



In need of advice: how business owners respond to legal problems

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Abstract: *Business owners sought advice to resolve business-related legal problems more often than other LAW Survey respondents. They also made greater use of legal advisers, financial advisers and trade/professional association advisers than individuals. Yet we know that business-related legal problems routinely result in adverse consequences and frequently co-occur with other legal problems. A legal needs survey dedicated to business owners would provide guidance on the delivery of legal assistance services to this group.*

Source

This paper presents new findings from the Legal Australia-Wide Survey (LAW Survey). The first major findings for Australia as a whole were published in *Legal Australia-Wide Survey: legal need in Australia* by Christine Coumarelos, Deborah Macourt, Julie People, Hugh M. McDonald, Zhigang Wei, Reiny Iriana and Stephanie Ramsey (2012).

About the LAW Survey

The LAW Survey provides a comprehensive assessment of a broad range of legal needs of a representative sample of the population. It covered 129 different types of civil, criminal and family law problems. It examined the nature of legal problems, the pathways to their resolution and the demographic groups that struggle with the weight of their legal problems. With 20,716 respondents across Australia, the LAW Survey allows for in-depth analysis at both the state/territory and national level. The nine LAW Survey reports are available at www.lawfoundation.net.au/publications

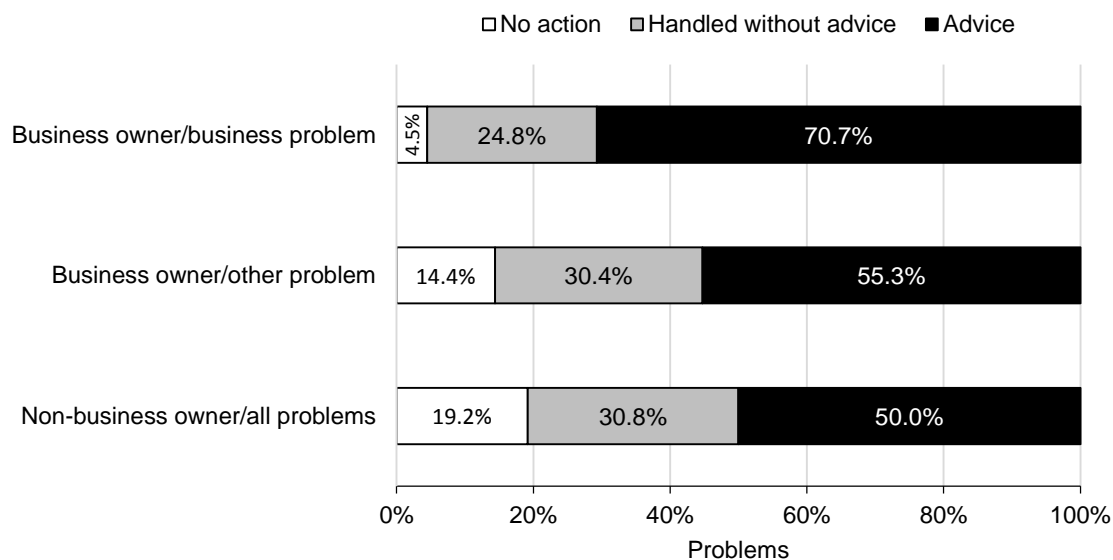
Introduction

As at June 2016, 2,171,544 businesses were actively trading across Australia;¹ 97.5 per cent of which are 'small' (up to 19 employees) and 88.3% of which are 'micro' (up to 4 employees). Small businesses 'account for over 40 per cent of national employment in the private non-financial sector and around one-third of production'.² We have shown elsewhere that business-related legal problems³ substantially impact on owners' private lives,⁴ and that a small percentage of business-owners account for of the bulk of business-related legal problems.⁵ Building on earlier findings from the LAW Survey, this paper examines the legal problem resolution strategies employed by business owners.

Business owners' responses to legal problems

Business owners less often took no action, and more often sought advice, to resolve business-related legal problems than other types of legal problems (Figure 1).



Figure 1: Broad problem resolution strategy by business ownership and problem type

Note: 3,070 non-business-related problems were reported by business owners, 222 business-related problems were reported by business owners, and 15,287 problems reported by other respondents. Seven business problems reported by these other respondents (from more than a year before) were excluded from analysis.

This was not simply a function of problem severity (i.e. more severe business problems relating to less inaction and more advice). There was relatively little difference in perceived severity between business owners' business-related and other problems; and differences in problem-solving strategy remained after severity was controlled for.

Business owners' business-related legal problems were also more likely than their other legal problems to have involved court or tribunal processes (18% vs 12%), or other formal dispute resolution processes, such as formal mediation, conciliation etc. (20% vs 11%). Moreover, in comparison to other LAW Survey respondents, business owners less often took no action, and more often sought advice, to resolve non-business-related legal problems (Figure 1). They also more often utilised court or tribunal (12% vs 9%) and other formal dispute resolution processes (11% vs 8%).

Finally, turning to sources of advice (Figure 2), business owners' use of legal advisers was far more common in relation to their business-related legal problems than other legal problems they had faced (46% vs 20%). Business owners also used financial advisers (33% vs. 16%) and trade/professional associations (10% vs. 4%) for business-related problems more often than for other legal problems.

