminars Association with non-professional organisations (eg. church; schools; sporting activities) Referrals from lawyers Referrals from other businesses eg. real estate agents None Other
			Wiesner (2009) Malhotra & Hall et al (2008)	Yes/No	3. Do you employ the services of a professional marketing consultant?	
		Use of performance indicators	Wiesner (2009)	Yes/No	4. Do you measure the effectiveness of any of the marketing strategies you employ?	
			Wiesner (2009)	Single/multiple choice	5. If yes – what measures for effectiveness does the firm use?	Profitability Client service Profile of law firm Other
			Mortensen (2009)	Single/multiple choice	6. Why do you use these strategies?	Practice management decision Used by previous law firms Based on relevant professional/legal journal articles Developed under the firm's business plan Law firm has always carried out this practice Recommendation of consultant Other
H: Use of information technology	Infrastructure resources	Operational planning	Brett & Styles Christine Burns (2000) Geraldine Neal (2002) Paul Marsh (2001)	Partners – high; moderate; low Legal staff – high; moderate; low Admin staff – high; moderate; low (extension of question to cover admin staff – to be asked at interview, not survey)	1. What level of access and use of information technology is available in the law firm?	Email Voice recognition technology Subscription databases (eg. LexisNexis) Electronic Court processes – lodgement Web-cam technology Other Nil
	Staff confidence	Subjective judgment of information technology confidence	Result of pilot survey (2009)	High; moderate; low Question to be asked at	2. How would you rate your level of confidence with using information	Email Voice recognition technology Researching legal matters through subscription

				interview not survey	technology?	databases Researching legal matters through free subscription databases Obtaining precedents Keeping up-to-date with professional issues through QLS updates Communication through web-cam Other Nil
	Staff training & confidence	Staff competence	Result of pilot study (2009)	3 point Likert Scale single/multiple choice Low; moderate; high	3. What level of training & up-dating of information technology is available in the law firm?	
			Stewart (2003)	Single choice	4. Who is the predominant user of information technology within the law firm?	Administration staff Para-legal staff Trainee solicitors Employed solicitors Partners All None Other
	Innovation		Stewart (2003)	Single choice	5. Which group is the most innovative or experimental user of information technology?	Administration staff Para-legal staff Trainee solicitors Employed solicitors Partners All None Other
	Business strategy	Business planning & strategic approach to tangible resources	Hart (2009)	Single choice	6. What future plans for the use of information technology does the firm have?	Upgrade Provide further training Research into information technology options No future plans Other
			Mortensen (2009)	Single choice	7. Which statement best indicates the basis for the law firm's reasons for making decisions relating to information technology?	Practice management decision Used by previous law firms Based on relevant professional/legal journal articles Developed under the firm's business plan Law firm has always carried out this practice Recommendation of consultant Other
I: The firm's performance	Financial analysis	Comparative financial performance	Landon 1982, 474	Increase; decrease; no change option for each	1. Estimate (and forecast) to what extent the <u>annual revenue</u> derived	Last year This year

				year	from the practice has changed for the years specified.	Next year
			Mortensen & Wiesner (2009) Jacobsen (2001)	Increase; decrease; no change option for each year Expansion of the question to be asked at interview that further analyses the annual expenses in terms of: Partners Consultant solicitors Employed solicitors Trainee solicitors Para-legal staff Administrative staff	2. Estimate (and forecast) to what extent the <u>annual expenses</u> derived from the practice has changed for the years specified.	Last year This year Next year
			Mortensen & Wiesner (2009)	Increase; decrease; no change option for each year	3. Estimate (and forecast) to what extent the <u>annual profit</u> derived from the practice has changed for the years specified.	Last year This year Next year
		Predictive analysis of current global financial crisis	Mortensen (2009)	3 point Likert Scale High; moderate; low Qualitative input to be derived at interview	4. To what extent do you anticipate a variation in profit to be an outcome of the global economic crisis?	
J: Characterising regional legal practice	Motivation	Self-reflection for practising in RRR	Hart (2009)	3 point Likert Scale Accurate Moderately accurate Inaccurate/false	1. What made you practise in this location?	I have previous connections to this community I enjoy the opportunities to engage in a broad range of community activities that would not be available to me in an urban/metropolitan location This location allows me to pursue family orientated activities I grew up in this location Opportunities for employment were offered to me in this location This was the only employment available to me
	Perceptions	Subjective judgment of RRR sustainability	Landon (1990) Result of pilot study – (2009)	3 point Likert scale Single/multiple choice Accurate Moderately accurate Inaccurate/false	2. To what extent do you think the following statements accurately define practising law in RRR Queensland?	There has been a movement in the quality of work into the bigger cities and away from RRR centres Large organisations prefer to brief law firms in the bigger cities rather than in RRR centres There is no longer the population in RRR centres

