The Long Road of the Sole General Practitioner: Towards Definition, Knowledge and Endurance

A thesis in total fulfilment of the requirements for the degree of Doctor of Philosophy

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LIST OF ABBREVIATIONS

ABA	American Bar Association
ABS	Australian Bureau of Statistics
CPD	Continuing Professional Development
FLIP Report	Law Society of New South Wales Report on the Future of Law and Innovation in the Profession
GFC	Global Financial Crisis
IPA	Interpretative Phenomenological Analysis
LAC	Legal Aid Commission
MDPs	Multi-Disciplinary Practices
NSW	New South Wales
NSW Law Society	Law Society of New South Wales
NSW OLSC	New South Wales Office of the Legal Services Commissioner
NT	Northern Territory
PLT	Practical Legal Training
QLD	Queensland
RRR	Regional Rural and Remote
SAP	Self-Assessment Process
Tas	Tasmania
UK	United Kingdom
US	United States
WA	Western Australia

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ABSTRACT

Sole legal practitioners are a significant, but poorly understood, cohort within the legal profession. Even less is known of the sole general practitioner within the solicitors' profession. These lone lawyers have a mythical quality, perceived either as champions of justice or misfits and outliers. In response to this gap in knowledge of the sole general practitioner, this thesis investigates these solicitors as individuals and as a collective.

Applying a phenomenological method to examine the world of sole general practitioners, this thesis has two objectives. The principal objective is to understand the essence of these solicitors by investigating their perspectives on opting for sole practice, its joys and challenges, and future as a mode of legal practice. This understanding informs the second objective, which is to address the insights of these sole solicitors into their professional role, in relation to their clients and in the context of their communities.

This understanding of the participants' lived experience is analysed through three key discourses: the scholarship of the legal profession, the history of sole general practitioners in Australia and the contemporary legal services market. Collectively, these discourses support the empirical evidence – that sole general practitioners, as a sub-branch of the profession, are often abandoned and isolated.

This thesis concludes that whilst the future for sole general practice is uncertain, there is a sustained need for the sole practitioner. Guided by the participants' experiences, several key proposals are considered, with the aim of supporting the contribution of this cohort to the legal needs of individual and small business clients and, more broadly, to the life of their communities.

The value of this study is the participants' rich and extensive experience of sole general practice, which informs questions about access to legal services, lawyers' duties and the homogeneity of the legal profession.

STATEMENT OF AUTHORSHIP

Except where reference is made in the text of the thesis, this thesis contains no material published elsewhere or extracted in whole or in part from a thesis accepted for the award of any other degree or diploma. No other person's work has been used without due acknowledgment in the main text of the thesis. This thesis has not been submitted for the award of any degree or diploma in any other tertiary institution.

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1 THE WORLD OF SOLE GENERAL PRACTITIONERS: AN INTRODUCTION

And it's daft to think deep, you know, because it gets you nowhere, though deep is what I am when I've passed the half-way mark because the long-distance run of an early morning makes me think that every run like this is a life – a little life, I know – but a life as full of misery and happiness and things happening as you can ever get really around yourself – and I remember that after a lot of these runs I thought it didn't need much know-how to tell how a life was going to end once it had got well started.[1]

1.1 The 'Curious Position' of Sole Practitioners in Australia: Reality and Myth

Sole practitioners hold a curious position. Within the Australian legal profession, they are the largest cohort of practitioners. The *2020 National Profile of Solicitors,* published by the Law Society of New South Wales ('NSW Law Society'), reported that in 2020, 82% of private law firms were sole practices.[2] Yet, whilst united as sole practitioners, this

[1] Alan Sillitoe, *The Loneliness of the Long-Distance Runner* (Vintage, 1959) 19.
[2] Urbis and Law Society of New South Wales, *2020 National Profile of Solicitors: Final Report* (Report, 1 July 2021) 28 <https://www.lawsociety.com.au/sites/default/files/2021-

cohort of solicitors is disparate, being scattered across communities from regional areas to the city, from commercial premises to home offices.

Surprisingly, given the statistical dominance of the sole practitioner, we know comparatively little about their work, their experiences or their clients. Indeed, 'sole practitioner' is itself an umbrella term. It merges the sole practitioner and the sole general practitioner into one, and often, the small firm practitioner is twinned with the sole solicitor, thus creating a cluster of sole and small firm practitioners. We know little about each cohort, their transition as lawyers from another form of legal practice to that of sole practice, or their motivation for doing so. We know even less about *general* practitioners within the cohort of sole practitioners. Sole general practitioners are a separate practice group to both specialist sole practitioners, for example, in family or criminal law, and small two or three partner firms. Sole general practitioners – the focus of this thesis – are considered the 'traditional' sole practitioners. They offer a diverse practice in an era when specialisation is considered by the profession to be the preferred option, in terms of maintaining currency of knowledge and risk management.[3]

Much of our knowledge about sole lawyers in general practice is built on stereotype and myth. Sole practitioners are admired as entrepreneurs, astute business owners and brave fugitives from large law firms.[4] They are equally slighted as swindlers, 'failed' corporate

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07/2020%20National%20Profile%20of%20Solicitors%20-%20Final%20-%201%20July%202021.pdf>. Prior to 2020, National Profiles were published in 2018, 2016, 2014 and 2011.

[3] Roman Tomasic, in his 1975 survey of the legal needs of the Australian community, noted a demand for specialist solicitors. Roman Tomasic, *Lawyers and the Community* (Allen & Unwin and the Law Foundation of New South Wales, 1978) 130–131. The growth of specialisation is evidenced by the number of areas of accredited specialisation. The Law Society of New South Wales ('NSW Law Society') offers 17 areas of accredited specialisation – see 'Specialist Accreditation Scheme', *Law Society of New South Wales* (Web Page, 2019) <https://www.lawsociety.com.au/for-the-public/going-court-and-working-with-lawyers/specialist-accreditation-scheme>. The Law Institute of Victoria also offers 15 areas of accredited specialisation – see 'Accredited Specialists', *Law Institute of Victoria* (Web Page, 2019) <https://www.liv.asn.au/For-the-Community/Choosing-a-Lawyer/Accredited-Specialists>. In addition, the New South Wales ('NSW') professional indemnity insurer, Lawcover, recognises the need for practice support in small practices where isolation and anxiety is 'increasingly experienced by many solicitors'. See 'About Practice Support Services', *Lawcover* (Web Page, 2019) <https://www.lawcover.com.au/practice-support-services/>. Lawcover also advised that 'accepting instructions in an unfamiliar area of practice increases risk. It can lead to errors, disappointed clients and consequential claims'. See Kerrie Lalich, 'Do You Know it All? When it's Unwise to Advise.' [2017] (37) *LSJ: Law Society of NSW Journal* 70.

[4] These stereotypes are represented by some of the participants in this study, and are discussed in Chapter Six. In professional literature, such as *Lawyers Weekly*, sole practice is described as 'one client turned into many', 'building relationships one-to-one' and 'one of the few paths to a balanced lifestyle in law'. Jerome Doraisamy, 'How to Establish Yourself as a Sole Practitioner', *Lawyers Weekly (Sydney)* (online, 30 November 2018) <https://www.lawyersweekly.com.au/sme-law/24089-how-to-establish-yourself-as-a-sole-practitioner>. Also in *Lawyers Weekly*, sole practitioners are described as lawyers who are 'quiet achievers'. Zoe Lyon, 'Flying Solo: The Rise of the Sole Practitioner', *Lawyers Weekly (Sydney)* (online, 3 March 2012) <https://www.lawyersweekly.com.au/news/5357-flying-solo-the-rise-of-the-sole-

lawyers and misfits.[5] These solitary lawyers also attract corresponding mythical images, such as heroes or champions, represented so vividly in fiction by characters such as Atticus Finch[6] and Denis Denuto,[7] or as crooks, such as Tulkinghorne.[8] Cultural images of lawyers are powerful, yet diverse representations of reality. For many, the image of a lawyer is linked to a suite of floors in an ultra-modern, multi-storey tower with harbour views,[9] surrounded by hanging gardens, expensive artefacts and designer-dressed personnel.[10] For others, the image is one of a street-front office with a tidy reception area and a lawyer and *his* assistant. Despite its simplicity, based on the visual difference in appearance between city-based global law firms and the varied offices of sole practitioners, all these visions hold a degree of validity.

Mystification and myth are compatible concepts that operate to enable the law and the work of lawyers to be partially hidden from community understanding. The courtroom, legal documents and statutes are not the domain of the public. By contrast, ideals of fairness and justice are familiar to the community, as evidenced by the fictional Atticus Finch and Dennis Denuto.[11] Both lawyers are sole practitioners and imagined as solitary characters fighting for their client against a political, and in the case of Finch, a social, system in order to achieve justice. Film and television have also created contrasting

practitioner>. Several participants in this study referred to the need to escape large law practice as the reason for moving to sole practice. Two practitioners (Karen and Susan) spoke of the importance of business management skills, as well as one practitioner (Larry) who had an entrepreneurial approach to his practice with a system of cloud-based office support and use of contract lawyers in busy periods. (NB. To ensure confidentiality and anonymity, all participants have been de-identified and all names are pseudonyms.)

[5] The popular literature, such as *Lawyers Weekly*, often produces inflammatory headlines about sole practitioners and misconduct cases when such cases against other practitioners are not covered. See, e.g., Jerome Doraisamy, 'WA Sole Practitioner Struck Off for "Extremely Serious" Misconduct', *Lawyers Weekly (Sydney)* (online, 14 August 2019) <https://www.lawyersweekly.com.au/sme-law/26295-wa-sole-practitioner-struck-off-for-extremely-serious-misconduct>; Jerome Doraisamy, 'Sole Practitioner Guilty on 5 Grounds of Professional Misconduct', *Lawyers Weekly (Sydney)* (online, 16 June 2019) <https://www.lawyersweekly.com.au/sme-law/25846-sole-practitioner-guilty-on-5-grounds-of-professional-misconduct>; Jerome Doraisamy, 'NSW Sole Practitioner Reprimanded, Fined for Professional Misconduct', *Lawyers Weekly (Sydney)* (online, 17 February 2019) <https://www.lawyersweekly.com.au/sme-law/25047-nsw-sole-practitioner-reprimanded-fined-for-professional-misconduct>.

[6] Harper Lee, *To Kill a Mockingbird* (J B Lipincott & Co, 1960).

[7] *The Castle* (Roadshow Entertainment/Miramax Films, Debra Choate, 1997).

[8] Charles Dickens, *Bleak House* (Bradbury & Evans, 1853).

[9] The image of the city-based law firm with expansive, expensive views is represented in the novel and movie *Hell has Harbour Views*. Richard Beasley, *Hell Has Harbour Views* (Pan Macmillan, 2001); *Hell Has Harbour Views* (ABC Australia, Ian Collie and Prue Fletcher, 2005).

[10] The image of well-dressed personnel was represented in the novel by Lisa Pryor, *The Pinstriped Prison* (Picador Australia, 2008). The well-dressed image is also seen in the regular feature, titled 'Dressed to Impress', in *LSJ: Law Society of NSW Journal*.

[11] In *To Kill a Mockingbird*, Finch successfully defends an African American accused of rape. In *The Castle*, Denuto successfully acts for a family whose home is threatened with resumption.

images of lawyers as both champions and saboteurs.[12] Further, the media offers extreme and contrasting examples of 'hero' lawyers and 'rogue' lawyers.[13] The poor public image of lawyers continues,[14] whilst at the same time, the legal profession meets its duty of service to the public through pro-bono work, and commencing law students report that their motivation for studying law is to 'make a difference'.[15] The attraction of imagery extends to the discourse with regard to legal education with the famous reference to a lawyer as either a plumber or Pericles offered by Professor William Twining.[16] Described as 'polar' depictions, the plumber represents 'specialised knowledge' and 'technical skills', whilst the Periclean lawyer is described as 'enlightened' and 'wise'.[17]

As previously highlighted, despite the prevalence of these fictional, perceived and public images of sole practitioners, in reality, little is known about their impact as lawyers, their experience of practice or their professional needs. This divergence between the

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[12] Movies and television series include *LA Law*, *Suits, A Few Good Men* and *The Firm*.

[13] 'Hero' lawyers include Major Dan Mori, who acted for David Hicks (2007) and Julian McMahon, who acted for Van Tuong Nguyen (2002). 'Rogue' lawyers include Carol Foreman, who was found to have committed professional misconduct as a result of lying to the Law Society and the Court about a costs agreement (1994), and Marcus Einfeld who was convicted of perjury and perverting the cause of justice (2009). The use of opposite descriptions of lawyers (positive/negative) has been identified as an approach taken by 'the culture of mass media' to United States ('US') lawyers. Anthony Chase, 'Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys' (1986) 11(2) *American Bar Foundation Research Journal* 281, 282. Media attention may highlight wrongful lawyer conduct, as was the case with a number of NSW barristers who, in the late 1990s and early 2000s, avoided their tax responsibilities. It was not until the media headlined these cases that the NSW Bar Association moved to commence misconduct proceedings against the relevant members. See Christine Parker, 'Regulation of the Ethics of Australian Legal Practice: Autonomy and Responsiveness' (2002) 25(3) *University of New South Wales Law Journal* 676.

[14] In the 2019 US Gallop Poll, lawyers were 14th out of 22 professions for 'honesty and ethics', with 22% of respondents (85% of the US adult population) indicating that lawyers rated very high or high in honesty and ethical standards. By comparison, nurses had an 85% rating (highest) and car salespersons had a 9% rating (lowest). RJ Reinhart, 'Nurses Continue to Rate Highest in Honesty, Ethics', *Gallup.com* (online, 6 January 2020) <https://news.gallup.com/poll/274673/nurses-continue-rate-highest-honesty-ethics.aspx>. In the Ipsos 2019 poll for Australia, lawyers were considered by 22% of respondents to be 'trustworthy'; this was the 11th highest out of 18 professions. David Elliot, 'It's a Fact… Scientists are the Most Trusted People in the World', *Ipsos* (online, 18 September 2019) <https://www.ipsos.com/en-au/its-fact-scientists-are-most-trusted-people-world>.

[15] In their study of University of New South Wales students, Tani and Vines found that law students consider future employers would value contributions to the welfare of the community marginally more than other disciplines. Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?' (2009) 19(1–2) *Legal Education Review* 3, 24. In their study of first and final year undergraduate law students at Melbourne University, Larcombe, Nicholson and Malkin found that 54% of law students choose 'social justice' as a reason for studying law. Wendy Larcombe, Pip Nicholson and Ian Malkin, 'Law Students' Motivations, Expectations and Levels of Psychological Distress: Evidence of Connections' (2012) 22(1/2) *Legal Education Review* 71, 107. In their study of commencing undergraduate law students at Monash University, Castan et al found that respondents noted that a legal career would enable them to 'provide a survey to society' and to 'fight against injustice'. Melissa Castan et al, 'Early Optimism?: First-Year Law Students' Expectations and Aspirations' (2010) 20(1/2) *Legal Education Review* 1, 6.

[16] William L Twining, *Pericles and the Plumber* (Queen's University Belfast, 1967) 10.

[17] Ibid.

prevalence of myth and the absence of empirical evidence as to their practice exposes the curious role of the sole practitioner – numerically, they are the most significant cohort within the overall population of lawyers in Australia, yet evidence-based analysis highlights their under-representation as a focus of study and reform. This cohort includes the *general* practitioner, about whom even less is known.

This thesis takes steps to address this gap. It examines the role of the sole general practitioner, as distinct from other cohorts of sole and small firm practices. In order to gain a deeper understanding of the work and role of these lawyers, this thesis unites the scholarship on sole general solicitors with their lived experience. To do so, this thesis examines the lived experience of 23 sole general practitioners from rural, suburban and city regions in New South Wales ('NSW'). Their experiences offer rich insights into the world of legal practice, one that is displaced by corporate domination. These are the solicitors who appear in the local court, undertake home visits and, until recently, attended in-person exchanges and settlements;[18] the solicitors whom clients refer to as 'my lawyer' and who are often chairs or members of local community associations. This thesis argues that the absence of the sole general practitioner's *voice* in both the Australian literature and the structural support they are offered by the profession is reflected in the participants' experience of abandonment. This thesis concludes that this absence of structural support for this significant cohort of Australian legal practitioners must be addressed.

1.1.1 The Gaps in Our Knowledge of the Sole General Practitioner

There is a paucity of literature on the role and work of the sole general practitioner, particularly in Australia. This includes the lack of a definition, discussed later in this chapter. Literature concerning sole practitioners is generally situated in scholarship about the legal profession, its history and the ethics of lawyering, with limited references to sole practitioners in the literature addressing access to legal services.

The majority of literature from common law jurisdictions emanates from the United States ('US'), where scholars have made a significant contribution to knowledge of the legal profession.[19] Notably, there are two differences between the US and Australia:

[18] Until the introduction of PEXA (Property Exchange Australia) and online conveyancing on 1 July, 2018.
[19] US scholars include Richard L Abel, 'Toward a Political Economy of Lawyers' (1981) 1981(5) *Wisconsin Law Review* 1117; Susan Daicoff, 'The Future of the Legal Profession' (2011) 37(1) *Monash*

firstly, in the US, there is a greater quantum of literature addressing sole practitioners[20] and secondly, the structure of the US profession is different to that in the United Kingdom ('UK') and Australia. In the US, there is one category of lawyer, that of the attorney, rather than the two categories of barrister and solicitor.[21] There are proportionally many more 'solos',[22] being a barrister/solicitor hybrid, in the US compared with the UK and Australia. Thus, the US literature cannot be directly applied to the Australian context.

However, in Australia, existing literature is underwhelming with respect to sole practitioners, instead affording a greater focus on corporate lawyers. Yet, in terms of the population of the different cohorts within the profession, corporate lawyers number less than those in small firms and sole practitioners.[23] However, as the literature demonstrates, in a neo-liberal market, the influence and authority of corporate law firms take priority over other branches of the profession.[24] The corporate client, from whom the corporate law firm takes instructions, determines the prioritising of big business over small business and individual needs and interests.[25] The expansion of corporatisation and internationalisation over the last fifty years is reflected by a corresponding increase in attention given to corporate and international firms and a decrease in attention given to smaller and general firms.[26]

University Law Review 7; Susan Fortney, 'Taking Empirical Research Seriously' (2009) 22(4) *Georgetown Journal of Legal Ethics* 1473; Geoffrey C Hazard, 'The Morality of Law Practice' (2015) 66(2) *Hastings Law Journal* 359; Anthony T Kronman, 'Legal Professionalism' (1999) 27(1) *Florida State University Law Review* 1; David Luban, 'Is There a Human Right to a Lawyer?' (2014) 17(3) *Legal Ethics* 371; Deborah L Rhode, 'Ethical Perspectives on Legal Practice' (1985) 37 *Stanford Law Review* 589.

[20] Research includes Leslie C Levin, 'Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners' (2001) 70(3) *Fordham Law Review* 847. Interestingly, Fortney opines that less attention is given by US researchers to sole and small firm lawyers and in-house counsel compared with large firms. Fortney (n 19) 1475–6.

[21] This is evidenced by the uniform structure of the US profession with one professional association, namely the federal American Bar Association ('ABA') and state bar associations.

[22] 'Solos' is used in reference to US solo attorneys. The ABA includes 'Solo, Small Firm & General Practice' as a Group. 'Solo, Small Firm and General Practice Division', *American Bar Association* (Web Page, 2020) <https://www.americanbar.org/groups/gpsolo/>. See also Levin (n 20).

[23] See Table 2.2 in Chapter Two.

[24] Joanne Bagust, 'The Legal Profession and the Business of Law' (2013) 35(1) *Sydney Law Review* 27; Oliver Mendelsohn and Matthew Lippman, 'The Emergence of the Corporate Law Firm in Australia' (1979) 3(1) *University of New South Wales Law Journal* 78.

[25] Marc Galanter and Thomas M Palay, 'Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms' (1990) 76(4) *Virginia Law Review* 747; David B Wilkins, 'Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship' (2010) 78(5) *Fordham Law Review* 2067.

[26] For example, the annual 'Australia: State of the Legal Market' reports published by Thomson Reuters cover the 'Big 8 Firms' and 'Large Firms' only. In 2019, 'New Law Firms' was included as an additional

One exception to this limited knowledge is in the area of regulation. In the reporting of complaints against lawyers and cases of professional misconduct, sole practitioners (and small firm partners/directors) are over-represented.[27] The academic literature,[28] and limited professional literature,[29] critically examines this over-representation. As observed by John Briton, the former Queensland Legal Services Commissioner:

> There is simply no good reason to believe that lawyers who do commercial litigation work and the like or who work for medium-sized and larger law firms are more ethical or have higher standards of conduct than lawyers who do conveyances or work in sole practice or small firms.[30]

On balance, the Australian literature concerning sole practitioners is skewed towards conduct and size rather than the place of these lawyers in the broader legal profession and community, whilst the literature concerning sole *general* practitioners is negligible.

1.2 The Twin Aims of the Thesis

This thesis undertakes a phenomenological study of sole solicitors in general practice to address this significant gap in knowledge.[31] These lawyers practise as 'solicitors' as distinct from 'barristers'.[32] They are the 'GPs'[33] of the law. Their substantial population, with their major focus on delivering legal services to a significant client base, provides an imperative for knowing and understanding their work.

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category. As discussed in Chapter Two, attention to smaller and general firms has decreased since the 1970s.

[27] See Linda Haller, 'Solicitors' Disciplinary Hearings in Queensland 1930-2000: A Statistical Analysis' (2001) 13(1) *Bond Law Review* 1; Linda Haller and Heather Green, 'Solicitor's Swan Song?: A Statistical Update on Lawyer Discipline in Queensland' (2007) 19(1) *Bond Law Review* 140; Kath Hall, *Tough Love: Professional Regulation of Lawyer Dishonesty* (Research Paper No 13–11, ANU College of Law, 9 August 2013) 5 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2307325>. Over-representation of sole practitioners in the disciplinary system is further discussed in Chapter Two.

[28] Haller (n 27); Haller and Green (n 27); Hall (n 27).

[29] John Briton, *Rethinking the Regulation of Lawyer Conduct: The Centrality of Law Firm Management and Ethical Infrastructures* (Conference Paper, Australian Legal Practice Management Association National Conference, 15 August 2009) <https://www.lsc.qld.gov.au/__data/assets/pdf_file/0020/106193/rethinking-the-regulation-of-lawyer-conduct.pdf>.

[30] Ibid.

[31] As defined in Chapter Three.

[32] In some Australian jurisdictions, solicitors are admitted to the Roll of Practitioners as 'solicitors and barristers'. These practitioners are subject to the regulatory framework of state and territory law societies. Barrister practitioners, who are called to the bar and who come within the regulatory framework of the bar associations, are not included in this study.

[33] General Practitioner, also known as the family doctor.

This thesis aims to investigate and highlight two phenomena in the world of sole general practitioners. Firstly, the principal objective is to understand the *essence* of these solicitors as sole practitioners – their reasons for opting for sole practice, its joys and challenges and their perception of its future as a mode of legal practice. This understanding flows into the second objective, which is to acknowledge their insights into their *place* as sole solicitors in general practice, in the context of their clients and their communities.

This thesis is an original contribution to knowledge, which asks and answers two primary research questions that have not been addressed in existing academic and professional literature:

1. *How do lawyers experience and understand their role as sole general practitioners?*
2. *What do they understand their impact to be on the communities in which they practise law?*

In order to examine these questions, this thesis undertakes a review of the literature relating to the legal profession, particularly in Australia, and analyses interviews with 23 participants. The literature, whilst useful and relevant, is primarily indicative of the scant representation of sole practitioners within the broader profession. In contrast, the qualitative methodology used in this thesis offers narratives and insights that contribute to a deeper, nuanced awareness of the sole general practitioner.

1.3 Definitions: Contextualising the Role and Client Base of the Sole General Practitioner

Reflecting the 'curious position' of the sole practitioner, several terms used in this thesis are well accepted but, nevertheless, require definition in order to explain the context in which they are situated.

General practice for lawyers is not defined in Australian statute or case law. The scarce references to general practice in the professional and academic literature refer to 'areas appropriate to clientele',[34] 'matters in a variety of areas',[35] 'broad'[36] practice and

[34] Canadian Bar Association, Special Committee on Specialization in the Legal Profession, *The Unknown Experts: Legal Specialists in Canada Today* (Report, August 1983) 11, quoted in Inge Lauw,

generalists as practising in four areas.[37] One possible reason for the lack of a well-used definition is an assumption that general practice is akin to the medical GP, where the lawyer in general practice looks after 'all things legal'. This assumption aligns with the popular comparison between doctors and lawyers.[38]

As discussed in Chapter Three, for the purpose of this study, lawyers are considered generalists if they practise in three or more areas of the law. Three practice areas allow for both a broad practice and a reasonable volume of legal work in each area. Three areas of the law also encompass a client base that generally consists of individuals and small businesses,[39] and includes clients with problems of a legal, quasi-legal[40] and non-legal nature.

In considering the role of sole general practitioners as *local* lawyers and citizens, the community is defined as the area in which each lawyer practises, being either geographical and within visible boundaries,[41] identified by solicitors' areas of interest,[42] by the clients who seek them out[43] or shaped by reputation.[44]

Being located in a community and accessible to individual and small business clients enables these solicitors to offer a broad range of legal services. General practitioners

'Specialisation, Accreditation and the Legal Profession in Australia and Canada' (1994) 1(2) *Murdoch University Electronic Journal of Law* s 8.4.2[6].

[35] 'Solo, Small Firm and General Practice Division' (n 22).

[36] Broad is defined as 'less than 25% of work across all categories', being eight areas of work listed in Table 4 in Pascoe Pleasence, Nigel Balmer and Richard Moorhead, *A Time of Change: Solicitors' Firms in England and Wales* (Report, commissioned by the UK Law Society, Legal Services Board & Ministry of Justice, July 2012) 14 <http://www.pascoepleasence.com/_Media/A%20Time%20of%20Change.pdf>.

[37] Leslie C Levin, 'The Ethical World of Solo and Small Law Firm Practitioners' (2004) 41(2) *Houston Law Review* 309, 325.

[38] Several participants in this study compared lawyers with doctors.

[39] For individual clients, these areas could include wills and powers of attorney, and selling and buying real estate. For small business clients, these areas could include business structures, leasing and contracts.

[40] For example, survey work undertaken by Hazel Genn in 1997 and 1998 identified problems that were not identified by respondents as legal, but which had a legal dimension. These problems consisted of employment, ownership of residential, rental properties for landlord and tenant, faulty goods or services, money, relationships and family matters, parental concerns for children under 18, injuries and health problems due to accidents or workplaces, discrimination, unfair treatment by police, immigration and nationality and negligent medical or dental treatment. Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law* (Hart Publishing, 1999) 21-22. Several practitioners referred to clients consulting them with problems that were not, on their face, legal issues. These problems had possible legal consequences. They included problems with Centrelink, banks, strata committees and neighbours.

[41] For example, most participants in this study acted for clients within their geographical area.

[42] For example, one rural participant (Adam) had business clients in the city and country. Two city participants (Robert and Sally) and one suburban participant (Larry) had overseas clients.

[43] One rural participant (Kelvin) had a new client base because of city-based clients coming into the area to invest in land. One suburban participant (Melina) had a client base from her ethnic community.

[44] For example, in this study, several participants' client base came from existing client referrals and 'word-of-mouth'.

have a wide array of clients who seek out their services, some of whom may have problems, legal, quasi-legal or non-legal. There is a perception that, as general practitioners, they can provide assistance in all matters of importance. In addition, as the local lawyer, they are 'on hand' to solve legal problems, to provide the community with a pathway to legal services and to enable access to the law.

However, private practitioners are not usually regarded as a sector of the profession that facilitates access to legal services. Unlike legal aid, government or community lawyers, they rely on billings as an income source. In this thesis, the term *access to legal services* is used in relation to three cohorts. One category is those who qualify for legal aid. Another is those who are the recipients of pro bono work. The third cohort is the most relevant group for private practitioners, being prospective clients who are excluded from legal services because of a lack of financial means. This third cohort, described by the Productivity Commission as the 'missing middle', are those that fall outside the Commission's assessment that:

> …only 8 per cent of households would likely meet income and asset tests for legal aid, leaving the majority of low and middle income earners with limited capacity for managing large and unexpected legal costs.[45]

These groups fall within the 'justice gap',[46] described by Daicoff as those that are 'too rich for legal aid yet too poor for private lawyers'.[47]

1.4 Scope and Limitations of the Thesis

This thesis examines solicitors who offer legal services across a range of areas and who have sole responsibility for their practice. The focus is the sole *general* practitioner. This examination extends to the broader roles these solicitors may have outside legal practice. This is particularly relevant to the second research question as to these lawyers' understanding of their impact on the communities in which they practise law.

This thesis is constrained, in part, by an historical lack of focused attention on the solicitor who practices, in a range of legal areas, on his or her own. Merging of sole

[45] Productivity Commission, *Access to Justice Arrangements* (Report, Australian Government Productivity Commission, 3 December 2014) 20 <https://www.pc.gov.au/inquiries/completed/access-justice/report>.
[46] Daicoff (n 19) 13.
[47] Ibid.

general practitioners with sole practitioners and small firms occurs in the academic and professional literature.[48] In order to overcome this limitation, research from other jurisdictions is referred to where relevant. This literature is useful, given the strong presence of sole practitioners in common law countries.[49] Significantly, the originality and strength of the thesis rests on the narratives of the participants, who are all sole general practitioners.

All participants are from NSW and, whilst this cohort is limited to the one state, its solicitor population is the highest of all states and territories.[50] Importantly, the participants represent rural (seven participants), suburban (six participants) and city (10 participants) areas, and a balance of gender, with 12 female and 11 male participants.

1.5 The Research Questions: What are the *Essence* and the *Place* of the Sole General Practitioner?

The aim of the twin research questions is to understand the experiences and attitudes of a cohort of solicitors who share the two common characteristics of 'sole' and 'general' practice. The research questions interrogate the participants' lived experience as solicitors, sole practitioners, representatives of the legal profession and members of the community. The participants' experience and their sense of their work and place inform our knowledge of this significant branch of the profession. How these lawyers experience their role as local solicitors provides an understanding of their legal and non-legal contribution to the community, and of their status within the profession.

Non-legal service to the community is sustained by the image of the lawyer as a trusted advisor and a judicious leader. Indeed, the hallmark of the legal profession is its structure as a series of duties, the highest being to the administration of justice, above that of the

[48] In the academic literature, references to solo and small firm practices as a collective are found in Carlin's study of New York lawyers referred to in Levin (n 20) 850. See also John P Heinz and Edward O Laumann, *Chicago Lawyers: The Social Structure of the Bar* (Russell Sage Foundation; American Bar Foundation, 1982). In the professional literature, references to sole and small firm practices as one cohort (1-10 partners) are referred to in Urbis and Law Council of Australia, *National Attrition and Re-Engagement Study Report* (Report, 2014) 15 <https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf> ('*NARS Report*').

[49] Statistics as to the number of sole practitioners in some common law countries are outlined in Chapter Three.

[50] The *2020 National Profile of Solicitors* states that of the 83,643 practising solicitors in Australia at the time, 43% were in NSW, with 25% in Victoria. Urbis and Law Society of New South Wales (n 2) 6.

client, and the lower ranked as duty of public service.[51] This matrix of duties is clearly enunciated in the NSW Court of Appeal's decision in *New South Wales Bar Association v Cummins*:[52]

> There are four interrelated interests involved. Clients must feel secure in confiding their secrets and entrusting their most personal affairs to lawyers. Fellow practitioners must be able to depend implicitly on the word and the behaviour of their colleagues. The judiciary must have confidence in those who appear before the courts. The public must have confidence in the legal profession by reason of the central role the profession plays in the administration of justice. Many aspects of the administration of justice depend on the trust by the judiciary and/or the public in the performance of professional obligations by professional people.[53]

Whilst the duty to the law is paramount, the duty to the client is often seen to dominate.[54] The duty to the public, once seen as aspirational, is possibly considered archaic.[55] However, the notion of service draws on the traditional role of lawyers as leaders and advisors, and is embedded in their professional identity.

This current 'traditional' model of the role of lawyers and, particularly, of those in sole general practice is impacted by technological change. The presence of lawyers within their communities usually relies on their visibility and accessibility. Whilst the impact of technology on the work of lawyers is not fully known, the rapid move to virtual communications and business as a result of COVID-19 offers persuasive evidence that services can be delivered effectively without the requirement for a physical presence.[56] This leads to a consideration of the consequences of a possible demise of the need for face-to-face delivery of legal advice, particularly in rural areas. This, in turn, may affect the leadership and service roles that lawyers engage in within their communities.

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[51] These duties are found in the common law and legislated in the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* made under the *Legal Profession Uniform Law* (NSW).
[52] *New South Wales Bar Association v Cummins* [2001] NSWCA 284.
[53] Ibid [20].
[54] This notion of client dominance is entrenched in law firm culture. A widely referred to example is the reported words of Tom Poulton, (then) managing partner of Allens Arthur Robinson (now Allens): 'We expect our people to treat the client as if they were God and to put themselves out for clients'. See 'Doing It Their Way', *The Sydney Morning Herald* (online, 26 April 2005) <https://www.smh.com.au/business/doing-it-their-way-20050426-gdl75f.html>.
[55] The duty to the public now appears, at least in the corporate sector, to be satisfied by an undertaking of pro bono work.
[56] Examples of online communication and business include Telehealth and video conferencing.

1.6 Methodology

The methodological approach to gathering, analysing and synthesising the lived experience of the participants is grounded in phenomenology. Phenomenology is well suited to narrative-based research, given that phenomenology has been described as a 'philosophical discipline'[57] in which its 'strength'[58]

> …lies in its ability to bring to life the richness of existence through description of what may appear at first sight to be ordinary, mundane living. The magic comes when we focus so deeply on aspects of individuals' ordinary lives we see that what is revealed is, invariably, something special; something *more.* What is revealed is actually quite extra-ordinary.[59]

The methodology applied to the research data primarily draws on the work of three leading scholars of phenomenology – Max van Manen, Linda Finlay and Mark Vagle – as well as the Interpretative Phenomenological Analysis ('IPA') method.[60] These scholars have developed their approaches from the early phenomenologists, and their work reflects the range of philosophies and theories within the study of phenomenology. The field of phenomenology continues to be explored, debated and contributed to, and as the results of this thesis conclude, it is apparent that there is 'no one fit' for the representation of lived experience. Most importantly, as Finlay subscribes, an approach must be defensible.[61]

Drawing on the theory of phenomenology allows for an open and reflective view of the world of sole general practitioners. This approach provides a structure for participants' narratives to be analysed and clustered in recurrent themes. Its value is found in its capacity to reveal a shared experience whilst respecting individual narratives.

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[57] Max van Manen, *Phenomenology of Practice: Meaning-Giving Methods in Phenomenological Research and Writing* (Left Coast Press, 2014) 22.
[58] Linda Finlay, *Phenomenology for Therapists: Researching the Lived World* (John Wiley & Sons, 2011) 26.
[59] Ibid.
[60] Jonathan A. Smith, Paul Flowers and Michael Larkin developed Interpretative Phenomenological Analysis (IPA). Jonathan A Smith, Paul Flowers and Michael Larkin, *Interpretative Phenomenological Analysis: Theory, Method and Research* (Sage, 2009).
[61] Linda Finlay, 'Writing up and Evaluating Phenomenological Findings', *Dr Linda Finlay: Integrative Psychotherapist and Academic Consultant* (Web Page, 2014) <http://lindafinlay.co.uk/wp-content/uploads/2014/05/Writing-up-and-evaluating-phenomenological-findings.pdf>.

1.7 Findings

The key finding of this thesis is that the limited presence of the sole general practitioner in literature and scholarship reflects the participants' lived experience of isolation and abandonment. These experiences are confirmed, to an extent, by the absence of a definition of the sole general practitioner. This absence and abandonment leads to significant and demonstrable difficulties for this cohort. Beneath this key finding, the study highlights areas for investigation, including knowledge of sole general practitioners, professional support for these solicitors and sustainability of sole general practice.

With regard to knowledge, there is inadequate information about, and understanding of, sole general practitioners, as well as sole practitioners more broadly and, by association, small firms. The 'robust' number of sole practitioners is touted as proof that the profession serves the needs of the clients and communities where these lawyers practise. Snapshots of the presence of sole practitioners are relied on as recognition that this cohort is valued, however, there is little evidence of this beyond the headlines.[62] Notably, the experiences of many participants contradict this version, and, in keeping with the literature, confirm a preferencing of the corporate firm and corporate client.

In relation to the solicitors' experiences of support, sole general practitioners share a degree of abandonment by the professional associations that are charged with representing them, and by the government, which, to an extent, determines their areas of practice and livelihood.[63] Most notably, there is a disconnect between professional associations' perception of support for sole and small firm practices and the experience of these solicitors.

In terms of the sustainability of sole general practice, the analysis of the interview data shows that these solicitors consciously elect sole practice as an alternative to other models of private practice. Whilst they are motivated by seeking a more satisfying career rather than an altruistic goal of public service, sole practice enables these solicitors to move into roles that exemplify their values and their place within the community. For the

[62] For example, in 2012 the NSW Law Society established the Small Practice Portal for small firm and sole practitioners. This no longer appears on the Society's website as a service to members.
[63] Several participants referred to NSW government legislation that reduced work for solicitors, including personal injury, workers' compensation, victims' compensation and conveyancing.

community, these lawyers embody values of trust and integrity, coupled with skills of leadership and counsel that are sought after in non-legal contexts. For clients, sole general practitioners offer a range of legal work to individuals or groups who may, otherwise, find it difficult to access these services.

Whilst the future prospects for sole practice cannot be predicted, this study leads to a consideration of the sustainability of sole practice and concludes that, based on the participants' experiences, there is likely to be an ongoing need for some *form* of sole practice. The participants consider that their accessibility, particularly for individual and small business clients, provides an important service that is not otherwise available. These participants also consider that the joys of sole practice outweigh its challenges and that, as such, being a sole practitioner is a worthwhile career option.

1.8 Significance

This thesis is the first study to apply a phenomenological approach to interrogate the essence and the place of the sole general practitioner. Its significance is to inform relevant stakeholders as to the aspects of sole general practice that are essential to maintain a strong and diverse legal profession, and to respond to unmet legal needs in Australia.

Importantly, this thesis identifies a critical need for the ongoing collection and analysis of uniform and consistent data about this cohort. This includes data to analyse whether there is an alignment of legal services delivery with community legal needs. In particular, the role of the sole general practitioner is often hidden in the reporting on sole practitioners more generally. Published data reports on the number of solicitors in each practice structure[64] and leads to the conclusion that sole solicitors are a significant part of the overall population of lawyers. However, the current lack of reliable data hampers any national study of the legal profession in Australia.

Further, the twin aims of this study – of the role of sole general practitioners *and* their place in the communities in which they practise law – offer a balance to the literature concerning the over-representation of sole practitioners in the disciplinary regime. Often presented as a 'problem' (whether due to a lack of specialisation, practice

[64] These consist of sole practitioners and firms categorised by their number of partners. This data is discussed in Chapter Two. General practice is not included as a practice structure or sub-structure.

mismanagement, incompetence or remoteness from practice innovation and requirements), this thesis analyses such myths. By providing a qualitative examination of the experience of sole general practitioners, this research centres attention on the gap in knowledge and understanding as to the work and needs of this cohort of solicitors.

In summary, as the first study to address the gap in existing knowledge, this thesis enhances our understanding of sole, and sole general, practitioners in Australia. This contribution is timely. The legal profession is facing change – rapid and unheralded. For example, there is an increasing acknowledgement that technology-driven innovation is 'disrupting' society, prompting a shift from the 'old ways' to a calling to embrace the 'new world'. In exploring the impact of change, such as the extent and the likely consequences of technology on access to legal services, the thesis confronts issues of importance to the public and the profession, such as whether, in relation to legal services, virtual firms, start-ups and legal entrepreneurs will replace shop-front solicitors.