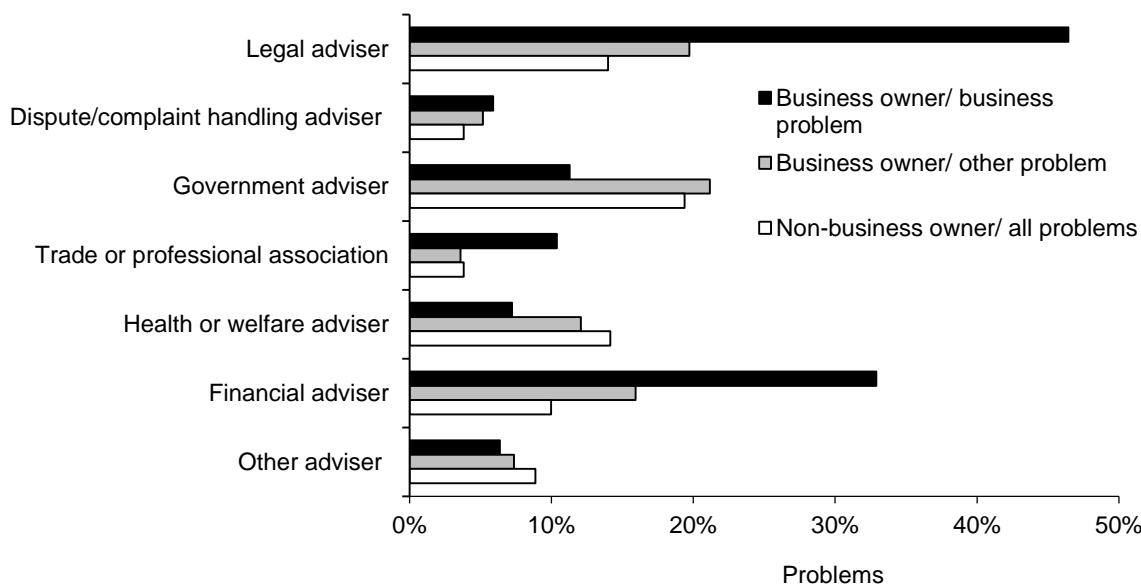
In comparison to other LAW Survey respondents, business owners made greater use of legal and financial advisers in respect of non-business-related legal problems than non-business owners (19% vs 14% and 15% vs 10%, respectively). They used health or welfare advisers and government advisers less often.

Business owners also reported that legal advisers were the 'most useful adviser' at a higher rate than would be expected given overall use (46% observed vs 39% expected).⁶ Conversely, business owners were less likely than would be expected to have reported that other adviser types were 'most useful'; notably trade/professional associations (6% observed vs 9% expected), dispute/complaint handling advisers (3% observed vs 5% expected) and health/welfare advisers (4% observed vs 6% expected).⁷

Implications

It is common for business owners to seek advice in relation to their business-related legal problems. This could be a function of necessity, the nature of relationships with other parties to problems (which are distinct from non-business-related problems), greater knowledge of advice, or greater or lesser understanding of the law.

Figure 2: Advisers used by business and non-business owners by problem type



Note: The figure includes 225 business owner business-related problems, 3,124 business owner non-business-related problems and 16,015 problems reported by respondents who were not business owners.

We know that business-related legal problems routinely result in adverse consequences and cluster with non-business-related legal problems, but are unable to investigate the behaviour of business owners further using LAW Survey data. The limitations of LAW Survey data, as regards business owners and business-related legal problems, highlights the potential value of a comprehensive legal needs survey of Australian businesses to explore these issues in more depth.

Such a survey would shed light on the support business owners need, and also point to the most effective forms of legal assistance service delivery for this group.

Endnotes

- 1 Australian Bureau of Statistics, *Counts of Australian businesses, including entries and exits: June 2012 to June 2016*, cat. no. 8165.0, ABS, Canberra, 2017.
- 2 S Nicholls & D Orsmond, 'The economic trends, challenges and behaviour of small businesses in Australia,' in A Moore & J Simon eds, *Small business conditions and finance*, Reserve Bank of Australia, Sydney, 2015.
- 3 The term 'legal problem' is used throughout this paper for easy reference to a problem that is 'justiciable'. Justiciable problems have been defined by H Genn in *Paths to justice: what people do and think about going to law*, Hart, Oxford, 1999 as problems that raise civil legal issues, whether or not

this is recognised and whether or not any legal service or process is utilised in their resolution.

- 4 NJ Balmer & P Pleasence, *From the frying pan to the fire: the impact of small businesses legal problems*, Updating justice, no. 52, Law and Justice Foundation of NSW, Sydney, 2017.
- 5 NJ Balmer & P Pleasence, *On the brink: how business owners experience business-related and other legal problems*, Updating justice, no. 53, Law and Justice Foundation of NSW, Sydney, 2017.
- 6 The most useful adviser was determined by asking respondents which, of those advisers contacted, "was the most useful? (QA21). In many cases, only one adviser was contacted. In such circumstances, that adviser would always be the most useful.
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