						to sustain growth in legal practice Law is adversarial and seen as competitive – therefore big business would rather brief a ‘big’ law firm in a city than a law firm in a RRR centre RRR law firms can create a market that will sustain growth within a practice RRR law firms practise a different type of law to the big city law firms
	Motivation	Subjective judgment of motivation for practising in RRR	Landon 1982, 478 Result of pilot study (2009) Franken	3 point Likert scale single/multiple choice Always Sometimes Never	3. To what extent do you think the following statements accurately describe what motivates you to practise law?	It provides me with an opportunity to carry out an important service to the community I can provide excellent quality work to my clients I can learn & use complex technical & legal skills I have the respect & recognition from colleagues I have respect & recognition from clients I enjoy the financial rewards Other
	Satisfaction	Subjective judgment of satisfaction for practising in RRR	Result of pilot study –	0 – dissatisfied 10 – highly satisfied	4. Rate your level of satisfaction on the following bars below	Professional Financial Personal
		Objective indicators of sustainability			Analysis of recent closures of law firms within 5 year period – information to be obtained from Queensland Legal Services Commissioner	
					Analysis of recent openings of law firms within 5 year period – information to be obtained from Queensland Legal Services Commissioner	

**SUSTAINABLE REGIONAL, RURAL AND REMOTE LAW PRACTICE IN
QUEENSLAND**

PART A: THE PRINCIPALS/DIRECTORS & THE LAW PRACTICE

1. How long has the practice operated?

- a. 0 – 1 years
- b. 2 – 4 years
- c. 5 – 9 years
- d. 10 – 19 years
- e. 20 – 30 years
- f. 31 – 50 years
- g. 51 – 99 years
- h. 100 or more years

2. What is your gender?

Male ₁

Female ₂

3. Where is the head office of the law practice located?

- a. HA (high accessibility)
- b. A (accessible)
- c. MA (moderate accessibility)
- d. R (remote)
- e. VR (very remote)

4. In how many locations does the practice operate a practice from?

- 1. 1 only ₁
- 2. 2 – 3 ₂
- 3. 4 – 6 ₃
- 4. 7 – 9 ₄
- 5. 10 or more ₅

5. What is your age?

- a. 35 – 40
- b. 41 – 45
- c. 46 – 50
- d. 51 – 55
- e. 56 – 60

6. What law school did you attend?

- a. UQ
- b. QUT
- c. GU
- d. UNE
- e. Other University

7. What is your undergraduate qualification?

- a. LLB ₁
- b. Dual degree ₂
- c. Nil university qualification ₃

8. Did you obtain honours in your law degree?

Yes ₁

No ₂

9. Have you undertaken a higher degree?

Yes ₁

No ₂

10. If you have completed a law society specialist accreditation, please indicate which of the following specialisations you studied.

- a. Family Law ₁
- b. Personal Injuries Law ₂
- c. Property Law ₃
- d. Succession Law ₄
- e. Mediation Law ₅
- f. Taxation Law ₆
- g. Nil specialisation ₇

11. Please indicate what best describes the way in which you have been admitted as a solicitor?

- a. Legal Practice Course ₁
- b. Trainee solicitor ₂
- c. Articles ₃
- d. Bar ₄
- e. Mutual recognition from interstate/overseas ₅
- f. Government lawyer (10 years admission) ₆

12. What year were you admitted?

- a. 1 year
- b. 2 – 4 years
- c. 5 – 9 years
- d. 10 – 14 years
- e. 15 – 19 years
- f. 20 – 24 years
- g. 25 – 29 years
- h. 30 years or more