1.9 Structure

The structure of this thesis is chronological. It examines the past, present and future of sole general practitioners and highlights the scarcity of scholarship about this cohort. Chapter Two (Literature Review) examines the existing literature concerning sole practitioners and the profession. Given that this study is about a client-centred profession, it is essential to examine the popular and professional, as well as the academic, literature. Considerable research and information is disseminated as professional literature, much of which is statistical data and emanates from professional associations. The academic literature critiques the legal profession, particularly lawyers' ethics. An examination of lawyers' professional identity provokes the long-standing and much-debated topics of the place of values and ethics in the work of lawyers and the 'profession versus business' divide,[65] which is particularly problematic for sole general practitioners.

Chapter Three (Profile and History) commences with an analysis of the definition of both sole and general practitioner. Here anomalies are identified, including the absence of a common definition for general practice and the diversity of sole practice, from the solitary solicitor with a home office to a principal lawyer in commercial premises with a team of staff.

[65] The 'profession versus business' divide is discussed in Chapter Four.

To respond with accuracy as to the statistic that the majority of private practice solicitors are sole practitioners, it is essential to clarify their number. Accordingly, the size of the sole practitioner population is considered and the inconsistencies as to the sourcing and recording of data are highlighted. The difficulties of inconsistent and incomplete data have been identified since the mid-70s. In 1977, in one of the earliest works about the legal profession, Disney et al noted: 'There is no comprehensive Australian study on the distribution of lawyers' time among the various activities in which they are engaged'.[66] In 2001, the Law Council of Australia noted the lack of complete data,[67] whilst in 2018, Urbis, the agency commissioned by the NSW Law Society to prepare a report on the profile of solicitors in Australia, declared that there were deficiencies in reporting by some states.[68] A divergence of data continues, despite the move to a national profession. Studying the trend in relation to their population provides insight as to their likely future, at least in the short term.

Chapter Three then returns to the past and examines the history of the sole practitioner from the early beginnings of the profession in England. The place of the sole practitioner has endured through claims of prominence from the barristers' arm of the profession, and from the corporate firms within the solicitors' arm of the profession. The conclusion drawn is that the history of the sole practitioner has a bearing on the lived experience of the participants in this study.

The more recent history and current state of the legal services market is examined in Chapter Four (Australian Legal Services Market). This chapter considers the forces that have impacted the legal profession and the subsequent delivery of legal services since 2000. Beginning with the Global Financial Crisis, factors such as internationalisation, technology and increased competition, corporatisation and regulation, continue to impact legal services. To varying degrees, these factors affect all cohorts of the profession with one clear outcome, that of a considerable gap between the corporate client and corporate law firm at the 'big end of town', and the individual and small business client and sole and small firm solicitors at the 'small end of town'. These changes have taken, and are

[66] Julian Disney et al, *Lawyers* (Law Book Company, 1977) 58.
[67] Law Council of Australia, *2010 Discussion Paper: Challenges for the Legal Profession* (Discussion Paper, 2001) 2.
[68] The deficiencies are caused by the lack of a common approach to data collection and reporting of the participating seven law societies and the Victorian Legal Services Board, and to incorrect recording of data by some associations. Urbis and Law Society of New South Wales (n 2) 4.

taking, place concurrently with the participants' time in sole practice. Their perceptions and experiences of these changes are studied through a phenomenological lens.

Chapter Five (Methodological Form and Rationale) introduces phenomenology to best facilitate an understanding of the narratives of these experienced lawyers. The preferencing of phenomenology enables the discovery of significant, and sometimes surprising, findings.

The thesis then turns to these findings. Applying the phenomenological approach to, firstly, the individual narratives and, following, a holistic view across the narratives, several patterns of experiences emerged. Employing the IPA method, these patterns converged into the four main themes, which are discussed in Chapter Six (Thematic Insights). *Opting for Sole Practice*, *Serving the Community*, *Supporting My Practice* and *Reflecting on the Future* are identified as areas where participants shared rich and common insights and experiences. In essence, the narratives confirm and add intensity and understanding to both research findings and gaps. The participants' words, phrases, descriptions and use of humour highlight the work that sole general practitioners undertake and the roles they have in their communities. The four themes discussed in Chapter Six, informed by the research about sole and sole general practitioners and access to legal services, are developed into findings and recommendations.

Chapter Seven (Findings and Discussion) considers strategies to positively respond to the lack of recognition and support so strongly felt by many of these lawyers. The participants' perceptions and experiences highlight the advantages and disadvantages of being a sole general practitioner. Some findings, such as the need for accurate and uniform data and business practice support, are not surprising. Others, such as a sense of abandonment by stakeholders, including professional associations, and the resilience of some lawyers in creating their own support,[69] whilst surprising, confirm the 'invisibility' that is also a mark of the literature and scholarship.

Finally, Chapter Eight (Conclusion) summarises the literature and history concerning sole general practitioners and the themes emerging from the lived experience of the participants as individuals and as a collective. Research outcomes demonstrate the contribution of this thesis to our knowledge and understanding of this cohort. Constraints

[69] Referred to by one participant as 'the brains trust'.

of the thesis are disclosed within the context of a viable cohort of lawyers who provide legal services to those who are not served by corporate, community or virtual lawyers.

1.10 Conclusion

The title of this thesis is based on Alan Sillitoe's novel, *The Loneliness of the Long-Distance Runner*. This 1950s narrative of the long-distance cross-country runner, escaping from a destructive past, has many synergies with the sole general practitioner – that of escape, self-sufficiency, joys, challenges, 'business-as-usual', resilience, optimism, loneliness, abandonment – all merging to be more than 'a little life'.[70] Sole general practitioners are more than a noteworthy statistic within the profession. However, their experiences and the 'misery and happiness'[71] of solicitors in sole general practice are not widely reported, despite their marathon as long-serving lawyers, and their resultant, meaningful legal and non-legal contributions to the communities in which they practise law.

This thesis contributes to our knowledge of sole general practitioners regarding the work they undertake, the clients they serve and their wider role in the community. The study also contributes to our understanding of the joys and challenges of sole general practice. Through the perceptions and experiences of these 23 solicitors, we learn about a cohort of the legal profession that is more celebrated in fiction than in daily real-life legal practice.

This study's conclusion is marked by a recurring observation throughout many participants' narratives – that of pro bono service, as lawyers and as citizens. As the long-distance runner declared, 'if my heart's soft, I know the sort of people I am going to save it for'.[72]

[70] Sillitoe (n 1) 19.
[71] See n 1.
[72] Sillitoe (n 1) 18.

2 LITERATURE REVIEW: POPULATION, DISCOURSE, CONDUCT AND ACCESS

What lawyers did, how they earned their bread and butter, their practices and ideas, how they dealt with clients (from the vantage point of both lawyers and their clients), the reputation of lawyers, and the extent to which there was access to legal advice and assistance (as well as alternatives to lawyers and litigation) – all these tended to receive short shrift.[1]

2.1 Introduction

Whilst the solitary lawyer receives attention in popular fiction for both heroic[2] and humorous[3] deeds, *real* sole general practitioners are remarkably less prominent in Australian professional and academic literature. The motivations, practice and role in the community of sole solicitors, who offer legal services across several areas as general

[1] W Wesley Pue and David Sugarman (eds), *Lawyers and Vampires: Cultural Histories of Legal Professions* (Hart, 2003) 6.
[2] For example, Atticus Finch as the hero in Harper Lee, *To Kill a Mockingbird* (J B Lipincott & Co, 1960).
[3] For example, Dennis De Nuto as the humorous, inept, suburban solicitor in *The Castle* (Roadshow Entertainment/Miramax Films, Debra Choate, 1997).

practitioners, are absent. They are under-researched at two levels – their lived experience and their role in facilitating access to legal services. This thesis responds to this absence, highlighting the void in knowledge of these solicitors, whilst contributing to an understanding of sole practitioners in general practice.

Indeed, *the* threshold prerequisite to addressing the research questions through empirical research, and analysing the lived experience of 'generalists', is identifying who should be interviewed. This chapter focuses on contemporary literature regarding the profession.[4] It adopts a thematic approach that examines the representation of the sole general practitioner in the academic and professional literature across Australia, the US and the UK. The available literature is grouped into four thematic areas that connect this cohort: (1) the sole practitioner population, (2) discourse about this cohort, (3) their representation in professional conduct matters and (4) their role in access to legal services. These themes, and the scholarship therein, contribute to the finding that the sole general practitioner is largely represented in the literature as a statistic, at best, and as incompetent or inconsequential, at worst.

Considering that this study examines a public-facing profession, it is important to address both professional and academic literature. Regarding the former, considerable research and information is disseminated as professional literature, much of which is statistical data emanating from professional associations. The academic literature critiques the legal profession, and, as this research centres on professional practice, there is particular emphasis upon, and interest in, lawyers' ethics.

Additionally, as noted in Chapter One, a complicating factor for research is that sole general solicitors are not considered separately, being absorbed as sole practitioners or paired with small firms. This bundling is evident throughout the professional and academic literature.

Whilst this thesis centres on the solicitors' profession in Australia, this chapter also examines professional and scholarly literature about the attorneys' profession in the US and considers relevant literature from the UK. The purpose of referencing literature beyond Australia is to offer insights that are largely absent in scholarship concerning sole and sole general practitioners in Australia. Regarding nomenclature, references to the

[4] The history of sole general practitioners is addressed in Chapter Three.

Australian and UK legal profession are generally directed at 'lawyers', being both solicitors and barristers. Australian and UK literature about the legal profession, however, is predominantly about solicitors rather than barristers. As there is no division between solicitors and barristers in the US, this literature regarding US lawyers refers to attorneys. That noted, the US literature about 'solo attorneys'[5] provides valuable insights into their professional experiences. Across all three jurisdictions, however, the challenge in the literature is the absence of delineation between the sole practitioner and the sole general practitioner.

As presented in Chapter One, the two most notable representations of sole practitioners within the solicitors' profession concern population and discipline. These themes, grounded in the literature, inform the research questions. The first question, as to how lawyers experience and understand their role, is also studied through the discourse theme, including the profession's perceptions and the tension between law as a profession and a business. The second question, as to their impact on the communities in which they practise, is also considered through the theme of access to legal services.

2.2 The Sole Practitioner Population: An Incomplete Snapshot

The limited Australian literature concerning sole practitioners focuses mainly on their statistical population, and their (mis)conduct. Whilst useful, this literature is limited in its insights. Most importantly, given the focus of this thesis, it fails to distinguish between *types* of sole practitioners. Consequently, the role and prevalence of the sole general practitioner remains a mystery.

Indeed, a comprehensive understanding of the Australian solicitors' profession is hampered by lack of reliable information about its statistical population. As set out in Section 2.2.2 below, this deficit includes the sole practitioner population. Despite annual reporting of the number of lawyers in Australian states and territories,[6] the information is inadequate. Inaccuracies and absences in reporting are consistently acknowledged in the literature. As highlighted in Chapter One, the absence of reliable data was identified as early as the mid-1970s by Disney et al, who noted the lack of 'comprehensive data'[7] and

[5] See Chapter One, n 22.
[6] The statistical information published in the annual reports of state and territory law societies is discussed in the next section: *Reporting of Sole Practitioners in Australia*.
[7] Julian Disney et al, *Lawyers* (Law Book Co, 2nd ed, 1986) 58.

'very scanty'[8] information about the lawyer population. The result is an inability to track changes in the number of sole practitioners over time.[9]

Also, as noted in Chapter One, concern with the absence of data has long been recognised by the Law Council of Australia. In 2001, the Council published *2010: A Discussion Paper on Challenges for the Legal Profession*, which aimed to open up dialogue about legal practice in the twenty-first century. The report notes that there are 'no definitive statistics'[10] as to the number of private practitioners in Australia.[11] More than 15 years later, the Council again recognised the challenge of insufficient data in its *2018 Justice Project*, leading to a recommendation for increased national data on solicitors in rural, regional and remote areas, including the range of available legal services, client profiles and the structures of legal entities that provide these services.[12]

The *National Profile of Solicitors*, published by the NSW Law Society in 2011, was the first attempt to gather a national snapshot of solicitors for the purpose of accurately recording their population, including the number of practitioners in defined cohorts within the profession.[13] As discussed below, the reports, published in 2011,[14] 2014,[15] 2016[16], 2018[17] and 2020[18] include all state and territory jurisdictions. Each report

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[8] Ibid.
[9] Ibid.
[10] Law Council of Australia, *2010 Discussion Paper: Challenges for the Legal Profession* (Discussion Paper, 2001) 2 ('*2010 Discussion Paper*').
[11] Ibid.
[12] Law Council of Australia, *The Justice Project Final Report Part 1: Rural, Regional and Remote (RRR) Australians* (Report, August 2018) 29 <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Rural%20Regional%20and%20Remote%20%28RRR%29%20Australians%20%28Part%201%29.pdf>.
[13] The defined cohorts are private practice, corporate legal, government legal, and other. The private practice category is divided into sole practitioner, two to four partners, five to 10 partners, 11 to 20 partners, 21 to 39 partners and 40 or more partners.
[14] Urbis and Law Society of New South Wales, *2011 Law Society National Profile: Final Report* (Report, July 2012) ('*2011 Law Society National Profile*').
[15] Urbis and Law Society of New South Wales, *2014 Law Society National Profile: Final Report* (Report, April 2015) <https://urbis.com.au/app/uploads/2015/05/2014-Law-Society-National-Profile.pdf>.
[16] Urbis and Law Society of New South Wales, *National Profile of Solicitors 2016: Report* (Report, 24 August 2017) <https://www.lawsociety.com.au/sites/default/files/2018-04/NATIONAL%20PROFILE%20OF%20SOLICITORS%202016.compressed.pdf> ('*2016 National Profile of Solicitors*').
[17] Urbis and Law Society of New South Wales, *2018 National Profile of Solicitors: Final Report* (Report, 17 July 2019) <https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors.pdf> ('*2018 National Profile of Solicitors*').
[18] Urbis and Law Society of New South Wales, *2020 National Profile of Solicitors: Final Report* (Report, 1 July 2020) (Report, 1 July 2021) https://www.lawsociety.com.au/sites/default/files/2021-07/2020%20National%20Profile%20of%20Solicitors%20-%20Final%20-%201%20July%202021.pdf ('20*20 National Profile of Solicitors*').

discloses a prominence of sole practitioners.[19] However, there are significant concerns with the data, as different reporting methods are used across jurisdictions, and reporting criteria within individual jurisdictions have changed over time.[20]

2.2.1 Reporting of Sole Practitioners in Australia

The difficulty with gathering data as to the number of solicitors in Australia, and for the purpose of this thesis, the sole and sole general practitioner population, is this lack of uniformity, transparency and consistency. Since the Law Council's 2001 discussion paper, data collection and publication on a national basis, and in some states and territories, has not significantly improved. As shown in Table 2.1, data publication is erratic, including the absence of analysis of the number of *sole general* practitioners.

Most reporting of the profession is state and territory based, and remains largely so, despite the introduction of the *Legal Profession Uniform Law* in 2015 in NSW and Victoria. Annual reports of professional associations replicate these jurisdictional divisions. Each state and territory association publishes annual reports, some of which include statistics on the number of lawyers in their jurisdiction.[21] These reports serve their statistical purpose and, to an extent, highlight the presence of sole and small firm practices through the publication of their significant population. However, they do not detail the practice areas of solicitors. Therefore, whether a sole solicitor comes within the definition of both a sole and a generalist practitioner cannot be determined from the current quantitative data.

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[19] See Section 2.2.2 below.

[20] The flawed data is because of the lack of a common approach to data collection and reporting of the participating seven law societies and the Victorian Legal Services Board, and the incorrect recording of data by some associations. Urbis and Law Society of New South Wales, *'2018 National Profile of Solicitors'* (n 17) 4.

[21] Between 2016 and 2019, annual reports of the NSW Law Society referred to sole practitioners in relation to regional and rural law societies and succession planning, and disruption caused by technology (see Law Society of New South Wales, *Annual Report 2018* (Report, 2018) 5 <https://www.lawsociety.com.au/sites/default/files/2018-12/Annual%20Report%202018.pdf>), whilst the 2018 and 2019 annual reports of the Law Institute of Victoria referred to sole practitioners in 2019 as part of their 'broad church' (see Law Institute of Victoria, *Annual Report 2019: Celebrating Our Past, Embracing Our Future* (Report, 2019) 6–7 <https://www.liv.asn.au/About/Council-Governance/20190923_LIV_AnnualReport2019.aspx>) and in relation to respondents to the 2018 survey of members (see Law Institute of Victoria, *LIV Annual Report 2018* (Report, 2018) 15 <https://www.liv.asn.au/PDF/About/AnnualReports/20180927_LIV_AnnualReport2018.aspx>).

As shown in Tables 2.1 and 2.2, the statistics recorded in the annual reports of law societies that disseminate data on practice categories provide the following clear conclusions:

- sole practitioners make up a significant percentage of the solicitor population; and
- in some jurisdictions, their number is increasing.

It is within the ambit of annual reports to identify different sub-branches within the solicitors' profession. The major current inconsistencies amongst the annual reporting of data are the varying levels of disclosed information and the method of data collection:

- Some annual reports include detailed information about solicitors' positions within the jurisdiction (sole practitioner, employee, partner, director) and the structure in which these solicitors practise (sole practice, private firm, incorporated legal practice). Some associations report the number of sole practitioners in the private profession or in the entire profession, and others report on both sole practices and practitioners.
- The method of data collection employed by professional associations varies. In Victoria (not published), NSW and Tasmania ('Tas'), statistics are collected from solicitors' practising certificate renewals.[22]
- NSW, Queensland ('QLD') and Tas have consistently published statistics on the number of sole practitioners. NSW and Tas also publish statistics on the number of sole practices. QLD commenced publication of statistics from 2013/14. In QLD, the statistics are based on law society membership and include judges, clerks and students (but not barristers).
- The NSW Law Society publishes statistical information about the number of solicitors who hold a practising certificate in NSW in a separate annual publication, titled 'Profile of Solicitors'. As shown in Table 2.2, NSW has taken responsibility for the publication of national data.

[22] From 1993, the NSW Law Society invited applicants to complete a survey specifying the practice areas in which they spent at least 25% of their time. Since 2010, applicants have been asked to indicate their main areas of practice. The response rate in 2014/15 was 46.9% of practising solicitors. This information is not publicly available.

- Four law societies (Australian Capital Territory ('ACT'), Northern Territory ('NT'), Victoria and Western Australia ('WA')[23] do not generally report statistical data. However, the number of sole practices was provided in the 2008 annual report of the Law Institute of Victoria[24] and its 2014 annual report noted the number of sole practitioner members.[25]
- The Law Society of South Australia does not generally publish annual reports on its website, restricting access to its members, although the 2018/19 annual report is available online.[26]
- The first state to introduce electronic publication of annual reports[27] and public access was NSW in 2001, followed by Victoria in 2002, ACT in 2004/2005, Tas in 2007/2008, and NT, QLD and WA in 2010/2011.

The absence of accurate data recording is set to continue. Whether a national profession will result in accurate records is not known. The particularly slow movement to a national profession is indicative of a lack of commitment to unifying the profession.[28]

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[23] The 2014/2015 annual report of the WA Law Society includes two pages of statistics from the National Profile of Solicitors in Australia, undertaken by the NSW Law Society. Law Society of Western Australia, *Annual Report 2014/2015: The Essential Membership for the Legal Profession* (Report, 2015) 62–63 <https://www.lawsocietywa.asn.au/wp-content/uploads/2015/10/annual-report-2014-2015-financials.pdf>.
[24] The 2008 annual report noted that there were 2,715 sole practitioners out of 4,414 practices, including community and government. Law Institute of Victoria, *The Power of Association: 2008 Annual Report* (Report, 2008) 19 <https://www.liv.asn.au/PDF/About/AnnualReports/2008annrep_FullReport.aspx>.
[25] The 2014 annual report noted that there were 1,696 sole practitioner members out of a total membership of 19,002 members. Law Institute of Victoria, *Annual Report 2014* (Report, 2014) 5 <https://www.liv.asn.au/PDF/About/AnnualReports/LIV_AnnualReport_Full_011014.aspx>.
[26] See Law Society of South Australia, *Annual Report 2018-2019* (Report, 2019) <https://www.lawsocietysa.asn.au/pdf/AnnualReport19.pdf>.
[27] These reports are accessible online. See 'Annual Reports', *Australian Capital Territory Law Society* (Web Page, 2020) <https://www.actlawsociety.asn.au/about-us/annual-reports>; 'Annual Reports', *Law Society of New South Wales* (Web Page, 2020) <https://www.lawsociety.com.au/about-us#sts=Annual%20Reports%20&%20Business%20Plan>; 'Annual Report', *Law Society of the Northern Territory* (Web Page, 2019) <https://www.lawsocietynt.asn.au/publications/annual-reports.html>; 'Annual Report', *Queensland Law Society* (Web Page, 2021) <https://www.qls.com.au/About_QLS/Queensland_Law_Society/Resources_publications/Corporate_documents/Annual_Reports>; 'Annual Reports', *Law Society of Tasmania* (Web Page, 2021) <https://lst.org.au/about/annual-reports/>; 'LIV Annual Reports', *Law Institute of Victoria* (Web Page, 2020) <https://www.liv.asn.au/About/Council-Governance/LIV-Annual-Reports>; 'Annual Reports', *Law Society of Western Australia* (Web Page, 2020) <https://www.lawsocietywa.asn.au/annual-reports/>.
[28] The first indication of a move to a national profession came in 1994 when the Law Council of Australia disseminated the *Blueprint for the Structure of the Legal Profession: A National Market for Legal Services* (Law Council of Australia, 1994), which included a proposal for mutual recognition of admission in the states and territories. In 2001, the Standing Committee of Attorneys-General proposed the drafting of national model laws to regulate the profession, which were incorporated into legislation in all states and territories, except for SA. NSW and Victoria implemented the further step of uniform legislation on 1 July 2015 with the *Legal Profession Uniform Law*. See NSW Government Department of Communities & Justice, 'National Legal Profession Reform – Background Information', *NSW Government - Communities & Justice* (Web Page, 2014) <https://www.justice.nsw.gov.au:443/for-students-legal-profession/national-

The move to a national framework, which commenced in 2001, has resulted in only two states (NSW and Victoria) introducing uniform legislation, with one state (WA) indicating its intention to join in 2022. Five of the eight jurisdictions are yet to commit to a national approach. Furthermore, and most pressingly, each jurisdiction retains its own methodology for counting and reporting. This is a significant barrier to a national approach.

2.2.2 The Number of Sole Practitioners in Australia

As noted earlier, statistics reported by state and territory law societies form the main source of data about lawyers and legal practices in Australia, however, they do not detail solicitors' areas of practice. Inconsistencies in the reporting of numbers of both sole practices and sole practitioners are evidenced below. Table 2.1 presents statistics concerning sole principals and sole practices in jurisdictions where such information is publicly available.

Anomalies with reporting across jurisdictions, coupled with lack of a national data collection system, mean that is it problematic to identify the environment in which sole solicitors practise and to tailor services to meet specific needs. This gap in the statistical profile of sole practitioners contributes to a lack of planning about the legal needs of communities. By way of example, governments and professional associations have not prioritised incentives to encourage lawyers to move to areas of legal need. The Law Council of Australia promotes rural, regional and remote practice, although there is no economic incentive attached to relocation, as is the case for medical practitioners.[29]

legal-profession-reform/background-information>. In March 2020, WA announced that it will introduce uniform legislation after 1 January 2022. See 'Legal Profession Uniform Law - Important Update on Uniform Law in Western Australia', *Law Society of Western Australia* (Web Page, 13 March 2020) <https://www.lawsocietywa.asn.au/legal-profession-uniform-law/>.

[29] The needs of sole practitioners and the communities they serve are discussed in Chapter Seven.

Table 2.1 Published Statistics on the Annual Numbers of Sole Practitioners and Sole Practices in NSW, QLD and Tas

	NSW		QLD*	Tas**	
	Sole Principals (%)#	*Sole Practices (%)##*	*% of Law Society Membership*	*Sole Principal (n)*	*Total Firms (n)*
2008/09	38.6%	85.4%	Not published	77	127
2009/10	39.3%	85.4%	Not published	80	120
2010/11	40.7%	86.4%	Not published	79	121
2011/12	40.5%	86.6%	Not published	85	126
2012/13	40.5%	87%	8%	83	123
2013/14	41.9%	87.3%	44.8% (law firms)	81	125
2014/15	Only number of private practice solicitors reported		11%	82	126
2015/16	As 2014/15 Report		12.3%	76	120
2016/17	As 2014/15 Report		11.7%	76	125
2017/18	As 2014/15 Report		11.8%	101	128
2018/19	As 2014/15 Report		24.3%	101	127
2019/20	As 2014/15 Report		9%	102	129

Notes:

 # The number of sole principals in the private profession.

The number of sole practices as a proportion of private law firms.

** QLD statistics refer to Law Society membership and include judiciary, clerks and students*

*** Tas statistics refer to sole principals from the private profession*

2.2.3 The Place of the Sole Practitioner within the National Private Profession

The NSW Law Society's commissioned *National Profile of Solicitors* reports source data on information provided by the eight state and territory law societies. In each reporting year, sole practitioners and sole practice firms constitute the largest cohort of private practice solicitors and firms. Table 2.2[30] shows the number of solicitors in private practice by firm size in 2011, 2014, 2016, 2018 and 2020.

The 2011 report notes that 29.8% of solicitors were working in sole practice compared to 23.1% of practitioners in large law firms of 40 or more partners.[31] By 2020, this percentage had increased to 41% of sole practitioners,[32] in comparison with a decrease to 11% of firms of 40 or more partners.[33]

Table 2.2 Percentage of solicitors in private practice in Australia by firm size in 2011, 2014, 2016, 2018 and 2020

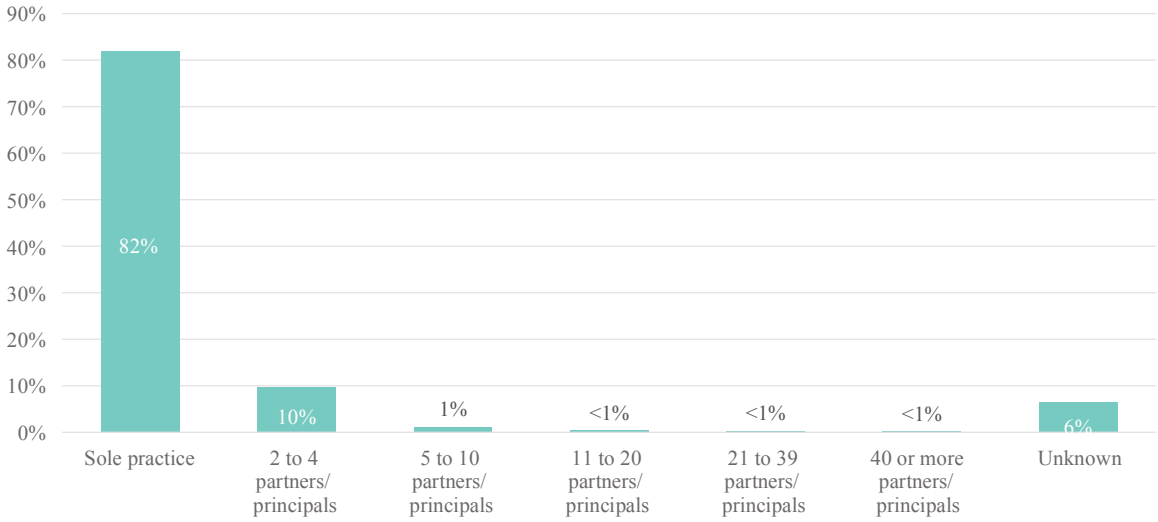
	Number of Solicitors				
	2011	*2014*	*2016*	*2018*	*2020*
Sole practitioner	29.8%	30.6%	30.3%	38%	41%
2-4 partners	18.4%	19.0%	19.6%	15%	19%
5-10 partners	11.1%	11.5%	11.4%	7%	7%
11-20 partners	9.2%	8.8%	9.0%	6%	7%
21-39 partners	8.0%	7.0%	7.2%	7%	8%
40+ partners	23.1%	23.1%	22.4%	10%	11%
Unknown	0.4%	0.0%	0.1%	17%	7%
Total	***100% (41,737)***	***100% (46,163)***	***100% (48,241)***	***100% (52,893)***	***100% (56,176)***

[30] Urbis and Law Society of New South Wales, *'National Profile of Solicitors 2016'* (n 16) 27, table 12. A different method for presenting the number of firm structures within the private profession is utilised in the 2018 and 2020 reports, which do not include the percentage increase in firm sizes. Urbis and Law Society of New South Wales, *'2018 National Profile of Solicitors'* (n 17) 28, figure 22, Urbis and Law Society of New South Wales, *'2020 National Profile of Solicitors'* (n 18) 30, figure 22. As noted in Chapter One, 2020 is the most recent national profile.
[31] Urbis and Law Society of New South Wales, *'2011 Law Society National Profile'* (n 14) 15.
[32] Urbis and Law Society of New South Wales, *'2020 National Profile of Solicitors'* (n 18) 30.
[33] Ibid.

Overall, the number of solicitors as sole practitioners has increased notably over the last nine years whilst the percentage of lawyers in firms of 40 or more partners has halved. Sole practitioners significantly dominate the private profession.

Similarly, private practice firms are dominated by sole practices. Figure 7.1 below is a snapshot of the reporting of private practice firms in the 2020 report. In 2020, 82% of private law practices were sole practices (one principal solicitor or a sole solicitor) compared to <1% of solicitors in firms of 21 to 39 partners and in firms of 40 or more partners.[34]

Figure 2.1 Breakdown of Private Practice Firms in 2020



In 2004, when the NSW Law Society published *The Solicitors of New South Wales in 2015*, it was predicted that by 2015, 86.3% of NSW firms would be sole practices.[35] At the end of 2014, the society's annual reporting noted that sole practices constituted 87.35% of firms.[36] This increase in the predicted growth reinforces the quantitative data from some other states and territories, which indicates that sole practice continues as a sustainable mode of legal service delivery. However, as the data is inadequate to quantify a national trend, it cannot be concluded that the collective increase in sole practice is across Australian jurisdictions. By way of example, in contrast to the increase in NSW, the 2010/11 Queensland Law Society annual report indicated a decrease in the number of sole practices from 17% of members in 2001 to 11% in 2010-2011. Interestingly, in the

[34] Urbis and Law Society of New South Wales, *'2020 National Profile of Solicitors'* (n 18) 28.
[35] Urbis Keys Young, *The Solicitors of New South Wales in 2015: Report Prepared for the Law Society of New South Wales* (Law Society of New South Wales, 2004) 1.
[36] Law Society of New South Wales, *Profile: Law Society Research Update* (Report, 1 December 2014) 2.

2018 National Profile, QLD has the highest number of sole practitioners, with 50% of the private profession in sole practice.[37] Notably, as evidenced in Table 2.1 and confirmed in Table 2.2, sole practice remains a viable option for many Australian solicitors. According to the 2020 *National Profile of Solicitors*, at least 30% of sole practitioners practise on their own with no employed staff,[38] yet within this sub-branch of the solicitors' profession, how many of those solicitors are in *general* practice is unknown.

In summary, irrespective of the inconsistency in data, it is evident that a significant number of solicitors are practising law on their own account, whether as sole practitioners or as sole principals. Statistical limitations arise with the reporting of categories of legal practice, as records do not include areas of practice nor the number of practice areas of individual solicitors. The shortfall of data identifying sole general practitioners highlights the question as to whether, as a cohort, generalists are increasing, declining or remaining constant.

Statistical information would provide a base from which further questions could be explored, such as the interests and needs of this cohort. Importantly, as this thesis highlights and considers in the following chapter, there is no definition of general practice. The interviews conducted as part of this research confirm the importance of recognising the work and wider contribution of these solicitors. Relevant data would inform a definition and, subsequently, contribute to acknowledgement of sole general practice as a category within the solicitors' profession.

The next section considers international data with respect to sole practitioners. Evidence from other common law countries reflects the Australian position of a stable population of sole practitioners and an absence of delineation between specialist and general practice.

2.2.4 The Number of Sole Practitioners Internationally

As with Australian data, the publication of statistics from other countries is problematic. Some data reports on the number of sole practitioners, whilst other data reports on the number of sole practices within the private profession. As a general proposition,

[37] Urbis and Law Society of New South Wales, *'2018 National Profile of Solicitors'* (n 17) 27.
[38] Urbis and Law Society of New South Wales, *'2020 National Profile of Solicitors'* (n 18) 31.

Susskind estimates that in large jurisdictions,[39] between 30% and 40% of practices are sole.[40]

The US has the greatest number of solo lawyers. The American Bar Association ('ABA') reported that in 2019, solos and small firms (2-9 attorneys) comprised the majority of the legal profession, with 63% of respondents of the *2019 ABA Legal Technology Survey Report* practising as solo (32%) and small firm attorneys (31%).[41] This statistic must be considered in the context of a fused profession.

Statistics published by the Federation of Law Societies of Canada indicated that, from 1998 to 2016, sole practitioners shared the most popular form of practice with professional corporations.[42] In 2018, 44.9% of Canadian lawyers were sole practitioners and 55.1% were in professional corporations.[43] These statistics did not state whether professional corporations include sole directors. In Canada, between 2007 and 2012, the number of sole practitioners increased by 33%, whilst the number of lawyers in large firms grew by only 20%.[44]

In November 2020, the UK Solicitors Regulation Authority published statistics on the categories of solicitors in England and Wales. According to these figures, sole practices constituted 20.2% of firms, partnerships were 14.5%, limited liability partnerships were 15.1% and incorporated companies were 49.8%, with the latter including sole directors.[45] In Ireland, 44% of firms were sole solicitor practices in the 2019/2020 reporting year.[46]

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[39] Although not explicit, it is likely that 'large jurisdictions' refers to western jurisdictions, as throughout his text Susskind draws on examples from England and Wales, the US and Canada. Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2nd ed, 2017) 18.
[40] Ibid.
[41] '2019 Solo & Small Firm', *American Bar Association* (Web Page, 4 December 2019) <https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/solosmallfirm19/>.
[42] 'Statistics', *Federation of Law Societies of Canada* (Web Page, 2021) <https://flsc.ca/resources/statistics/>.
[43] '2018 Statistical Report of the Federation of Law Societies of Canada', *Federation of Law Societies of Canada* (Web Page, 2018) <https://flsc.ca/wp-content/uploads/2020/02/2018FLSCStatsReport.pdf>.
[44] Jim Middlemiss, 'The Rise of the Sole Practitioner', *Financial Post* (online, 17 July 2013) <https://financialpost.com/legal-post/the-rise-of-the-sole-practitioner>.
[45] 'Breakdown of Solicitor Firms', *Solicitors Regulation Authority* (Web Page, 8 August 2011) <https://www.sra.org.uk/sra/how-we-work/reports/statistics/regulated-community-statistics/data/solicitor_firms/>.
[46] Law Society of Ireland, *Annual Report and Accounts 2019/2020* (Report, 2020) 15 <https://annualreport.lawsociety.ie/media/1848/ar-lawsociety2019-20-final.pdf>.

In New Zealand, with a divided profession, 39% of solicitors were sole practitioners in 2019.[47] The method of reporting this 2019 snapshot differed from earlier reporting, in that the 2019 statistic was restricted to sole practices where there was only one practising lawyer, whereas earlier reports were based on one sole principal working either on their own or with other non-principal lawyers.[48]

Whilst the above statistics from common law jurisdictions provide a snapshot of sole practice as a sizeable component of the private profession, it is not possible to accurately evaluate their number as a cohort internationally. Similar to the Australian statistics, the percentage of sole practitioners who manage a general practice is not available.

A strong theme emanating from the global statistics is the significantly greater number of sole practitioners as compared to other forms of practice. Analysis of the sustained, and sometimes increasing, number of sole practitioners is required to assess whether this is evidence of a trend and, if so, the implications. According to the participants in this research, the issue of flexibility, particularly for lawyer parents and for confident users of technology, is a major reason for being in sole practice.[49] The most noted reason was the freedom of practice as compared with larger firms. In 1990, Weisbrot acknowledged this in the concluding sentence in his text, *Australian Lawyers*: 'Many lawyers prefer the "nostalgic ideal"[50] of individual independent professionalism to employment within a large bureaucracy, public or private'.[51]

The statistics imply, as a degree of authority, that the 'fuss or favour' about the corporate firm is inflated. The nostalgic heart of the profession is sole and small firm practice. By highlighting these statistics in annual and other reports, the presence of the sole practitioner and the sole general practitioner is acknowledged and provides a method by which their influence and contribution can be balanced with that of the corporate firm. What the statistics fail to reflect is the capacity of the corporate firm, in partnership with the corporate client, to dominate the profession. The emergence of the corporate law firm and its impact on the legal landscape is discussed in Chapter Four.

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[47] Geoff Adlam, 'Snapshot of the Profession 2019' (2019) 926 (March) *New Zealand Law Society LawTalk* 27, 37.
[48] Ibid 36.
[49] More specifically, participants discussed flexibility in relation to the capacity for mothers to plan their practice around children, and for solicitors to use technology to work remotely.
[50] Richard L Abel, 'The Decline of Professionalism?' (1986) 49(1) *Modern Law Review* 1, 41.
[51] David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) 274.

Notably, data as to the percentage of *sole general* practitioners is not collected. The bundling of sole and small firm lawyers precludes the ability to analyse accurate data as to over-representation of sole practitioners in the disciplinary system. This deficit is significant because it reveals a fundamental flaw in knowledge of the most public-facing cohort within the profession. It is particularly concerning, given that their presence in the profession discourse has declined in Australia over the last 50 years. This theme of discourse is discussed below.

2.3 The Sole Practitioner Discourse

Generally, sole practitioners in Australia have not been the subject of significant academic interest. They featured in a body of scholarship that emerged in the 1970s and 1980s but subsequently, attention to this cohort has declined. This deterioration in attention coincided with a shift in the literature towards the emergence of the corporate firm and the 'business of law'.[52]

In this section, the literature is clustered into aspects of practice, including the profession's perception of this cohort and the tension of the commercial and individual client dichotomy. Although much of the literature concerns US lawyers, it has relevance to solicitors in Australia.

2.3.1 Sole Practitioners in the Literature

As discussed earlier in this chapter, Disney et al authored the first contemporary scholarly work on the Australian legal profession. Published in 1977, *Lawyers* examines the structure of the Australian legal profession with reference to other scholars' work in this area.[53] Of relevance for this thesis are the authors' observations relating to the sole practitioner population. Noting a decline in sole practice in Australia and the UK, the

[52] Disney et al describe this emergence as a 'steady increase in the size of law firms', with principals in NSW and Victorian law firms in 1985 being comprised of 68% of 2-3 partner firms, 38% of 4-9 partner firms, 8% of 10-19 partner firms and 16% of 20 or more partner firms. Disney et al (n 7) 60.

[53] Since the publication of *Lawyers*, a series of texts have followed, including first editions of Ysaiah Ross and Peter JM MacFarlane, *Lawyers' Responsibility and Accountability: Cases, Problems and Commentary* (Butterworths, 1997); Ysaiah Ross, *Ethics in Law: Lawyers' Responsibility and Accountability in Australia* (Butterworths, 1995); GE Dal Pont, *Lawyers' Professional Responsibility in Australia and New Zealand* (LBC Information Services, 1996); Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 2007); Paula Baron and Lilian Corbin, *Ethics and Legal Professionalism in Australia* (Oxford University Press, 2013). These texts form the basis of the teaching of 'Ethics and Professional Responsibility', a Priestley 11 subject prescribed in *Legal Profession Uniform Admission Rules 2015* (NSW) sch 1 'Academic Areas of Knowledge'.

authors consider this to be a result of 'growth in the number and size of large law firms'[54] and 'significantly lower levels of profitability of sole practice relative to other forms of practice'.[55] During this period of commercial firm expansion, the attraction of a healthier and more secure income may well have incentivised solicitors to opt for city-based commercial practice. Interestingly, though perhaps not surprisingly, the authors do not consider factors that might deter professionals from city-based practices and large firms. Negative experiences such as discrimination, harassment or adverse impacts on health and wellbeing, later identified as part of the corporate culture, were not contemplated by a predominantly Caucasian male privately-educated profession.