13. Was either of your parents involved in legal practice?

Yes ₁ No ₂

14. Which categories best describe your law practice?

- a. sole practitioner ₁
- b. group practice ₂
- c. partnership ₃
- d. partnership interest under trust ₄
- e. incorporated partnership ₅
- f. incorporated legal practice ₆
- g. multi-disciplinary partnership ₇

15. How many solicitors (including partners, employed and consultant solicitors) does the practice employ?

- a. Sole practitioner ₁
- b. 2 lawyers ₂
- c. 3 – 4 lawyers ₃
- d. 5 – 7 lawyers ₄
- e. 8 – 14 lawyers ₅
- f. 15 – 49 lawyers ₆
- g. 50 or more ₇

16. How many principals/directors are in the practice?

- a. 1 only
- b. 2 only
- c. 3 – 4
- d. 5 – 7
- e. 8 – 10
- f. 11 or more

17. How many employed solicitors/consultants are in the practice?

- g. 0
- h. 1 only
- i. 2 – 3
- j. 4 – 6
- k. 7 – 10
- l. 11 or more

18. How many trainee solicitors are in the practice?

- m. 0
- n. 1 only
- o. 2 – 3

- p. 4 – 6
- q. 7 or more

19. How many administrative staff/paralegal staff are in the practice?

- r. 0
- s. 1 - 2
- t. 3 – 5
- u. 6 – 9
- v. 10 or more

20. Are there family, marital, personal or intimate relationships that exist between people working in the practice? Yes/No

PART B: THE LAW PRACTICE, THE COMMUNITY & THE PROFESSION

1. To what extent are you involved with professional organisations?

	<i>Well connected</i>	<i>Somewhat connected</i>	<i>Not at all connected</i>
a. Queensland Law Society	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
b. District Law Association	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
c. Women’s Law Society	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
d. Young lawyer’s associations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
e. International law associations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
f. Family law associations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
g. Mediation law associations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

2. To what extent are you active in the following organisations and clubs?

	<i>High</i>	<i>Moderate</i>	<i>Nil</i>
a. Civic organisations (e.g. Community Legal Service)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

b. Service clubs (e.g. Lions or Rotary)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
c. Social clubs (e.g. golf club)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
d. Political organisations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
e. Religious organisations (e.g. Anglican Church)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
f. School organisations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

3. To what extent were the premises you are currently located in chosen for the following characteristics?

	<i>High</i>	<i>Moderate</i>	<i>Nil</i>
a. Quality and prestige of premises	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
b. Proximity to surrounding businesses	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
c. Proximity to a commercial centre	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
d. Proximity to other professional services	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
e. Proximity to court	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

PART C: STRATEGIC DIRECTION IN THE LAW PRACTICE

1. To what extent does planning on the direction and outcomes to be attained by the law practice occur?

	<i>High</i>	<i>Moderate</i>	<i>Low</i>
(a) Last year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) This year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Next year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

2. How often does planning, including setting strategic directions occur in the law practice?

Six-monthly (high) ₁

Yearly (moderate) ₂

No planning (low) ₃

3. Who is involved in planning discussions?

Principals/directors

₁

Practice Manager

₂

Employed sol/trainee solicitors^{1.}

₃

2.

3.

Admin staff/paralegals ₄

Shareholders (if ILP) ₅

Combination ₆

4. To what extent are the outcomes identified as part of a planning process?

1. High ₁

6.

2. Moderate ₂

3. Low ₃

5. To what extent are indicators to measure success identified and numerical targets set for the purpose of measuring achievement of outcomes?

High ₁

Moderate ₂

Low ₃

6. To what extent is benchmarking used to determine the best processes to achieve a result?

1. High ₁

2. Moderate ₂

3. Low ₃

5.

7. To what extent are the following indicators used to measure performance by the law practice?

	<i>High</i>	<i>Moderate</i>	<i>Low/Nil</i>
(a) Revenue	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Profit	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Customer satisfaction	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) Market share	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

8. To what extent are the following kinds of information and knowledge shared within the practice?

	<i>High</i>	<i>Moderate</i>	<i>Low/Absent</i>
a. Legal knowledge	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
b. Practice management knowledge	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

c. Strategic management knowledge	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
d. Marketing & promotional knowledge	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
e. Information technology knowledge	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
f. Administrative knowledge	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