2.3.2 General Practice in the Literature

The decline of sole practitioners in the 1970s discussed by Disney et al corresponded with an increase in the diversity and specialisation of solicitors' work. This expansion into larger firms and emergence of areas of expertise is demonstrated by the categorisation of solicitors introduced by sociological research in the 1970s. Hetherton's survey of 2,699 Victorian solicitors in 1976 and 1977 identified different cohorts of solicitors categorised by six typologies – the 'Property Practitioner', the 'Personal Plight Practitioner',[56] the 'Commercial Practitioner', the 'Workers' Compensation Practitioner', the 'Taxation Practitioner' and the 'Residual Practitioner'.[57] The final typology of Residual Practitioner is the general practitioner, who Hetherton notes 'failed to meet the classification criteria of other type of practitioners'[58] based on aggregate hours in specified practice areas.

Similar to Hetherton's methodological approach, Tomasic and Bullard surveyed over 600 NSW lawyers in 1977 and proposed four typologies – the 'Litigation Lawyer', the 'Property Lawyer', the 'Commercial Lawyer' and the 'Generalist'.[59] Akin to Hetherton's

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[54] Disney et al (n 7) 59.
[55] Ibid.
[56] Margaret Hetherton, *Victoria's Lawyers: The First Report of a Research Project on 'Lawyers in the Community'* (Victoria Law Foundation, 1981), cited in Disney et al (n 7) 67. The Personal Plight Practitioner primarily practised in family law and personal injury law.
[57] Disney et al (n 7)) 66–7.
[58] Ibid 72.
[59] Roman Tomasic and Cedric George Bullard, *Lawyers and Their Work in New South Wales: Preliminary Report* (Law Foundation of New South Wales, 1978). The survey sampled barristers and solicitors from the private profession, government and corporations. From the private profession, samples were taken from city solicitors (302 solicitors invited to respond with a 40.4% response rate), suburban solicitors (166 solicitors invited to respond with a 37.95% response rate) and country solicitors (155 solicitors invited to respond with a 57.42% response rate): at 103.

definition of the 'Residual Practitioner, Tomasic and Bullard define the 'Generalist' as 'those lawyers who could not be allocated to any cluster'.[60] Referencing Hetherton's study, Tomasic notes similarities between the categories of solicitors and their proportions across the two jurisdictions, including 34.8% of NSW solicitors as 'Generalists' in parallel with 34% of Victorian solicitors as 'Residual Practitioners'.[61]

In summary, in the 1970s, one-third of NSW and Victorian lawyers[62] were in general practice. How many were in *sole* general practice is not known. The fact that Hetherton and Tomasic and Bullard did not differentiate this cohort is a significant reminder of the knowledge gap and lack of concern regarding this major group of practitioners, and highlights the shift from limited literature about general practice to limited literature about sole practice.

2.3.3 Law Reform and Sole Practitioners

In concurrence with the above studies, the NSW government recognised that, during the reform period of the 1970s and 1980s, different cohorts were emerging.[63] Between 1982 and 1984, the New South Wales Law Reform Commission made numerous recommendations in a series of four reports on the legal profession,[64] which resulted in a modernised approach to legal practice. The *First Report on the Legal Profession: General Regulation and Structure* identifies relevant stakeholders, including clients, 'would-be clients',[65] 'judges and other people who work within the legal system'[66] and

[60] Roman Tomasic, 'Social Organisation amongst Australian Lawyers' (1983) 19(3) *Australian and New Zealand Journal of Sociology* 447, 456.
[61] Ibid 457.
[62] In NSW, the lawyers were either solicitors or barristers. In Victoria, they were solicitors.
[63] *Trade Practices Act 1974* (Cth); *Family Law Act 1975* (Cth). Since the Law Reform Commission reports, a cluster of reports have followed, mainly concerning lawyer regulation, including the concept of a national profession and the broader systemic challenge of access to the law. Literature concerning a national profession and its effect on sole practitioners is discussed in Chapter Three. Literature concerning access to legal services is discussed in Chapter Seven.
[64] The four reports are on General Regulation and Structure; Complaints, Discipline and Professional Standards; Advertising and Specialisation; and Solicitors' Trust Accounts. See 'Law Reform Commission: Completed Projects', *NSW Department of Communities & Justice* (Web Page, 1 September 2015) <https://www.lawreform.justice.nsw.gov.au:443/Pages/lrc/lrc_completed_projects/lrc_completedprojects1980_1989/lrc_legalprofession.aspx>.
[65] New South Wales Law Reform Commission, *First Report on the Legal Profession: General Regulation and Structure* (Report No 31, 1982) [3.2] <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-31.pdf>.
[66] Ibid.

the community.[67] The report refers to sole practitioners in the context of the different needs of solicitors in remote areas compared with partners in large city firms.[68]

Additionally, the report recognises differences between city and country firms, and between corporate clients engaged in taxation litigation and personal injury clients, which are early signs of geographical and clientele dissimilarities within the profession.[69] In order to meet diverse clients' interests, the Commission recognised the need for flexibility in the structure of lawyers' practices. The report notes:

> Freedom of choice encourages flexibility, diversity, competition and innovation. It enables lawyers to respond to the needs of their particular clients or potential clients, to their own capabilities and preferences, and to the circumstances of particular cases. If the structure of the profession unduly restricts this freedom, it may adversely affect the quality, accessibility, speed or cost of legal services.[70]

The recognition of the community as a stakeholder and the importance of the public voice were advanced with the recommendation that the community be represented on the Law Society Council and the Bar Council,[71] and on their respective Committees.[72] The report's recommendations were based on the continuation of a divided profession, with barristers receiving greater attention, as evidenced by an additional two chapters dedicated to this branch of the profession.[73] This is not surprising, given the early colonial history of the Australian legal profession with the dominance of the Bar.

Although the second and third reports do not refer to sole practitioners, they are discussed in the context of the legal needs of clients. The *Second Report on the Legal Profession: Complaints, Discipline and Professional Standards* makes no specific reference to sole practitioners, although the promotion of laypersons as active contributors to the oversight of the profession continued with a recommendation that non-lawyers be involved in the inquiry and determination of complaints.[74] The *Third Report on the Legal Profession: Advertising and Specialisations* recommends the

[67] Ibid.
[68] Ibid [3.3].
[69] Ibid.
[70] Ibid.
[71] Ibid s r15.
[72] Ibid s r20(1).
[73] Ibid ch 9 'Queen's Counsel' 123-32; ch 10 'Court Dress' 133-40.
[74] New South Wales Law Reform Commission, *Second Report on the Legal Profession: Complaints, Discipline and Professional Standards* (Report No 32, 1982) [4.8] <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-32.pdf>.

continuation of 'institutional advertising and community legal education',[75] particularly in areas of unmet legal need.[76] Whilst this recommendation was not directed at sole practices, its community focus recognised the demand for lawyers to provide legal services in these areas. Almost 40 years following the reports, the extent to which legal services are provided to the community by private practice lawyers has not been thoroughly examined. The *Fourth Report on the Legal Profession: Solicitors' Trust Accounts* is discussed later in this chapter.

2.3.4 Sole Practice as a Career

At the time of the Law Reform Commission's reports, sole practice was considered a career destination. The *Legal Practice Book*, jointly published in 1987 by the NSW Law Society and the College of Law, summarises the joys and challenges of sole practice:

> One of the drawbacks of being in sole practice is that once the practice becomes relatively busy, it is almost impossible to get away from the practice for holidays etc. On the other hand, the joy of being able to leave the practice for short periods of golf and other amusements without being beholden to an employer or fellow partner is quite considerable.[77]

At that time and into the 1990s, moving into sole practice was an attractive career option for law graduates. In a five year study of 1997 Australian law graduates, Karras and Roper[78] found that 23% had completed articles of clerkship in a small firm, ahead of the number of graduates who articled at a small-medium firm (19%)[79] and a medium-large firm (10%).[80] For the purposes of this thesis, the findings are regrettably limited, as the options for post-clerkship career destinations are broad, being 'private legal profession',

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[75] New South Wales Law Reform Commission, *Third Report on the Legal Profession: Advertising and Specialisation* (Report No 33, 1982) [16.12] <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-33.pdf>.
[76] Ibid.
[77] Richard Ennis, *The Legal Practice Book for Sole Legal Practitioners* (Law Society of New South Wales and College of Law, 1987) 46.
[78] Maria Karras and Christopher Roper, *The Career Destinations of Australian Law Graduates: First Report of a Five Year Study* (University of Newcastle, 2000) 1. A further study of the career destinations of law graduates was undertaken by Sumitra Vignaendra, who found that 20% of 1991 graduates worked in small firms, defined as 'no more than 10 partners'. Sole practice as a career destination was not reported. Sumitra Vignaendra, *Australian Law Graduates' Career Destinations* (Australian Government, Department of Employment, Education, Training and Youth Affairs, 1998) 107.
[79] Karras and Roper (n 78) 85. 5–10 partners.
[80] Ibid. 11–20 partners.

'public sector' or 'private sector'. Possibly, at the time of the surveys, the private profession was considered sufficiently homogenous to not require further breakdown.[81]

Although there is no statistical evidence to indicate succession planning in sole practices, an immersion in sole and small firm practice provides an opportunity to experience legal practice in this environment, with the prospects of joining the firm, an offer of partnership and the possibility of taking over the practice on the departure of the master solicitor. However, from the 1970s, the emergence of corporate firms, and subsequently international law firms, plus the relatively new role of in-house lawyers, offered alternative legal careers.[82] The increase in large firms, boutique practices, specialist community legal centres and companies with their own in-house counsel, coupled with the decline of articles and the requirement of two years of supervised practice prior to becoming a principal solicitor, left sole practice as an increasingly less visible and viable option for law graduates.[83]

This is in contrast to the US, where there is a considerable solo attorney population due to their fused profession. In addition, solo and small firm practice as a career option is embedded in law school curricula.[84]

2.3.5 Sociological Studies in Australia

Sociological studies of lawyers in Australia are uncommon. There have been no sociological studies of the Australian legal profession since the work of Hetherton and Tomasic and Bullard, referred to earlier in this chapter. In her survey, Hetherton sought

[81] Ibid 58, 60. The results indicated that 35% of respondents wished to work in the private profession and 52% of respondents wished to be working in the private profession within the next three years.
[82] Disney et al cover the corporate law firm and in-house counsel as legal career options. Disney et al (n 7) 183–9.
[83] A more diverse range of career options for law graduates, a structured clerkship and graduate programs for the large corporate firms, and career services aimed at the corporate and government sectors, for example, advertisements in *Lawyers' Weekly* and at University Careers Services, dominate the legal employment market.
[84] For example, the Thomas M Cooley Law School in Michigan offers a concentration of study in general practice for solo and small firm attorneys. The unit 'General Practice Sole and Small-firm Concentration (GPSolo Concentration)' is designed for students seeking careers in this form of practice. See Gary L Bauer, 'Addressing the Needs of Solo/Small Firm Practitioners through Law School Based Programs to Reduce Stress in Practice - Several Approaches' (2003) 6(1) *Thomas M Cooley Journal of Practical and Clinical Law* 1, 27. The Office of Career Services and the John and Terry Levin Center for Public Service and Public Interest Law at Stanford Law School provide information on solo and small firm careers. 'Working at Small Firms and Solo Practice', *Stanford Law School* (Web Page, 2021) <https://law.stanford.edu/careers/career-possibilities/private-sector/>.

information about areas of work, hours of work and specialisation.[85] In their survey, Tomasic and Bullard sought information as to participants' qualifications, [86] place of birth,[87] relatives' occupation,[88] high school education,[89] religion[90] and political preference.[91]

Karras and Roper's survey of 1997 law graduates included questions on age, gender, ethnic background, first language spoken, birthplace, secondary and university education, parents' educational levels and occupations and family responsibilities.[92] Nonetheless, there are no studies of sole or sole general practitioners.

2.3.5.1 Sociological studies in the United States

The limited sociological literature in Australia stands in stark contrast to the US, where the prominence of solo and small firm practice is evidenced by an extended research footprint. The first study of solo attorneys was undertaken by Carlin in the late 1950s.[93] His study of Chicago lawyers, and subsequent study of New York lawyers, found that the main practice areas of solo attorneys were personal injury, real estate, matrimonial, criminal and workers' compensation.[94] Carlin also identified that these attorneys came from the 'lower social classes',[95] had graduated from the less prestigious universities[96] and were less ethical than large law firm members.[97] Interestingly, from an Australian perspective, Karras and Roper also found that students from the higher socio-economic class choose to study at older universities,[98] whilst Tomasic and Bullard conclude that 'city solicitors and barristers form an elite within the profession'.[99]

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[85] See Disney et al (n 7) 152–3.
[86] Tomasic and Bullard (n 59) 3.
[87] Ibid 23.
[88] Ibid.
[89] Ibid 24.
[90] Ibid.
[91] Ibid 26.
[92] Karras and Roper (n 78) iii–iv.
[93] Jerome E Carlin, *Lawyers on their Own: A Study of Individual Practitioners in Chicago* (Rutgers University Press, 1962).
[94] Jerome E Carlin, *Lawyers' Ethics: A Survey of the New York City Bar* (Russell Sage Foundation, 1966), cited in Leslie C Levin, 'Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners' (2001) 70(3) *Fordham Law Review* 847, 850 ('Preliminary Reflections').
[95] Ibid.
[96] Ibid.
[97] Ibid 851.
[98] Older universities are referred to as the 'sandstones'. Karras and Roper (n 78) 18.
[99] Tomasic and Bullard (n 59) 8.

Heinz and Laumann's 1975 study of Chicago lawyers, whilst not restricted to sole practitioners, adheres to Carlin's identification of law school as a determining factor in a successful career, 'whether measured by prestige, income or job persistence',[100] whilst slightly diverging from social class to 'ethnoreligious background and father's occupation'.[101] Of relevance to the divergence of lawyers' practices, Heinz and Laumann shift Carlin's socio-economic determinates of attorneys' professionalism to the client as the causal factor.[102] They highlight the corporate client as the determining factor in lawyers' decision-making.[103] According to the authors, writing in 1982,[104] this distinction is 'more "sharply bifurcated"[105] than any of the other professions'.[106]

Twenty years later in 1995, Heinz and Laumann, together with Nelson and Sandefur, undertook a further study of Chicago lawyers, which offered two main findings – increased fragmentation and specialisation.[107] Seron notes that the authors attributed the greater fragmentation to the rising presence of the corporate client and the increase of lawyers from minority groups and female attorneys.[108] Of relevance to solo practitioners is the finding of increased specialisation in solo and small firms, to the extent that the authors consider that greater specialisation belongs to these lawyers, rather than corporate lawyers who practise in several areas across connected specialisations.[109]

Of particular note are the works of Seron[110] and Levin.[111] Seron's 1989 study of New York solo and small firm attorneys concludes that these lawyers manage their practice through reliance on informal networks of colleagues, court officials and mentors, coupled

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[100] Carroll Seron, 'The Status of Legal Professionalism at the Close of the Twentieth Century: Chicago Lawyers and Urban Lawyers' (2007) 32(2) *Law & Social Inquiry* 581, 587 ('The Status of Legal Professionalism'). In this article, Seron critiques two studies of lawyers in Chicago undertaken 20 years apart by Heinz and Laumann (1975 study) and Heinz, Laumann, Nelson and Sandefur (1995).
[101] Ibid.
[102] Ibid 582.
[103] Ibid 589.
[104] John P Heinz and Edward O Laumann, *Chicago Lawyers: The Social Structure of the Bar* (Russell Sage Foundation; American Bar Foundation, 1982). Although the text was published in 1982, the study, based on interviews with 777 lawyers, was undertaken in 1975.
[105] Seron, 'The Status of Legal Professionalism' (n 100) 582.
[106] Ibid.
[107] Ibid.
[108] Ibid 583.
[109] Ibid 588.
[110] Carroll Seron, 'New Strategies for Getting Clients: Urban and Suburban Lawyers' Views' (1993) 27(2) *Law & Society Review* 399; Carroll Seron, *The Business of Practicing Law: The Work Lives of Solo and Small-Firm Attorneys* (Temple University Press, 1996) ('*The Business of Practicing Law*'); Seron, 'The Status of Legal Professionalism' (n 100).
[111] Levin, 'Preliminary Reflections' (n 94); Leslie C Levin, 'The Ethical World of Solo and Small Law Firm Practitioners' (2004) 41(2) *Houston Law Review* 309 ('The Ethical World').

with observation of other attorneys' work.[112] The essential business of practice management is challenging.[113] Their main sources of clients are referrals, professional associations and connections through local activities.[114] Comparably, many of the participants in this thesis' research shared similar experiences regarding the value of informal networks, the challenge of business management and the avenues for sourcing clients. More recently, Seron's insights into the two previously mentioned studies of Chicago attorneys identify the 'important civic contributions to the profession and the community'[115] offered by solo and small firm attorneys. Seron also specifically refers to the 1995 study of Chicago lawyers, noting its findings that solo and small firms contribute to their communities,[116] have leadership roles in their local bar association and undertake more pro bono work than large firms.[117]

In 2001, forty years after Carlin's work, Levin's study of solo attorneys in suburban New York responded to Carlin's 'damning conclusions'[118] that these practitioners were less ethical than their large firm colleagues.[119] Levin argues that changes to legal practice and the profession since the early 1960s positively influenced the work of solo and small firm attorneys.[120] The perception of solo attorneys as less ethical than other lawyers raises the question of whether they have greater vulnerability and exposure because of their small size and, possibly, fewer resources.

In addition to delivering a range of practice areas, Levin defines lawyers in solo and small firm practices as 'lawyers for the middle class'[121] acting for clients from the same socio-economic group. She also describes these lawyers as 'big firm refugees'.[122] The participants in this thesis echoed these descriptions.[123] Based on interviews with 41

[112] Seron, *The Business of Practicing Law* (n 110), cited in Andrew L Kaufman et al, *Problems in Professional Responsibility for a Changing Profession* (Carolina Academic Press, 6th ed, 2017) 1042.
[113] Ibid 1043.
[114] Ibid 1042.
[115] Seron, 'The Status of Legal Professionalism' (n 100) 592.
[116] Ibid.
[117] Ibid 593.
[118] Levin, 'Preliminary Reflections' (n 94) 851.
[119] Ibid.
[120] Ibid 852.
[121] Ibid 854.
[122] Ibid 849.
[123] Several participants in this study shared that they opted for sole practice as an alternative to large firm practice. Based on practice locations, areas of practice and client descriptions, the vast majority of participants' clients would be considered middle-class.

attorneys,[124] Levin concludes that, although their numbers were decreasing, solo and small firm practitioners were 'hardly a dying breed'.[125]

2.3.5.2 Literature from the United Kingdom

The continuing sole practitioner presence is also a feature of the legal profession in the UK. In 2012, the UK Law Society, Legal Services Board and the Ministry of Justice jointly commissioned a survey and report of solicitors in England and Wales. Based on responses from 2,007 private firms, the report concludes that, at that time, legal services delivery was in a period of 'unparalleled change'.[126] Sole practitioners were the largest group of the survey, consisting of 44% of the respondents.[127] The report refers to general practice as 'broad',[128] in contrast to specialist practice, which is referred to as 'narrow',[129] noting that specialist practice was favoured, with 27% of firms operating 90% of their practice in one area compared with 15% of firms having a practice where 25% or more of their work was in one area.[130] The number of sole practitioners with a broad practice was not reported.

Studies in the US and UK share the same finding as in Australia – that there is a deficit in data concerning sole general practitioners. The discourse regarding fragmentation within the profession reinforces the evidence that the sole practitioner and sole general practitioner are not perceived as autonomous and discrete entities.

2.3.6 Perception of Sole Practitioners by the Profession

The US and Australian literature examines the profession's perception of sole practitioners, highlighting a major theme of fragmentation between 'classes' of solicitors. In the US literature, Pue and Sugarmann refer to the notion of a homogenous legal profession as a 'simplistic view'.[131] This fragmentation categorises lawyers through their clients, either corporate or individual, and these categories have been characterised by

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[124] Levin, 'The Ethical World' (n 111) 319. These lawyers were mainly from a solo practice or firms of up to five attorneys with 29% being female and two were African American.
[125] Levin, 'Preliminary Reflections' (n 94) 848.
[126] Pascoe Pleasence, Nigel Balmer and Richard Moorhead, *A Time of Change: Solicitors' Firms in England and Wales* (Report, commissioned by the UK Law Society, Legal Services Board & Ministry of Justice, July 2012) 53 <http://www.pascoepleasence.com/_Media/A%20Time%20of%20Change.pdf>. The findings of this report are discussed in Chapter Four.
[127] Ibid 12.
[128] Ibid 14.
[129] Ibid i.
[130] Ibid 51.
[131] Pue and Sugarman (n 1) 21.

scholars as separate *worlds.* Heinz and Laumann describe these as 'two hemispheres of the profession'.[132] Galanter elaborates on this image, noting that the majority of solo and small firm practices are in the 'individual' hemisphere,[133] or, as described by Kaufman and Wilkins, the 'private' client.[134]

In Australia, the Law Council also recognises the growing separation between 'two tiers of solicitors',[135] namely the commercial sphere and the personal sphere.[136] As presented in Chapter One, sole and small firm solicitors generally practise in the personal sphere, acting for individual and small business clients.

The profession's perception of clients as either corporate or individual, situates sole practitioners in the 'personal sphere'. Here they are placed with small firm solicitors. This bundling of the three cohorts – sole, sole general and small firm, as identified in Chapter One, is a feature of the polarisation of the profession. It emphasises the lack of scholarship that addresses sole practitioners and sole general practitioners as discrete cohorts.

Furthermore, the perception of sole and small firm practices as 'worlds apart' from their corporate colleagues has been reinforced by the discourse regarding the divide between the law's purpose as a business or as a profession. This tension continues to stratify the solicitors' profession.

2.3.7 Tension within the Profession

Fragmentation between the commercial and personal spheres within the solicitors' profession is also characterised as a tension between law as a profession and law as a business. The literature highlights the impact of the dominance of the 'commercial sphere' operating in a neo-liberal market, as both client and law firm, on the traditional view that law is a profession that serves the public interest as well as the client.

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[132] John Heinz et al, 'The Changing Character of Lawyers' Work: Chicago in 1975 and 1995' (1998) 32(4) *Law & Society Review* 751, 751. Following the 1975 survey, the 1995 survey resulted in a more nuanced finding that the hemispheres were 'less distinct', although the corporate hemisphere was providing increased work for the profession.
[133] Marc Galanter, '"Old and In the Way": The Coming Demographic Transformation of the Legal Profession and its Implications for the Provision of Legal Services' [1999] (6) *Wisconsin Law Review* 1081, 1091.
[134] Andrew L Kaufman and David B Wilkins, *Problems in Professional Responsibility for a Changing Profession* (Carolina Academic Press, 5th ed, 2009) 732.
[135] Law Council of Australia, *'2010 Discussion Paper'* (n 10) 7.
[136] Ibid.

The continuing debate as to the place of law as a profession or a business is a fertile area of scholarship. On the profession side of the debate, scholars[137] and judges[138] promote ethics as critical for maintaining virtuous lawyer conduct and upholding the rule of law. On the business side, scholarship concerning corporate firms questions the place of ethics in these firms' structures and culture.[139] Within the debate, there is a lack of recognition that this dichotomy is not absolute. The practice of law is both a business and a profession. Furthermore, the debate fails to recognise sole practitioners as a specific cohort that should be considered separately, despite their role as lawyers in private practice, maintaining a business, and as legal professionals serving the public interest by facilitating access to legal services for individual and small business clients.

The critique of law as a business, to the exclusion of the notion of service to the public, is allied with the rise of the corporate firm. Notably, the emergence of the corporate client is a defining feature within the Australian legal profession. In the 1970s, whilst general practice was considered its own area, the image of the corporate lawyer was emerging. Writing in 1978, Tomasic and Bullard captured the initial tension between a traditional general legal practice and a commercially oriented practice, and between a professional and a *businessman*. Their definition of a successful lawyer includes both approaches to the practice of law, whilst designating the value of both to different cohorts. A successful lawyer is one with a 'broad range of legal experience, followed by the possession of business acumen. The latter factor is particularly important to city solicitors and corporation lawyers, whilst the former factor is most important to country and suburban solicitors'.[140]

An analysis of the Australian corporate firm, beyond that of 'business acumen', challenges the belief that the lawyer determines the retainer with the client. This analysis

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[137] Christine Parker et al, 'The Ethical Infrastructure of Legal Practice in Larger Law Firms: Values, Policy and Behaviour' (2008) 31(1) *University of New South Wales Law Journal* 158; Mirko Bagaric and Penny Dimopoulos, 'Legal Ethics is (Just) Normal Ethics: Towards a Coherent System of Legal Ethics' (2003) 3(2) *Law and Justice Journal* 367.

[138] Michael Kirby, 'Legal Professional Ethics in Times of Change' (Speech, The St James Ethics Centre Forum on Ethical Issues, 23 July 1996) <https://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_stjames2.htm>; Geoffrey Nettle, 'Ethics - The Adversarial System and Business Practice' (2005) 10(1) *Deakin Law Review* 67. Sir Daryl Dawson acknowledges the commercialisation of legal practice whilst categorising the profession as 'one of a special kind'. Daryl Dawson, 'The Legal Services Market' (1996) 5 *Journal of Judicial Administration* 147. See also Chapter Four.

[139] Oliver Mendelsohn and Matthew Lippman, 'The Emergence of the Corporate Law Firm in Australia' (1979) 3(1) *University of New South Wales Law Journal* 78, 90; Joanne Bagust, 'The Legal Profession and the Business of Law' (2013) 35(1) *Sydney Law Review* 27.

[140] Tomasic and Bullard (n 59) 4.

evidences the influence of the corporate client on firm conduct and culture. Mendelsohn and Lippman, writing in 1979, described the early indication of the disappearance of individual non-corporate clients from corporate law firms, despite long-standing connections.[141] The authors suggest that this decline results from clients not requiring the same volume of legal work and therefore, not generating the same level of profit as corporate clients.[142] Similarly, Bagust's 2005 study, based on 50 interviews with partners, employed solicitors and former employees from selected mid and large international and/or national firms in Melbourne, found that maximisation of profits took precedence over the needs of workers.[143] This notion of the client being embedded as the permanent priority in the firm demonstrates the dominance of the 'big business' client in the lawyer/client retainer.[144] As Bagust notes, 'It is of concern that professionally trained lawyers working in the top echelons of the large corporate firms which service the major corporations are finding their professional autonomy compromised by pressure to march to the beat of the clients' drum'.[145] The power of the client and the consequential effect on lawyer decision-making has been examined in case studies of corporate lawyers and corporate firm misconduct.[146] As noted in Chapter One, of relevance is the observation of John Briton, the former Queensland Legal Services Commissioner, that there is no justification for the suggestion that corporate lawyers are more ethical than other practitioners.[147]

In the US literature, tension caused by fragmentation is largely discussed within the context of ethics and professionalism. The literature addresses the place of values in the practice of lawyers, including the tensions caused by an increasingly corporatised

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[141] Mendelsohn and Lippman (n 139) 84.
[142] Ibid.
[143] Bagust (n 139) 28.
[144] This notion of client dominance is entrenched in law firm culture. See Chapter One, n 54.
[145] Bagust (n 139) 50.
[146] Allegations and/or findings of misconduct or poor ethical conduct have taken place against the US firm, Vinson & Elkins, in relation to the 2001 collapse of Enron Corp – see Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 3rd ed, 2018) 325–7; against the law firm Allens Arthur Robinson (now Allens) and the chief general counsel of James Hardie in relation to the company's plans to avoid compensation payments to victims of asbestos: at 319-23; against Clayton Utz for advising its client British American Tobacco on a document retention policy that, since 1985, included the destruction of documents that were likely to be relevant to anticipated litigation: at 290. See also *McCabe v British American Tobacco Australia Services Limited* [2002] VSC 73.
[147] John Briton, *Rethinking the Regulation of Lawyer Conduct: The Centrality of Law Firm Management and Ethical Infrastructures* (Conference Paper, Australian Legal Practice Management Association National Conference, 15 August 2009) <https://www.lsc.qld.gov.au/__data/assets/pdf_file/0020/106193/rethinking-the-regulation-of-lawyer-conduct.pdf>.

world.[148] Kronman highlights the tension between the two approaches to legal practice in his seminal work *The Lost Lawyer*.[149] Kronman's approach to law as a profession is the 'lawyer-statesman',[150] a figure he describes as being an ideal of service that is disappearing from large law firms. Galanter draws on Kronman's advice:

> So the lawyer who wishes to live a life centred on the values of the vanishing lawyer-statesman ideal is advised to avoid elite corporate practice in favour of 'the general-practice law firm in a small town or city outside the country's metropolitan centers'.[151]

This image is associated with the lone lawyer who unites leadership and service for the community's benefit. Wilkins recognises the influence of the corporate client as a core reason for the changing profession, with the observation that, although large law firms make up a relatively small population in the private profession,[152] they take up 'the lion's share of scholarly and popular attention'.[153]

Kaufman and Wilkins suggest that this lack of scholarship in the US is due to solo practitioners' absence from large public litigation, and from the graduate recruitment process embedded in law schools.[154] The infrequent appearance of sole practitioners in high-profile cases in the higher courts is part of the imbalance of power and influence between corporate and individual clients, with the latter having considerably less prospect of commencing litigation compared with corporate and government entities.[155]

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[148] Richard L Abel and Philip SC Lewis, *Lawyers in Society* (University of California Press, 1988). For a discussion on professional ethics in the context of the welfare of others, see Geoffrey C Hazard, *Ethics in the Practice of Law* (Yale University Press, 1978). For a discussion on the two hemispheres of corporate versus individual and small business clients, see Kaufman and Wilkins (n 134). For a collective work on specific groups of lawyers, including ethical perspectives on decision-making and typologies for lawyers, see Leslie C Levin and Lynn M Mather (eds), *Lawyers in Practice: Ethical Decision Making in Context* (University of Chicago Press, 2012). For a discussion on cultural history and its impact on the identity and social role of lawyers, see Pue and Sugarman (n 1).

[149] Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harvard University Press, 1995).

[150] 'Lawyer-statesman' is the term used by Kronman to describe the corporate firm that previously adhered to ideals of public service. See Marc Galanter, 'Lawyers in the Mist: The Golden Age of Legal Nostalgia' (2017) 122(1) *Dickinson Law Review* 549, 553–4.

[151] Kronman (n 149) 397, referred to in Galanter (n 150) 554.

[152] Galanter (n 133), referred to in Kaufman et al (n 112) 968.

[153] David B Wilkins, 'Some Realism about Legal Realism for Lawyers: Assessing the Role of Context in Legal Ethics' in Leslie C Levin and Lynn M Mather (eds), *Lawyers in Practice: Ethical Decision Making in Context* (University of Chicago Press, 2012) 25, 30.

[154] Kaufman and Wilkins (n 134) 807.

[155] The Productivity Commission's *Access to Justice* report refers to the 'two extremes' in litigation, that of the 'self-represented litigants and well resourced, repeat users of the system, such as government and big business'. Productivity Commission, *Access to Justice Arrangements* (Report, Australian Government Productivity Commission, 3 December 2014) 17 <https://www.pc.gov.au/inquiries/completed/access-justice/report>.

Further, the dominance of international and national corporate firms in the legal graduate market relegates sole practice as a career to a less popular option.[156]

This tension within the profession is exacerbated by the dominance of the corporate firm. Lawyers are represented as two distinctive clusters, with the corporate firm being the more powerful because of the economic influence of their clients. Whilst some literature critiques the corporate client as the driver of unethical firm behaviour, these 'faceless' corporate practices receive less public scrutiny as compared to the identifiable solicitors in sole and small firm practices who engage in poor ethical conduct.

2.4 Ethics and Professional Conduct

Contemporary academic literature regularly focuses its gaze on the ethical framework of the profession and includes theoretical perspectives, such as lawyers' values, morals and professional identity,[157] as well as practical aspects, such as regulation and conduct rules.[158] The commitment of scholars and legal educators to the criticality of lawyers' ethics and professional conduct, together with the requirement of ethics as a compulsory component of an Australian law degree, results in a healthy collection of legal ethics texts.[159] These texts present the regulatory and disciplinary frameworks across Australia, which produce a skewed representation of the categories of lawyers accused of misconduct. Some academic literature examines this skewed representation of practitioners from sole and small firms in the area of complaints and misconduct. The

[156] It should be noted that in Australia, graduates must complete either 18 months or two years of supervised practice prior to commencing practice as a sole principal. See *Legal Profession Uniform Law 2014* (NSW) s 49(1) ('*Uniform Law NSW*'). In relation to the dominance of large firms in the graduate market, one of the objectives of the Centre for the Legal Profession at Georgetown University's *Report on the State of the Legal Services Market* is to provide law students 'with a sophisticated understanding of the opportunities and challenges of a modern legal career'. See Georgetown University Law Center and Thomson Reuters, *2017 Report on the State of the Legal Services Market* (Report, 2017) 17 <https://static.legalsolutions.thomsonreuters.com/static/pdf/peer-monitor/S042201-Final.pdf>.

[157] Deborah Hartstein and Justine Rogers, 'Professional Associations as Regulators: An Interview Study of the Law Society of New South Wales' (2019) 22(1–2) *Legal Ethics* 49; Parker et al (n 137); Bagaric and Dimopoulos (n 137).

[158] Paula Baron and Lillian Corbin, 'The Unprofessional Professional: Do Lawyers Need Rules?' (2017) 20(2) *Legal Ethics* 155; Hartstein and Rogers (n 157); Christine Parker, 'Regulation of the Ethics of Australian Legal Practice: Autonomy and Responsiveness' (2002) 25(3) *University of New South Wales Law Journal* 676; Christine E Parker, Robert Eli Rosen and Vibeke Lehmann Nielsen, 'The Two Faces of Lawyers: Professional Ethics and Business Compliance with Regulation' (2009) 22(1) *Georgetown Journal of Legal Ethics* 201.

[159] Paula Baron and Lilian Corbin, *Ethics and Legal Professionalism in Australia* (Oxford University Press, 3rd ed, 2020); GE Dal Pont, *Lawyers' Professional Responsibility* (Law Book Co, 7th ed, 2020); John Littrich and Karina Murray, *Lawyers in Australia* (Federation Press, 4th ed, 2019); Parker and Evans (n 146).

core reason proposed is the ability of the large corporate firms to be absent from the regulatory process,[160] other than a few notable exceptions.[161]

2.4.1 Regulatory Focus

As noted in Chapter One, the literature concerning sole practitioners focuses on their population and their misconduct. Both in Australia and in the US, a body of scholarship has developed that suggests sole practitioners and small firms have a propensity towards questionable ethical conduct. In 1984, the New South Wales Law Reform Commission's *Fourth Report on the Legal Profession: Solicitors' Trust Accounts*,[162] noted: 'Another vulnerable class of a solicitor is the ageing sole practitioner who has enjoyed a reasonably high standard of living most of his life and his personal spending habits may have become inappropriate to his present earning'.[163] The report details two insights into the over-representation of sole practitioners in relation to complaints concerning the trust account.[164] Firstly, given the high incidence of trust account breaches by sole practitioners, this cohort should receive 'special attention'[165] and be inspected more frequently than other firms.[166] The second insight refers to the practitioner who is nearing the end of practice. Referring to an earlier report requested by the Commission, senior sole practitioners are identified as a 'class of solicitors'[167] likely to default.

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[160] See Kath Hall, *Tough Love: Professional Regulation of Lawyer Dishonesty* (Research Paper No 13–11, ANU College of Law, 9 August 2013) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2307325>; John Briton, *The Changing Face of Lawyer Regulation* (Presentation, 47th Annual Vincents' QLS Symposium, 28 March 2009) <https://www.lsc.qld.gov.au/__data/assets/pdf_file/0004/106195/changing-face-of-lawyer-regulation.pdf>; Levin, 'The Ethical World' (n 111) 372.

[161] Carol Foreman was removed from the Roll of Legal Practitioners as a result of forging a costs agreement and denying any wrongdoing. See *Law Society of New South Wales v Carol Foreman* [1994] NSWCA 69. Peter Paradise, former partner at Herbert Smith Freehills, was removed as a partner following the firm's internal investigation into complaints concerning sexual harassment. See Patrick Begley and Michaela Whitbourn, 'Top Lawyer Sacked over Sexual Harassment but Still on Sydney FC Board', *The Sydney Morning Herald* (online, 24 March 2018) <https://www.smh.com.au/national/nsw/top-lawyer-sacked-over-sexual-harassment-but-still-on-sydney-fc-board-20180324-p4z61x.html>.

[162] New South Wales Law Reform Commission, *Fourth Report on the Legal Profession: Solicitors' Trust Accounts* (Report No 44, 1984) <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-44.pdf> ('*Fourth Report*').

[163] Yarwood Vane & Co, *Study and Analysis of Available Experience of Investigation of Solicitors in Default of Trust Account Regulation* (Report, NSW Law Reform Commission, 1979), referred to in New South Wales Law Reform Commission, *'Fourth Report'* (n 162) 9–10.

[164] New South Wales Law Reform Commission, *'Fourth Report'* (n 162) [2.25]. The report noted that between 1 July 1982 and 30 June 1984, whilst sole practitioners comprised 20% of the private profession in NSW, over 60% of the 33 solicitors struck off for trust account offences were sole practitioners.

[165] Ibid [8.25].

[166] Ibid [8.25].

[167] Ibid [2.24].

This observation is also presented in the academic literature, both in relation to the profile of sole solicitors in complaints and disciplinary cases concerning the trust account,[168] and as a challenge to the belief that they have all 'enjoyed a reasonably high standard of living'.[169] Interestingly, the need to maintain a high standard of living as a catalyst for unethical conduct has been attributed to the Bar, at least in NSW, with a series of misconduct proceedings arising from taxation offences in the late 1990s and early 2000s.[170] More recently, the academic literature concerning disciplinary proceedings recognises the vulnerability of lawyers with health challenges, rather than the need to maintain a certain lifestyle.[171]

In Australia, regulation and discipline has attracted significant research since the establishment of an independent regulator.[172] Initial reform to the complaints and disciplinary systems occurred in Victoria in 1991, with its Law Reform Commission's discussion paper *Access to the Law: Accountability of the Legal Profession*.[173] The Commission proposed a uniform regulatory system for solicitors and barristers that was intended to separate the 'trade union'[174] role of professional bodies with that of the regulatory one.[175] With the co-regulatory model in Victoria[176] and NSW,[177] the majority

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[168] Hall notes that, between 2004 and 2010, 89% of NSW practitioners who appeared in disciplinary proceedings were sole and small firm practitioners. Of that cohort, 80% of cases involving dishonesty resulted in striking off orders. Hall (n 160) 1, 18.

[169] See n 164. The conclusion that there were older sole practitioners who breached their trust account obligations was shared by two of the interview participants. One, reflecting on her experience as a young female solicitor, was aware of older male sole practitioners who 'stole' from the trust account for the reason that they were nearing the end of their professional life and were concerned about a lack of retirement fund. The other shared advice given to him by another practitioner, namely that solicitors in the 'twilight part of their career' 'diddled' the trust account.

[170] *New South Wales Bar Association v Hamman* [1999] NSWCA 404; *New South Wales Bar Association* v *Cummins* [2001] NSWCA 284; *New South Bar Association v Somosi* [2001] NSWCA 285; *New South Bar Association v Stevens* [2003] NSWCA 261. In particular, the Supreme Court noted in *Wardell v New South Wales Bar Association* that the barrister 'had income far in excess of that required to meet ordinary living expenses. A considerable amount of money was spent on what has been called "discretionary lifestyle choices"'. *Wardell v New South Wales Bar Association* [2002] NSWCA 548, [24].

[171] Hall (n 160) 23; Paula Baron and Lillian Corbin, 'Lawyers, Mental Illness, Admission and Misconduct' (2019) 22(1–2) *Legal Ethics* 28 ('Lawyers, Mental Illness, Admission and Misconduct').