9. Please indicate the practice's 'alliances' with other law practices?

	<i>Part of current strategic direction</i>	<i>To be included in future strategic direction</i>	<i>Not included in any practice plans</i>
(a) Purchase additional legal practice	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Alliance with regional, rural, remote legal practice	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Alliance with urban legal practice	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) Alliance with specialist legal practice (eg. personal injury practice)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(e) Alliance with other professional service firms (eg. real estate; insurance professionals; superannuation practices)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(f) Alliance with non-professional practices	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

10. If there are alliances: To what extent does the practice analyse the income derived from such alliances?

High ₁

Moderate ₂

Low ₃

11. Does the practice plan to relocate any part of the legal practice?

Yes ₁ No ₂

12. What level of change does the practice plan to improve the staffing of the practice?

a. Professional staff:

Increase ₁

Nil change ₂

Decrease ₃

b. Administrative staff:

Increase ₁

Nil Change ₂

Decrease ₃

13. Has the practice developed or implemented a plan to deal with the future retirement of the partners?

Yes ₁

No ₂

14. Is the recruitment of suitably qualified legal staff an issue?

1. Yes
2. No
3. Not applicable

PART D: PRINCIPALS/DIRECTOR'S CHARACTERISTICS & RELATIONSHIPS

1. How many years have you been a principal/director with this law practice?

1. 1 year

2. 2 – 4 years

3. 5 – 7 years

4. 8 – 10 years

5. 11 – 15 years

6. 16 years or more

3. 2 – 3 partnerships

4. 4 – 5 partnerships

2. How many partnership positions have you occupied?

1. 0 partnerships

2. 1 partnership

3. Has a dispute with another partner(s) been the predominate reason for a decision to leave a partnership?

Yes ₁

No ₂

Not applicable ₃

4. If you are a sole practitioner how long have you been in this sole practice?

1. 1 year

2. 2 - 4 years

3. 5 - 7 years

4. 8 - 10 years

5. 11 - 15 years

6. 16 years or more

5. To what extent do you think you display any of the following characteristics?

	<i>Often</i>	<i>Sometimes</i>	<i>Never</i>
(a) Able to deal effectively with risk and uncertainty	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Able to see opportunities to the practice's advantage	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Able to maintain a knowledge of methods and technologies to advance the law practice	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) Able to deal confidently with social situations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(e) Demonstrates judgment and insight	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(f) Demonstrates creativity and vision	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(g) Demonstrates a keen legal intelligence	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(h) Develops a rapport with clients	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(i) Is considered a strong leader	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

If the law practice involves more than one partner, please answer the following questions:

6. To what extent does the law practice divide responsibilities relating to the management, direction and leadership of the practice?

	<i>Strong division</i>	<i>Moderate division</i>	<i>All partners contribute equally</i>
a. One partner is predominantly responsible for determining the <u>strategic direction of the practice</u>	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
b. One partner is predominantly responsible for determining the <u>recruitment and progression of staff</u>	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
c. One partner is predominantly responsible for ensuring <u>client satisfaction</u>	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
d. One partner is predominantly responsible for marketing and <u>promoting the practice</u>	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
e. One partner is predominantly responsible for setting and <u>reviewing profitability</u> of the practice	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
f. One partner is predominantly responsible for researching and implementing <u>innovative developments</u> in carrying out the practice's business	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

7. As a principal, how would you describe your level of satisfaction in resolving grievances or disputes?

	<i>High satisfaction</i>	<i>Moderate satisfaction</i>	<i>Low satisfaction</i>
(a) Between partners/directors	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Between staff	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) With clients	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

PART E: THE BUSINESS OF THE LAW PRACTICE

1. What proportion of the practice's day-to-day practice is work for which law school training has given you specific expertise?

- 75% or more ₁
- 60 – 74% ₂
- 40 – 59% ₃
- 30 – 40% ₄
- 20 – 30% ₅
- Less than 20% ₆

2. Select those activities which consume the highest proportion of the practice's time?

- | | |
|--|--------|
| a. Conferring with clients | yes/no |
| b. Research & preparing briefs | yes/no |
| c. Negotiating on behalf of clients | yes/no |
| d. Developing clientele & public relations | yes/no |
| e. Updating case files | yes/no |
| f. Reading to 'keep up' | yes/no |
| g. Conferring with colleagues | yes/no |

3. Indicate the time spent by the practice in the following activities:

	<i>More than 50%</i>	<i>25 – 49%</i>	<i>10 – 24%</i>	<i>Less 10% Nil</i>
a. Probate, wills & estate planning	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
b. Business, commercial & contract law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
c. Conveyancing & property law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
d. Debt recovery	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
e. Family law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
f. Negligence & personal injury	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
g. Criminal law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
h. Taxation law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
i. Litigation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
j. Administrative law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

7. What proportion of the practice's clients was personally acquainted with partners prior to giving legal service to them?

- Over 75% ₁
- 51 - 75% ₂
- 26 - 50% ₃
- 0 - 25% ₄

8. What proportion of the law practice's time is spent in giving personal advice, in contrast to legal advice, to clients?

- Over 70% ₁
- 61 - 70% ₂
- 51 - 60% ₃
- 41 - 50% ₄
- 31 - 40% ₅
- 21 - 30% ₆
- 11 - 20% ₇
- 6 - 10% ₈
- 0 - 5% ₉

9. If a matter referred to the law practice was not within a partner's area of expertise, how would the law practice deal with it?

- a. Research the matter within the law practice Y/N
- b. Seek the support of other practitioners within the law practice Y/N
- c. refer to specialists in that field from another practice Y/N

10. What proportion of the law practice's income is spent on developing new ways of carrying out the business of the law practice?

- Over 21% ₁
- 16 - 20% ₂
- 11-15% ₃
- 6 - 10% ₄
- 1 - 5% ₅

11. What other businesses or enterprises (other than the law practice) are partners within the law practice engaged in?

- | | |
|---|--------|
| a. Real estate (including investments) | yes/no |
| b. Banking | yes/no |
| c. Insurance | yes/no |
| d. University/TAFE | yes/no |
| e. Farming | yes/no |
| f. Accountant | yes/no |
| g. Public office (e.g. local; state; federal) | yes/no |
| h. Mortgage financing before 1 July 2007 | yes/no |

12. What proportion of your total income comes from the practice of law?

- | | |
|-------------|---------------------------------------|
| a. All | <input type="checkbox"/> ₁ |
| b. 91 – 99% | <input type="checkbox"/> ₂ |
| c. 75 – 90% | <input type="checkbox"/> ₃ |
| d. 51 – 74% | <input type="checkbox"/> ₄ |
| e. 26 – 50% | <input type="checkbox"/> ₅ |
| f. 0 – 25% | <input type="checkbox"/> ₆ |

13. Which statement best describes how service fees are determined?

- | | |
|---|--------|
| (a) High billing rates based on complexity and/or risk in client engagement | Yes/no |
| (b) Moderate billing rates based on greater use of less skilled professionals and para-legals | Yes/no |
| (c) Strong reliance on highly competitive billing based on maximum use of para-legals | Yes/no |

14. Has the law practice experienced any adverse community reaction to cases or clients the law practice has represented?

- | | |
|---------------|---------------------------------------|
| a. Frequently | <input type="checkbox"/> ₁ |
| b. Moderate | <input type="checkbox"/> ₂ |
| c. Nil | <input type="checkbox"/> ₃ |

15. Do you plan/develop/implement new ways of carrying out practise areas?

-
- | |
|-------------------|
| 1. Yes |
| 2. No |
| 3. Not applicable |
-

PART F: PEOPLE MANAGEMENT PRACTICES

1. To what extent has the staff structure changed in the law practice within the last 3 years?

	<i>Increase</i>	<i>No change</i>	<i>Decrease</i>	<i>Not applicable</i>
(a) Administrative support (e.g. Reception)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(b) Para-legal staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(c) Practice manager	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(d) Trainee solicitor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(e) Employed solicitor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(f) Consultant solicitor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(g) Partner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(h) Salaried partner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. To what extent are the following methods of advertising used when seeking potential legal staff (e.g. trainee solicitors, employed solicitors, consultant solicitors).

	<i>Often</i>	<i>Sometimes</i>	<i>Never</i>
(a) From within your practice	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Walk-ins	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Word-of-mouth (referrals)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) Private employment agencies	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(e) Professional associations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(f) Universities	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(g) Bulletin boards, notice boards	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(h) Newspaper advertisement	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(i) Advertising on the radio/TV	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(j) Professional journals	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(k) Internet (law practice website)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

(l) Law practice website ₁ ₂ ₃

3. To what extent are the following factors important when selecting the practice's legal staff (including trainee solicitors, employed solicitors, consultant solicitors, partners)?