[172] In NSW, the Office of the Legal Services Commissioner was established in 1994 – see 'History', *NSW Office of the Legal Services Commissioner* (Web Page, 14 February 2015) <https://www.olsc.nsw.gov.au:443/Pages/lsc_aboutus/olsc_history.aspx>. In Victoria, the Victorian Legal Services Commissioner was established in 2005 – see 'About the Board and Commissioner', *Victorian Legal Services Board and Commissioner* (Web Page, 24 December 2020) <https://lsbc.vic.gov.au/about-us/board-and-commissioner/about-board-and-commissioner#AboutthenbspVictorianLegalServicesCommissioner>.

[173] Law Reform Commission of Victoria, *Access to the Law: Accountability of the Legal Profession* (Discussion Paper No 24, 1991).

[174] 'Legal Profession: Legislation' (1992) 18(3) *Commonwealth Law Bulletin* 1011, 1036.

[175] Ibid. Participants in this study also referred to the 'trade union' role of their professional associations.

of disciplinary oversight has moved to the regulator, although the professional associations have retained a visible role, particularly in relation to trust account compliance.

A subsequent report of the NSW Law Reform Commission, *Scrutiny of the Legal Profession: Complaints Against Lawyers*[178] in 1993 disclosed that the majority of complaints were directed to sole practitioners[179] and small firms,[180] with mid-sized[181] and large firms[182] receiving less than one-fifth of the number, when compared with sole and small firm practices. The majority of complaints were against suburban solicitors,[183] followed by city practitioners,[184] and finally rural lawyers.[185] Practice areas with the highest complaints were conveyancing,[186] family law[187] and workers' compensation,[188] these all being the usual work of general practitioners.

Complaints against lawyers are managed by professional associations, such as the NSW Law Society and the Law Institute of Victoria, together with state regulators, including the New South Wales Legal Services Commissioner and the Victorian Legal Services Board + Commissioner. Tribunals, such as the New South Wales and Victorian Civil and Administrative Tribunals, generally determine disciplinary proceedings against lawyers. As discussed later in this section, the available information concerning complaints and (mis)conduct cases frequently involves individual clients and practice areas associated with the work of sole and small firm practitioners. This emphasis may lead to the conclusion that these lawyers' ethics are questionable. What is known is that incomplete data adds to a lack of understanding of solicitors who come within the regulatory system.

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[176] The Law Institute of Victoria is the professional association for solicitors and the Victorian Bar is the professional association for barristers. The Victorian Legal Services Board + Commissioner is the regulatory body.
[177] The NSW Law Society is the professional association for solicitors and the NSW Bar Association is the professional association for barristers. The NSW Legal Services Commission is the regulatory body.
[178] New South Wales Law Reform Commission, *Scrutiny of the Legal Profession: Complaints against Lawyers Report* (Report No 70, 1993) ('*Scrutiny of the Legal Profession*').
[179] Ibid. 63 complaints.
[180] Ibid. 56 complaints.
[181] Ibid. 14 complaints. Mid-sized firms were defined as between 4 and 9 partners.
[182] Ibid. 7 complaints. Large-sized firms were defined as more than 10 partners.
[183] Ibid. 51 complaints.
[184] Ibid. 42 complaints.
[185] Ibid. 33 complaints.
[186] Ibid. 22 complaints.
[187] Ibid. 22 complaints.
[188] Ibid. 19 complaints.

2.4.2 Lack of Data

The lack of comprehensive data about complaints and disciplinary hearings can result in generalisations, such as the connection between sole general practice and unethical conduct. Because suburban solicitors are the largest cohort attracting complaints,[189] and the most complained about areas of practice are ones that are traditionally the domain of general practitioners,[190] there is potential for these factors to become associated with sole general practitioners. This profile is reinforced by the New South Wales Law Reform Commission's 1993 finding that a very high percentage of respondents had previous complaints,[191] which prompts the suggestion that 'repeat offenders' are working alone and unchecked.

This lack of comprehensive data is also apparent in the annual reports of the regulators in NSW and Victoria, where the categories of lawyers against whom complaints are made is not disclosed. The reports include the practice areas with the highest complaints and the basis of the complaints. Whilst there are slight differences between NSW and Victoria, the practice areas with the highest complaints are family and de facto, probate and estate and a general category of 'Other Civil'.[192] General practitioners undertake many of these areas.

The three main reasons for complaints in NSW are communication (lack of), negligence, and overcharging,[193] and in Victoria are overcharging,[194] negligence[195] and 'other disciplinary issues'.[196] Whilst these complaints could be attributed to lawyers generally, it is the investigation of complaints that is managed differently, in accordance with the

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[189] See n 177.
[190] The practice areas set out at n 192 below are ones that are typically undertaken by general practitioners. These areas were largely undertaken by the participants.
[191] New South Wales Law Reform Commission, '*Scrutiny of the Legal Profession*' (n 178). 81 out of 88 respondents had previous complaints.
[192] 'Other Civil' includes 'Breach Legal Profession Act/Regulations; Civil Liberties; Debt Collection; Defamation; Equal Opportunity; Freedom of Information; Intellectual Property; Taxation; Trade Practices; Motor Vehicle Repairs/Claims; Other/Unsure (includes new categories of Constitutional, Otherwise unfit)'. Victorian Legal Services Board + Commissioner, *Annual Report 2020: Inspiring a New Beginning* (Report, 4 November 2020) 56 <https://lsbc.vic.gov.au/sites/default/files/2020-12/Report%20-%202020-11-06%20-%20Victorian%20Legal%20Services%20Board%20and%20Commissioner%20Annual%20Report%202020.pdf>.
[193] Office of the Legal Services Commissioner, *Annual Report 2019-2020* (Report, 2020) 23 <https://www.olsc.nsw.gov.au/Documents/2019%202020%20Annual%20Report%20final.pdf>.
[194] Referred to as 'Costs/Bills – overcharging'. Victorian Legal Services Board + Commissioner (n 192) 57.
[195] Ibid, referred to as 'Negligence – including bad case handling'.
[196] Ibid. 'Other disciplinary issues' includes 'anti-competitiveness, taking executors commission, failing to check capacity, practising while unqualified and refusal of legal aid'.

entity of the client. Individual and small business clients seek redress from the 'consumer watchdog', whilst corporate clients and their lawyers resolve complaints privately. The role of regulators as 'consumer watchdogs' is evident in their public-facing approach to their function.[197] Some complaints result in disciplinary action, which further publicises the sole and small firm solicitor as 'unethical'.

Most notably, the deficit in data is evidenced in the disciplinary cases. Just as the statistical reporting of solicitors does not include the population of sole *general* practitioners, disciplinary proceedings do not formally report on whether the practice of a solicitor, the subject of the complaint, is a general one. Nor do they differentiate the type of practice[198] the solicitor worked in at the time of the alleged misconduct or negligence. This shortcoming precludes a comprehensive and accurate assessment of the finding that sole practitioners are over-represented in the disciplinary regime.[199] Nevertheless, a body of Australian literature does address this over-representation of sole and small firm solicitors.

2.4.3 Over-Representation in Data

The Australian literature includes Haller's substantial body of work in relation to lawyers in the QLD disciplinary system, which sets a baseline for other jurisdictions to consider.[200] Haller provides an overview of the reporting mechanisms that identify sole and small principal firms as the main (and for some, repeat)[201] 'offenders', and of the nature of the complaints and offences against these solicitors. Haller's first study of cases between 1930 and 2000 found that of the 473 matters determined during this seventy-year period, 60% of solicitors were in sole practice at the time of the hearing.[202] To support her finding of over-representation in disciplinary hearings, Haller draws on NSW

[197] For example, the website for the NSW Office of the Legal Services Commissioner consists of communications directed at individuals, such as 'Complaints must be made in writing by the complainant or a person on his/her behalf' 'Making a Complaint', *NSW Office of the Legal Services Commissioner* (Web Page, 14 February 2015) <https://www.olsc.nsw.gov.au:443/Pages/lsc_complaint/olsc_making_complaint.aspx>. The website for the Victorian Legal Services Board and Commissioner headlines: 'Protecting consumers with effective regulation of legal practice' 'Home | VLSBC', *Victorian Legal Services Board + Commissioner* (Web Page, 2020) <https://lsbc.vic.gov.au/>.
[198] For example, the size of the practice in terms of staff and location of the practice, such as rural, suburban or city.
[199] Discussed in Chapter Seven.
[200] Linda Haller, 'Solicitors' Disciplinary Hearings in Queensland 1930-2000: A Statistical Analysis' (2001) 13(1) *Bond Law Review* 1 ('Solicitors' Disciplinary Hearings in Queensland').
[201] Ibid 23. Haller's analysis identified that for 31% of solicitors who appeared in disciplinary matters, this was their second or subsequent matter.
[202] Ibid 11.

statistics where, in 1977, over 50% of complaints were against sole practitioners, who constituted 29% of the solicitor population.[203]

Haller's identification of the main categories of misconduct aligns with the finding of the New South Wales Law Reform Commission's *Fourth Report on the Legal Profession: Solicitors' Trust Accounts*, referred to earlier. Haller's research found the main categories were general breaches of the trust account (26%), fraudulent use of trust monies (22%), unlawful movement of trust monies where there was no fraud (22%) and failure to respond to the Law Society's request for an explanation in relation to trust account concerns (20%).[204]

The connection between misconduct and the trust account can lead to an impression that sole practitioners, who are singularly responsible for the trust account, are dishonest and untrustworthy. The seriousness of misappropriating clients' money is also likely to be a reason why, as Haller notes, '[t]hese were the matters which the Law Society considered the most appropriate for formal discipline'.[205] Haller and Green updated decisions concerning QLD solicitors between 2001 and 2005, when the Queensland Law Society ceased management of the disciplinary process. The authors note a gradual shift from 2001 in the focus of investigations, from trust account matters to those of costs and quality of service, which was prompted by a broader view of misconduct that included negligence as a disciplinary matter, together with the 2005 establishment of the Queensland Legal Services Commission with its expanded remit.[206] This shift could also have been due to an increase and broadening of client complaints. Costs and quality of service remain two of the three major areas of complaints made to the Queensland Legal Services Commission.[207] More recently, complaints relating to trust monies, whilst not the leading area, is one of eight main areas of grievances.[208] Whilst the majority of solicitors operate a trust account, the lone and unchecked access of sole practitioners to

[203] Ibid, citing statistics from NSW Law Reform Commission, *The Legal Profession – Background Paper III* (1980) 51, Table 3, cited in Weisbrot (n 51) 204.
[204] Haller, 'Solicitors' Disciplinary Hearings in Queensland' (n 200) 17.
[205] Ibid 6.
[206] Linda Haller and Heather Green, 'Solicitor's Swan Song?: A Statistical Update on Lawyer Discipline in Queensland' (2007) 19(1) *Bond Law Review* 140, 151.
[207] The other area is 'ethical matters'. Legal Services Commission Queensland, *2019-2020 Annual Report* (Report, 9 October 2020) 22 <https://www.lsc.qld.gov.au/__data/assets/pdf_file/0009/659781/legal-services-commission-2019-2020-annual-report.pdf>.
[208] Ibid.

the trust account provides an enticement to solve financial problems[209] or, in cases of incompetence, leads to poor management.[210]

Not surprisingly, Haller and Green's additional study confirmed the earlier finding regarding sole practitioners' over-representation in disciplinary proceedings.[211] Their research disclosed that in proceedings in which practice structures were recorded, 56.6% related to sole practitioners.[212] Whilst not a direct comparison, the over-representation of sole practitioners who are the subject of complaints rather than litigation, remains relatively high, with 51 out of 157 investigations by the Queensland Legal Services Commissioner in 2019 directed at firms with one holder of a practising certificate.[213]

Hall's study of NSW solicitors from 2004 to 2010 confirms the QLD findings. Of the 152 cases of alleged misconduct determined in the NSW Administrative Decisions Tribunal (137 cases) and the NSW Supreme Court (15 cases), Hall concluded that 69% of disciplinary proceedings were against sole practitioners, whilst 89% of cases were against sole and small firm practitioners, with no matters against large firm lawyers.[214]

2.4.4 Limit of Research

Haller concludes her first study by observing that the finding of the majority of respondents in tribunal proceedings as sole practitioners is not surprising, given previous studies.[215] She also concludes that this finding requires further investigation.[216] It is

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[209] For example, in *Council of the Law Society of New South Wales v Connolly* [2018] NSWCATOD 43, [53], the Tribunal found that the sole practitioner was 'continually scrambling for funds and was prepared to "bend the rules" to enable him to acquire monies to pay overheads'. In *Law Society of New South Wales v Mattila (No 2)* [2018] NSWCATOD 91, the sole practitioner used trust account monies to pay staff salaries and rent. In *Legal Services Commissioner v Nguyen (Legal Practice)* [2014] VCAT 744, [10], the sole practitioner's reasons for trust account breaches were due to his wanting to 'give an impression of success and prosperity' in his Vietnamese community.

[210] For example, in *Council of the Law Society of New South Wales v Davidson* [2019] NSWCATOD 105, the sole practitioner intermixed her personal account with the trust account, used one client's trust monies to pay a disbursement in another matter and had a deficit in the trust account. In *Council of the Law Society of New South Wales v Dlakic* [2018] NSWCATOD 155, the sole practitioner was found guilty of professional misconduct for a trust account deficiency, despite claiming he was affected by a major depressive illness. In *Legal Services Commissioner v Brereton* [2008] VCAT 2073, [31], the sole practitioner intermingled his trust and business accounts, not due to mismanagement but rather as a result of 'an apparent inability to deal properly with trust monies'. In *Delahunty v Law Institute of Victoria Limited (Legal Practice)* [2012] VCAT 524, [112], the Tribunal found that, despite 40 years as a sole practitioner, the solicitor's deficiencies in his trust account were a result of 'ignorance of his legal obligations'.

[211] Haller and Green (n 206) 149.

[212] Ibid.

[213] Legal Services Commission Queensland (n 207) 27.

[214] Hall (n 160) 5.

[215] Haller, 'Solicitors' Disciplinary Hearings in Queensland' (n 200) 36.

important to note the limits of research on professional misconduct, as acknowledged by researchers. For example, Hall's research does not indicate the source of her statistics on practice types.[217]

In both Haller's first study and Haller and Green's subsequent study, it is qualified that sole practitioners subject to disciplinary hearings may not have been in sole practice at the time of the misconduct.[218] Departure from partnerships and a default career in sole practice is a possible outcome when a lawyer is charged with a disciplinary complaint.[219] This anomaly between the practice status of disciplined lawyers at the time of the alleged misconduct and the inconsistent recording of practice status at the time of the finding is further evidence of limited accurate information.

Whilst Haller and Green's research identified that more than 50% of lawyers who appeared before the tribunal were sole practitioners, a precise statistical claim as to over-representation cannot be made for the period from 1930 to 2005. There is no parallel data as to the percentage of sole practitioners within the profession. There is, however, data for the decade between 1991 and 2000, which indicates that slightly more than 20% of the profession were in sole practice.[220]

2.4.5 Reasons For and Circumstances of Over-Representation

Hall's examination of the reasons for over-representation highlights a vulnerability in sole and small firm practitioners, resulting primarily from the 'limited appreciation by regulatory authorities of the links between dishonesty, stress and psychological conditions'.[221] She identifies that lawyers' poor decision-making can be a result of this vulnerability, rather than an inherent unethical character. For example, poor decision-making is connected to poor psychological health, and Hall found that in 19% of cases, the Tribunal or Court heard considerable evidence of psychological ill-health.[222] These factors, identified by Hall as 'substantial evidence of psychological illness or anxiety',[223]

[216] Ibid 37.
[217] No reference is made to data maintained by the Administrative Decisions Tribunal or the Supreme Court concerning types of lawyers and practices sizes.
[218] Haller, 'Solicitors' Disciplinary Hearings in Queensland' (n 200) 16; Haller and Green (n 206) 149.
[219] Haller, 'Solicitors' Disciplinary Hearings in Queensland' (n 200) 16.
[220] Ibid.
[221] Hall (n 160) 2.
[222] Ibid 23.
[223] Ibid.

have been subsequently recognised as a general concern within the profession.[224] Reporting on psychological ill-health and its connection to discipline was not part of the earlier research of Haller and Green.

Hall's analysis offers a significant finding, suggesting that the focus of regulators and disciplinarians on the character of the lawyer is misplaced. She also draws on Canadian and US research[225] with similar findings to the Australian research, namely that 'high reward low risk'[226] matters are the focus of the regulator.[227] This confirms the observations of Briton, referred to earlier in this chapter. The former Queensland Legal Services Commissioner succinctly attributes the over-representation of sole and small firm practitioners to the regulator's 'gaze'[228] being focused on this cohort, and thus turned away from the culture of the corporate firm, where, in his view, it should be fixed.[229]

More recently, Baron and Corbin's research of cases relating to admission, misconduct and readmission across all Australian jurisdictions from 2008 to 2017 presents two significant findings.[230] Firstly, the 'presence' of mental health in misconduct proceedings has increased, with a greater number of practitioners raising this as a defence.[231] Secondly, in order to balance the competing interests of the protection of the public and the reputation of the profession with individual lawyer's capacity to be 'fit and proper', the courts and tribunals are giving greater regard to mental ill-health and relying on guiding principles to do so.[232] These principles are led by their general acceptance that mental ill-health may be relied upon by practitioners as an explanation for professional misconduct. It is, however, not acknowledged as a vindication of such conduct.[233] The principles are particularly relevant for sole practitioners, in that 'mental illness or

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[224] Norm Kelk et al, *Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers* (Monograph No 2009–1, Brain & Mind Research Institute, University of Sydney, and the Tristan Jepson Memorial Foundation, January 2009) <https://law.uq.edu.au/files/32510/Courting-the-Blues.pdf>. See also Chapter Seven. Two participants (Gavin and Robert) also referred to the nexus between poor mental health and wrongdoing.
[225] Hall references the work of Alice Woolley in several Canadian provinces and Bruce Arnold and John Hagan, Jerome Carlin, Ted Schneyer and Sharon Lerman in the US. Hall (n 160) 1–2.
[226] Ibid 1.
[227] Ibid 28.
[228] Briton (n 160).
[229] Ibid.
[230] Baron and Corbin, 'Lawyers, Mental Illness, Admission and Misconduct' (n 171).
[231] Ibid 39.
[232] Ibid 43.
[233] Ibid.

impairment is not of itself a bar to admission',[234] and, by extension, to re-admission or annual applications for practising certificates. In effect, there are prospects of a future livelihood in legal practice for a sole practitioner, even if not as a sole principal. Disclosure by lawyers and acceptance by courts and tribunals that mental illness is a factor to be considered in determining penalties and outcomes, as the authors note, demonstrates a sensitivity to these lawyers.[235]

Hall proposes that findings from the US and Canada confirm Australian research demonstrating that the 'focus of most disciplinary cases is on solo and small firm lawyers and relatively small cases of dishonesty'.[236] US scholar, Levin, conducted research into Queensland's disciplinary system with results that align with Hall's above finding. Levin identifies the narrow and superficial concentration of the regulator[237] and suggests a refocus on the large corporate practice, where client-driven misconduct[238] and overcharging are likely to occur.[239] She summarises reasons for the disproportionately high number of disciplined sole and small firm practitioners, compared with large firm lawyers, as the ability of corporate firms to internally manage client complaints,[240] and the difficulty of identifying the one responsible lawyer within a large firm and with bringing actions against a collective firm.[241] Additionally, Levin found that client entity also determines the cohorts of lawyers who are more likely to come within the regulatory system. Individual clients seek redress against their sole or small firm lawyer through the government's regulatory process, compared with corporate clients who leverage their dominant bargaining position to remedy a complaint directly with the firm.[242]

Despite the Uniform legislation, there is no discussion that misconduct could be a collective responsibility, and that partners of firms may be as accountable as individual

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[234] Ibid; *Doolan v Legal Practitioners' Admission Board* [2013] QCA 43 [22].
[235] Courts and tribunals demonstrate sensitivity in agreeing to anonymity in cases and in balancing the tension between the protection of the public and the individual lawyer's ability to practise. Baron and Corbin, 'Lawyers, Mental Illness, Admission and Misconduct' (n 171) 48.
[236] Hall (n 160) 28.
[237] Levin, 'Preliminary Reflections' (n 94) 851; Levin, 'The Ethical World' (n 111) 372.
[238] Levin cites the destruction of documents by Clayton Utz in the British American Tobacco case. Leslie C Levin, 'Building a Better Lawyer Discipline System: The Queensland Experience' (2006) 9(2) *Legal Ethics* 187, 201.
[239] Ibid.
[240] Ibid.
[241] Levin, 'Preliminary Reflections' (n 94) 851.
[242] Ibid; Levin, 'The Ethical World' (n 111) 314.

lawyers for misconduct.[243] In contrast, sole and small firm lawyers lack the means to 'protect' themselves from complaints.[244]

An examination of the US literature provides insight to the reasons for the over-representation of sole practitioners in the disciplinary system. The early US research concerning the connection between the socio-economic status of the lawyer and their ethical capacity, as discussed at Section 2.3.5.1 above, has not continued as a theme in later studies. What has continued is the connection between the practice areas that receive the highest complaints and the legal services offered by solo and small firms. The reference to practice areas, rather than background and ethical framework, in the analysis and reporting of complaints is adhered to in annual reports of Australian regulators.[245] Current annual reports in Australia do not provide a breakdown of the categories of lawyers against whom complaints are made.

Levin's research on US attorneys also identifies professional and personal challenges as the reasons for unethical conduct.[246] According to Levin, some solos are unable to manage their law practices,[247] including business incompetency leading to legal incompetency.[248] Bauer has also recognised a lack of business knowledge and skills as a reason for over-representation in the disciplinary system.[249] In support of this finding, Hazard and Schneyer contrast these circumstances with those of large firms, which have 'sophisticated control mechanisms'[250] that ensure limitation periods, due dates, billings,

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[243] *Uniform Law NSW* (n 156) s 34 and *Legal Profession Uniform Law Application Act 2014* (Vic) sch 1 ('*Uniform Law Vic*') state that a principal of a law practice who fails to ensure that the practice complies with practice obligations may be found to have engaged in misconduct.
[244] Ibid.
[245] For example, the annual reports of the NSW Legal Services Commission categorise complaints in practice areas, in order of highest complaints, as family/defacto, other civil, criminal, personal injuries, probate/family provisions, conveyancing, commercial/corporations, wills/power of attorney, industrial law, leases/mortgages/franchises, strata bodies/corporates, immigration, workers' compensation, land and environment, professional negligence, building law, victims' compensation and insolvency. Office of the Legal Services Commissioner (n 193) 22. The Victorian Legal Services Board + Commissioner categorises complaints in practice areas, in order of highest complaints, as family/defacto, other civil, probate/family provisions, conveyancing, commercial/corporations/franchise, criminal, wills/powers of attorney, leases/mortgages, employment, workers' compensation, personal injuries, building, professional negligence, immigration, strata bodies/corporates, land and environment, trust account breaches, insolvency and victims' compensation. Victorian Legal Services Board + Commissioner (n 192) 52.
[246] Levin, 'The Ethical World' (n 111) 310, 375. Levin refers to solo and small firm attorneys frequently 'struggling for business, for control over their workload, and for respect': at 310.
[247] Ibid 340.
[248] Ibid 340–1.
[249] Bauer (n 84) 2.
[250] Geoffrey C Hazard Jr and Ted Schneyer, 'Regulatory Controls on Large Law Firms: A Comparative Perspective' (2002) 44 *Arizona Law Review* 593, 601.

office and trust accounts and diary and matter administration are effectively managed.[251] Flood proposes that the nature of legal work undertaken by global law firms means they are less 'hampered'[252] by 'local rules',[253] thereby distancing themselves from the local regulators' lens.[254] Additionally, the breakdown of the business component of practice can undermine the ability to maintain currency in the law, to access other lawyers' assistance and to identify and resolve ethical issues.[255] Clients take the opportunity to move through 'the cracks' in the business, placing pressure on their attorneys to make unethical decisions. Subsequently, the workplace meshes with solos' personal lives to the extent that they became 'overwhelmed by their circumstances'.[256]

Other reasons for the dominance of solo and small firms in the US disciplinary system include 'isolation, loneliness and insecurity',[257] as well as health issues associated with alcohol, drugs and 'other antisocial behaviour',[258] which Bauer notes are increasing within the profession. These issues, he submits, result in 'missed deadlines and failures to communicate with clients'.[259] In Australia, Haller,[260] Hall[261] and Baron and Corbin[262] have also identified the effect of personal circumstances on lawyers' professional practice.

In summary, the findings of Haller and Hall that sole practitioners constitute the majority of disciplinary decisions require further analysis. Haller's studies of solicitor respondents in the QLD disciplinary case framework between 1930 and 2005, together with Hall's study of NSW solicitors between 2004 and 2010, refer to US and Canadian research that confirms sole practitioners are over-represented in reported cases.[263] Neither Haller nor Hall identify whether the sole practitioners discussed in their research are in general

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[251] Ibid.
[252] John Flood, 'The re-landscaping of the legal profession: Large law firms and professional re-regulation' (2011) 59(4) *Current Sociology* 507, 513.
[253] Ibid.
[254] Ibid.
[255] Challenges with the business side of practice were a pattern across the participants' narratives. Similarly, in response to criticism that graduates and lawyers are not adequately trained in business skills, there has been a call for business skills and acumen to be included in law courses.
[256] Levin, 'The Ethical World' (n 111) 380.
[257] Bauer (n 84) 1.
[258] Ibid.
[259] Ibid.
[260] Linda Haller, 'Smoke and Mirrors: When Professional Discipline May Cause Harm' (2005) 8(1) *Legal Ethics* 70; Linda Haller, '"Waiting in the Wings": The Suspension of Queensland Lawyers' (2012) 3(2) *Queensland University of Technology Law Review* 397.
[261] Hall (n 160).
[262] Baron and Corbin, 'Lawyers, Mental Illness, Admission and Misconduct' (n 171).
[263] Hall (n 160) 1; Haller, 'Solicitors' Disciplinary Hearings in Queensland' (n 200) 7.

practice. However, given that a significant period of Haller's research[264] was prior to accredited specialisation,[265] it is likely that many of these solicitors were in general practice.

Research into sole practitioners highlights deficiencies in knowledge about their approach to ethical decision-making, understanding of conduct rules and management of client expectations and complaints. This is a significant deficit as it leaves the sole practitioner with a lingering reputation as incompetent and dishonest. Because these solicitors primarily have individual clients, this reputation, also coloured by a perception that lawyers are successful and wealthy,[266] permeates into the public perception of the legal profession. This public perception differs to that of the medical profession and its general practitioners, who are largely considered to be reliable, supportive and trustworthy.[267] This contrast is particularly noticeable when considering the role of lawyers in the community.

2.5 Access to Justice and Pro Bono Work

This thesis interrogates how sole general practitioners understand their impact on the communities in which they practise law. This question is in response to the deficit in the literature concerning the nexus between access to legal services and the private profession, in particular sole practitioners. Whilst there is a body of literature on the inadequacy of the legal system, led by the inaction of governments,[268] knowledge and

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[264] Haller's initial research covered 1930 to 2000. Her subsequent research with Green covered 2001 to 2005.

[265] Accredited specialisation was introduced in NSW in 1992, in Victoria in 1993 and in QLD in 1995.

[266] Richard Susskind refers to the public's and media's perception of 'fat-cats', being partners who earn extraordinarily high incomes. Susskind (n 39).

[267] For example, in the last three years, the Royal Australian College of General Practitioners has implemented two advertising campaigns to promote medical GPs. The first one in January 2017, 'I'm not just a GP. I'm your specialist in life' promotes the benefits of general practice. 'RACGP Community Awareness Campaign: Your Specialist in Life', *Royal Australian College of General Practitioners* (Web Page, January 2017) <https://www.racgp.org.au/racgp-community-awareness-campaign>. The second in August 2020, 'Expert Advice Matters, Now More than Ever' is in response to the COVID-19 pandemic. 'Expert Advice Matters, Now More than Ever', *Royal Australian College of General Practitioners* (Web Page, August 2020) <https://www.expertadvicematters.com.au/>.

[268] For example, Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in New South Wales* (Report, Law and Justice Foundation of NSW, August 2012) <http://www.lawfoundation.net.au/ljf/site/templates/LAW_NSW/$file/LAW_Survey_NSW.pdf>; Community Law Australia, *Unaffordable and out of Reach: The Problem of Access to the Australian Legal System* (Report, July 2012) <http://www.communitylawaustralia.org.au/wp-content/uploads/2012/07/CLA_Report_Final.pdf>; Productivity Commission (n 155); Law Council of Australia, *The Justice Project Final Report: Recommendations and Group Priorities* (Report, August 2018) <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/03%20-

understanding of the role of sole and small firm practices in responding to the need to serve identified groups with ongoing legal issues is limited.

In this area of access to legal services, there is a critical yet under-developed place for sole practitioners. As presented in Chapter One, the problem of unmet legal needs is considered to be the domain of government and the community sector. Under the current legal services structure, individuals who cannot pay private lawyers' fees are directed to legal aid and community legal centres. It is well known that legal aid work undertaken by the private profession is poorly remunerated[269] and that community legal centres are severely underfunded. The private profession, particularly in suburban and rural areas, affords an informal alternative for these groups.[270]

Despite this, there is piecemeal acknowledgement that the private profession has a role in the facilitation of access to legal services.[271] In particular, two Australian reports have identified the role of the private profession in access to legal services. In 2009, the Law Council conducted a study of 1,185 country solicitors, the *Rural, Regional and Remote Areas Lawyers' Survey*,[272] which found that rural, regional and remote practitioners undertook significant pro bono and unpaid voluntary work.[273] The findings describe rural, regional and remote lawyers as 'integral to country communities',[274] predicting that the absence of solicitors will 'impact negatively on rural and regional commercial infrastructure and also on the community life of country towns'.[275]

%202018%2009%20-%20Recommendations%20and%20Group%20Priorities.pdf>. These are discussed in Chapter Seven.

[269] The poor remuneration was discussed by several participants. In addition, the available legal aid work for the private profession has declined. Mary-Anne Noone and Stephen A. Tomsen, *Lawyers in Conflict* (The Federation Press, 2006) 197.

[270] This work is discussed by the participants.

[271] Centre for Innovative Justice RMIT, *Affordable Justice – A Pragmatic Path to Greater Flexibility and Access in the Private Legal Services Market* (Report, October 2013) 245 <http://mams.rmit.edu.au/qr7u4uejwols1.pdf>.

[272] Law Council of Australia and Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey* (Executive Summary, July 2009) 1 <https://www.lawcouncil.asn.au/publicassets/68bc466f-d839-e711-93fb-005056be13b5/Report%20into%20the%20Rural,%20Regional%20and%20Remote%20Areas%20Lawyers%20Survey%20-%20Executive%20Summary.pdf>.

[273] Ibid. Over 64% of rural firms undertook pro bono work and 71% of lawyers undertook unpaid voluntary work.

[274] Ibid 2.

[275] Ibid.

As a cautionary note, the Council also recognises that many geographical areas do not have sufficient lawyers to meet clients' needs[276] and that, as many country practitioners were intending to retire in the following five to 10 years, the situation will deteriorate.[277]

The 2013 *Affordable Justice* study conducted by the Centre for Innovative Justice at RMIT proposed that the challenge of a lack of legal services in some areas could be met by the promotion of sole and small firm practice to the 'excess'[278] of newly admitted lawyers, and the establishment of 'incentives'[279] for solicitors to establish practices in suburban and regional areas.[280] In response to the high expenses for sole practitioners in managing a business,[281] the report suggests that solicitors consider technological innovation, such as virtual offices and mobile practices, to reduce overheads.[282] Importantly, the report recognises the need to promote sole and small firms within their local communities, 'including any discounted work they may do'.[283] These two reports demonstrate the necessity for a national study of the role of the private profession, particularly sole and small firm practices, in the facilitation of access to legal services.

In addition to the knowledge gap regarding the role of sole and small firm solicitors in the facilitation of legal services, these lawyers are also largely ignored in the reporting of pro bono work. Pro bono work is defined by the Australian Pro Bono Centre as 'the provision of legal services on a free or significantly reduced fee basis, with no expectation of a commercial return'.[284] The Law Council adopts a broader definition that encompasses community legal education and law reform work.[285] Pro bono work is considered the flagship of the private profession's contribution to legal services, although it is captured in a way that promotes the work of the corporate firms and ignores the contributions of sole and small firm practices.

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[276] Ibid.
[277] Ibid.
[278] Centre for Innovative Justice RMIT (n 271) 4.
[279] Ibid 15.
[280] Ibid.
[281] Ibid 20. Referring to the Legal Fees Review Panel, the report notes that 69% of sole solicitors' gross income is spent on overheads.
[282] Ibid 20.
[283] Ibid 15.
[284] 'Definition of Pro Bono', *Australian Pro Bono Centre* (Web Page, 2021) <https://www.probonocentre.org.au/information-on-pro-bono/definition/>.
[285] Law Council of Australia, *Law Council Policy Statement: Pro Bono Publico – For the Public Good* (Resolution, 5 September 1992) <https://www.lawcouncil.asn.au/publicassets/276c7bd7-e1d6-e611-80d2-005056be66b1/95-Policy-Statement-Pro-Bono-Publico-For-the-Public-Good.pdf>.

The Productivity Commission's 2014 *Access to Justice Arrangements* report identifies the evaluative model used to assess pro bono work as the reason for lack of understanding of the private profession's 'long tradition of providing legal services free of charge'.[286] Recognition of pro bono work is aligned with the National Pro Bono Aspirational Target, which has a small number of signatories and is in place primarily for firms that tender for Federal Government work and are required to disclose their pro bono commitment as part of the tender process.[287] The signatories to the Target are overwhelmingly from the corporate sector, with 95% being firms of 50 plus lawyers.[288]

Noting this restrictive model, Justice Connect submitted that individual recipients of pro bono work constitute less than 3% of services [289] with the majority of pro bono work being for not-for-profits.[290] Whilst the Commission's report separated sole and small firm practices in its discussion about pro bono services, the similarities between the two are noted,[291] including the 'ad hoc' nature of this work.[292] More importantly, the significance of this pro bono work is acknowledged: '[S]mall firm lawyers are valuable pro bono providers, as their (paid) legal experience is more likely to be relevant to pro bono cases and can have a substantial impact, particularly in smaller, more disadvantaged communities'.[293]

The impact of the Commission's recommendations has mixed consequences for sole practitioners. Possible negative consequences include initiatives such as non-lawyers with limited licences[294] undertaking defined legal work,[295] for example, in family law.[296] This would decrease the work of lawyers who practise in family law. Possible positive consequences include initiatives such as unbundled legal services, where clients who may not usually consult a solicitor because of the cost may seek legal assistance for contained components of a matter.[297] The recommendation for increased legal aid

[286] Productivity Commission (n 155) 32.
[287] Ibid 815.
[288] Ibid 810.
[289] Ibid 816.
[290] Ibid.
[291] Ibid 811.
[292] Ibid 810.
[293] Ibid 811.
[294] Ibid 37.
[295] Ibid 215.
[296] Ibid 37.
[297] Ibid.

funding in civil matters[298] would include the private lawyers who undertake legal aid work. Whilst the recommendations suggest that all states should encourage pro bono work,[299] there is no specific recommendation to change the evaluation model for reporting and acknowledging pro bono work to include sole and small firm practices.

The claim of this chapter that sole practitioners are largely ignored is substantiated by the lack of recommendations relevant to this cohort. Of the Commission's 83 recommendations, the federal government committed to the implementation of 17, none of which included the work of sole and small firm practices.[300] This was an opportunity lost.

In the Law Council of Australia's 2018 *Justice Project Final Report*, the contribution of sole practitioners, together with small and medium firms, to pro bono services is recognised with the acknowledgement that reporting of this work is skewed towards large firms.[301] The report includes a relevant submission from Regional Alliance West about legal and non-legal work undertaken by the private profession within communities, recognising:

> …the unacknowledged contribution that many private practitioner lawyers make to their communities through providing free or low costs assistance to their clients or contributing in other ways, such as being involved on the boards of local not-for-profit organisations or sporting groups.[302]

Recommendations affecting sole practitioners include a commitment by the Law Council to undertake further research on the unmet legal needs of the 'missing middle' and the ability of the private legal profession to provide access to legal services.[303] This recommendation also targets rural, regional and remote areas through the Council's call for a greater commitment from governments to implement and fund strategies, such as sponsored rural placements, mentoring, incentives, increased legal services and legal aid

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[298] Ibid 39.
[299] Ibid 68.
[300] *Productivity Commission Recommendations Implemented by the Australian Government* (Report, Australian Government Productivity Commission, 4 April 2016) <https://www.ag.gov.au/sites/default/files/2020-03/Government-response-to-Productivity-Commissions-report.pdf>.
[301] The report notes that the reporting of pro bono hours by the Australian Pro Bono Centre relates only to the work of large law firms. Law Council of Australia, *The Justice Project Final Report Part 2* (Report, August 2018) 13 <https://www.lawcouncil.asn.au/justice-project/final-report>.
[302] Ibid.
[303] Ibid 4.

fee rates.[304] These recommendations have not been implemented, thus further highlighting the lack of attention to those who need, but cannot afford, legal services.

The analysis in this chapter evidences the knowledge gap regarding sole general practitioners and the need for further research. It is imperative to recognise and address this gap, both for the legal profession and the wider community. A powerful example as to why this is important is found in the debate regarding access to the law. Herein is a body of literature on the inadequacy of the legal system to serve groups in society with ongoing legal needs. However, the literature rarely connects this need with sole practitioners in the private profession, other than legal aid work.[305] Yet this thesis demonstrates that in the area of access to legal services, there is a significant role played by sole general practitioners. Through identifying such gaps in existing knowledge about the role and function of the sole general practitioner, as well as drawing connections between the literature on access to legal services and the lived experience of the participants, this thesis expands understanding of pro bono work undertaken by these solicitors.

The analysis in this thesis suggests that research contributing to an understanding of the pro bono work of sole practitioners is critical for a holistic assessment of unmet legal needs. In identifying the ways in which sole practitioners facilitate access to legal services within their communities, this thesis emphasises the importance of the lived experience of the sole practitioner as a new area of research.

2.6 Conclusion

Whilst we know that sole practitioners have a major role in providing legal services to individual and small business clients,[306] we do not know how they are perceived by the public or what the public's experiences are in relation to the legal services they provide. Arguably, the divided structure of the profession between barristers and solicitors has masked the reality of a division within the solicitors' profession. The public perceives the legal profession as lawyers, rather than solicitors and barristers. Indeed, from the perspective of sole practitioners, the division within the solicitors' private profession may

[304] Ibid 29.
[305] Private practitioners can apply, on behalf of their clients, to undertake work funded by Legal Aid NSW and Victoria Legal Aid.
[306] Located in suburban and rural areas.

be as significant as the separation of the two branches of the profession – solicitors[307] and barristers.

Therefore, the challenge for the sole solicitor cohort, and the sole general practitioner in particular, is its invisibility within a profession that, ironically, seeks to promote its solidarity, its shared values of service to the community and its united role in upholding principles of justice. Through examining key themes within the legal profession literature, this chapter identifies the knowledge deficiencies and, consequently, highlights the inadequate extent of awareness and understanding of the sole practitioner and, to a greater extent, the sole general practitioner.

Firstly, in reviewing the literature concerning the solicitors' profession, the lack of accurate and detailed data about sole practitioners, and particularly sole general practitioners, is evident. Currently, there is no national quantitative or qualitative study of the practice of sole practitioners, and by extension, sole general practitioners. This may be due to the state-based organisation of the profession and the lack of appetite of professional associations to unite in pursuit of research beyond their jurisdictions. Regardless of the reasons, this thesis argues for the benefits of accurate and uniform reporting, particularly given the objectives of the Uniform Law:

> …to promote the administration of justice and an efficient and effective Australian legal profession, by:
>
> (a) providing and promoting interjurisdictional consistency in the law applying to the Australian legal profession; and …
>
> (e) promoting regulation of the legal profession that is efficient, effective, targeted and proportionate; and
>
> (f) providing a co-regulatory framework within which an appropriate level of independence of the legal profession from the executive arm of government is maintained.[308]

[307] Within these two extremes of the solicitors' private profession, various sub-categories exist, including: international firms; large firms; boutique firms; mid-sized firms; incorporated legal practices; multidisciplinary practices; small firms; sole practices; and city, suburban and rural, regional and remote firms. These sub-categories evidence the divergence of legal practice, in terms of structure, size, location and practice areas. For the sole general practitioner, sub-categories of incorporated legal practices and city, suburban and rural, regional and remote firms are relevant.

[308] *Uniform Law NSW* (n 156) s 3; *Uniform Law Vic* (n 243) sch 1, s 3.

Additionally, the professional literature concerning sole practitioners is largely funnelled into the regulatory framework, which constructs this cohort as representative of a less ethical, incompetent and 'second-rate' group of lawyers. As a balance, some (not all)[309] academic literature acknowledges that this construct is flawed. Scholars have identified theoretical and practical reasons why lawyers in larger law firms are invisible in the regulatory system. Further, literature concerning the disproportionate weighting of sole practitioners in complaints and disciplinary proceedings highlights the need for further research into the experiences of these lawyers. This thesis contributes to the literature through questioning the strategies implemented by the regulators and the decision-making process of the disciplinarians.

Finally, in reviewing the literature regarding access to legal services, there is an absence of meaningful connections between the pro bono work of sole general practitioners and the outcomes for their clients, and more broadly, the impact of their presence on the general community. Understanding the work of sole general practitioners is critical for assessing their impact on the delivery of legal services. Data on their work, client base and demographics would form a reference point for the assessment of legal needs and services. This thesis provides perspectives regarding sole general practitioners' broader contributions to the functioning of their communities, and offers insights into the place of lawyers within the context of leadership and service.

To appreciate the significance of this thesis in adding to the existing literature, the context of the sole practitioner must be understood. Here the history of sole and general practice as a continuous presence in the profession informs the study of the *place* of these lawyers within the broader legal community. The next chapter considers this history and the changing profile of sole practitioners. It highlights the permanence and the centrality of the role these practitioners serve. In turn, this explains the significance of this research in identifying the personal and professional challenges they face. The next chapter also further underscores the gap that has existed, until this thesis, in which researchers have overlooked, or perhaps more accurately underrated, the essence and place of sole general practitioners in the legal profession and their wider communities.

[309] For example, Carlin (n 94).

3 PROFILE AND HISTORY: SEARCH FOR A DEFINITION OF THE SOLE GENERAL PRACTITIONER

Then, as now, there were solicitors quite ready to accept and even echo patronising statements by barristers about their 'branch'. Some did so because the class overtones of division seemed part of a neat and proper social order. Perhaps others did so because it was a price worth paying for respectable, routine (but very well-paid) clerical work.[1]

3.1 Introduction

As presented in Chapter One, the aim of this thesis is to examine how lawyers experience and understand their role as sole general practitioners, and their understanding of their impact on the communities in which they practise law. However, as argued in Chapter Two, the immediate obstacle to investigating these questions is limited professional and scholarly literature. This literature neither defines nor identifies sole general

[1] JRS Forbes, *The Divided Legal Profession in Australia: History, Rationalisation and Rationale* (Law Book Co, 1979) 58.

practitioners, which precludes any study of this cohort beyond that of their undertaking the 'respectable, routine' work of solicitors, as described by Forbes.[2]

Indeed, *the* threshold prerequisite to addressing the research questions through empirical research, and analysing the lived experience of 'generalists', is identifying who should be interviewed. Yet this chapter demonstrates the absence of statutory and common law definitions available to identify the practice of the sole general practitioner, as well as the deficiency of context of their role and function in terms of statistics, history and regulation. Whilst 'sole practitioner' is defined in the legislation, sole general practitioner is not. Although statistics indicate that the sole practitioner branch of the solicitors' profession is a formidable cohort, the number of sole general practitioners is not available. Similarly, as this chapter demonstrates, the history of the growth of sole practitioners to such a notable size is inexact and largely undocumented.

The absence of anything but a rudimentary definition for the sole practitioner, and the complete lack of definition for the sole general practitioner, ignores their existence. An examination of sole solicitors in general practice must begin by establishing definitions for both sole general practitioner and general practice. This chapter takes up the challenge. Its purpose is to identify who sole general practitioners are and what characteristics define them, both in terms of the work they perform and their historical place in the common law legal tradition.

In response to this void, this thesis develops a conceptual framework for defining general practice. This study is the first to define the Australian sole general practitioner. It develops criteria based upon existing characteristics of sole *and* general practice. The chapter proposes that the sole general practitioners, who are the subject of this thesis, can be defined by two core characteristics:

- a principal practising as a sole trader who may employ non-legal staff and/or non-principal lawyers, and
- offering clients a range of legal services in *three or more practice areas*.

The development of the above criteria fills a gap in existing literature. The formation of this working definition for this cohort is presented in two parts.

[2] Ibid.

The first part of this chapter (Sections 3.2 and 3.3) undertakes a rigorous analysis of the statutory definition of sole practitioner in the *Legal Profession Uniform Law 2014* (NSW) and Schedule 1 of the *Legal Profession Uniform Law Application Act 2014* (Vic) (referred to as the 'Uniform Law'). This definition is considered as a potential reference point from which to analyse further interpretations. Other sources in case law and literature are analysed. The definitions of legal practitioner and the context attributed to general practice are considered for the purpose of developing a descriptor for the sole general practitioner. The objective of this first part is to consider whether legislated or other definitions aptly describe the sole general practitioner.

The second part of this chapter (Section 3.4) analyses the history of lawyers and the development of the profession to construct the role of early sole practitioners in shaping the practice of contemporary generalists. The history of the profession, particularly in colonial NSW, draws on early understandings of the sole general practitioner and contributes to discussion about the connection between general practice and the legal needs of communities. These understandings inform the character of today's sole general practitioner and are reflected through the participants in this study. The objective of this second part is to historically contextualise and inform the definition of sole general practitioner, as adopted by this thesis. Specifically, it explores two significant aspects: (1) the clear division between solicitors and barristers, and (2) the enduring historical absence of a workable definition to apply to the specific cohort of sole general practitioners.

3.2 Who is the Sole General Practitioner?

Primarily, identifying who is a 'generalist' is problematic as there is no common definition in state and territory legislation or other common law jurisdictions. Similarly, whilst there are few references to, and descriptions of, general practice in case law, reports and academic articles, there is no universal description. Nor is there a uniform definition of 'practice areas'. The Priestley 11 offers a straightforward understanding of practice areas,[3] however, this approach excludes new and nuanced areas of the law. A contemporary understanding of practice areas, which is applied in this thesis, is provided

[3] *Legal Profession Uniform Admission Rules 2015* (NSW) sch 1 ('*Admission Rules*'). The Priestley 11 Areas of Knowledge are 'Criminal Law and Procedure, Torts, Contracts, Property, Equity, Company Law, Administrative Law, Federal and State Constitutional Law, Civil Dispute Resolution, Evidence and Ethics and Professional Responsibility'.

by the NSW Law Society[4] and the Law Institute of Victoria.[5] These areas address a comprehensive coverage of matters that impact individuals and small business.

Of course, there is a common understanding that sole general practitioners are solicitors.[6] Their practices are based in cities, large and small rural towns and suburbs, many of the latter near a local court. Yet these practices are diverse. Categorisations of sole practitioners range from a solicitor working without any assistance, with non-legally trained staff,[7] or with employed legal[8] and non-legal staff.

The threshold question this raises, which is addressed in this chapter, is how to define the sole general practitioner for the purposes of this thesis and for further research. This examination follows from the analysis in Chapter Two, which identifies that the definition, size and history of sole general practitioners are indistinct.

3.3 Statutory Definitions of Sole Practitioner and Law Practice

3.3.1 Sole Practitioner

The Uniform Law regulates the legal profession in NSW and Victoria. The Uniform Law, currently subscribed to by these two states,[9] does not define general or specialised legal practice. This is not its purpose. Rather, the statutory framework provides a reference point from which to understand the meaning of sole practitioner.

The Uniform Law defines a sole practitioner as 'an Australian legal practitioner who engages in legal practice *on his or her own account*'.[10] Based on this definition, a sole

[4] 'About Practice Areas: What Kind of Lawyer do I Need?', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/about-practice-areas>. The areas are primarily those that involve individual and small business clients.
[5] 'Areas of Law: Your Area of Law', *Law Institute of Victoria* (Web Page) <https://www.liv.asn.au/Professional-Practice/Areas-of-Law/Your-area-of-law>. Although there are more corporate areas than listed on the NSW Law Society site, there are many areas associated with individual and small businesses.
[6] Solicitors are a distinct category of the legal profession, as distinct from the Bar, being the category of barristers. Whilst admission to the Supreme Courts of NSW and Victoria is as a legal practitioner, there remain the separate branches of solicitors and barristers. Admission to the Supreme Courts of NSW and Vic is as an Australian lawyer. *Legal Profession Uniform Law 2014* (NSW) s 16 ('*Uniform Law NSW*'); *Legal Profession Uniform Law Application Act 2014* (Vic) sch 1 ('*Uniform Law Vic*').
[7] Non-legally trained employees include secretarial and administrative staff, office managers, accounts staff, conveyancers, clerks and paralegals. Some of these roles may be undertaken by law students.
[8] Legal staff include employed solicitors and consultants.
[9] See Chapter 2, n 28.
[10] Emphasis added. *Uniform Law NSW* (n 6) s 6; *Uniform Law Vic* (n 6) sch 1.

practitioner must be providing 'legal services'[11] without the assistance of another legal practitioner ('on his or her own account'). They may employ non-legal staff, such as paralegals, clerks, bookkeepers and conveyancers. However, there is ambiguity in the legislation. In the same 'Definitions' section, a principal of a law practice includes a sole practitioner,[12] implying that a principal may work with lawyers, such as employed solicitors, consultants or locums. Therefore, sole practitioners may include lawyers or principals working on their own, or with other lawyers, with the principal having exclusive responsibility for the regulatory compliance of the practice.[13]

The ambiguity surrounding the definition of sole practitioner is mirrored in the approaches of other common law countries; it is unclear whether such a practitioner operates as a sole principal, sole legal practitioner, or totally on their own with no legal or non-legal assistance. For example, in New Zealand, lawyers who practise on their 'own account',[14] prior to commencing practice, must appoint an agent through a power of attorney in the event that they are unable to continue practice.[15] The phrase 'practise on their own' is not defined and there is no case law that interprets the section. The requirement for an agent suggests that the legislation was intended to refer to lawyers working on their own, possibly with no staff. The Victorian Legal Services Board + Commissioner has adopted this mechanism through its Practice Contingency Planning policy. This policy provides that sole practitioners appoint two lawyers, to manage their practice if they are unable to do so, one as a personal representative and the other as an appointee in the event that the personal representative is unable to act. Although this is not a legislated requirement, sole practitioners are requested to provide details of the

[11] Ibid. 'Legal service' means 'work done, or business transacted, in the ordinary course of legal practice'.
[12] Ibid.
[13] Examples of the principal solicitor having responsibility for acts of employed solicitors are found in the disciplinary cases. In *Legal Services Commissioner v Nikolaidis (No 3)* [2005] NSWADT 200, the respondent was found guilty of professional misconduct for grossly excessive costs. The bill of costs was prepared and sent to the client by his employed solicitor. The Tribunal noted that: 'The Practitioner was in sole practice at the time the bill was issued and it is clear that as a sole practitioner he was responsible for the bill and responsible for the actions of his employees in the conduct of practice': at [46]. In *Council of the Law Society of New South Wales v Wehbe* [2018] NSWCATOD 14, the Tribunal found the respondent guilty of professional conduct for tax and superannuation matters, including failure to pay superannuation entitlements to employees. In addition, the Tribunal found that the respondent's statutory obligations as the sole director of an incorporated legal practice applied to the same extent as they did to a sole practitioner: [156]. In *Law Society of New South Wales v Gavel* [2007] NSWADT 38, the respondent was an employed solicitor who misappropriated funds totalling $171,759.87 from Estate matters. The misappropriation occurred over a period of 12 months. When the sole principal discovered the irregularities, he immediately reported his findings to the NSW Law Society.
[14] *Lawyers and Conveyances Act 2006* (NZ) s 44 1(a).
[15] Ibid s 7(c).

personal representative and appointee to the Board.[16] Similarly, in 2020, NSW introduced an optional contingency plan for sole practitioners to appoint a personal representative and an alternative to manage their practice in the event that they are unable to do so.[17]

Relevant legislation in England and Wales[18] and the ABA's *Model Rules of Professional Conduct*[19] do not refer to either sole or general practice. The *Federation Model Code of Professional Conduct*, drafted by the Federation of Law Societies of Canada, refers to 'sole proprietorship'[20] as a law firm structure, although the definition of 'sole proprietorship' does not detail whether employees are included.

Notably, the common feature of these varying definitions is that the sole practitioner has exclusive responsibility for the commercial, regulatory and legal operation of the practice and, by inference, for many of the ethical obligations of employed lawyers, legal consultants and non-legal staff, including those relating to the trust account. This 'exclusive responsibility', rather than the legislation's 'on his or her own account' criterion, informs the definition applied in this thesis. Whilst the solicitors interviewed for this thesis include a range of sole principals with employed lawyers, sole practitioners with non-legal staff and practitioners with no staff, they were all solely accountable for their practice.[21]

3.3.2 Law Practice

One purpose of the Uniform Law is to define the structures for the delivery of 'legal services', being 'work done, or business transacted, in the ordinary course of legal practice'.[22] This is generally understood as legal work, advice and representation offered

[16] Victorian Legal Services Board + Commissioner, *Practice Contingency Planning Policy* (Policy No D-17-157420, 2019) <https://lsbc.vic.gov.au/sites/default/files/2020-02/Policy-Practice_Contingency_Planning-2019.pdf>.
[17] 'Contingency Plan for Sole Principals', *Law Society of New South Wales* (Web Page, 2020) <https://www.lawsociety.com.au/contingency-plan-sole-principals>.
[18] *Legal Services Act 2007* (UK).
[19] American Bar Association, *Model Rules of Professional Conduct* (at August 2020) <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/>.
[20] Federation of Law Societies of Canada, *Federation Model Code of Professional Conduct* (at 14 March 2017) s 1.1 'Definitions' <https://flsc.ca/national-initiatives/model-code-of-professional-conduct/federation-model-code-of-professional-conduct/>.
[21] See Chapter Six.
[22] *Uniform Law NSW* (n 6) s 6; *Uniform Law Vic* (n 6) sch 1.

by a solicitor in legal practice. The legislation defines a law firm as a partnership[23] and distinguishes a law firm from a law practice, which includes 'a sole practitioner, a law firm, a community legal service, an incorporated legal practice and an unincorporated legal practice'.[24] The sole practitioner manages a law practice, which may be a specialist or a general practice. These two categories of practice are not defined in the legislation.

3.3.3 Definition of General Practice

Determining a definition for generalist practitioner requires consideration beyond the legislative framework. A simple definition of general practice is the delivery of legal services in several practice areas, as distinct from specialist practice that offers one area of law. Specialist practice includes accredited specialists,[25] being solicitors who have spent three years or more conducting at least 25% of their practice in one of the identified specialist areas.[26] Whilst it is difficult to be both a generalist and specialist, it is possible within the accreditation definition.[27] Specialists also include non-accredited solicitors who focus on one practice area, such as family, criminal or employment law. These self-declared specialists become known as matter experts through word-of-mouth referrals.[28] Nevertheless, using the existing framework of accredited specialists to construct a definition for generalist practitioners is problematic for two reasons. Firstly, it relies on the absence of specialisation, or a definition by omission, and secondly, it can apply to both generalists and specialists.

Being without a legislative or 'soft law' option, an alternative is to examine case law and professional and scholarly literature for possible definitions. As discussed in Chapter

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[23] Ibid.
[24] Ibid.
[25] The NSW Law Society offers specialist accreditation in 14 areas of law. 'About the Specialist Accreditation Program', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/specialist-accreditation/about>. The Law Institute of Victoria offers specialist accreditation in 16 areas of law. 'Become an Accredited Specialist', *Law Institute of Victoria* (Web Page, 2021) <https://www.liv.asn.au/Learning-and-Networking/Accredited-Specialisation/Become-an-Accredited-Specialist/Specialist-Areas-Key-Dates>.
[26] See 'Specialist Accreditation 2021 Program', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/specialist-accreditation>; Law Institute of Victoria, *Accredited Specialisation Scheme Rules* (at April 2016) <https://www.liv.asn.au/LIVPublicWebSite/media/150th-Anniversary-2009/LIV%20Documents/20160420_Master_SpecialisationSchemeRules_April16.pdf>.
[27] Two of the 23 participants (Sally and David) are accredited specialists.
[28] Although it may be possible for a solicitor to be an accredited specialist and to also spend the smaller balance of practice across a range of other legal areas, only two of the interview participants were accredited specialists – one in Family Law and one in Wills and Estates. Rule 36.2 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* ('*Australian Solicitors' Conduct Rules*') under the *Uniform Law NSW* (n 6), provides that solicitors cannot use the words 'specialist or accreditation or a derivative' unless they are an accredited specialist.

Two, case law, reports and academic articles refer to sole practitioners in varying degrees. However, this material is not useful in constructing a definition. Other than the work of Hetherton[29] and Tomasic,[30] critiqued in Chapter Two, there is scarce mention of general practice in Australia.

In contrast, general practice in medicine is well understood. Law and medicine are often coupled and lawyers and doctors often compared,[31] particularly in relation to such aspects as the power of their professional associations,[32] the status achieved by entry to the profession[33] and the contributions that they make to society.[34] In relation to medicine, general practice is a defined area:

> General practice is a unique discipline. Rigorous scientific medical training and the ability to apply the evidence appropriately in community settings places general practice at the centre of an effective primary health care system. These same qualities – when combined with the discipline's holistic, relationship based philosophy and broad generalist practice, distinguish the discipline in large measure from other medical disciplines.[35]

This description of a 'unique discipline' does not naturally fit general legal practice, although if general practice was itself a specialisation, it would be a unique discipline. Nevertheless, some features are shared with the above description, including *rigorous training*, *community settings*, *relationship-based* and *broad.* Yet these and other affirming features of general practice are not attributed to lawyers to the same extent as

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[29] Margaret Hetherton, *Victoria's Lawyers: The First Report of a Research Project on 'Lawyers in the Community'* (Victoria Law Foundation, 1981). Hetherton defines the general practitioner as the 'Residual Practitioner'. See Chapter Two, n 56.

[30] Roman Tomasic and Cedric George Bullard, *Lawyers and Their Work in New South Wales: Preliminary Report* (Law Foundation of New South Wales, 1978). Tomasic and Bullard define the general practitioner as the 'Generalist' who could not be allocated to any other cluster. See Chapter Two, n 59.

[31] For example, several interview participants compared the legal profession to the medical profession and doctors to themselves.

[32] Dare notes the power of the institutional roles of lawyers, doctors and police. Tim Dare, 'Robust Role-Obligation: How do Roles Make a Moral Difference?' (2016) 50(4) *Journal of Value Inquiry* 703, 704.

[33] See Robert Dingwall and Philip Lewis (eds), *The Sociology of the Professions: Lawyers, Doctors and Others* (Macmillan, 1983). This is also evidenced by the high university ATAR (Australian Tertiary Admission Rank) entry requirements for the study of medicine and law.

[34] JP Nieuwenhuysen, *Professions in the Marketplace: An Australian Study of Lawyers, Doctors, Accountants and Dentists* (Melbourne University Press, 1982).

[35] 'What is General Practice?', *Royal Australian College of General Practice (RACGP)* (Web Page, 2021) <https://www.racgp.org.au/education/students/a-career-in-general-practice/what-is-general-practice>.

doctors. Unlike the medical profession, the legal profession is not generally described as a *caring* or *relationship-based* one that places the client at the centre of practice.[36]

Notwithstanding, in recent years, client-centred practice has received prominence in legal education research[37] and professional associations.[38] In particular, the ethics of care approach, promoted by Parker and Evans,[39] centres on the importance of sustainable relations with clients and communities.[40] This approach has similarities with the medical *community settings* and *relationship-based* characteristics described above. Whilst the theoretical approaches discussed by Parker and Evans do not reflect the language of lawyers describing their practice,[41] the authors offer examples of client-focused care, including high-quality communication with clients and greater involvement of clients in their legal outcomes.[42] Other examples from legal education research and professional associations include promotion of non-adversarial, collaborative outcomes[43] and service to the community.[44] Given the ability to work with clients on a one-to-one basis and be open to a broad range of problems, not always legal, the ethics of care approach is well suited to sole general practice.[45]

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[36] The poor reputation of lawyers as a caring profession is described by David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) 247 and Roman Tomasic, *Lawyers and the Community* (Allen & Unwin and the Law Foundation of New South Wales, 1978) 250. Yet, as discussed in Chapter Seven, many participants noted the benefit of personal connection with their clients.

[37] GE Dal Pont, *Lawyers' Professional Responsibility* (Law Book Co, 7th ed, 2020) 125. Dal Pont refers to client care rules in QLD and NSW, suggesting that the removal of reference to such a rule is due to the wider obligation for costs disclosure at the commencement of the retainer.

[38] Clients' needs and expectations in relation to technology are highlighted in Law Society of New South Wales, *The Future of Law and Innovation in the Profession (FLIP) Report 2017: Findings* (Report, 2017) <https://www.lawsociety.com.au/sites/default/files/2018-03/1272515.pdf> ('*FLIP Report*'). See also Paddy Oliver, 'Practice Management: Satisfaction Guaranteed' [2016] (July) *Law Institute Journal* <https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/July-2016/Practice-management--Satisfaction-guaranteed>.

[39] Christine Parker and Adrian Evans, *Inside Lawyers' Ethics* (Cambridge University Press, 3rd ed, 2018) 55. See also Parker's earlier work 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30(1) *Monash University Law Review* 49.

[40] Parker (n 39) 54.

[41] Ibid 74. For example, lawyers do not describe themselves as an 'adversarial advocate', a 'responsible lawyer', a 'moral activist' or an 'ethics of care practitioner'.

[42] Ibid 71.

[43] For example, Collaborative Practice is 'about working together to settle dispute, without going to court'. See 'AACP', *Australian Association of Collaborative Professionals* (Web Page) <https://www.collaborativeaustralia.com.au/>.

[44] For example, the NSW Law Society's mission includes: 'Ensure the community is served by ethical, competent and independent legal practitioners; Ensure the community has reasonable and affordable access to justice.' 'What We Do', *Law Society of New South Wales* (Web Page) <https://www.lawsociety.com.au/about-us/what-we-do>.

[45] Several examples of ethics of care lawyering were shared by participants in this study, including not charging for initial advice (Gavin), guiding clients in non-legal matters (Lara) and undertaking pro bono work (Angela). Participants gave further evidence of the ethics of care approach when they spoke about

Despite the existence of solicitors committed to an 'ethics of care' practice and general practitioners who provide legal services across cities, suburbs and rural areas, the difference between the professions is the perception that lawyers are 'expensive' and driven by commercial incentives, whilst doctors are motivated by a duty to 'do no harm'. This comparison devalues general legal practice and is exemplified in the populist publication of trusted professions, in which doctors are close to the most trusted and lawyers less trusted.[46] Common references to the legal profession are found in jokes, in which lawyers are categorised as sharks, greedy and dishonest.[47]

The community has an understanding of 'the GP' as the family doctor who manages a wide range of medical matters, whilst specialists are experts who practise in particular areas of medicine. However, whilst there is a clear understanding of the specialist practitioner in law, such as the family, criminal or defamation lawyer, there is no common definition of general practice or understanding of the number of practice areas that equate to general practice. This absence of definition extends across primary, secondary and non-legal sources of law. Indeed, the case law and literature provide scant direct references to general practice.

3.3.3.1 Case law

Disciplinary case law does not commonly or formally identify the structure of lawyers' practices (e.g. Incorporated Legal Practice, partnership or sole practice) or lawyers' practice areas. As discussed in Chapter Two, solicitors in sole and small firm practices receive disproportionate attention in the disciplinary regime. In some proceedings, respondents'[48] practices are described as small or sole.[49] In others, an analysis of the facts

seeing generations of clients, spending unbilled and unbillable time with older clients, including assistance with non-legal matters, such as dealing with Centrelink, and charging reduced fees or payment of fees by installments.

[46] In 2017, a survey of 30 professions showed that doctors were the second most trusted profession (89%) whilst lawyers were 15th (35%). Roy Morgan, *Roy Morgan Image of Professions Survey 2017* (Finding No 7244, 6 June 2017) <http://www.roymorgan.com/findings/7244-roy-morgan-image-of-professions-may-2017-201706051543>.

[47] See Stan Ross 'Heard the one about the lawyer?' (1996) 31(11) *Australian Lawyer* 16; Marc Galanter, 'The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse' (1998) 66(3) *University of Cincinnati Law Review* 805; 'World's Best (and Worst) Lawyer Jokes', *Lawyers Weekly (Sydney)* (online, 3 March 2012) <https://www.lawyersweekly.com.au/sme-law/6045-world-s-best-and-worst-lawyer-jokes>; Tom Lodewyke, 'World's Best (and Worst) Lawyer Jokes: Part 2', *Lawyers Weekly (Sydney)* (online, 18 May 2017) <https://www.lawyersweekly.com.au/careers/21130-world-s-best-and-worst-lawyer-jokes-part-2>.

[48] The practitioner charged with professional misconduct or unsatisfactory professional conduct is usually the respondent. The applicant is generally the regulator or professional association.

leads to the conclusion that the respondents were working in a small or sole practice.[50] The range of work that they may have undertaken is less clear. Some cases relate to breaches of the trust account, with the misappropriation relating to one practice area, such as conveyancing or estate work.[51] In cases that relate to general mismanagement of the trust account, a range of practice areas is often described.[52] The extent of clients' monies in trust across a range of practice areas is an indicator of general practice.

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[49] *Law Society of New South Wales v McElvenny* [2002] NSWADT 166, [1]. In this case, the respondent was described as 'a solicitor in sole practice'. He was found guilty of unsatisfactory professional conduct for swearing an incorrect affidavit without verification, fined $3,750 and ordered to undertake a legal ethics course. In *Law Society of New South Wales v Stormer (No 2)* [2011] NSWADT 9, the Tribunal referred to the respondent's evidence that the 'many stresses of sole practice' were 'difficult and lonely and that the emotional distress involved impaired his judgement': at [12]. Interestingly, the respondent put before the Tribunal two secondary sources relating to the challenges of practice – one was from John Briton, the former Queensland Legal Services Commissioner, about the disciplinary process: at [15], and the other was the article 'Why Lawyers are Unhappy' authored by Martin Seligman and Ors: at [17]. The Tribunal noted that these did not affect their finding that the respondent was not fit and proper: at [17]. The respondent was found guilty of professional misconduct and his name removed from the roll.

[50] *Law Society of New South Wales v Hinde* [2005] NSWADT 199. In this case, there is no reference to the respondent being a sole practitioner, however, the circumstances of his professional misconduct, being failure to honour an undertaking in a conveyancing matter, and the fact that the good character references before the Tribunal were from a barrister and a sole practitioner, the respondent may well have been a sole practitioner.

[51] In *Council of the Law Society of NSW v Stuart* [2019] NSWCATOD 108, the sole practitioner misappropriated trust funds from estate matters. He was found guilty of professional misconduct and his name removed from the roll. In *Council of the Law Society of NSW v Lo (No 2)* [2012] NSWADT 159, [41], the sole practitioner, whose main area of practice was conveyancing, told the Tribunal that he thought trust monies were transit monies and, as a result, he had not opened a trust account. The respondent told the Law Society:

> This is the first time I have ever endeavoured to handle trust funds. In hindsight, I should have attended some account-keeping courses or engaged a professional accountant to assist me in this regard. However, the stress and pressure of my sole practice overtook all my working hours (and most of my personal hours) to the extent that I over-looked this. I accept this should not be an excuse as I am a sole practitioner.

The respondent was found not to be fit and proper and his name removed from the roll. Interestingly the Tribunal found that: 'he has demonstrated no enthusiasm ... for undertaking mentoring, professional education or participating in collegiate education events through membership of a regional law society': at [215].

[52] *Council of the Law Society of New South Wales v Davidson* [2020] NSWCATOD 71. In this case, the sole practitioner misappropriated trust funds across various matters and intermixed money. Whilst she had been a solicitor for 17 years, only three of those had been in sole practice with her earlier practice as a government legal officer. The Tribunal accepted medical evidence, character references, the fact that clients did not lose money and the respondent's remorse. Findings of professional misconduct and unsatisfactory professional conduct were made and the respondent allowed a restricted practising certificate. In *Law Society of New South Wales v Portale* [2001] NSWADT 68, the respondent was found guilty of misconduct in relation to breaches of the trust account in estate and conveyancing matters as well as a workers' compensation and a lease matter. His name was removed from the roll. In *Law Society of New South Wales v Cornell No 2* [2006] NSWADT 308, the Tribunal found wilful breaches of the trust account leading to professional misconduct. Evidence from the Law Society was that the respondent had taken 'his eye off the ball with respect to the Trust Account' as a result of his increased interest in property development with his solicitor work consisting of a few matters: at [39]. The respondent was fined $8,000

References to general practice do not offer a definition. In some cases, further information is included in order to provide context to the complaint. In *Legal Services Commissioner v Bechara*,[53] the solicitor was described as managing a 'general practice but mainly focusing on workers' compensation and common law personal injury cases'.[54] This case exemplifies how within general practice, a solicitor may still concentrate in particular 'popular' practice areas.[55] In *Legal Services Commissioner v Barrett (Legal Practice)*,[56] the Tribunal noted that the solicitor had a general practice with some personal injury work.[57]

References in case law discuss function or duties rather than definitions. For example, solicitors have a duty to be competent.[58] Competence for a sole general practitioner means the ability to work capably across several areas of the law. A challenge with general practice is its potentially limitless number of legal areas, and whether solicitors feel a duty to take matters on despite unfamiliarity with an area.

3.3.3.2 Professional sources

As noted in Chapter Two, Australian state and territory professional associations publish annual reports, some of which include statistics on practice structures. None of the reports delineate between specialist sole practice and sole general practice. Many areas associated with general practice are also traditional ones, such as wills and estates, general litigation, sale and purchase of land or businesses, leases and mortgages, family law and local court work.[59] The NSW Law Society lists 16 main areas[60] and the Law

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and given a public reprimand. He also gave an undertaking not to apply for a practising certificate for five years.

[53] *Legal Services Commissioner v Bechara* [2009] NSWADT 145. The respondent was found guilty of professional misconduct, given a public reprimand and ordered to pay a fine of $6,500. *Legal Services Commissioner v Bechara* (No 3) [2009] NSWADT 313. Interestingly, the solicitor had charged her three clients up to $6,000 a day over six days of hearing. *Legal Services Commissioner v Bechara* [2009] NSWADT 145 [7].

[54] Ibid 145 [1]. In this case, the respondent charged each of her three clients, for the whole day, in a related matter heard together, throughout the six days of the hearing. The respondent advised the Tribunal that she did not know that the fees should be apportioned. The finding was one of professional misconduct.

[55] Two of the participants had a focus on particular areas, one in family law and the other in commercial law.

[56] *Legal Services Commissioner v Barrett (Legal Practice)* [2012] VCAT 1800.

[57] In this case, the respondent was not aware that contingency fees could not be charged and in doing so, he was found to have committed professional misconduct.

[58] *Australian Solicitors' Conduct Rules* (n 28) r 4.1.3.

[59] Traditional areas were identified in the 1970s and 1980s by Hetherton (see Chapter Two, n 56) and Tomasic and Bullard (see Chapter Two, n 59). Duncan's report for the College of Law identified that in 1984 the main areas of work for sole practitioners consisted of 'conveyancing, family law, probate and motor vehicle accident areas of work with an allied heavy workload in the areas of drafting, particularly of wills'. Robyn Mary Duncan, *A Study of the Learning Needs of Sole Legal Practitioners for Survival in the*

Institute of Victoria records 42 similar areas on its website.[61] Both associations also include new areas of practice, such as privacy, space and technology. However, many practice areas are relevant to the legal needs of individuals and small business, rather than corporate clients. Similarly, the Australian Bureau of Statistics ('ABS') description of solicitor lists tasks that are associated with individual rather than corporate clients.[62] Both these references recognise the practice of law as a human-centred activity.

3.3.3.3 Academic articles

The academic literature also fails to offer a concise or clear definition of a sole general practitioner or general practice. It is assumed that the profession, regulator and community know who a sole practitioner is. Lauw identifies the challenge of defining general practice as whether it should be considered an area of specialist accreditation.[63] He refers to the Canadian Bar Association's definition of general practitioner as a specialist in 'integrating areas appropriate to clientele' and 'in matters unique to those communities'.[64] This approach recognises that sole practices are sustained by client demands or needs that cover several legal areas, predominantly non-corporate. The ABA acknowledges that solo and small firm lawyers usually 'handle legal matters in a variety of areas',[65] including real estate, family, litigation and estate and financial planning.[66] Similar areas are practised by sole practitioners in New Zealand; in 2019, the most popular areas of practice were property (61%), company/commercial (59.8%), trusts/estates (54.9%), family (50.7%) and civil litigation (39.5%).[67]

Eighties (Centre for Legal Information and Publications, College of Law, Ku-ring-gai College of Advanced Education, 1985) 9.

[60] 'About Practice Areas: What Kind of Lawyer do I Need?' (n 4). Within the 16 main areas, there are three branch areas, for example under Wills and Estates, there is 'Making a will', 'Setting up a trust fund' and 'Being an executor'.

[61] 'Areas of Law: Your Area of Law' (n 5).

[62] Australian Bureau of Statistics, *Australian Standard Classification of Occupations (ASCO) - 2521-13 Solicitor* (Catalogue No 1220.0, 31 July 1997) <https://www.abs.gov.au/ausstats/abs@.nsf/0/E04C0DA072026446CA25697E00184F27?opendocument>. These tasks include 'prepares wills', 'provides advice on family law', 'manages conveyancing', 'may act as trustee or guardian', 'may act as executor of client's will'.

[63] Inge Lauw, 'Specialisation, Accreditation and the Legal Profession in Australia and Canada' (1994) 1(2) *Murdoch University Electronic Journal of Law* [8.4.2].

[64] Canadian Bar Association, Special Committee on Specialization in the Legal Profession, *The Unknown Experts: Legal Specialists in Canada Today* (Report, August 1983) 11, cited in Lauw (n 63) [8.4.2].

[65] 'Solo, Small Form and General Practice Division', *American Bar Association* (Web Page) <https://www.americanbar.org/portals/solo_home/practice-area.html>.

[66] Ibid.

[67] Geoff Adlam, 'Snapshot of the Profession 2019' (2019) 926 (March) *New Zealand Law Society LawTalk* 27, 37.

3.3.4 Legal Education and General Practice

Given the limited attention to general practice, it is ironic that legal education is substantially based on knowledge areas relevant to general practice. Accreditation of law courses is based on the Priestley 11 Areas of Knowledge[68] and the Practical Legal Training ('PLT') Competencies.[69] The subject content of the Competencies require entry-level lawyers to be 'competent' in the nature of work traditionally undertaken in a suburban practice. The academic and practical requirements cover traditional areas of law, many of which are relevant to the legal needs of individual, rather than corporate, clients. This is justified by the belief that a law degree should be designed foremost for the purpose of admission as a legal practitioner.[70] Indeed, the PLT Competencies refer to qualification as an 'entry-level lawyer'.[71]

The definition adopted in this thesis draws upon the Priestley 11 and PLT Competencies as the foundation for the range of practice areas covered by a generalist. The Priestley 11 knowledge areas are siloed for the purposes of legal education, whilst the Competencies form the entry-level professional requirements for legal practitioners. In practice, these areas intermingle and inform those identified by the professional associations. Essentially, this thesis considers practice in three or more areas to be the foundation of a definition for sole general practitioners, and the reasons for this are discussed in the next section.

3.3.5 Definition of the Sole General Practitioner: Why Three Practice Areas?

In order to define the sole general practitioner, the statutory definition of sole practitioner must be contextually extended, beyond 'on his or her account', to allow for an additional category of criteria, namely the scope of work attributed to general practice. Central to this criterion is the overarching question of what a generalist is expected to be able to do. The term 'generalist' means a person who practises in several areas of the law in order to

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[68] *Admission Rules* (n 3) sch 1.
[69] Ibid sch 2. The PLT Competences are 'Lawyer's Skills, Problem Solving, Work Management and Business Skills, Trust and Office Accounting, Civil Litigation Practice, Commercial and Corporate Practice, Property Law Practice, Ethics and Professional Responsibility and two of the following areas of Administrative Law Practice, Banking and Finance, Criminal Law Practice, Consumer Law Practice, Employment and Industrial Relations Practice, Family Law Practice, Planning and Environmental Law Practice and Wills and Estates Practice'.
[70] David Barker, *A History of Australian Legal Education* (The Federation Press, 2017) 139.
[71] *Admission Rules* (n 3) sch 2.

meet the legal needs of a community, mainly comprising of individuals and small business. The community assumes the generalist is competent in these areas of the law, and this expectation of competence is embedded in the *Australian Solicitors' Conduct Rules*.[72]

Drawing on material presented in Chapter Two, particularly empirical research from the US and UK, some headway can be made towards offering a definition of the sole general practitioner in the Australian context. This definition is informed by three pieces of scholarship and then reinforced by current practices, including those of the participants.

Regrettably, the Australian literature concerning the over-representation of sole practitioners in the disciplinary context characterises the structure of a practitioner's firm as either sole or small,[73] rather than identifying it as general. This leaves a binary model for sole general practitioners. In contrast, Levin's research into US solo and small firm attorneys offers a definition of general practice as four practice areas.[74] Levin bases this number of areas on her interviews of 41 solo and small firm attorneys, finding that one third were 'true general practitioners'.[75] She notes:

> A general practitioner was a lawyer who often described himself as a general practitioner or, when asked to ascribe percentages to his practice, would do as follows: 'I would say thirty percent personal injury, another thirty is real estate, another thirty is criminal, and the other little stuff like divorces.'[76]

The 2012 UK report *A Time of Change: Solicitors' Firms in England and Wales* categorises practice as 'narrow', being a single category of practice where 90% of work is in one area,[77] and 'broad', being less than 25% of work in each area across all practice

[72] *Australian Solicitors' Conduct Rules* (n 28) r 4.1.3.
[73] Kath Hall, *Tough Love: Professional Regulation of Lawyer Dishonesty* (Research Paper No 13–11, ANU College of Law, 9 August 2013) 1 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2307325>.
[74] Leslie C Levin, 'The Ethical World of Solo and Small Law Firm Practitioners' (2004) 41(2) *Houston Law Review* 309, 325.
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Pascoe Pleasence, Nigel Balmer and Richard Moorhead, *A Time of Change: Solicitors' Firms in England and Wales* (Report, commissioned by the UK Law Society, Legal Services Board & Ministry of Justice, July 2012) i <http://www.pascoepleasence.com/_Media/A%20Time%20of%20Change.pdf>.

areas.[78] Applying this approach, broad practice could also equate to a minimum of four practice areas.

Australian reports have not addressed the level of detail that distinguishes lawyers in sole practice from those in sole general practice. For example, the sizeable 1982 NSW Law Reform Commission *First Report on the Legal Profession: General Regulation and Structure* notes that barristers are sole practitioners and that there are many solicitors who are in sole practice.[79] In the context of considering the benefits of specialisation and with slight reference to general practice, the report acknowledges, 'It is simply not possible for a practitioner to achieve and maintain competence across the whole range of law'.[80] This reference was made in relation to the specialisation of barristers resulting in a decrease in work for competent non-specialist solicitors.[81]

In addition to the literature, specialisation in particular practice areas has informed a definition of general practice. A few years after the above report, accreditation in specific practice areas was introduced in Victoria.[82] According to Lauw, this accreditation was intended to formalise the 'de facto'[83] specialisation that had developed as a result of the 'increasing volume and complexity of the law'.[84] The effect of specialist accreditation may well have been a reduction in the number of general practitioners, as some saw specialisation in such areas as family law, criminal law, or wills and estates as a more viable option. Specialisation allowed for a narrowing of areas in which to develop expertise, a decrease in possible complaints and the potential for an increase in clients, based on referral and reputation as an expert.