	<i>Very important</i>	<i>Moderately important</i>	<i>unimportant</i>
(a) Educational qualifications	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) University attended	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) School attended	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) Previous experience	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(e) Interpersonal skills	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(f) Ability to work under pressure	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(g) Management experience	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(h) Ability to meet dead lines	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(i) Availability in terms of proximity	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(j) Links to the profession (e.g. parent is a solicitor; barrister; judge)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(k) Initiative	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

4. To what extent does the practice use any of the following practices to develop legal staff?

	<i>Often</i>	<i>Sometimes</i>	<i>Never</i>
(a) Leadership and development courses for partners	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Mentoring (eg. a close, on-going professional relationship to develop expertise in legal practice)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Coaching (eg. a defined relationship in which specific legal skills are demonstrated, taught and reviewed)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) Rotation to different areas of law	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(e) Training courses on information technology	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

- | | | | |
|--|---------------------------------------|---------------------------------------|---------------------------------------|
| (f) Training courses on research skills | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (g) Training courses on specific areas of law dealt with by the law practice | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (h) Funding & access to further education | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |

5. Indicate reasons why the law practice chose the practices in Question 5:

- | | |
|--|--------|
| a. Practice management decision | Yes/no |
| b. Used by my previous law practices | Yes/no |
| c. Based on relevant profession/legal journal articles | Yes/no |
| d. Developed under the law practice's business plan | Yes/no |
| e. Law practice has always carried out this practice | Yes/no |

6. To what extent are the following staffing programs used in the practice?

- | | <i>Often</i> | <i>Sometimes</i> | <i>Never</i> |
|---|---------------------------------------|---------------------------------------|---------------------------------------|
| (a) Structured career paths (e.g. from trainee solicitor to partner) | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (b) Access and funding for professional training and development and continuing legal education | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (c) Access and funding for further attainment of postgraduate qualifications | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (d) Structured salary review to allow extra remuneration for improved performance | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (e) Flexible work arrangements to assist with work/life balance (e.g. caring for elderly parent; caring for young children; opportunities for travel) | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |

7. Indicate the reasons why the law practice uses these programs

- | | <i>High</i> | <i>Moderate</i> | <i>Low</i> |
|--------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
| (a) Minimise loss of staff | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (b) Reward legal staff | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (c) Develop practice expertise | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |

(d) Build capacity for client base ₁ ₂ ₃

8. What percentage of the practice’s budget is allocated to people management practices?

- Over 7% ₁
- 6 – 7% ₂
- 4–5% ₃
- 2 – 3% ₄
- 0 – 1% ₅

PART G: MARKETING PRACTICES

1. To what extent do the following statements best describe the reputation of the law practice and how it is communicated?

	<i>Accurate</i>	<i>Moderately accurate</i>	<i>Inaccurate /false</i>
(a) Provides expert legal advice in areas of law that are new, developing and innovative	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Provides legal advice based on years of experience in established fields of complex legal matters	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Provides consistently efficient advice on areas of law	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) Contributes to professional/academic journals on legal practice matters	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(e) Considered an expert in its field based on speeches; newspaper contributions & other public interaction	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(f) Individual partners within the law practice have reputations within the community	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(g) Its reputation is communicated through targeted & specialised brochures	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(h) Its reputation is communicated through selected advertisements in the media	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(i) Its reputation is associated with other institutions of substance and long-standing	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(j) Its reputation is communicated through client	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

Accurate Moderately Inaccurate
accurate /false

interactions and referrals only

2. To what extent do you use any of the following to increase business?

	<i>Often</i>	<i>Sometimes</i>	<i>Never</i>
(a) Reputation	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Word-of-mouth	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Professional contacts	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) Internet	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(e) Professional organisations	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(f) Advertising on TV	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(g) Advertising on radio	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(h) Advertising in yellow pages (or other business directory)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(i) Professional engagements—seminars, speaking	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(j) Association with non-professional organisations (church, schools, sporting, civic)	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(k) Referrals from lawyers	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(l) Referrals from other businesses eg. real estate agents	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

3. Do you employ the services of a professional marketing consultant?

Yes ₁

No ₂

4. Do you measure the effectiveness of any of the marketing strategies you employ?

Yes ₁

No ₂

internet presence does the law practice have?