As noted earlier in this chapter, specialisation also includes non-accredited expertise. Whilst the number of accredited and non-accredited specialists is not known, the increase in areas of accredited specialisation, managed by the professional associations, evidences its pull. Without the boundaries established by the Bar or by specialisation, lawyers who choose not to specialise, particularly those in sole and small firm practices, may consider

[78] Ibid. Areas of work consisted of crime, family/matrimonial, personal injury, property and planning, immigration, employment, commercial/corporate, wills, trusts and probate.
[79] New South Wales Law Reform Commission, *First Report on the Legal Profession: General Regulation and Structure* (Report No 31, 1982) [3.71] <https://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-31.pdf>.
[80] Ibid [3.56].
[81] Ibid [3.60].
[82] Lauw (n 63) [6.4].
[83] Ibid [3].
[84] Ibid.

they have their own cab-rank rule with a duty to take on matters. Certainly, in Tomasic's study, prior to accreditation, 51.6% of respondents agreed that 'most solicitors are willing to handle any sort of problem people take to them'. Fewer than 20% (19.8%) disagreed.[85]

A more nuanced approach to general practice takes into consideration the increasing complexity of traditional practice areas, with several developing distinct adjunct areas. For example, wills had developed into powers of attorney, trusts, testamentary intentions and family provision claims; business law has developed into greater compliance in relation to taxation and accounting matters; and family law has experienced an increase in matters involving parentage and international treaties. Rather than the four areas of practice applied by Levin in her study and hinted at in the UK report, it is proposed that three areas acknowledge this complexity. Given this increasing complexity and expansion of the law and the interconnected matters that come within broad practice areas, even since the definitions of Levin (2004) and in the UK report (2012), it is argued that three, rather than four, practice areas are suitable for the definition of the minimum required for a solicitor to be considered a generalist.

Furthermore, the criterion of three areas covers a diverse range of transactional or litigious matters for which clients consult lawyers, such as conveyancing, wills and estates, personal injury, family law, local court and small business. Practitioners frequently advertise the availability of three or more practice areas on webpages or in the front window of their premises. Finally, three areas provide delineation from the specialist, who concentrates on one or two areas of practice.

Importantly, the areas of practice of the participants in this study (see Chapter Six) offer a robust foundation for defining general practice as the practice of three or more areas of law. Most participants practised in many more than three areas, whilst a few practised in one or two general areas, as well as adjunct matters.

Accordingly, for the purpose of this thesis, a sole general practitioner is *one who provides legal services in three or more areas of the law with the exclusive responsibility for the practice's commercial, regulatory and legal compliance*. These two pillars support a definition that is distinguishable from a specialist lawyer, whether the latter is a

[85] Tomasic (n 30) 49.

formal accredited specialist or a self-proclaimed expert in a particular area. The areas of practice applied in this thesis are based on the Priestley 11 Areas of Knowledge, the PLT Competencies and those identified by the professional associations.

The following discussion of the history of sole and general practice confirms that this definition is consistent with documented evidence of these two pillars regarding the delivery of legal services within communities.

3.4 History of the Sole Practitioner within the Profession

The history of the sole practitioner connects general practice as an ongoing presence with the continuous role of the independent solicitor. Both characteristics of legal practice have offered an uninterrupted and unique service in the facilitation of access to the law. An analysis of this entity highlights three core themes that underpin the development of the sole general practitioner: (1) the myths surrounding the 'hero' lawyer; (2) the changing nature of clients; and (3) the colonial origins of the profession in Australia. By separating myth from reality, each of these themes demonstrates the validity of the definition adopted in this thesis.

A study of the profession's history prompts the question of whether today's sole general practitioners are a modern version of the professional lawyer of the Middle Ages. There is, of course, greater complexity to the narrative of the sole legal practitioner than the argument that the contemporary generalist solicitor, operating on his or her own, has turned 'full circle' and revisited the profession's origins. Whilst the roots of the common law lawyer are found in the entrepreneurial work of 'attorneys' (as they were termed in 13th century England) assisting landowners[86] and royalty[87] in court and in court-related matters,[88] the role of solicitors has expanded to represent a broader standing as key members of the community, serving both individual and business clients.

This section highlights how the historical development of the role of the sole practitioner has shaped and sustained general practice. It goes some way to explain the modern absence of definition of the sole general practitioner. Importantly, this section supports the need for a 'special' and, as noted above, nuanced definition. It demonstrates that the

[86] Julian Disney et al, *Lawyers* (Law Book Co, 2nd ed, 1986) 5.
[87] Ibid 6.
[88] Ibid 5.

generalist approach – of three practice areas – is suitable for the contemporary Australian profession.

This section firstly analyses themes relevant to sole practitioners that have emerged from the history of the profession. In particular, the origin of the profession in NSW, where colonial conditions facilitated the establishment of sole practice, is examined. Secondly, the last 50 years of the profession are analysed, with a focus on Australia, emphasising the sustainability of the sole practitioner. Finally, this section identifies the challenges for sole general practitioners.

3.4.1 Myth and Nostalgia

Myth and nostalgia, inherited from common law history, transported to Australia from England and shaped by the earlier settlement in the US, influenced the characterisation of the early colonial profession. Depictions of barristers as elite and superior were contrasted with representations of the other 'branch' as willing and eager, as represented by two emancipist lawyers described as 'so rooted in wickedness and vice'[89] because of their effectiveness in increasing legal work in the colony during Governor Macquarie's term from 1810 to 1821.[90] Whilst it is impossible to evidence, it seems likely that the absence of definition for the sole general practitioner that exists in Australia is due to their overwhelming historical presence in the UK and in the early NSW colony. Indeed, sole practitioners – presumably general in nature – were the solicitors of the legal profession as distinct from the Bar.

The profession's early development in the UK, US and Australia emphasises the individual forging a legal career in response to community legal needs, and in doing so, developing a broad practice to respond to new and emerging needs. Throughout this development, the tradition of the knowledge-holders of law, which was considered mysterious or foreign, was established. The 'entrepreneurial' lawyer, the 'frontier' lawyer and the 'colonial' lawyer present images of heroes and champions of the law, who either upheld or challenged the status quo. The description of the sole practitioner as the trusted advisor to the community, the local leader who is able to respond to the many complexities of the law, as well as to the non-legal needs of communities, offers a

[89] John Michael Bennett, *A History of Solicitors in New South Wales* (Legal Books Ltd, 1984) 13. Bennett refers to Governor King's description of Crossley and Robinson, former convicts and attorneys, as quoted in *The General Advertiser* or *Limerick Gazette*, 29 November 1804.
[90] Ibid.

nostalgic view of these lawyers. Such a view is represented in the depiction of the US attorney in *To Kill a Mockingbird*. These early lawyers shared some of the characteristics of Atticus Finch, such as tenacity, passion and determination.[91] They had foresight to see opportunities beyond the city centres,[92] and many, mainly in the British outposts of the US but also in Australia, moved from the law into politics and other prominent roles.[93]

Rules, laws and orders, in varying forms, have existed in western society for centuries and have created a longstanding need for 'specialists' to advise on matters relating to the law and legal systems. The early English attorney became the gatekeeper of legal knowledge and of access to the 'mystical' workings of the law. As a result of this sacrosanct position, he (as was the case for 600 years) became both an entrepreneur of the practice of law and an expert in the law. In England, these specialists emerged in the early 13th century as the first cohort of professional lawyers.[94] They offered legal services as sole agents, sourcing and undertaking work on their own. Essentially, these early English lawyers were sole practitioners serving the needs of royalty and the ruling class. By the mid-17th century, the profession had expanded due to an increase in civil litigation in London,[95] following a shift from private resolution to lawsuits among the aristocracy and gentry.[96] Lawyers became indispensable. Brooks describes the role of the profession as being 'deeply involved in the everyday lives of ordinary people ranging down through the gentry to the so-called middling sort and even the poor'.[97] This period established an environment in which lawyers worked independently and across increasingly identified areas where the law intersected with society, thereby providing a foundation for sole general practice.

In Canada, New Zealand and the Australian colonies, the structure and nature of the legal profession followed British traditions. However, the experience of attorneys in the US differed. One result of this difference is the early and continuing prominence of the solo

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[91] Convict lawyers in colonial NSW, who agitated for the right to practise law, also took on roles as advisors. For example, Crossley had been an advisor to Governor Bligh. Alex C Castles, *An Australian Legal History* (Law Book Co, 1982) 106.
[92] For example, the US attorneys who set up practice in newly established industrial areas.
[93] In the US, early presidents were trained lawyers, including John Adams (1797-1801), Thomas Jefferson (1801-1809) and James Madison (1809-1817). In the NSW colony, William Charles Wentworth was a lawyer, advocate, media owner and explorer. Robert Wardell was a lawyer, advocate and media owner.
[94] Disney et al (n 86) 5.
[95] Christopher W Brooks, *Law, Politics and Society in Early Modern England* (Cambridge University Press, 2009) 9.
[96] Ibid.
[97] Ibid.

attorney. As explained in Chapter Two, this evolution led to clearly differentiated literature on the sole general practitioner in the US that does not exist in either Australia or the UK. The characterisation of the solo attorney that emerged from this prominence portrays law as a higher calling that elevates the role of the lawyer to one of a wise and trusted leader. Whilst it aligns with the notion of the lawyer as an expert and a professional that emerged in the English history of the profession, the image portrayed of the English lawyer was less lofty. Bennett notes that the Elizabethan period lawyer was portrayed as a 'comic pettifogger or sly mercenary profiting from other men's misfortunes'.[98] He also references Birk's description of the English attorney, at the end of the 18th century, as 'an important local figure with a finger in every local pie'.[99]

Friedman attributes the emergence of this 'statesman' or 'political' characteristic of the US solo attorney as a result of individuals seeking to gain a reputation through advocacy as an entrée into politics.[100] He views this attorney as the 'frontier' lawyer who established his practice around the location of new work, such as the construction of railways and mines.[101] Whilst the 'frontier' lawyer is not represented in the history of the English and Australian legal profession, this core feature of US attorneys of aligning career path and market needs is similar to English and Australian pioneer lawyers.[102] These lawyers identified a demand for legal services in emerging areas of the law. Unlike the English and Australian legal profession, US attorneys were not hampered by the politics of a divided profession.

This 'frontier' depiction of the solo attorney continued, building the traditions associated with the profession, such as fierce advocacy, pro-bono service and community leadership. These traditions are aptly embedded in the US scholarship. Galanter considers the nostalgia associated with these traditions, suggesting that it is 'long past time to abandon the essentialism that makes the past good',[103] when the American lawyer was revered as a trusted leader, and core to the community through his vision, intellect and insight.[104] Although Galanter is referring to a period from the late 19th century

[98] Bennett (n 89) 4.
[99] Michael Birk, *Gentlemen of the Law* (Stevens & Sons, 1960), cited in ibid 7.
[100] Lawrence Meir Friedman, *American Law in the 20th Century* (Yale University Press, 2002) 551.
[101] Ibid 557.
[102] A pioneer lawyer is one that forged a path in new areas, similar to the US frontier attorney and the more contemporary entrepreneurial lawyer.
[103] Marc Galanter, 'Lawyers in the Mist: The Golden Age of Legal Nostalgia' (2017) 122(1) *Dickinson Law Review* 549, 562.
[104] Ibid 554.

through to post-Second World War, the acknowledgement of nostalgia is applicable throughout the history of the profession and beyond the US. For example, early rural lawyers in NSW have been described as establishing their status by forging 'ties with local communities'[105] and finding locations to 'sustain their practice'.[106]

In assessing the truth of the hero myth, Pue sees the language of the law and the myths surrounding lawyers as part of the profession's narrative to acquire and maintain credibility.[107] Lawyers have been criticised for mystifying the law in order to sustain a monopoly over the delivery of legal services. The Medieval lawyer, developing the language and customs of the law, laid the cloistered foundations for subsequent lawyers and the profession to maintain these traditions. In terms of the definition of the sole general practitioner, the myth and nostalgia surrounding such lawyers supports the image of an expert who can 'turn his hand' to any or all legal matters. However, as noted above and discussed below, this generalisation in the modern Australian context must be limited to three practice areas due to the complexity and demands of the law.

3.4.2 The Individual Client at the Core of Solicitors' Practice

The definition adopted by this thesis centres on the individual and small business client. The importance of including this client profile within the definition derives from the beginnings of the legal profession. The history of lawyers, as with many other professions, is one of responding to the needs of individuals. In this section, the client, as a key stakeholder, is analysed from the perspective of the division between solicitors and barristers and between individual and corporate clients. Whilst sole and small firm practices have commercial clients, their 'business as usual' is with individual clients and a focus on meeting their specific needs through offering legal services across three or more practice areas.

This section begins by identifying the difference between solicitors and barristers, and the impact this historical division has had upon the development of the modern definition of sole general practitioner proposed in this thesis. The outcome is that barristers are excluded from the definition because of their specialist practice and their long-standing

[105] Michael Pelly and Caroline Pierce, *Defending the Rights of All: A History of the Law Society of New South Wales* (Law Society of New South Wales, 2016) 197.
[106] Ibid.
[107] W Wesley Pue, *Lawyers' Empire: Legal Professions and Cultural Authority, 1780-1950* (UBC Press, 2016) 6.

advocacy for independence and division. The distinction between corporate firms and sole practices from the perspective of the client base will then be discussed. This distinction relates to the proposed definition that the general practitioner is charged with serving the legal needs of individual and small business clients across a range of matters that represent the presence of the law in everyday life.[108] This section informs the discussion concerning the first research question regarding how sole general practitioners understand their role.

3.4.2.1 Solicitors versus barristers

The definition adopted in this thesis reflects the binary of the Australian legal profession. From the perspective of the sole practitioner, the history of the division between barristers and solicitors explains that solicitors remained generalists, whilst barristers narrowed their practice areas. As the profession continued to be marked by the divide between solicitors and barristers, the areas within general practice increased, enabling solicitors to take on work that barristers considered to be outside their domain. For solicitors,[109] practice expanded from litigation to the preparation of documents,[110] the delivery of legal advice,[111] the management of client's financial matters[112] and the conduct of cases in the Court of Chancery and Star Chamber.[113] During the 19th century, solicitors' scope of work increased with the addition of matters in the ecclesiastical courts, formally undertaken by proctors.[114] This work extended to appearances in the inferior courts,[115] probate, divorce and admiralty work.[116]

Early signs that solicitors were likely to engage in general practice, rather than the specialist practice of the Bar, are evidenced by the division of legal craftsmen between the pleader (barrister)[117] and attorney (solicitor).[118] These positions continued throughout the Middle Ages with a refinement of pleaders into serjeants and apprentices, which was indicative of the developing specialisation of barristers as advocates. This division, and

[108] For example, civil matters in contract, tort, property, business and wills and criminal matters.
[109] Disney et al (n 86) 16. The term 'solicitor' originated from the 15th century and was attributed to a 'business agent' who managed cases in new courts, particularly the Court of Chancery and Star Chamber.
[110] Ibid 9.
[111] Ibid.
[112] Ibid.
[113] Ibid 16.
[114] Ibid 20.
[115] Ibid.
[116] Ibid.
[117] Ibid 6.
[118] Ibid 9.

subsequent sub-division, served as the first indicator of a dual profession. However, Forbes argues that solicitors could not be considered a profession, at least until the *Attorneys and Solicitors' Act* of 1729.[119]

In the second half of the 16th century, different regulatory frameworks contributed to the increasing distinctiveness of the branches within the profession. The developing specialisation of barristers and the self-regulation of the Bar continued to divide the two clusters, with advocacy becoming the Bar's domain and solicitors no longer permitted to be members of the Inns of Court. Disney et al describe the second half of the 16th century and into the 17th century as a time of 'significant changes in the work, education, organisation and elements of the legal profession',[120] resulting in two distinct branches:

> In 1614, it could be stated quite generally by the benchers of the four Inns that there ought always to be preserved a difference between a counsellor at law, which is the principal person next unto the serjeants and judges in administration of justice, and attorneys and solicitors which are but ministerial persons and of an inferior nature.[121]

Forbes also notes that this attitude continued into the 18th and early 19th centuries, with solicitors being regarded as subservient to the Bench and Bar. They were referred to as 'clerks, process servers and other legal errand-men'.[122]

When the Inns of Court confined their membership to barristers, solicitors began to form their own professional association. In 1739, the first voluntary association for solicitors was established – The Society of Gentlemen Practisers in the Courts of Law and Equity.[123] As the first advocacy group for solicitors, the Society lobbied for a monopoly over conveyancing. This work continued as a core source of income for many solicitors, particularly for sole practitioners. The general need for conveyancing introduced clients to lawyers and provided lawyers with an opportunity to serve these clients' other legal needs, such as wills and business. Towards the end of the 18th century, the Society became known as the Law Society, a name that has continued to denote the professional associations of solicitors in England and most Australian states today.

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[119] Forbes (n 1) 10.
[120] Disney et al (n 86) 12.
[121] W Woldsworth, vol VI (1996 repr), 433 et passim, cited in ibid 13.
[122] Forbes (n 1) 6.
[123] Disney et al (n 86) 11.

Differences between barristers and solicitors also emerged in the integrated areas of training and regulation. Education for solicitors was through the apprenticeship system, whilst barristers gained their experience through tutelage. The move to exclusivity for barristers as members of the Inns of Court, together with the introduction of pupillage, meant a final division between the two branches. The *Attorneys and Solicitors Act 1729* (UK) introduced the first model of articles for solicitors, with the mandating of a five-year apprenticeship as a clerk.[124] This apprenticeship model of the handing down of the general trade from master solicitor to clerk continued into the 1970s.[125]

As the number of professional attorneys grew, judges were given the authority to regulate this branch of the profession through admission and removal.[126] Given that the authority to regulate solicitors was the domain of the judiciary, solicitors became officers of the court.[127] This was reflected in the *Attorneys and Solicitors Act 1729* (UK), with the requirement for an oath of office and registration on the 'Roll'. These traditions remain today for legal practitioners.[128]

The depiction of attorneys and solicitors as subordinate to the Bar and judiciary, together with legislative recognition of solicitors and the expansion of an eclectic collection of practice areas, firmly established the separate roles and disparities between barristers and solicitors. The disbandment of the position of attorney in deference to the office of solicitor, as distinct from barrister, was recognised in the *Judicature Act 1873* (UK).[129]

The expansion of areas for solicitors evidences that general practice is historically attached to this cohort rather than barristers. Although this has changed, to an extent,

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[124] Ibid 18–19. The master/apprenticeship model is one that remained until the 1970s. Interestingly, in Victoria, a form of articles continues, with supervised legal training as an alternative to practical legal training.

[125] The articles of clerkship program continued in NSW until 1973, prior to the establishment of a Practical Legal Training ('PLT') course at the College of Law. 'History of the Law Society', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/about-us/organisation-and-structure/history>. In Victoria, law graduates can complete either PLT or Supervised Legal Training (one year traineeship with a practitioner. 'Managing Your Career - Qualifying to Practise Law', *Law Institute of Victoria* (Web Page, 2021) <https://www.liv.asn.au/Professional-Practice/Supporting-You/Managing-Your-Career/Qualifying-to-Practise-Law#Practical>.

[126] Disney et al (n 86) 10–12.

[127] Barristers were cloistered by internal regulation through the Inns of Court. By the 19th century, both classes of the profession were considered to be officers of the court.

[128] Both solicitors and barristers are admitted as legal practitioners and required to take an oath or make an affirmation of office. *Uniform Law NSW* (n 6) sch 16 (1)(c); *Uniform Law Vic* (n 6) sch 1, s 16(1)(c).

[129] *Judicature Act 1873* (UK) – 'The registrar of attorneys and solicitors in England shall be enactments called the Registrar of Solicitors': at s 87. 'Whereas under s 87 of the principal Act, solicitors and attorneys will, after commencement of that Act, he (be) called solicitors in the Supreme Court': at s 14.

with specialisation,[130] there continues a cohort of general practitioners, and within that cluster, a group of sole generalist practitioners. Generally, up until the 20th century, in terms of the nature of legal work and the structure of legal practices, the solicitors' branch of the profession continued as a reasonably homogenous group. A divide within the solicitors' profession grew out of the different client bases, particularly through the emergence of the corporate client with legal needs and interests that required specialist legal work, rather than the broader base of the general practitioner.

3.4.2.2 Individual versus corporate clients

As discussed above, the definition of the sole general practitioner adopted in this thesis reflects not only the solicitor and barrister binary but also the client base. The history of the differing needs of individual and corporate clients significantly influenced the distinct roles of sole and small firm practices primarily serving individual clients and small business, and corporate firms representing the interests of big business and corporates. This difference was evident from the early 20th century, particularly in the US, with the rise of the corporate client in partnership with the corporate law firm.

As MacCrate notes, the US law firm as a distinct entity emerged at the end of the 19th century to service the expansion of 'industry, commerce and finance'.[131] This movement overshadowed the traditional model of the lawyer serving the needs of the individual client:

> Historically, the lawyer in America was an independent professional who was neither employed by another nor dependent on others to assist in providing legal services. The lawyer was also a generalist, personally ready to render whatever legal service a private client might require. The vast majority of lawyers were sole practitioners, either as a full-time or a part-time occupation'.[132]

Galanter and Palay identify the growth of the large US law firm in the 1920s as a response to market demand for legal services best served by a labour force of lawyers under the one structure.[133] This growth in the legal services market continued up to, and following, the Second World War, with an acceleration through to the 1970s. New areas

[130] Specialist accreditation and specialised areas within large law firms.
[131] Robert MacCrate, '"The Lost Lawyer" Regained: The Abiding Values of the Legal Profession' (1995) 100(3) *Dickinson Law Review* 587, 601–2.
[132] Ibid.
[133] Marc Galanter and Thomas M Palay, 'Why the Big get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms' (1990) 76(4) *Virginia Law Review* 747, 767–8.

of law and the demand for lawyers expanded, particularly in litigation. The need for legal advice, legal transactional work and representation reflected the social and economic changes in society. Traditional legal work continued to expand, such as property, probate, contracts and trusts, whilst new areas of the law developed, such as personal injury and small business. At this time, the 'vast majority'[134] of US lawyers were solos.

Interestingly, the American legal profession is one of contrast. Although it is the origin of the corporate firm, the US has a sustained presence of solo attorneys. Friedman describes this divide in the 20th century as between 'good, gray, competent, conservative men who handled the affairs of big business'[135] and 'personal injury lawyers who raced to the scene of accidents or hospital rooms to sign-up clients'.[136] Whilst this description does not directly translate to solicitors in Australia,[137] a similar divide of client base is present here, with corporate firms acting for 'big' clients and small firms being instructed by individual clients who, because of their circumstances, may be vulnerable.

In Australia, the schism between the legal needs of the corporate and individual client, and between corporate law firms and small or sole practices, deepened in the 1970s and was evidenced by the type of legal work undertaken by each cohort. Transactional and litigious commercial and government work became the domain of the corporate firm, whilst motor accident and workers' compensation, family law, probate and estate administration and conveyancing remained with smaller practices.[138] Work for the corporate firm concentrated on the corporate client, whilst work for small and general practices focused on the delivery of a range of matters for a range of clients. Weisbrot describes the predominance of the corporate client: 'Corporate lawyering is now the true professional paradigm, and is held to be such by both society in general and lawyers themselves'.[139]

Whilst the corporate client and firm hold prominence and power in the 21st century, the Bar dominated the development of a legal profession in the UK and Australia. The effect

[134] MacCrate (n 131) 77.
[135] Friedman (n 100) 29.
[136] Ibid. The US has a reputation as litigious, resulting in the depiction of US attorneys as 'ambulance chasers'. This reputation is, in part, due to the ability to charge contingency fees.
[137] David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) 237.
[138] Ibid 258.
[139] Ibid 44.

of a divided profession meant specialisation for barristers, and a general practice for the solicitors' branch, at least prior to the emergence of the corporate client. Solicitors continued to practise in a range of areas, knowing that complex, specialist matters could be briefed out to Counsel.

3.4.3 Colonial Origins

Insight into the colonial origins of the NSW legal profession is critical to understanding the framing of the definition proposed in this thesis. The difference between the UK and the US is significant because the origin of the Australian profession resides in the British colonised NSW convict settlement. From Governor Phillip's arrival in 1788 to the early 18th century, the legal profession[140] consisted of former convict attorneys.[141] Bennett suggests that the inability of lawyers to make a 'quick fortune'[142] in the early decades meant that English lawyers were unlikely to set up practice in the colony, which has resulted in a lack of certainty about when a legal profession was established.[143]

Forbes notes that, between 1788 and 1815, the NSW colony was without admitted lawyers, although three qualified lawyers were given a right of appearance.[144] These first attorneys, George Crossley, Edward Eagar and George Chartres, were former convicts.[145] They represent the unplanned nature of the establishment of an Australian legal profession. The description of these attorneys provides insight into the types of crime that resulted in transportation and the resilience of many convicts to re-establish a professional life. Castles assigns Crossley the title of 'father' of the legal profession in Australia.[146] Crossley, transported for perjury,[147] had been convicted in the colony of unlawfully practising as an attorney. Eager, an Irish attorney sent to the colony for 'uttering a forged bill', resumed legal practice following his conditional pardon in

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[140] *In re Roberts and Williams* [1838] NSWSupC 70. Colonial cases refer to 'the honour of the profession' and 'the profession of the law'. See 'Decisions of the Superior Courts of New South Wales, 1788-1899: In *Re Roberts and Williams* [1838] NSWSupC 70', *Macquarie Law School - Macquarie University* (Web Page, 2011) <http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/case_index/1838/in_re_roberts_and_williams/#bn1>.
[141] Castles (n 91) 66.
[142] Bennett (n 89) 12.
[143] Ibid.
[144] Forbes (n 1) 32.
[145] Castles (n 91) 106.
[146] Ibid 107.
[147] Bennett (n 89) 16.

1813.[148] Chartres, also an Irish attorney, was convicted of fraud and sentenced to transportation for seven years.[149] He commenced practice in 1812 after being granted a ticket-of-leave.[150]

As the arrival of free settlers grew, so did non-convict attorneys seeking to practise law. Both cohorts of lawyers appeared to have been practising, or seeking to practise, as sole attorneys, with former convict attorneys practising 'well into the second decade of the nineteenth century'.[151] Given the ad hoc beginning of the profession, offering a general practice was necessary to establish a reputation, a business and a service for the emerging needs of the colony. This concept of general practice has continued and is aligned with the definition proposed in the thesis. Indeed, the organic historical development of the Australian legal profession calls for a unique Australian definition of the sole general practitioner, as is developed in this thesis.

The role of solicitors in Australia was shaped by two powerful forces, namely colonial politics and the British legacy of a divided profession. In turn, both of these contributed to the unique definition of the general practitioner. Colonial politics pulled the early lawyers into building legal practices in harsh and unruly conditions, whilst the transportation of a divided profession from England pushed solicitors' practices to accept the miscellaneous work that was undesirable to the Bar. These influences are discussed below.

3.4.3.1 Colonial politics

An overview of the early admission cases[152] indicates that the first challenge for English lawyers, or the few English adventurers aspiring to be lawyers, was one of legitimacy. Early applicants for admission sought acceptability of their role in a fraught political and legal system based on convict labour and military rule. A notable example was the political tension between Governor Macquarie (1810-1821) and Jeffrey Hart Bent, the first Judge appointed to the Supreme Court (1814-1817), their conflict concerned whether former convict attorneys should be entitled to practise law. Macquarie supported

[148] Castles (n 91) 107.
[149] Ibid.
[150] Ibid.
[151] Ibid 66.
[152] The admission cases cover the period from 1827 to 1850. See 'Decisions of the Superior Courts of New South Wales, 1788-1899 - Macquarie Law School', *Macquarie University* (Web Page, 2011) <http://www.law.mq.edu.au/research/colonial_case_law/nsw/cases/subject_index/d-m/>.

their admission, whilst Bent intensely opposed it.[153] This disagreement caused a two-year delay in the commencement of the Supreme Court,[154] which had been established under the *Second Charter of Justice* in 1814.[155] The Court began sitting in 1817, when Bent was recalled to England.[156] Earlier in 1810, prior to the *Second Charter of Justice*, Jeffrey Bent's brother, Ellis Bent, the Deputy-Judge Advocate, advocated for more lawyers in the colony:

> If a few – three, or at most, four – attornies were to come out here, whose characters were respectable, complainants would naturally have recourse to them to be informed of the legal mode of obtaining redress, and the expense necessarily incurred by them in adopting this step would be the means of preventing any frivolous litigation.[157]

A subsequent challenge for former convict attorneys was the 1816 edict from Britain that former convict lawyers could only practise if there were 'less than two free lawyers in the colony'.[158] Britain ensured this requirement was met by sending two lawyers to the colony.[159]

Due to political and personal conflicts amongst barristers, judges and governors, the Supreme Court regulated the profession in accordance with the whim of the presiding judge, rather than as a commitment to the establishment of an 'honourable' profession with an obvious regulatory framework to address matters such as admission.[160] Tension between former convicts and free British arrivals, both vying for entry to the legal profession, was enunciated in the Supreme Court in preference to the development of consistent admission rules.

The absence of clarity about general practice began in these early years of the profession in colonial NSW. There was also a lack of consistency as to the precise 'role' of the

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[153] Castles (n 91) 106.
[154] Ibid.
[155] Ibid 105.
[156] Ibid 108.
[157] Letter to Under-Secretary Cooke, 7 May 1810, cited in John Michael Bennett and Alex C Castles (eds), *A Source Book of Australian Legal History: Source Materials from the Eighteenth to the Twentieth Centuries* (Law Book Co, 1979) 29.
[158] *Macquarie to Wylde and Field*, 11 March 1817, *HRA*, ser IV, vol 1, 856, referring to a despatch from Earl Bathurst of 18 April 1816, and *Bathurst to Macquarie*, 18 April 1816, *HRA*, ser I, vol 9, 107, cited in Castles (n 91) 110.
[159] Anthony Fisher, *From Norman Conquest to Rum Rebellion*, 3–20, cited in Bennett (n 89) 14. Bennett refers to this as 'spelling the doom of practice of the ex-convict attorneys': at 14.
[160] For example, Forbes notes that the original statue establishing the NSW Supreme Court made 'no specific provision for the legal profession'. Forbes (n 1) 32.

successful applicant upon admission in NSW. References to 'proctor', 'attorney', 'solicitor' and 'practitioner' are made in several cases, with some using three or four descriptors for one applicant.[161] The lack of rules and consistency of judicial decisions in relation to admission cases meant that the profession evolved in a haphazard way, with lawyers, once they overcame the hurdle of admission, etching out their own practice. The capacity and opportunity to practise in three or more areas within this environment reflects the history of the colony. It also highlights the difference between solicitors in the UK, who evolved through centuries and the US frontier lawyers who, as noted in Chapter Two, forged legal and political careers in areas of growth and expansion.[162]

The *Third Charter of Justice of 1823* (UK) sought to establish clear admission rules by establishing that the Court had authority to admit practitioners 'as well as in the Character of Barristers and Advocates as of Proctors, Attornies and Solicitors'.[163] Forbes considers the reference to 'as well as' as an intention to establish a 'single professional class'.[164] Despite this, the forceful influence of barristers ensured that the profession remained deeply divided. The need to maintain the traditions of the 'mother country' meant that barristers, who had been admitted in England, and solicitors, who had completed five years of articles in England, could be admitted to the Supreme Court of NSW.[165] However, subsequent cases referred to the overriding power of the Court to regulate admission on the basis of sufficiency,[166] including admission of 'fit and proper' unqualified persons.[167] In 1842, the Supreme Court issued a notice reminding unqualified lawyers that they were in breach of the law and that the Court would 'enforce the provisions of these statutes in every case where such irregularity may occur'.[168]

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[161] In the case of *Re Gellibrand* [1827] NSWSupC 59, reference to William Wentworth, who swore an affidavit in the case, was as 'one of the Attornies, Solicitors, and Proctors, of the said Court'. In *Ex Parte Pattison* [1828] NSWSupC 87, the case note provides that 'the *Australian* published the Rules of Court, including one dated 24 December 1825 on the admission of "Attornies, &c."' A person was not to be admitted as an attorney, solicitor or proctor unless he had been articled for five years, or he had previously been admitted in another court. The Rule also had a general qualification that 'such Admission shall be subject to the discretion of the said Court, to be regulated by the Spirit of the said Charter and the Circumstances of the Case'.
[162] See n 102.
[163] *Third Charter of Justice 1823* (UK) 2.
[164] Forbes (n 1) 32.
[165] Ibid.
[166] *Ex Parte Pattison* (n 161).
[167] Ibid.
[168] *Notice to Attorneys* [1842] NSWSupC 28.

3.4.3.2 British legacy of a divided profession

The British legacy of customs and practices is described by Pue, in relation to Canada, as: 'Our legal professions widely celebrate the English inheritance without knowing what it is we supposedly inherited'.[169] Indeed, the early admission cases reflect the 'Englishness' of the profession in the colony. They support the definition proposed in this thesis that is based upon this binary. In particular, several cases highlight the transportation of the divided profession from England and the 'superior' approach of the Bar. By the 1820s, the emergence of the role of solicitors and their types of practice are overshadowed by the British legacy of a divided profession.[170]

The three main historians of the legal profession, Bennett,[171] Forbes[172] and Castles,[173] agree that the separate branches were a significant feature in the profession's history. The English-inherited divided profession compromised the establishment of a cohesive legal profession. Judicial decisions as to whether the profession was divided or fused absorbed much of the Court's time and the press during the early colonial period. In the first *Bar Monopoly Case* of 1824, Chief Justice Forbes noted: 'We are not old enough, neither are we in the possession of sufficient wealth, to sustain an independent Bar'.[174] Current barristerial practices based on English tradition were discussed, such as barristers' immunity[175] and the privileges of the Bar.[176] These significant discussions, which were often the basis of the application before the Court, culminated with the judicial decision to maintain a separate profession. The Supreme Court approved the division of the profession in 1829. However, the matter was referred to London and not given final approval by the British until 1834.

In the 1834 case, following the British approval, the Supreme Court determined the operative effect of the rule for a divided legal profession. In reaffirming the power of the early barristers, Chief Justice Forbes opined: 'An Attorney is no more a Barrister, than he is a Physician, or a Doctor of Laws'.[177] A reporter covering the NSW barristers' celebration of the British-sanctioned division, described much drinking, applause and

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[169] Pue (n 107) 23.
[170] Van Diemen's Land did not follow the NSW structure of a divided profession.
[171] Bennett (n 89).
[172] Forbes (n 1).
[173] Castles (n 91) 181.
[174] *Division of the Profession (Bar Monopoly Case)* [1824] NSWSupC 17.
[175] *Bensley v Stroud* [1829] NSWSupC 18.
[176] *Division of Legal Profession* [1831] NSWSupC 5.
[177] *Division of the Legal Profession* [1834] NSWSupC 113. Source: *Sydney Herald*, 6 November 1834.

agreement as to the Bar's superiority over solicitors, including discussions about 'sweating' the attorneys, prepayment in cash, two counsel for each party, and deterring transportation of the English Bar to the colony.[178]

Forbes recognises this class division, explaining it as solicitors 'accepting' a lower status than barristers. He states: 'The attorney of the early nineteenth century knew his place, and it was not an exalted one'.[179] This 'supremacy' of the Bar is a core component of the hierarchy of the profession. Reference to this 'less exalted' work of solicitors during the 1850s can be found in the example of a solicitor who did not oppose a divided profession, being content with 'buying and selling… borrowing and lending money, preparing settlements and that sort of work'.[180] This division between the two branches, with the specialisation of barristers in advocacy and in specific practice areas, encouraged solicitors to be generalists and to offer 'many sorts of work'.

3.4.4 The Historical Foundation of the Sole General Practitioner: 1788-1840

Scholars of Australian legal history[181] and colonial case law extracts[182] provide insight into legal practice, which, as a result of the colony's establishment, had to be general in scope, with the early lawyers 'taking on' a range of matters.[183] As discussed earlier, the initial admission cases in the NSW colony suggest that these pioneer lawyers were undertaking a range of legal work, thus forming the first general practices. For example, the description of legal work provided by Crossley, Eagar and Chartres identifies a general practice and includes advice work, civil litigation, criminal law (prosecution and defence) and conveyancing.[184]

A reference from the mid-19th century regarding the areas of law practised by a solicitor reveals the diversity of legal work available:

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[178] Ibid.
[179] Forbes (n 1) 33.
[180] McCulloch, NSWPD, ser I (1881) 527, cited in ibid 58–9.
[181] Bennett (n 89); Castles (n 91); Forbes (n 1).
[182] These reports, published by Macquarie University, are taken from the *Sydney Gazette* or *Dowling, Select Cases*, Archives Office of NSW and commence in 1824. 'Colonial Case Law - Macquarie Law School', *Macquarie University* (Web Page, 2011) <https://www.law.mq.edu.au/research/colonial_case_law/>.
[183] Castles (n 91) 107.
[184] Ibid.

> I find it necessary to have a division… to get my business competently managed: one of my clerks manages the Equity, another the Common Law, another the Conveyancing and another the Insolvency business, and they all conduct their particular branches independently of each other.[185]

This reference to a range of legal 'business' evidences the existence and work of general practitioners and their intrinsic connection to the practice of law as a business. Furthermore, except for prosecution work, these areas are similar to contemporary general practice. The stories of these first lawyers, being former felons convicted and transported for dishonesty,[186] present characteristics associated with pioneers and entrepreneurs, such as establishing new territories, taking risks and seizing opportunities.

The necessity to forge into areas of legal need in the colony, or potential legal need, established the foundation for general practice and 'entrepreneurial' lawyering. The need to establish a demand for legal services led to an early poor reputation of the convict-populated profession, with the labelling of some lawyers as 'Pettifoggers'.[187] The extent of the practice of former convict attorneys was evident when they were no longer in practice, as the work of the Court decreased.[188] Castles describes their impact: 'They had drummed up business for the old Civil Court and many emancipists it would seem were not prepared to rely on others to take up their civil claims.'[189]

The colonial admission cases were not intended to address the nature of the practice in which applicants planned to work. As such, no details were recorded as to whether the applicants proposed to be in sole practice. Three cases refer to firms of more than one solicitor. In the *Bar Monopoly Case* of 1824, the Court notes that the barristers, Wentworth and Wardell, 'were keen to ensure that the public understood that although they had chambers in the same building, they were not partners'.[190] In *Re Stephen* [1842], the plaintiff, Mr Carr, is described as a 'respectable solicitor of the court'[191] from the

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[185] Ibid 72.
[186] Ibid 106.
[187] Simon Smith, *Barristers Solicitors Pettifoggers profiles in Australian Colonial Legal History* (Maverick Productions) 1. Pettifogger is described as 'An inferior legal practitioner, especially one who deals with petty cases or employs dubious practices.' Oxford English Dictionary 1.
[188] As reported by the *Examination of J Wylde, HRA,* ser IV, vol 1, 784. As Wylde summed up, if he were to admit Crossley and other ex-convict lawyers to practice before the court, 'I should find very probably that the suits would be as numerous as in the former period of the Colony.' See ibid 114.
[189] Castles (n 91) 106
[190] *Division of the Profession (Bar Monopoly Case)* (n 174).
[191] *Re Stephen* (1842).

firm Carr, Rogers and Young, which indicates a partnership. Similarly, in *Re Campbell* [1840],[192] the defendant's lawyer is referred to as 'Mr Smith of the firm of Chambers and Holden'.[193]

Three cases refer to single solicitors – one in Pitt Street, Sydney,[194] another mainly practising in criminal law[195] and another in Bathurst.[196] Interestingly, the third attorney was refused an appearance to represent his client in a criminal matter before a Magistrate in Bathurst.[197] In this case, it was noted that the reluctance of barristers to travel to courts of Quarter Sessions (Bathurst) resulted in the denial of representation to prisoners.[198]

Bennett's writings concerning the history of the NSW legal profession and Forbes' work regarding the history of the Australian legal profession offer insights into the size of the lawyer population and the structure of legal practice. However, neither directly address sole practitioners in general practice, nor offer any historical recognition or definition of this area of practice. Both historians focus on the narratives of the leading lawyers, many of whom had interests beyond the law, in politics, the land or industry.[199] These narratives include the partnering of lawyers to establish firms, with the occasional reference to sole practice. Some of these early partnerships were the forbearers of current large and mid-sized firms.[200]

Importantly, the definition adopted in this thesis excludes partnerships. Interestingly, Bennett frequently refers to practitioners entering partnerships,[201] including the first lawyer from Hobart who was 'for a brief time in partnership'[202] with another lawyer who was also admitted to practise in Van Diemen's Land.[203] Partnerships are also referenced in Bennett's description of solicitor applicants for admission from 1825 to 1830.[204] This is interesting as there is no reference to sole or general practice during this period. Bennett does refer later to sole practice in his recount of the number of firms in Sydney

[192] In *Re Campbell* [1840] NSWSupC 94.
[193] Ibid.
[194] *Bensley v Stroud* (n 175). Reference is to a 'Mr Owns in Pitt Street'.
[195] *Rowe v Wilson* [1825] NSWSupC 58. Reference is to Rowe as an 'English solicitor' with a practice 'largely in criminal law'.
[196] *Re Nichols* [1837] NSWSupC 5.
[197] Ibid.
[198] Ibid.
[199] For example, both authors cover William Charles Wentworth and Robert Wardell.
[200] See Bennett (n 89) ch 1.
[201] Ibid 42.
[202] Ibid 43.
[203] Ibid.
[204] Ibid 49–51.

in 1856. He notes that there were 21 firms 'with an appreciable number of sole practitioners'.[205]

The exclusion of partnerships from the definition proposed in this thesis is supported by this early colonial history. Forbes refers to the practice of W H Moore and Frederick Moore, English lawyers 'of good standing' between 1815 and 1825.[206] There is no information as to whether they were in partnership, although their names suggest they were related. Bennett refers to W H Moore being in a previous brief partnership before establishing a new partnership with his stepbrother, Charles Moore, which lasted from 1828 until Charles' early death in 1834.[207] Sole practice appears as a contingency position when partnerships are terminated, either because of the death of a partner[208] or dissolution of the partnership.[209]

3.4.5 The 'Evolving' Sole General Practitioner: 1840 Onwards

Penal roots and authoritarian rule marked the first stage of English settlement in NSW and Van Diemen's Land. Convicted and transported lawyers, prompted by the 'legal' needs of the colony, returned to legal practice. The mark of a penal colony dissipated with the increase of immigrants, the emancipation of convicts to free settlers and the end of transportation to NSW in 1840.[210] Castles notes that by 1847, the convict population was 3.2% of the entire NSW colonial population.[211] The states of QLD, Victoria and WA[212] had smaller convict settlements, whilst SA was a free settlement. All states provided opportunities for lawyers to establish themselves within new communities centred on gold, wool and wheat. Castles writes: 'The influx of immigrants to Australia, and notably so in the mid years of the century, had also brought with it a comparatively large number of legal practitioners anxious to make their way in the colonies'.[213]

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[205] Ibid 69.
[206] Forbes (n 1) 32.
[207] Bennett (n 89) 49.
[208] Ibid 161.
[209] Ibid 64. Smith also refers to the dissolution of a partnership between William Thurlow and Charles Chambers in 1842 with Thurlow setting up a sole practice with an articled clerk, James Macpherson Grant, with whom he took into partnership upon his admission in 1847. (n 187) 169.
[210] Transportation to Van Diemen's Land ended in 1853.
[211] Castles (n 91) 153.
[212] WA was made a penal colony by the British Government in 1849. The last transportation to WA ended in 1869. 'Convict Transportation', *National Museum of Australia* (Web Page, 2020) <https://www.nma.gov.au/defining-moments/resources/convict-transportation>.
[213] Castles (n 91) 342.

Throughout the second half of the 19th century, the number of NSW solicitors steadily increased, book-ended by the discovery of gold in the 1850s and growth in wealth generated from wheat and sheep in the 1890s. In 1856, there were ten country practitioners in NSW, including two partnerships.[214] Country areas included Parramatta, Campbelltown and Windsor, which are all now considered to be part of greater Sydney, as well as Bathurst, Goulburn, Brisbane and Ipswich, the latter two locations later becoming part of QLD.[215]

The collective strength of solicitors grew in the 1840s with the establishment of law societies. The NSW Law Society was established in 1842 to 'promote good feeling and fair and honourable practice amongst the members of the profession'.[216] The Law Institute of Victoria was founded in 1859. Tension between rural and city practitioners is evident in the history of the societies, particularly in relation to representation of interests. Referring to the Victorian association, McQueen explains:

> City-based practitioners were more concerned with maintaining the reputation of the profession, whilst country solicitors and sole practitioners in the city were more concerned with keeping costs low and maintaining market control, particularly in bread and butter areas of practice.[217]

The role of law societies was primarily to manage the significant stages in the life of a solicitor, including admission and discipline. This regulatory power gave the societies status[218] and allowed them to be the voice of solicitors in policy and public matters that affected the profession.

The establishment of professional associations can be considered the commencement of the era of modernisation for solicitors. The associations became lobby groups for their members, or for certain interests within the profession, and were also established to regulate the profession. This places lawyers in an interesting position, where their professional association functions as both their representative and regulator. As discussed

[214] Ibid 92.
[215] Ibid 92–103.
[216] Bennett (n 89) 142.
[217] Rob McQueen, 'Together We Fall, Divided We Stand: The Victorian Legal Profession in Crisis 1890-1940' in W Wesley Pue and David Sugarman (eds), *Lawyers and Vampires: Cultural Histories of Legal Professions* (Hart Publishing, 2003) 293, 325.
[218] Ibid 297.

in Chapter Seven, there is a degree of conflict between these roles, which confuses the relationship between the association and the sole general practitioner.

Solicitors generally practised as independent lawyers until the 1870s, when partnerships increased in popularity,[219] providing an alternative business structure. In the early days of this new model of practice, partners continued to be general practitioners until a recognition that efficiency, and therefore profitability, required specialisation.[220] This shift from general to specialist practice had two significant consequences. A focus on specific corporate areas of practice harnessed the image of corporate firms as expert business and legal advisors. Secondly, specialisation became the new mode of practice, with an emerging recalibration of practice focused on the business of law rather than the profession of law. This new partnership model further distanced itself from the traditional small firm serving individual clients with diverse and general legal needs.

3.4.6 The 'Disappearing' Sole General Practitioner: The Last 50 Years and Changing Legal Practice

The need to draw upon colonial history of the legal profession to identify and trace a definition of the sole general practitioner stems from the absence of existing literature that clarifies their role and function. In the last 50 years, historical scholarship on the Australian solicitors' profession emphasises two dynamics: changes in the organisational structure of the profession and its ethical and regulatory framework.[221] These factors and their impact in the last two decades are significant and are also analysed in the following chapter. A third relevant area of attention is the statistical growth of the profession, as illustrated in Chapter Two.

Since the 1970s, the factors of greater complexity in the law, new areas of legislation and increased scrutiny of the profession have affected sole general practice. Increased complexity in the law, particularly in corporate and commercial law, has required lawyers to have a detailed, as well as broad, understanding of legal and business structures, regulation and legislation, thus restricting the ability to be a general

[219] Oliver Mendelsohn and Matthew Lippman, 'The Emergence of the Corporate Law Firm in Australia' (1979) 3(1) *University of New South Wales Law Journal* 78, 95.
[220] Ibid.
[221] Paula Baron and Lilian Corbin, *Ethics and Legal Professionalism in Australia* (Oxford University Press, 3rd ed, 2020); Dal Pont (n 37); Julian Disney et al, *Lawyers* (Law Book Company, 1977); Adrian Evans, *The Good Lawyer* (Cambridge University Press, 2014); John Littrich and Karina Murray, *Lawyers in Australia* (Federation Press, 4th ed, 2019); Parker and Evans (n 39).

practitioner. The demand for detailed knowledge in an area has led to specialisation. Statute law in taxation, consumer protection, directors' duties and company regulation has meant that clients, mainly business and corporate, have increasingly required expert legal advice to ensure compliance in a regulated neo-liberal market.[222] This era of heightened regulation has also included the legal profession, with the establishment of independent bodies to investigate complaints against lawyers and to lobby for greater consumer protection. The introduction of a regulator,[223] charged with the function of protecting consumers of legal services, has resulted in an increase in the dissemination of complaints and misconduct cases against lawyers. As discussed in Chapter Two, a significant number of these cases concern sole practitioners.

3.5 Conclusion

The written history of the Australian legal profession largely ignores the sole general practitioner and the fundamental role they have undertaken, and continue to undertake, in their communities. Indeed, the absence of a voice for the sole general practitioner has resulted in the emergence of myth and nostalgia defining their image. Consequently, this cohort requires definition and recognition to protect and enhance its role within the profession and its client base. Given its non-existence as a defined cohort for over 200 years, the need for a definition of the sole general practitioner is now critical. This cohort is deserving of recognition for the work they undertake to ensure legal services delivery to their client base.

The establishment of a definition of sole general practice, as undertaken in this thesis, is a major initiative. It is necessary in order to gain an understanding of the experiences of these solicitors who, on their own, account for their practice and offer legal services in at least three areas of the law. The work of today's lawyers is much more diverse than the early English male attorneys who developed as one cohort, distinct from barristers.

[222] Sexton and Maher suggest that the connection between law and business was facilitated in the 1970s through the appointment of solicitors to company directorships. Michal Sexton and Laurence W. Maher, *The Legal Mystique The role of lawyers in Australian society* (Angus & Robertson, 1982) 80.

[223] The NSW Legal Services Commissioner, as the first of these regulatory bodies, was established in 1994. Currently in Australia, each of the six states have an independent agency tasked with disciplinary oversight, whilst in the two territories, the law societies manage regulation and discipline. These consist of the Law Society of the ACT, New South Wales Legal Services Commissioner, Law Society Northern Territory, Legal Services Commissioner of Queensland, Legal Profession Conduct Commissioner of South Australia, Legal Profession Board of Tasmania, Legal Services Board of Victoria and the Legal Practice Board of Western Australia.

Today we have descriptions according to practice areas – the corporate lawyer, the family law lawyer, the criminal lawyer, the tax lawyer, etc. These descriptions are a result of the expansion and specialisation of the work of lawyers caused by the diversity of clients and their various legal needs.

This chapter has examined the obvious contradiction between the noteworthy numerical presence that the sole practitioner holds in the profession and the generalisation of their function, which is embedded within history and the definitions offered by the law itself. To highlight this contradiction, this chapter has demonstrated that the evolution of the common law lawyer in England, and subsequently in the US and Australia, includes a consistent and robust presence of sole practitioners. Put simply, the profession's origins are based on sole general practice and constitute a well-trodden path from establishment to the present. In the early NSW colony, a few individual 'characters'[224] attracted notoriety through their political and economic power. These lawyers considered themselves members of the Bar, not the 'lesser' solicitors' ranks. In contrast, the solicitors who resolved to be sole practitioners, or by default ended up as such, continued to practise 'local' general law and to meet client and community needs. A number identified the need for legal services in rural areas, and later, in the suburbs. It is beyond city practice that the status of the lawyer as a community leader has greater visibility.

Against a history of tension directed from the Bar and the ostensibly appealing alternatives of partnership, sole practitioners have established a place in their communities, particularly in suburban and rural areas. Their availability to undertake practice in a range of legal areas has provided them with a significant local profile. For these lawyers, the local community is a critical referral source. For the community, local lawyers, through their accessibility, familiarity and role as holders of legal knowledge, have a heroic and virtuous reputation. Some of these lawyers have taken on formal or informal leadership roles and have been considered prominent advocates and trusted advisors.

Most importantly, sole practitioners share a history of independence and struggle in a legal and political system dominated by the Bench, Bar and powerful individuals and corporates. This unique Australian history is well aligned to a distinctively Australian definition. These solicitors have responded to legal needs where others have not wanted

[224] For example, Wentworth and Wardell discussed at n 199.

to do so, whether through taking on work considered to be miscellaneous or trivial, or being 'willing to trust to luck'[225] in new locations. They are also characterised by their diversity in terms of location, organisational structure and their philosophy of sole practice. The themes that emerged from the interviews conducted for this thesis reflect this independence, resilience and diversity.

In summary, this chapter confirms that the role of the sole general practitioner is overlooked and undervalued. Into this gap has stepped myth and nostalgia to create the image of a self-motivated and resilient advocate. Accordingly, there is a need for a definition of the sole general practitioner. The definition adopted in this thesis is built upon the four available sources of information that may be utilised to define the general practitioner: data and statistics, as discussed in Chapter Two, and legal definitions and history, as examined in this chapter. Each fails to provide a nuanced definition of sole general practice and, accordingly, this thesis moves to address this lacuna. In summary, the sole general practitioners who are the subject of this thesis, and whose collective experiences are shared, are defined by two core characteristics:

- a principal practising as a sole trader who may employ non-legal staff and/or non-principal lawyers, and
- offering clients a range of legal services in three or more practice areas.

These criteria are developed through understanding, constructing and defining their role based upon the legal, statistical, historical and regulatory context of their practice. Instead of the system defining the practitioner, it is the context within which they are situated that highlights the unique role that they play within a profession that largely ignores their practice and presence.

The historical experiences of the sole practitioner and the narratives of the participants in this study, addressed in this and the following chapter, are different to other lawyer cohorts, including corporate solicitors and barristers. This difference is confirmed by the interviews with the study's participants. The divergence of the two spheres of practice confirms the critical need for a separate definition. This is particularly relevant for the sole general practitioner who faces increasing challenges, including the changing legal

[225] Bennett (n 89) 227.

services market over the last two decades. The place of the sole general practitioner in this market is considered in the following chapter.

4 THE PLACE OF THE SOLE GENERAL PRACTITIONER IN THE AUSTRALIAN LEGAL SERVICES MARKET

...we should accept that no institution, however gorgeous, is impervious to change. This is least of all so in a profession which repeatedly boasts of its adaptability and which rests upon the foundation of the common law which is truly one of history's success stories in its capacity to adapt (sometimes quite rapidly) to changing times.[1]

4.1 Introduction

The law permeates all aspects of the social, regulatory and economic framework in which the community operates. In this context, its changing presence is shaped by external influences, such as globalisation, competition, regulation and technology. Within the

[1] Michael Kirby, 'Legal Professional Ethics in Times of Change' (Speech, The St James Ethics Centre Forum on Ethical Issues, 23 July 1996) 15 <https://www.hcourt.gov.au/assets/publications/speeches/former-justices/kirbyj/kirbyj_stjames2.htm>.

practice of law, internal factors of professional culture, including diversity, attrition and workplace health, have a continuing effect on lawyers, individually and as a collective.

The impact of external influences has resulted in polarisation of the private profession. Throughout the Global Financial Crisis ('GFC'), the 'two hemispheres'[2] of the profession, discussed in Chapter Two, were accentuated by the effect of the GFC on corporate firms and their recovery response to the subsequent lengthy recession. Holistically, as discussed in this chapter, these external influences primarily benefit the profession's commercial sphere through increased financial opportunities and control over the purpose of the profession and its professional associations. In contrast, the personal sphere has been relegated to a tokenistic reference of 'holding back the profession'.[3] As sole general practitioners are commonly individual sphere lawyers, they are less resourced and cohesive in understanding and advocating the benefits of their role both within and beyond the profession.

This chapter examines this deepening divide between the corporate and the individual law practice. In particular, it evidences that this divide has been accelerating throughout the last 20 years and that attention to sole general practice is critical to ensure continued access to legal services. Indeed, this chapter argues that the promotion of the commercial 'hemisphere' of legal practice diminishes the presence of the sole general practitioner and, as a result, there is less attention given to the criticality of access to legal services for many in the community.

This chapter follows on from Chapter Two in analysing the historical catalysts of change acting upon the Australian legal profession, and from Chapter Three in identifying the challenges for this cohort throughout the history of the profession in Australia. As concluded in Chapter Three, the history of the sole general practitioner is one of both abandonment and resilience. The purpose of this chapter, therefore, is to critique the transformative changes in the Australian legal profession over the last two decades in order to evidence further this cohort's ongoing abandonment and resilience. In doing so, the external and internal developments in the legal services market are outlined and their likely impact on sole general practitioners assessed. In order to appreciate what this

[2] Law Council of Australia, *2010 Discussion Paper: Challenges for the Legal Profession* (Discussion Paper, 2001) 2 ('*2010 Discussion Paper*'). The paper refers to the commercial and personal tiers of solicitors. This segmentation was identified earlier by several US scholars, as discussed in Chapter Two.
[3] An example of this is the reason given for the delay in a Uniform Profession, being the reluctance of sole and small firms to join. This is discussed later in the chapter at Section 4.3.

means for our knowledge and understanding of this cohort, this chapter examines the impact of this transformation on these solicitors. In Chapter Six, this is then analysed through the context of the participants' experiences.

This chapter begins by identifying the GFC as a critical catalyst for the profession and the practice of law in Australia (Section 4.2). The GFC and its subsequent effect on the economy compelled the profession's corporate sphere to move into new global markets. With this increased internationalisation came further competition amongst corporate firms. For the sole and small firm practitioner, this has further reduced their visibility in the profession through greater segmentation and increased competition.

This chapter then examines how regulatory changes to the structure of private firms and the profession have impacted sole practices (Section 4.3). The consequences are varied. The positive impact of broader regulation of business structures is considered in light of the popularity of incorporation for sole and small firm practices. In contrast, the negative impact of a national regulatory system is examined, particularly within the context of the potential impact of the Uniform Law. New business structures and associated regulation are both an opportunity for greater financial agility and a challenge in relation to excessive regulatory compliance.

In the third part of this chapter (Section 4.4), technology-driven change is analysed within a framework of existing research and discussion, and on the basis that its future impact on the profession is evolving. For the sole and small firm practitioner, technology-driven innovation currently brings both positive and negative consequences. The effect of COVID-19 as a catalyst for increased use of technology in the delivery of professional services is also considered.

The culture of the profession, with a focus on the corporate private sector, is then addressed (Section 4.5). Whilst the long-term effects of a documented negative culture in the private profession are not fully known,[4] this is a timely consideration, particularly in light of the considerable research on the incidence of mental health and the level of

[4] For example, in 2019 the Law Council of Australia prepared a submission for the Australian Human Rights Commission's inquiry into sexual harassment in workplaces in Australia. The submission refers to the *NARS Report* discussed later in this chapter. The *NARS Report*, published in 2014, made various recommendations and the Law Council introduced several policies in response to the report. The effectiveness of the recommendations and policies have not been evaluated. Similarly, the *Courting the Blues* report of 2009, also referred to later in this chapter, has not been updated or reviewed.

harassment and bullying within the profession. Indeed, sole and small firm practice has frequently been a refuge for lawyers opting out of harmful corporate workplaces.

Finally, this analysis of the collective effect of transformation in the Australian legal services market on sole and sole general practice concludes that changes in the legal services market have disproportionately favoured the corporate sphere. The most significant insight from this transformation is its exacerbation of the divide between these two sub-branches of the solicitors' profession identified in Chapters Two and Three.

4.2 The GFC and the Emergence of the Corporate Firm as an International Mega-Firm

The GFC of 2007 and 2008 had a momentous effect on the corporate world, including the legal profession. Due to the nature of their legal services and their predominantly corporate client–base, the large corporate firms experienced the greatest impact. Professional commentaries in the US noted in 2013 that, the significant decrease in demand for legal services meant that the market was continuing 'in its fifth year of an unprecedented economic downturn'[5] caused by the GFC, whilst the commercial climate for legal services remained 'in the financial doldrums'.[6]

Although Australia was considered to have managed more effectively than other countries during the GFC,[7] Australian corporate law firms were part of the response to the GFC. Globally, corporate firms pursued new work, leading to increased internationalisation, an expansion of global markets and heightened competition in the legal services market. Expansion transformed the landscape of private legal practice through mergers of several large Australian firms with overseas practices.[8] For example,

[5] Georgetown University Law Center and Thomson Reuters, *2013 Report on the State of the Legal Market* (CSLP Papers and Reports, 1 January 2013) 1 <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1003&context=cslp_papers>.
[6] Ibid 2.
[7] Jennifer G Hill, 'Why did Australia Fare so Well in the Global Financial Crisis?' in Ellis Ferran et al (eds), *The Regulatory Aftermath of the Global Financial Crisis* (Cambridge University Press, 2015) 203. Hill notes that 'Australia appears to have withstood the crisis remarkably well': at 203.
[8] Georgetown University Law Center and Thomson Reuters (n 5) 7. For example, London's Herbert Smith with Australia's Freehills, UK's Ashurst with Australia's Blake Dawson, China's King and Wood with Australia's Mallesons Stephen Jacques, K & L Gates with Australia's Middletons, as reported: at 8. The 2013 report notes that in that year, the greatest number of mergers compared with previous years was experienced.

in 2005, there were six international firms in Australia; in 2015, there were over 25.[9] Whilst these mergers were generally confined to the top-tiered law firms,[10] the result was intensified competition amongst national markets vying for the work of the top-tiered firms. The international focus adopted by these firms, combined with federal government interventions,[11] resulted in greater globalisation and expansion of legal services, particularly into Asia.

Globalisation further fragmented the legal profession. Whilst the effects of the GFC have been described as 'difficult and challenging',[12] 'turbulent'[13] and creating 'a competitive legal services market',[14] the resulting competition has led firms to shift to a 'new and creative'[15] delivery of legal services, which brings 'challenges and disruption to traditional forms of practice'.[16] Yet while corporate firms shifted and adapted, sole and small firm practices largely continued to operate in the traditional manner. Internationalisation has been a catalyst of change for corporate firms, but it has had less bearing on other sections of the profession, such as sole and small firm practices.[17] Similarly, the growth in international law as an area of practice with multi-jurisdictional matters and increased commercial work on a transnational level has further accentuated this fragmentation. Whilst sole and small firm practices may have matters that involve international law[18] or clients who reside overseas,[19] international legal work is not common.[20]

Fragmentation of the private profession is also apparent in the context of graduate employment. As argued in Chapter Two, a career in the corporate world is the goal of

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[9] Steve Nunn of Carlyle Kingswood, quoted in Melbourne Law School and Thomson Reuters, *2015 Australia: State of the Legal Market* (Melbourne Law School, University of Melbourne, 2015) 12 <https://law.unimelb.edu.au/__data/assets/pdf_file/0006/1689153/2015AUReportFINAL1.pdf>.
[10] Ibid.
[11] For example, through the International Legal Services Advisory Council established by the federal government in 1990.
[12] Melbourne Law School and Thomson Reuters (n 9) 1.
[13] Pascoe Pleasence, Nigel Balmer and Richard Moorhead, *A Time of Change: Solicitors' Firms in England and Wales* (Report, commissioned by the UK Law Society, Legal Services Board & Ministry of Justice, July 2012) 1 <http://www.pascoepleasence.com/_Media/A%20Time%20of%20Change.pdf>.
[14] Office of the Legal Services Commissioner, *The Office of the Legal Services Commissioner 2011-2012 Annual Report* (The Office of the Legal Services Commissioner, 2012) 20 <http://www.olsc.nsw.gov.au/Documents/annual%20report%202011_2012%20accessible.pdf>.
[15] Georgetown University Law Center and Thomson Reuters (n 5) 1.
[16] Pleasence, Balmer and Moorhead (n 13) 53.
[17] Two city participants in this study, Robert and Susan, and one suburban solicitor, Larry, act for international clients.
[18] For example, in family law.
[19] For example, overseas purchasers of real property.
[20] This is evident in the list of practice areas that firms promote on websites or shop-front offices.

many law graduates. The esteem in which such careers are revered is evidenced by the prevalent concern that the GFC reduced the number of graduate positions available in the large law firms.[21] Whilst this is not directly relevant to sole and small firm practices, there may have been a greater number of graduates looking for alternative positions to the graduate programs as a consequence of the GFC.

In summary, the post-GFC period enabled well-placed Australian corporate firms to establish a presence in international markets. Nationally, this meant that the profession's commercial and personal spheres became more acutely opposed.

4.2.1 Post-GFC and Increased Competition and Privilege

The impact of the GFC on corporate firms led to increased competition in pursuit of expanded client bases. Competition grew out of the power of the corporate client to negotiate legal work, creating a market where firms focus on their capacity to offer the most effective services.[22] Competition has also emerged as a consequence of globalisation, as acknowledged with the passing of the *Legal Profession Uniform Law Application Bill* in the Victorian Parliament in 2014:

> With NSW and Victoria collectively being home to nearly three-quarters of Australian legal practitioners and a significant majority of Australian law firms, the uniform law is a major step on the path to national uniformity of regulation of the Australian legal profession, and is a critical development at a time when Australian law firms face increasing competition from overseas and are themselves looking to expand into emerging markets.[23]

This increased competition is indicative of significant transformation in the legal services market. Transformation occurs on two levels – the authority of the client and the privilege of the corporate firm. Each is discussed below.

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[21] Lara Bullock, 'The Black Hole', *Lawyers Weekly (Sydney)* (online, 22 August 2016) <https://www.lawyersweekly.com.au/partner-features/19406-the-black-hole>. Although not specifically related to legal employment, Graduate Careers Australia reported a 'fall in the full-time employment figure because of the global economic downturn' in 2009. Graduate Careers Australia, *Grad Stats: Employment and Salary Outcomes of Recent Higher Education Graduates* (Report No 14, December 2009) <https://www.graduatecareers.com.au/files/wp-content/uploads/2012/01/gca001225.pdf>.

[22] For example, firms tendering for government legal work must include their pro bono contributions. 'Provide Pro Bono Assistance - Government Tender Arrangements', *Australian Pro Bono Centre* (Web Page, 2021) <https://www.probonocentre.org.au/provide-pro-bono/government-tender-arrangements/>.

[23] Victoria, *Parliamentary Debates,* Legislative Council, 12 September 2019, 3163 (Edward O'Donohue).

Firstly, the corporate client's authority to negotiate legal services and the resultant competition to supply these services constitute a major shift in the relationship between lawyer and client, where the client now firmly exerts the power. As observed in Chapter Two, Bagust identifies this shift in the contractual relationship between corporate client and lawyer in Australia as one in which the lawyer becomes subservient to the client.[24] Based on empirical evidence,[25] Bagust defines the corporate client as the 'dictator'[26] determining who will carry out the work, where the work will be undertaken, when the work will be performed and the method of reporting progress to the client.[27] A key finding of her study is the lack of professional autonomy that corporate lawyers are able to exercise because of client demands within a profit-maximisation structure where the lawyer is the service provider.[28] Bagust concludes:

> The propensity of corporate law firms to focus constantly on the client list and the profit motive no doubt functions to affect the professional autonomy of individual lawyers, ethical corporate legal practice and, it follows, the integrity of the legal profession itself.[29]

Lack of professional autonomy is a critical factor in the changing legal services market and evidences the increasing segmentation of the typology of clients, positioned as the extremes of individual and small business versus corporate.[30]

Secondly, the privilege of the corporate firm is reinforced by the support of government and professional associations that allow corporate firms to shape the legal services market for their own benefit and that of their clients. Rogers et al identify the basis for

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[24] Joanne Bagust, 'The Legal Profession and the Business of Law' (2013) 35(1) *Sydney Law Review* 27, 43.
[25] Ibid 29-30. Empirical evidence consisted of interviews with 50 lawyers from five top-tier and five mid-tier Melbourne firms. The lawyers were partners, employed solicitors and former lawyers of the firms.
[26] Ibid.
[27] Ibid 43.
[28] Ibid 40.
[29] Ibid 49–50.
[30] Governments are also clients and, as described by Weisbrot, are as 'powerful' as corporates. David Weisbrot, *Australian Lawyers* (Longman Cheshire, 1990) 44. Although, as a 'model entity', the government does not exert the same authority nor challenge the autonomy of the corporate client. For example, the NSW Government has a Model Litigant Policy that requires government agencies to conduct civil litigation 'ethically, fairly and honestly' and to adhere to 'best practice'. 'Model Litigant Policy', *NSW Government Department of Communities & Justice* (Web Page, 2016) <https://www.justice.nsw.gov.au:443/legal-services-coordination/Pages/info-for-govt-agencies/model-litigant-policy.aspx>. The Victorian Government has similar requirements set out in the 'Victorian Model Litigant Guidelines', *Victoria State Government Department of Justice and Community Safety* (Web Page, 2011) <https://www.justice.vic.gov.au/justice-system/laws-and-regulation/victorian-model-litigant-guidelines>. Commonwealth agencies are also bound by the model litigants' duties as prescribed in the *Legal Services Directions 2005* (Cth).

this privileging as one of 'regulative bargaining',[31] where 'elite'[32] firms dominate the market through the guise of professionalism.[33] The authors conclude:

> Large firms have reached a commanding position by way of their effective break from the traditional model of self-regulation, which is based on individualistic and community values, and associational controls. They have become their own locations of professional regulation and meaning, deploying hybrid forms of professionalism for their own purposes.[34]

Rogers et al present a case study examining the power of Law Firms Australia[35] in securing equal or greater status compared with larger populated constituents in the Law Council of Australia,[36] thereby demonstrating that the size of an entity is not the determining factor in the distribution of authority.[37] Rather, matters of determination are economically-driven, as seen in Law Firms Australia's arrangement with the Law Council to financially support the professional associations of NSW and Victoria through their significant membership fees.[38]

Commentary on the legal services market continues to focus on corporate clients and their lawyers, including the 'Big 8 Firms'[39] and other corporate firms.[40] In contrast, sole and small firm practices lack the resources to form a collective with similar lobbying power to that of large corporate firms. This is significant for advocacy to government and professional associations in relation to decisions that affect the delivery of legal services, particularly for individual and small business clients.[41]

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[31] Justine Rogers, Dimity Kingsford Smith and John Chellew, 'The Large Professional Service Firm: A New Force in the Regulative Bargain' (2017) 40(1) *University of New South Wales Law Journal* 218, 219.
[32] Ibid.
[33] Ibid.
[34] Ibid 257.
[35] Law Firms Australia represent nine of the largest law firms in Australia. These are Allens, Ashurst, Clayton Utz, Corrs Chambers Westgarth, DLA Piper Australia, Herbert Smith Freehills, King & Wood Mallesons, MinterEllison and Norton Rose Fulbright Australia. 'Law Firms Australia: About', *LinkedIn* (Web Page, 2021) <https://www.linkedin.com/company/law-firms-australia/about/>.
[36] Rogers, Smith and Chellew (n 31) 254.
[37] Law Firms Australia has a significantly smaller membership compared with the state and territory law societies that make up the constituent bodies of the Law Council of Australia.
[38] Rogers, Smith and Chellew (n 31) 254.
[39] The 'Big 8 Firms' are defined as the firms in Australia with the largest number of lawyers. Melbourne Law School and Thomson Reuters (n 9) 3.
[40] Each year Thompson Reuters publish an annual White Paper on the *State of the Legal Market* in Australia. Up until 2019, Melbourne Law School co-authored these reports. These reports focus on the corporate sector and trends in international and national markets.
[41] Examples of an increasing division between large corporate and small firms are the high costs of litigation, including filing fees and the reduction and removal of general areas of practice, such as personal

The challenges and trends in the corporate sphere also affect sole and small firm practices. Competition from non-lawyers is one such challenge. In particular, competition with non-legal providers has increased, with financial, accounting and estate management sources moving into the legal services market. Corporate firms compete for clients with the major professional services firms.[42] The capacity of sole and small firm practices to expand their legal services into areas such as financial management and estate planning is challenged by competition from non-legal providers.[43] Sole and small firms have also lost work to conveyancers, self-help guides and processes,[44] self-represented litigants[45] and direct briefs to barristers.[46] In addition, the trend of poor remuneration for legal aid work has constrained their capacity to undertake this work[47] and the potential work that may flow from legal aid cases, such as referrals and privately-paid matters. The challenge of poorly-funded work has a direct consequence for access to legal services.

injury, workers' compensation, victims' compensation and conveyancing. In addition, the allowance of direct access briefs to Counsel eliminates the place of the instructing solicitor.

[42] Misa Han and Katie Walsh, 'Law Firms Turnaround Cautious Approach to Innovation: CBA Report', *Australian Financial Review (online)* (online, 2 March 2018) <https://www.afr.com/companies/professional-services/law-firms-cautiously-spending-on-innovation-20180226-h0wmku>; Michael Pelly, 'How Law Firms are Fighting off the Big Four Consulting Firms', *Australian Financial Review* (online, 27 June 2019) <https://www.afr.com/companies/professional-services/law-firms-defiant-as-pwc-kpmg-expand-into-their-turf-20190625-p52198>.

[43] Several participants in this study referred to competition from accountants in relation to business advice for clients.

[44] For example, the Victorian 'Victims of Crime Assistance Tribunal', *VOCAT* (Web Page, 2016) <https://www.vocat.vic.gov.au/> and the NSW 'Victims Support Scheme', *NSW Government Department of Communities & Justice* (Web Page, 2021) <https://www.victimsservices.justice.nsw.gov.au:443/Pages/vss/vs_financial_support/vs_financial_support.aspx>. The Family Court of Australia provides do it yourself kits for divorce applications, consent orders and other proceedings – 'Do It Yourself Kits', *Family Court of Australia* (Web Page, 2020) <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/forms-and-fees/court-forms/diy-kits/>.

[45] Whilst statistics on the number of self-represented litigants from a range of courts are lacking, the perception that the number of self-represented litigants in civil and administrative matters in Australia is increasing 'does appear to be supported, to a limited extent, by some court data and isolated studies'. Liz Richardson, Genevieve Grant and Janina Boughey, *The Impacts of Self-Represented Litigants on Civil and Administrative Justice: Environmental Scan of Research, Policy and Practice* (Report, Australasian Institute of Judicial Administration, 9 October 2018) 28 <https://aija.org.au/wp-content/uploads/2018/11/SRL-Policy-and-Practice-FINAL.pdf>.

[46] *Legal Profession Uniform Conduct (Barristers) Rules 2015* (NSW) r 22.

[47] Two participants in this study, Gavin and Kieran, revealed that they no longer undertook legal aid work because of the low remuneration. In the 2019-20 annual report of NSW Legal Aid, Craig Smith, Chair, noted that the additional funding of $88 million across four years would enable the first fee increase to private lawyers in 12 years. He also noted that 70% of private lawyers were engaged in case work and 40% undertook duty services. Legal Aid New South Wales, *Annual Report 2019–2020: Delivering Services When and Where our Clients Need Them* (Report, Legal Aid NSW, November 2020) 5 <https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0003/42546/201116_2020_LANSW_Annual_Report_WEB.pdf>.

Competition also results from the growth of NewLaw firms,[48] boutique firms[49] and non-legal professionals undertaking legal work,[50] all with the capacity to attract clients away from general practice. Although the number and 'profile'[51] of clients who seek out these alternatives in preference to a general practitioner are not known, factors such as online accessibility and competitive fees have a bearing on clients' decision-making when seeking legal assistance.[52]

These changes to the profession have significantly impacted, or have the potential to impact,[53] the sole practitioner. For some, this impact has led to structural change within their practice. For example, increased competition has prompted some sole practitioners to take up opportunities to secure the viability of their practice. For city practitioners, Chambers Practices, based on a similar model to the Bar, enable a sharing of the costs of managing their business, including staff and office space.[54] However, this structure may not be suited to suburban solicitors due to the smaller numbers of practitioners in individual suburbs, and even in more populated suburbs, solicitors could be seen to be in competition with each other. In rural areas, there may also be insufficient practitioner numbers to cluster into one office location. Other opportunities to financially sustain sole practices include engagement of contract lawyers[55] or locums[56] to assist with workflow and staff management. The effect of new approaches to private practice is discussed in Chapter Seven.

In the last two decades, the place of the sole general practitioner in the Australian legal services market has been challenged by firstly, a further 'shift and lift' in the status of the corporate firm through internationalisation; secondly, competition from non-lawyers; and

[48] The 2015 report refers to a 'flurry' of 'NewLaw startups' in 2012, 2013 and 2014. Melbourne Law School and Thomson Reuters (n 9) 13.
[49] Ibid 12.
[50] Ibid 13. The 2015 report provides the examples of real estate agents, conveyancing and leasing services.
[51] Factors such as age, location, digital literacy and past experience may influence clients in deciding to seek non-traditional legal services.
[52] Law Council of Australia, *Legal Futures Summit* (Background Paper, 13 September 2018) 39 <https://www.lawcouncil.asn.au/docs/002689ca-c104-e911-93fc-005056be13b5/Background%20Paper%20-%20Futures%20Summit.pdf> ('*Legal Futures Summit*').
[53] As discussed in Chapter Seven, NewLaw is initially targeting the business client. This may have an impact on the small business clients of sole practitioners. NewLaw has less of a presence in matters that affect individual clients.
[54] In this study, Jason practised in a Chambers Practice.
[55] In this study, Larry used contract lawyers during busy periods.
[56] In this study, Lara engaged a locum to assist with workload.

thirdly, decreased financial support in the provision of access to legal services for the private profession.[57]

4.3 New Business Structures and Regulation

As with the impact of competition, government regulation of law practices has resulted in consequences for the entire solicitors' profession. These consequences have advantages and disadvantages for sole and small firm practices.

Building on the success of Incorporated Legal Practices ('ILPs'), the *Legal Profession Uniform Law* provides for a range of business structures that attempt to balance a level of autonomy for lawyers with protection of clients. The *Legal Profession Uniform Law (NSW)* sets out the legislative objectives:

> The objectives of this Chapter are—
>
> (a) to enable the provision of legal services through a range of business structures; and
>
> (b) to ensure that any particular type of business structure does not hinder a law practice and the legal practitioners within it from complying with this Law, the Uniform Rules and the other professional obligations of Australian legal practitioners; and
>
> (c) to ensure that clients of law practices are adequately protected regardless of the business structure through which a law practice provides legal services.[58]

Whilst a lessening of restrictions for legal practice structures is considered a progressive move for a profession steeped in the partnership model, there are parallel concerns that the Uniform Law will be of less relevance and greater cost to sole and small firm practices. As noted in Chapter Two, NSW and Victoria are the sole members of the Uniform National Profession.[59] The reluctance of other states and territories to join a national profession is a primary reason for the prolonged move.[60] In the second reading

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[57] National Legal Aid, *Review of the National Partnership Agreement on Legal Assistance Services 2015-2020. Submission to NPA (National Partnership Agreement) Review Team, Urbis* (Discussion Paper, 5 October 2018). On behalf of state and territory legal aid commissions ('LACs'), National Legal Aid noted that 'LACs rely on private practitioners to extend reach of services around the country and to help address issues of professional legal conflict. LACs cannot afford to increase grant of aid fee rates paid to these private practitioners. Of significant concern is that poor remuneration is entrenched with a history of private practitioners withdrawing from legal aid work due to low fees': at 10.

[58] *Legal Profession Uniform Law 2014* (NSW) ch 3 pt 3 ('*Uniform Law NSW*').

[59] See Chapter 2, n 28.

[60] NSW, *Parliamentary Debates*, Legislative Assembly, 27 May 2015, Second Reading (Paul Lynch, Shadow Attorney-General).

of the *Legal Profession Uniform Law Application Legislation Amendment 2015*, Paul Lynch, the then NSW shadow Attorney General, acknowledged that the 'common criticism of the proposal is that it provides difficulties for smaller practices and sole practitioners'.[61] These difficulties were expressed in terms of concerns with increased costs for practising certificates and the maintenance of a national body to oversee the law. It should be noted that the financial concerns regarding the increased costs of a national profession are yet to be determined. However, these concerns present potential negative consequences for sole and small firm practices.