- a. High quality WebPages
- b. Moderate quality WebPages
- c. Low quality presence created indirectly

3. What level of training & up-dating on information technology is available in the law practice?

High ₁

Moderate ₂

Low ₃

4. Who are the users of information technology within the law practice?

- a. Administrative staff yes/no
- b. Paralegal staff yes/no
- c. Trainee solicitors yes/no
- d. Employed solicitors yes/no
- e. Principals/directors yes/no

5. Which group are innovative or experimental users of information technology within the law practice?

- a. Administrative staff yes/no
- b. Paralegal staff yes/no
- c. Trainee solicitors yes/no
- d. Employed solicitors yes/no
- e. Principals/directors yes/no

6. What future plans for the use of information technology does the practice have?

- a. Upgrade yes/no
- b. Provide further training yes/no
- c. Research into IT options yes/no
- d. No future plans yes/no

7. Which statements indicate the basis for the law practice's reasons for making decisions relating to IT?

- a. Practice management decision Yes/no
- b. Used by my previous law practice Yes/no
- c. Based on relevant profession/legal journal articles Yes/no
- d. Developed under the law practice's business plan Yes/no
- e. Recommendation of consultant Yes/no
- f. Law practice has always carried out this practice Yes/no

PART I: THE PRACTICE'S PERFORMANCE

1. Estimate (and forecast) to what extent the annual revenue derived from the practice has changed for the years specified.

	<i>Increase</i>	<i>Decrease</i>	<i>No change</i>
(a) Last year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) This year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Next year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

Optional: What was the figure of the last financial year's revenue?

2. Estimate (and forecast) to what extent the annual expenses derived from the practice has changed for the years specified.

	<i>Increase</i>	<i>Decrease</i>	<i>No change</i>
(a) Last year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) This year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Next year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

Optional: What was the figure of the last financial year's expenses?

3. Estimate (and forecast) to what extent the annual profit derived from the practice has changed for the years specified.

	<i>Increase</i>	<i>Decrease</i>	<i>No change</i>
(a) Last year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) This year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Next year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

Optional: What was the figure of the last financial year's profit? _____

4. To what extent do you anticipate a variation in profit to be an outcome of the global economic crisis?

	<i>Increase</i>	<i>Decrease</i>	<i>No change</i>
(a) This year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Next year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) Following year	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

PART J: CHARACTERISING REGIONAL LEGAL PRACTICE

1. What made you practise in this location?

	<i>Accurate</i>	<i>Moderately accurate</i>	<i>Inaccurate/false</i>
(a) I have previous connections to this community	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) I enjoy the opportunities to engage in a broad range of community activities that would not be available to me in an urban/metropolitan location	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) This location allows me to pursue family orientated activities	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) I grew up in this location	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(e) Opportunities for employment were offered to me in this location	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(f) This was the only employment available to me	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

2. To what extent do you think the following statements accurately define practising law in regional/rural/remote Queensland?

	<i>Accurate</i>	<i>Moderately accurate</i>	<i>Inaccurate/false</i>
(a) There has been a movement in the quality of work into the bigger cities and away from regional and remote centres.	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(b) Large organisations, (e.g. banks), prefer to brief law practices in the bigger cities rather than in regional & remote centres	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(c) There is no longer the population in regional & remote centres to sustain growth in legal practice	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃
(d) Law is adversarial and seen as competitive, and therefore big business would rather brief a 'big' law practice in a big city rather than a law practice in a	<input type="checkbox"/> ₁	<input type="checkbox"/> ₂	<input type="checkbox"/> ₃

Accurate *Moderately accurate* *Inaccurate/false*

regional or remote centre

- | | | | |
|--|---------------------------------------|---------------------------------------|---------------------------------------|
| (e) Regional & remote law practices can create a market that will sustain growth within a practice | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (f) Regional & remote law practices practise a different type of law to the big city law practices | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |

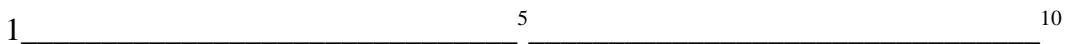
3. To what extent do you think the following statements accurately describe what motivates you to practise law?

Often *Sometimes* *Never*

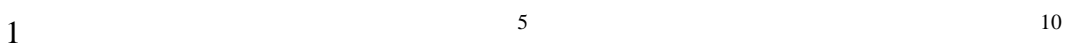
- | | | | |
|---|---------------------------------------|---------------------------------------|---------------------------------------|
| (a) It provides me with an opportunity to carry out an important service to the community | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (b) I can provide excellent quality work to my clients | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (c) I can learn and use complex technical and legal skills | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (d) I have the respect and recognition from colleagues | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (e) I have the respect and recognition from clients | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |
| (f) I enjoy the financial rewards | <input type="checkbox"/> ₁ | <input type="checkbox"/> ₂ | <input type="checkbox"/> ₃ |

4. Rate your level of satisfaction on the following bars below (1 being dissatisfied; 10 being highly satisfied)

a. Rating of professional satisfaction: 0 to 10 (1 being highest satisfaction)



b. Rating of financial satisfaction: 0 to 10 (1 being highest satisfaction)



c. Rating of personal satisfaction: 0 to 10 (1 being highest satisfaction)

1 _____ 5 _____ 10

Appendix 3: Proforma Letter to Solicitors

Dear

My name is Caroline Hart, a PhD student with the University of Southern Queensland and a member of the Downs and South Western Law Association, and a solicitor. I am conducting research into possible factors that may increase or improve the success and sustainability of regional and remote legal practices in Queensland. The factors being considered include:

- People management practices
- Business planning practices
- Marketing practices
- Information technology usage

I would very much like to organize either a telephone interview or a face-to-face interview with you as a means of gathering data towards this research.

There are a number of benefits that the University will be offering to support your involvement in this research. As a participant you will have access to the University website offering information on professional legal practice management. This will include current and topical issues on professional legal practice management not only from Australian national law bodies such as the Law Institute and large urban law firms, but also from the US and England. Additionally, the Queensland Law Society has enabled all participants who complete the survey, will be provided with 1 CPD Point.

My research is specifically aimed at regional, rural and remote law practices, with particular emphasis upon business carried out, business planning practices, marketing, human resources, and information technology.

Throughout most regional, rural and remote areas of Queensland (and indeed Australia) there have been successive government policies that have depleted regional infrastructure which has impacted on the ability to provide regional and remote services, including legal services. There has already been research conducted in the US that it is still possible to operate and manage a successful law practice despite these circumstances.

Even if you would characterize your practice as being successful, there may still be areas in which you would benefit from participating in this research. Indeed, many of the top law firms in the capital cities have welcomed the opportunity to participate in a sharing of knowledge and best practice in the Leading Edge Practice Tour that was coordinated by the Law Council Australia with support from law firms.

The research that I will be conducting, and the information that I will be making available on the website, will include analysis and discussion of the outcomes of the LEP Tour. I am also hoping that there will be opportunities for networking and establishing links between regional and remote legal practitioners.

If you are willing to be involved in my research then I will forward a copy of the content of my interview. I am hoping to travel to areas throughout Queensland to conduct face-to-face interviews. If this is possible (dependent upon funding) then I would welcome your comments on whether you would be interested in being involved in this subsequent opportunity to discuss your views on regional legal practice. Our interview would most likely take 90 minutes.

I would like to advise you that you may withdraw from the study at any time without any fear of consequences. You do not need to provide an explanation. Any material that you have provided will be disposed of with the utmost regard to confidentiality and privacy concerns. If you do decide to participate in this study, then any information you provide will be treated confidentially, and your privacy will be respected. Any data that is generated as a result of the study will be de-identified for the purposes of the study.

I am very much looking forward to carrying out this research and meeting and talking to as many regional and remote legal practitioners as possible. I am anticipating there will be important outcomes for the legal profession including the opportunity to identify critical factors for a successful, sustainable law firm. There is significant support for my research from the University of Southern Queensland, and legal organizations that represent the interests of legal practitioners.

Please do not hesitate to contact me on (07) 4631 1437 or by email on hartc@usq.edu.au to discuss any of the matters I have outlined above. I look forward to talking to you.

Kind regards

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