Until the year 2000, the private profession was structured in traditional models of either partnership or sole trader. Since then, new structures for legal services delivery in the private practice sector have been legislated, some relevant to sole practitioners. The introduction of ILPs and Multi-Disciplinary Practices ('MDPs') offered significant tax and financial benefits that sole traders and partnerships do not share. Of relevance to sole practitioners is the ILP structure.[62] As such, it is not surprising that for the first nine years of ILPs, small firms were the largest cohort to establish or transfer into practice as an ILP.[63]

Despite financial advantages, there has been a concern that incorporation has led to a regulatory compliance burden for sole and small firm practices. One basis for this concern is that ILPs came under greater regulatory scrutiny than traditional forms of practice. Legislation in NSW and Victoria, which established ILPs, provided for the introduction of Appropriate Management Systems ('AMS')[64] and the appointment of a legal director to be responsible for the firm's ethical conduct.[65] Compliance was the regulators' responsibility. The regulator's objective for appropriate management of ILPs included a self-assessment process ('SAP'). The regulators' approach towards compliance management was underpinned by a philosophy of 'education towards

[61] Ibid.
[62] In NSW, Incorporated Legal Practices were established by the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000* (NSW) from 1 July 2001. In Victoria, Incorporated Legal Practices were established by amendments to the *Legal Profession Act 2004* (Vic) from 12 December 2005.
[63] The majority of small firms had three or more partners. Steve Mark, 'Regulating for Professionalism: The New South Wales Approach' (Conference Paper, 2010 American Bar Association Annual Meeting, 5 August 2010) 9 <http://www.olsc.nsw.gov.au/Documents/regulating_for_professionalism_aba_conference_august2010.pdf >.
[64] *Legal Profession Act 2004* (NSW) s 140(3).
[65] Ibid s 140(1). This requirement was later amended by *Uniform Law NSW* (n 58) s 105.

compliance'[66] for the benefit of the public. For smaller ILPs, there was a concern that the mandatory nature of the SAP was onerous and unreasonable.[67] Compared with medium and large practices, sole and small firm practices have fewer resources in terms of staff with which to comply with the AMS. Furthermore, other private practices, such as partnerships, were not required to comply with the AMS and SAP.[68]

The requirement for ILPs to complete the SAP was removed with the Uniform Law. The reason for the removal, offered by the NSW Office of the Legal Services Commissioner ('NSW OLSC'), was that the requirement attached to the previous legislation.[69] However, this explanation does not offer insight into the merits of the removal. Possibly it was due to the burden of compliance management or the elimination of the need to distinguish between ILPs and other practices.[70] Whilst all law practices are expected to have management systems to enable compliance with the Uniform Law, there is no mandated requirement. Section 257 provides that a law practice, as a result of an 'examination, investigation or audit',[71] *may* be required to comply with a management system direction by ensuring appropriate management systems are in place. The advantages of the AMS, despite the compliance burden, are considered in Chapter Seven.

In summary, whilst regulatory reform such as ILPs has benefitted sole practitioners, there is concern as to the degree of regulation resulting from these changes, as well as the greater perceived compliance and expense[72] from a national profession.

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[66] Christine Parker, Tahlia Gordon and Steve Mark, 'Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales' (2010) 37(3) *Journal of Law and Society* 466, 468.
[67] Susan Fortney and Tahlia Gordon, 'Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation' (2012) 10(1) *University of St Thomas Law Journal* 152, 174.
[68] Ibid.
[69] See 'Practice Management & Compliance', *Office of the Legal Services Commissioner* (Web Page, 14 February 2015) <https://www.olsc.nsw.gov.au/Pages/lsc_practice_management/lsc_practice_management.aspx>.
[70] Ibid. The NSW OLSC states 'As the self-assessment process was developed to assist incorporated legal practices to demonstrate that they had implemented appropriate management systems under the old legislation, the requirement for authorised principals to complete the self-assessment process under LPUL [the Uniform Law] is removed'.
[71] *Uniform Law NSW* (n 58) s 257(1).
[72] Expenses include higher practising certificate renewals because of the costs of establishing and maintaining a central organisation to manage a national profession.

Acknowledgment that over-regulation has consequences for the profession is addressed in the NSW Law Society's *FLIP Report*.[73]

The major challenge of 'regulatory barriers'[74] to the sustainability of sole practice is supported by this study's empirical investigation. As discussed in Chapter Six, there is a strong perception amongst the participants of this study that regulation and competition have increased during their time in sole practice, with detrimental effects.

4.3.1 New Business Structures: Whither Law as a Profession?

Whilst private law firms have benefited from incorporation, the wider availability of corporatised structures contributes to the longstanding debate as to whether legal practice is a business or a profession. As critiqued in Chapter Two, the debate encapsulates the characteristics of the lawyer as key to maintaining the rule of law, including adherence to ethical rules on one hand, and on the other, the commercial work that lawyers, as legal experts, are engaged to undertake on behalf of clients, which can challenge adherence to ethical rules in favour of client retention and revenue. The impact of this debate is this cohort's quandary of finding harmony between the traditional view that lawyers offer a professional service that is central to their role, with less attention to the business aspect,[75] and the commercial view that legal practice is a business, in 'the business' of legal service delivery within a new context of 'organisational professionalism'.[76]

The profession/business debate also proceeds within the context of a changing legal services market. In a practical sense, the US *2013 State of the Legal Services Market Report* refers to this debate as a 'grossly oversimplified dichotomy because the law practice has obviously been both a profession and a business for a very long time'.[77] Despite this pragmatism, the disparity between the two identities continues, for reasons discussed below. In 2001, the Law Council of Australia, in predicting challenges for the

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[73] Law Society of NSW Recommendation 19: 'That the Law Society continue to investigate ways to reduce the impacts of regulatory barriers, to assist solicitors.' Law Society of New South Wales, *The Future of Law and Innovation in the Profession (FLIP) Report 2017: Findings* (Report, 2017) 9 <https://www.lawsociety.com.au/sites/default/files/2018-03/1272515.pdf>.
[74] Ibid.
[75] For example, in this study, two participants (Duncan and Christopher) advised that they have been slow at rendering bills to clients.
[76] James Faulconbridge and Daniel Muzio 'Organisational professionalism in globalizing law firms' *Work, Employment and Society* (2008) 22(1) 7, 21. Faulconbridge and Muzio propose that the large global law firms operate within a context of 'organisational professionalism', where professionals design organisational strategies and structures to maintain their professional occupational principles and objectives.
[77] Georgetown University Law Center and Thomson Reuters (n 5) 18.

legal profession in 2010, identified the 'ongoing tension'[78] between the commercial and the professional features of practice,[79] particularly with regard to the 'adequacy of existing ethical rules'.[80] Sir Daryl Dawson explained his theory of the business/profession dichotomy as a shift from 'social trustee professionalism'[81] to 'expert professionalism',[82] where the delivery of legal services is acknowledged as 'a commercial activity'[83] of a 'special kind'.[84] The addition of a 'special kind' gives a relational depth to the business of legal services delivery and to the client/lawyer retainer. In this context, the lawyer is both an expert and a professional, entitling the client to have an expectation of trust and reliance on the lawyer that goes beyond a transactional service. At the centre of the debate is the role of the lawyer, through the retainer with the client and more broadly, as a community member.

The duality of law as a business and a profession is also recognised in the academic literature. Dal Pont identifies three core components of the legal profession, namely, specialist skill and knowledge, autonomy or self-regulation, and public service.[85] This definition is compatible with a dual role of law as both a profession and the business of legal practice. Preferencing of 'business ideals' or 'professional service' to the exclusion of the other clouds the debate and is challenging for the sole practitioner who undertakes both activities, usually with less resources than corporate firms.

In relation to the specialist skill and autonomy of Dal Pont's criteria, Bagust suggests that Kronman's ideals of 'prudence, good judgment and a concern for civic-mindedness'[86] associated with the virtuous lawyer are incompatible with the definition of competency required of corporate lawyers.[87] She argues that for commercial lawyers in a neoliberal economy, client power operates to reduce the ability of lawyers to be ethical decision-makers and to operate within a framework of 'professional autonomy and altruistic

[78] Law Council of Australia, '*2010 Discussion Paper*' (n 2) 3.
[79] Ibid.
[80] Ibid.
[81] Daryl Dawson, 'The Legal Services Market' (1996) 5 *Journal of Judicial Administration* 147, 148.
[82] Ibid.
[83] Ibid 149.
[84] Ibid 148.
[85] GE Dal Pont, *Lawyers' Professional Responsibility in Australia and New Zealand* (Law Book Co, 7th ed, 2020) 6.
[86] Bagust (n 24) 36. Bagust is referring to Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Harvard University Press, 1995) 160–2.
[87] Bagust (n 24) 36.

service'.[88] This framework is also reinforced through the 'regulative bargaining'[89] between corporate firms and government and professional associations.

In relation to the public service component of Dal Pont's criteria, this notion of 'duty to the public' is challenged in a market where revenue is prioritised and funding for legal services is diminishing. The justification for a duty to the public as a characteristic of the profession is interpreted by US scholar Carol Andrews as fundamental to the ethical framework in which lawyers practise. Andrews argues that, because the legal profession has historically been self-regulating, lawyers' conduct is measured by the duties they have to various stakeholders.[90] Andrews identifies the duty of *public service* as one of six core values[91] that have existed for 800 years.[92] This duty of public service is recognised as a particular challenge for sole lawyers with limited time and resources[93] and where the 'pull of self-interest'[94] can usurp 'justice and fairness'.[95]

In the section below, technology as the final external catalyst for change is considered in the context of its actual and likely impact on the profession. In relation to this thesis, the consequences for sole practitioners are varied. This is confirmed in the participants' narratives as to their experience of technology and its likely effects on the future of sole practice.

4.4 Technology-Driven Disruption

Technology, as a significant driver of change, impacts the administration of justice, the profession and the community in accessing legal services. In relation to the administration of justice, including the courts, legal systems and associated processes, technology has transformed practices, replacing minor court attendances, in-person filing of court documents and physical exchange and settlements for conveyancers, and enabling online submission of forms.

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[88] Ibid 28.
[89] Rogers, Smith and Chellew (n 31) 218.
[90] Carol Rice Andrews, 'Standards of Conduct for Lawyers: An 800-Year Evolution' (2004) 57(4) *SMU Law Review* 1385.
[91] Ibid 1389. The other core values are litigation fairness, competence, loyalty, confidentiality and reasonable fees.
[92] Ibid 1387.
[93] Geoffrey Nettle, 'Ethics - The Adversarial System and Business Practice' (2005) 10(1) *Deakin Law Review* 67, 81–2.
[94] Ibid 82.
[95] Ibid.

In relation to legal practice, changes driven by technology are impacting the work of lawyers, regardless of firm size or location. The advantages of technology include advanced automated systems and processes and more effective communication modes. Positive impact can be measured by greater efficiency in the delivery of legal services and in client satisfaction, especially in the area of costs. This is particularly relevant to sole practitioners, as technology may provide an opportunity to enhance wellbeing, enabling them to maintain their practice whilst on holiday or leave.[96] Of course, any potential advantages must be assessed against considerations such as cost, lawyer training and client management.

In the context of greater access to legal services, options such as virtual lawyers and online legal services could improve access to legal services, particularly in remote areas.[97] Given the changes that have occurred during COVID-19, virtual lawyers may, in time, replace or reduce the need for local lawyers, and could, generally, provide services at a lower cost than the face-to-face lawyer. Communication tools[98] provide opportunities for the delivery of legal services to move online. However, sole general practitioners must deal with issues such as the availability and reliability of internet services and technological limitations for some clients. That noted, online legal service providers offer personalised legal documents that are relevant for individuals and small businesses.[99] The potential for 'traditional' sole practitioners to incorporate innovative tools into their practice requires consideration,[100] particularly given potential competition from other technology-driven sole and small firm practices.

The whole-of-profession approach to technology, applied in the *FLIP Report*, fails to provide a response to the resource challenge for sole principal and small firms,[101] as well as the community legal sector.[102] Whilst technology-driven disruption is yet to be fully understood by the profession, there is a general awareness that new technologies and resultant innovation have enormous capacity to influence the practice of law and the law itself.[103] The unprecedented impact of COVID-19 from March 2020 has shown that

[96] Several participants in this study referred to the benefits of technology.
[97] Law Council of Australia, '*Legal Futures Summit*' (n 52) 6.
[98] For example, Zoom, Skype and Microsoft Teams.
[99] For example, wills, powers of attorney, contracts and business sale agreement.
[100] For example, Larry relies on two software packages to manage his practice.
[101] Law Society of New South Wales (n 73) 6.
[102] Ibid 25.
[103] Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2nd ed, 2017); Richard Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services* (Oxford

technology can be readily embraced. This can be seen, for example, in the move to online hearings in the Family, Federal and Federal Circuit Courts.[104] Technology as an enabler of communication is relied on by those who would usually be considered technically illiterate. For sole practices, the acceleration of technological change as a result of COVID-19 is an opportunity to deliver legal services in an innovative way.

The most significant effect on legal practice is the new cohort of lawyers who are establishing legal service delivery based on technology and its capacity to innovate. These new lawyers and alternative providers present possible competition to traditional sole practice. The potential to further transform the legal services market through alternatives has led to the observation in the US that there is 'no longer a single legal market'.[105] In the US, Alternative Legal Services Providers ('ALSPs') are successfully challenging the traditional firms for a market share of legal work.[106] In Australia, this transformation in legal service delivery is also occurring.

In Australia, NewLaw, defined as the 'non-traditional law firm that leverages technology with flexible, client-focussed multi-skilled teams, and outcomes-based pricing',[107] potentially offers an accessible and affordable alternative to general practice. The transfer of the human element through automation to a robot lawyer[108] in some areas of general practice has been assessed as not being a 'good bet'[109] for sources of work in the next 10 years. In contrast, identified areas where Artificial Intelligence ('AI'), automation and software applications have the capacity to replace traditional legal work and traditional lawyers are 'property transactions, probate, family law and criminal law'.[110]

University Press, 2008); Law Society of New South Wales (n 73); Law Council of Australia, 'Legal Futures Summit' (n 52).

[104] Thomson Reuters, *2020 Australia: State of the Legal Market* (Report, 2020) 14 <http://images.connect.thomsonreuters.com.au/Web/TRLegalAU/%7B1efb4274-f484-4240-a272-cb7d882e6d2c%7D_2020_Australia_SOTLM_Final.pdf>.

[105] Georgetown University Law Center and Thomson Reuters, *2020 Report on the State of the Legal Market* (Report, 2020) 16 <https://legalprof.thomsonreuters.com/LEI_2020_State_of_Legal_Market_LP_010620?cid=9014946&sfdccampaignid=7014O000000vXWtQAM&chl=tr>.

[106] Ibid.

[107] Law Council of Australia, *'Legal Futures Summit'* (n 52) 36.

[108] Ibid. A robot lawyer has been defined as 'computer applications that enable consumers to deal with a legal issue without requiring the involvement of a legal practitioner': at 12.

[109] Ibid 10.

[110] Ibid.

NewLaw are mainly start-ups that share common features of an online presence and delivery of automated and personalised documents. Some provide tailored advice.[111] The notable element of individualised service lifts the influence of these providers beyond that of generic Internet sources, such as Austlii,[112] LawAccess,[113] Victoria Legal Aid[114] and other government and community centred electronic resources.

The possibilities of NewLaw and its impact upon the legal profession are under consideration. The Law Council of Australia's 2018 *Legal Futures Summit Background Paper* identifies the two client groups of the 'missing middle' and individual and small business clients[115] as those who may benefit from NewLaw. Those in the 'missing middle', currently unable to access legal services, are described as:

> …the ordinary working people who cannot afford legal representation for everyday legal concerns such as commercial matters, family law, injury compensation. Those in the 'missing middle' would never be able to qualify for legal aid assistance so they fall through the cracks in our justice system.[116]

Individual and small business clients are those who may engage a private lawyer and who require legal services in areas of 'wills, probate, conveyancing, consumer matters and family law',[117] 'contract law, business structures, business regulation, mergers and acquisition'[118] and 'criminal and civil offences matters'.[119] In addition, an identified important sub-group within the 'missing middle' are those in rural, regional and remote communities.[120]

The groups identified as potential consumers of new services may be 'lost' as a client base for sole solicitors in general practice. There is the possibility that the 'missing

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[111] Ibid 11-12.
[112] Austlii (Australian Legal Information Institute) provides information about legislation, cases and journals. *Austlii* (Website, 2021) <http://www.austlii.edu.au/>.
[113] LawAccess NSW provides information, including tool kits and videos and a free telephone service for people needing legal help with a range of matters, such as driving offences, small claims, debt, family law and neighbours. 'LawAccess NSW', *NSW Government Department of Communities & Justice* (Web Page, 2020) <https://www.lawaccess.nsw.gov.au>.
[114] Victoria Legal Aid provides free telephone and online legal advice about a range of legal issues including family law, wills and powers of attorney, crimes, consumer rights and migration. *Victoria Legal Aid* (Website, 2021) <https://www.legalaid.vic.gov.au/>.
[115] Law Council of Australia, *'Legal Futures Summit'* (n 52) 39.
[116] Ibid 17. The 'missing middle' is also defined in Chapter One.
[117] Ibid.
[118] Ibid.
[119] Ibid.
[120] Ibid.

middle' may be served by new entities in the future, offering legal services at a lower cost and with greater flexibility, such as unbundled legal services. Currently, legal start-ups in Australia have a focus on the commercial and business areas of the law and, based on their websites, are concentrating on business clients, rather than individuals in need of legal services for personal and domestic matters.[121] However, it is likely that, as online markets expand, start-ups will move into areas of practice where the client base is the individual, such as probate and estate management, family law and dispute resolution. This move may eventuate through client demand rather than being driven by sole and small firm practices.

The Law Council's paper draws on UK research to better inform an understanding of future trends in the delivery of legal services.[122] Of relevance to sole practice, the research finds:

- In 2018, 30% of consumers accessed legal services via email or the Internet compared with 21% in 2012.[123]
- From 2015 to 2018, the percentage of consumers who accessed legal services in a face-to-face environment continued at the same 46%.[124]
- Consumers seek face-to-face legal assistance primarily for 'will drafting (80%) and power of attorney (64%)'.[125]
- Consumers seek legal assistance by email or the Internet generally in 'conveyancing (52%) and problems with consumer services or goods (37%)'.[126]
- Consumers seek legal assistance by telephone services for 'accident and injury claims (42%)'.[127]

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[121] For example, *LegalVision* (Website, 2021) <https://legalvision.com.au/>, which is described as a 'commercial law firm with a commitment to innovation', and *Lawpath* (Website, 2021) <https://lawpath.com.au/>, which offers documents 'For personal matters' such as wills and letters of resignation, plus many more document types for businesses, including online, new and existing.
[122] The paper draws on research undertaken by the Legal Services Consumer Panel, managed by the Legal Services Board (UK), *Segmenting Consumers: Understanding the Needs of Legal Services Consumers* (Discussion Paper, March 2017) <https://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Consumer%20Segmentation%20Final%20Report.pdf>.
[123] Law Council of Australia, *'Legal Futures Summit'* (n 52) 19.
[124] Ibid.
[125] Ibid. Of the participants in this study, 20 of the 23 solicitors practised in wills.
[126] Ibid.
[127] Ibid.

This research evidences that face-to-face service continues to be popular, although automation has an increasing role in the delivery of legal services. The UK research considered segmentation of groups based on factors such as literacy levels, computer skills and disabilities[128] to identify ways different consumer groups can be assisted with legal matters.[129] For sole practitioners and small firms, this research informs an understanding of the degree to which online services are expanding and the opportunities where lawyers can use technology to assist consumers and grow their practice by providing, for example, online advice.

A core consequence of COVID-19 is a reliance on technological tools[130] that have become common place. Indeed, legal practice is undergoing change in a way that was not contemplated at the outset of this research or when the interviews took place. Technology-driven disruption, such as e-litigation,[131] automated office systems[132] and new forms of communications,[133] is altering the practice of law in general and direct ways across the profession. The impact of COVID-19 on the legal services market includes identification of the need for investment in 'baseline technologies'[134] to ensure that 'lawyers can work productively and securely offsite'.[135]

An evident challenge concerns communications, particularly for lawyers acting for clients with limited or no technical capacity. In addition, the COVID-19 pandemic has provided a cautionary warning of the need to 'future-proof' the way we operate as a society. An important part of this is the necessity to have 'operations, systems, and processes that can be maintained no matter what the external circumstances may be'.[136] As discussed in Chapter Seven, many participants considered that it is in the area of systems and processes that sole general practitioners are not supported.

Support is necessary to ensure continued access to legal services. Future legal services delivery will include a greater online presence. In Australia, the adoption of online services and communications is demonstrated by the fact that of the 95% of households

[128] Legal Services Consumer Panel, Legal Services Board (UK) (n 122) 6.
[129] Ibid 7.
[130] For example Zoom, Skype and Microsoft Teams.
[131] For example, e-filing, e-discovery and online directions hearings.
[132] For example, trust account software, LEAP and other office management systems.
[133] For example, email, text messages, online conferences for clients and witnesses.
[134] Thomson Reuters (n 104) 10.
[135] Ibid.
[136] Ibid 16.

that completed the 2016 Census, over 63% did so online.[137] However, there remains a significant number of consumers, clients and lawyers, primarily from a generation that did not grow-up with technology, who are not confident with online and automated legal services. By contrast, current and new generations of clients, or potential clients, are comfortable with, and may even require, online legal services. Concurrently, service providers connected with legal practice have moved online, including the courts, government facilities and private providers, such as PEXA.[138]

The 2018 President of the Law Council of Australia, Morry Bailes, has identified an overarching concern with the use of technology in the practice of law:

> This is a real challenge for the profession – to ensure that legal technologies are designed holistically to enhance justice outcomes and do not obscure serious and important legal problems behind an interface, styled as an alternative to traditional legal services.[139]

The profession must respond to this challenge to ensure the rule of law is maintained, that clients are able to understand the parameters of the service they receive, regardless of its delivery mode, and that legal advisors comply with legal and ethical requirements. With this caution there is a recognition that firstly, traditional legal services continue to contribute to the facilitation of access to legal services, including those offered by sole general practitioners, and secondly, technology-based legal services have a presence. The adaptability of sole general practitioners to the changing legal market may well be measured by their capacity to ethically assess the benefit of technology.

The next section examines the internal factors that have emerged in the legal profession throughout the last two decades and assesses their impact on the cohort of sole and sole general practitioners.

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[137] 'Sourcing the 2021 Census Digital Service', *Australian Bureau of Statistics* (Web Page, 2021) <https://www.abs.gov.au/websitedbs/D3310114.nsf/Home/2021+Census+Sourcing+the+2021+Census+Digital+Service>.

[138] PEXA, referred to as e-conveyancing, is an electronic platform for land dealings and transfers. See <https://www.pexa.com.au/>.

[139] Morry Bailes, 'The Law and Legal Technology: Our Changing Work Practices' (Speech, Australian Young Lawyers Conference, 20 October 2017) <https://www.lawcouncil.asn.au/media/speeches/the-law-and-legal-technology-our-changing-work-practices>.

4.5 Culture of the Legal Services Market

The culture of the legal services market is embodied in the corporatisation of legal practice, grounded in profit-maximisation, client privilege and hierarchical work structures. In the last decade, the culture of some workplaces, particularly in the corporate sector, has received attention from professional associations,[140] researchers[141] and committed individuals.[142] This attention humanises the unlawful and unethical consequences of the legal services market.

Findings as to sexual harassment and bullying in the profession, discussed below, is based on research in Australia. These findings of high incidences of sexual harassment and bullying are acknowledged internationally. The International Bar Association's 2019 global survey[143] of experiences of sexual harassment and bullying in legal workplaces found that 75% of female and 50% of male participants from Australia had experienced workplace bullying, compared with all 55% of female and 30% of male participants from other areas.[144] Unsurprisingly, the Association's report declared that 'bullying and sexual harassment are rife in Australian legal workplace'.[145]

Corporate firms receive the greatest attention, confirming the negative stories that have circled commercial practice in more recent times.[146] Harassment, bullying and discrimination are unlawful practices that have been identified of concern in corporate

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[140] For example, Law Council of Australia, *National Action Plan to Reduce Sexual Harassment in the Australian Legal Profession* (Report, 23 December 2020) <https://www.lawcouncil.asn.au/files/media-releases/National%20Action%20Plan%20to%20Reduce%20Sexual%20Harassment%20in%20the%20Australian%20Legal%20Profession_FINAL.pdf>.

[141] Norm Kelk et al, *Courting the Blues: Attitudes towards Depression in Australian Law Students and Lawyers* (Monograph No 2009–1, Brain & Mind Research Institute, University of Sydney, and the Tristan Jepson Memorial Foundation, January 2009) <https://law.uq.edu.au/files/32510/Courting-the-Blues.pdf>.

[142] Marie Jepson, with her husband George Jepson, established the Tristan Jepson Memorial Foundation in 2008 (now The Minds Count Foundation) after the suicide of her son Tristan, a young lawyer. See *Minds Count Foundation* (Website) <https://mindscount.org/>. Former Federal Court Justice Shane Marshall has advocated for the inclusion of a mental health and wellbeing subject in the curriculum, drawing on his own experience of depression. Shane Marshall, 'Depression: An Issue in the Study of Law' [2015] *Federal Justice Scholarship* 1.

[143] Kieran Pender and International Bar Association, *Us Too Bullying and Sexual Harassment in the Legal Profession* (Report, May 2019). The survey of the legal profession achieved 6,980 responses from members and non-members of the IBA across Western and Eastern Europe, Scandinavia, Oceania, North America, Latin America, Asia and Africa. Australia had the highest response rate with 937 responses, totalling 13% of respondents.

[144] Ibid 87.

[145] Ibid.

[146] Lisa Pryor, *The Pinstriped Prison* (Picador Australia, 2008); Richard Beasley, *Hell Has Harbour Views* (Pan Macmillan, 2001). See also *Lawyers Weekly: Legal News for Australian Lawyers* (Website, 2021) <https://www.lawyersweekly.com.au/>.

firms and the profession.[147] Employer demands leading to excessively long working hours and substantial workloads have also been recognised as contributory factors to attrition.[148] Baron considers these negative workplaces, resulting from unethical practices,[149] to be common and the major cause of 'lawyer distress'[150]:

> Unethical behaviour in legal workplaces, sometimes ignored, sometimes condoned and sometimes even encouraged and rewarded by the corporate legal culture, appears to be widespread.[151]

Bagust's finding of a decline in independent decision-making, a failure to act with professionalism and in accordance with ethical rules is also relevant to the absence of a collective responsibility in some workplaces.[152]

In Australia, damaging workplace practices were initially identified through the high attrition of recently-admitted and junior lawyers in corporate firms, particularly

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[147] These practices have been identified in several reports, including Maryam Omari, *Towards Dignity & Respect at Work: An Exploration of Work Behaviours in a Professional Environment* (Edith Cowan University and the Law Society of Western Australia, August 2010) <https://lawsocietywa.asn.au/wp-content/uploads/2015/10/Towards-Dignity-Respect-Work.pdf>, in relation to workplace bullying experienced by male and female lawyers; Victorian Equal Opportunity and Human Rights Commission, *Changing the Rules: The Experiences of Female Lawyers in Victoria* (Victorian Equal Opportunity and Human Rights Commission, 2012) <https://www.humanrightscommission.vic.gov.au/media/k2/attachments/Changing_the_Rules_Web.pdf_Final_1.pdf>, in relation to sexual harassment and discrimination; and Urbis and Law Council of Australia, *National Attrition and Re-Engagement Study (NARS) Report* (Report, 2014) <https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>, in relation to workplace discrimination, sexual harassment, bullying, intimidation and aggression. Prior to these reports, *Law Society of New South Wales v Foreman* [1994] NSWCA 69 noted the defendant's work environment that consisted of long hours, with solicitors working through the night and week-end work and a practice of charging high fees.

[148] Laura Helm, *Mental Health and the Legal Profession: A Preventative Strategy* (Final Report, Law Institute Victoria, 11 September 2014) 45 <https://www.liv.asn.au/PDF/For-Lawyers/Member-Benefits-adn-Privileges/MentalHealthReportFull.aspx>. The *NARS Report* found that respondents in private practice were the largest category of lawyers who worked 41-50 hours, compared with barristers and in-house counsel. However, they were the second highest category who worked 51-60 hours and 61+ hours, the highest being barristers. Urbis and Law Council of Australia (n 147) 17.

[149] Baron adopts the definition of 'unethical behaviours' used by Giacalone and Promislo. Paula Baron, 'The Elephant in the Room? Lawyer Wellbeing and the Impact of Unethical Behaviours' (2015) 41(1) *Australian Feminist Law Journal* 87, 92, citing Robert A Giacalone and Mark D Promislo, 'Unethical and Unwell: Decrements in Well-Being and Unethical Activity at Work' (2010) 91(2) *Journal of Business Ethics* 275.

[150] Baron (n 149) 96. Baron interprets 'lawyer distress' to include 'high levels of anxiety, depression, substance and alcohol abuse and suicide found amongst the legal profession'. Unethical behaviours were referred to by several participants and discussed in Chapter Six.

[151] Ibid 117.

[152] Bagust (n 24) 49.

women.[153] Attrition and retention issues challenge the belief, referred to earlier in this chapter, that securing employment in a top-tier firm is considered to be the hallmark of success. In recent years, this aspirational ambition has also been challenged by the medical recognition of mental health as a significant problem in the legal profession.[154]

Diversity, attrition and mental health directly impacted by workplace culture, particularly in the corporate private profession, are discussed below. The relevance of this discussion concerns how these issues have affected sole practitioners. An unexpected and interesting finding of the interviews in this thesis, and the material discussed in the following section, is that sole and small firm practice is an option for lawyers who have experienced harmful workplace practices.

4.5.1 Diversity

Within the legal profession, diversity has been missing from the agenda of professional associations until the last few years. In 2015, the Law Council of Australia established the *Diversity and Equality Charter*, which states:

> …the Australian legal profession and its members:
>
> - Promote and support a strong and fair legal profession comprising, accommodating, encouraging and respecting a diverse range of individuals and views.[155]

Despite a commitment to diversity, there is limited statistical information about the number of lawyers from diverse groups in Australia. The *2020 National Profile of Solicitors*, referred to in Chapter One, reports on gender and on identity as Aboriginal and Torres Strait Islander.[156] In contrast, the ABA reports on a wide range of

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[153] See Urbis and Law Council of Australia (n 147); Joanne Bagust, 'Keeping Gender on the Agenda: Theorising the Systemic Barriers to Women Lawyers in Corporate Legal Practice' (2012) 21(1) *Griffith Law Review* 137.
[154] Kelk et al (n 141).
[155] Law Council of Australia, *Diversity and Equality Charter* (Charter, 2015) <https://www.lawcouncil.asn.au/files/web-pdf/1508-Charter-Diversity-and-Equality-Charter.pdf>. The Charter was a recommendation of the *NARS* project. The Law Society of NSW and the Law Institute of Victoria have adopted the Charter.
[156] Urbis and Law Society of New South Wales, *2020 National Profile of Solicitors: Final Report* (Report, 1 July 2021) 26 < https://www.lawsociety.com.au/sites/default/files/2021-07/2020%20National%20Profile%20of%20Solicitors%20-%20Final%20-%201%20July%202021.pdf>, The 2018 report notes the historical first of a greater number of female than male lawyers and the decrease in the number of lawyers who identify as Aboriginal and Torres Strait Islander. Urbis and Law Society of New South Wales, *2018 National Profile of Solicitors: Final Report* (Report, 17 July 2019) 1 <

demographics, including gender, race and ethnicity, LGBT identity and disability.[157] Wider reporting of diversity is also undertaken by the UK Solicitors' Regulation Authority based on gender, gender identity, ethnicity, disability, sexual orientation, and religion and belief.[158]

A valuable preliminary step in mapping diversity across the profession is a commitment to the collection of evidence-based data. This could be achieved, as in the US and UK, through reporting of statistics. As proposed earlier in this thesis, the necessary data could be collected from practising certificate applications and renewals.

Of the diverse groups within the profession, female lawyers were the first to be identified as the recipients of inequitable treatment, despite an increasing presence. Empirical studies and statistical reporting of gender allow for a more comprehensive insight into female lawyers compared with other demographics within the profession. This section focuses on gender diversity, given that female lawyers constitute the majority of lawyers in Australia,[159] as represented by the 12 female participants[160] in the study.

In the last decade, empirical Australian studies have identified the significant harmful and unlawful treatment of female lawyers. The 2010 *Towards Dignity and Respect at Work* study sought to identify workplace bullying.[161] The study's methodology, grounded in survey data of 327 responses and narratives from 71 members of the Law Society of Western Australia, produced a 55.5% response rate from female lawyers,[162] with the highest (73%) from the private profession.[163] The study found that a fifth of respondents

https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors.pdf>. The annual reports of the NSW Law Society and the Law Institute of Victoria report on gender only.

[157] American Bar Association, *ABA Profile of the Legal Profession 2020* (Report, July 2020) <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>. The ABA has a Diversity and Inclusion Center with separate Commissions on Disability Rights, Hispanic Legal Rights and Responsibilities, Racial and Ethnic Diversity, Sexual Orientation and Gender Identity, Women and Diversity in the Educational Pipeline.

[158] 'How Diverse is the Legal Profession?' *Solicitors Regulation Authority* (Web Page, 20 March 2020) <https://www.sra.org.uk/sra/equality-diversity/key-findings/diverse-legal-profession/>.

[159] Urbis and Law Society of New South Wales (n 156) 8. In 2020, women constituted 53% of the solicitors' profession.

[160] Of a total of 23 participants in the study.

[161] Omari (n 147) 2.

[162] Ibid 10.

[163] Ibid 11.

experienced bullying in their current workplace.[164] Of the respondents, only 23% of those bullied made a complaint.[165]

The 2012 *Changing the Rules* survey sought to identify female lawyers' experiences, 'focusing on sexual harassment, discrimination and accommodation of parent and carer responsibilities'.[166] The study of 427 Victorian female lawyers, the majority of whom were from the private profession,[167] found that 40% experienced discrimination[168] and 23.9% were sexually harassed.[169] More than half did not make a complaint.[170] Both studies share two critical findings, that of significant levels of unlawful treatment and a reluctance of victims to report their experiences.

The *National Attrition and Re-engagement Study* ('*NARS Report*'), undertaken for the Law Council of Australia in 2014, sought to identify the 'drivers for attrition of women from the legal profession in Australia'.[171] The study provides important data and information as to the attrition of female lawyers and the workplace culture of some sections of the profession.[172] The significance of the report for female lawyers[173] and the legal profession[174] is the study's findings that female lawyers, particularly in private practice,[175] experienced harassment and discrimination,[176] as well as unsupportive workplaces, including lack of career progression,[177] flexibility[178] and work-life balance.[179]

As a general finding, female lawyers left private practice at a higher rate than their male colleagues, with 37% of female lawyers, compared to 30% of male lawyers, leaving private practice for a range of alternatives, including in-house Counsel, the Bar, an

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[164] Ibid 13.
[165] Ibid 14.
[166] Victorian Equal Opportunity and Human Rights Commission (n 147) 3.
[167] Ibid 4.
[168] Ibid.
[169] Ibid.
[170] Ibid.
[171] Urbis and Law Council of Australia (n 147) 4.
[172] Ibid.
[173] Ibid. Both female and male solicitors (3,801 practising lawyers) participated in the research that informed the report's finding. However, the main objective of the research was to analyse attrition of female lawyers.
[174] Ibid 76-85. Many of the report's findings apply to both female and male lawyers.
[175] Ibid 15. The majority of respondents worked in private practice with 61% of females and 66% of males.
[176] Ibid 76.
[177] Ibid.
[178] Ibid.
[179] Ibid.

extended break or other.[180] The sub-groups within the private practice sector are classified as large, medium and small firms.[181] Large firms consisted of 21 and more partners, medium firms had 11 to 20 partners, and small firms included sole practitioners and up to 10 partners.[182] Approximately one third of respondents transferred from large firms, with 16% of female and 20% of male respondents moving to small firms.[183] The reported advantages of small firm practice, as opposed to large firm practice, were more autonomy and 'less dissatisfaction'[184] with work-life balance.[185] The report found that 28% of female practitioners in small firms,[186] compared with 38% in medium firms[187] and 42% in large firms,[188] considered lack of work-life balance as one of the main reasons for dissatisfaction at work.[189]

However, disadvantages of small firm practice were also indicated, including fewer resources for career support and professional development, as well as lower remuneration.[190] The report noted:

> There is a view that some women in small firms 'get stuck', and fail to progress because of the attraction of the combination of flexible working arrangements, work-life balance, and sufficiently satisfying work.[191]

Whilst this finding presupposes the neo-liberal definition of success in terms of a hierarchical career trajectory heading upwards to greater authority and increased remuneration, it confirms the inequality within the profession, particularly the private sector.

Unfortunately, as another example of its invisibility, sole practice was not included in the *NARS Report* as a 'stand-alone' option, but rather was aggregated into the small firm category.[192] The one reference to sole practice as a separate status is in the reporting of the workplace of survey respondents. Of the private profession, lawyers who completed

[180] Ibid 39.
[181] Ibid 40.
[182] Ibid.
[183] Ibid.
[184] Ibid 79.
[185] Ibid.
[186] Ibid.
[187] Ibid.
[188] Ibid.
[189] Ibid. Work-life balance was one of four main reasons.
[190] Ibid.
[191] Ibid.
[192] Ibid 178.

the survey, 7% of female and 17% of male solicitors were sole practitioners.[193] The lower response rate compared with employees[194] and large firms[195] may be due to a lesser need to 'complain'. Contrary to this argument, the lowest category of respondents was from medium firms,[196] although the response rate of female lawyers in sole and medium firms was the same.

The implication of these findings is that sole and small firm practice is an option for lawyers who have experienced harmful workplace practices. The number of lawyers who move to sole practice as an alternative to other forms of practice is not known. The statistical data, discussed in Chapter Two, shows a stable sole practitioner population rather than sharp increases, either since the GFC or as a result of an increase in law graduates. The number of entry-level lawyers who establish a sole practice after a period of supervision and experience within a firm is unknown. Anecdotally, however, the majority of law students do not see their future in sole practice, particularly in suburban and regional locations.[197]

As discussed in previous chapters, there is a deficit as to knowledge of the sole general practitioner population. For example, while women constitute an increasing proportion of law graduates,[198] there is limited research into the number of female solicitors who move into sole practice.[199] This is similar to the inadequate data on early career lawyers establishing sole practices. Identification of where diversity is apparent across the cohorts of solicitors, for example, government, community, private (small, large, medium) and corporate, would inform knowledge of the contemporary legal profession.

[193] Ibid 15.
[194] Ibid. 82% of female and 60% of male solicitors were employees.
[195] Ibid. 50% of female and 39% of male solicitors were from large firms.
[196] Ibid. 7% of female and 4% of male solicitors were from medium firms.
[197] Maria Karras and Christopher Roper, *The Career Destinations of Australian Law Graduates: First Report of a Five Year Study* (University of Newcastle, 2000).
[198] Jerome Doraisamy, 'Female Grads in Firms Outnumber Males 2-to-1', *Lawyers Weekly (Sydney)* (online, 6 March 2019) <https://www.lawyersweekly.com.au/biglaw/25191-female-grads-in-firms-outnumber-males-2-to-1>.
[199] For example, the *2018 and 2020 National Profile of Solicitors* do not report on gender and employment in the different structures of private practice.

4.5.2 Attrition and Moves within the Profession: 'Escaping' to Sole Practice

The high attrition rate of female lawyers, particularly from the Bar and private practice, prompted the *NARS Report*.[200] There existed a particular concern about female and male early career lawyers leaving large firm practice.[201] Studies such as the *NARS* address self-imposed options that lawyers choose as a result of an unhealthy workplace. These include new careers as in-house counsel, government legal officers or community lawyers. Women and men who experience negative, unethical or unlawful treatment, may escape to sole practice where the risk of these experiences is significantly reduced. It must be noted that unlawful practices do occur in sole and small firm practices, as seen in *Hughes trading as Beesley and Hughes Lawyers v Hill*[202] with the upholding of a sexual harassment finding against a sole practitioner on the north coast of NSW.

Whether there is merit in promoting sole practice to 'unhappy' lawyers as an alternative to leaving the profession is worth exploring. As noted earlier, sole practice as an alternative to other forms of private practice is discussed by several participants in this study. Given that there are identified areas of legal need, particularly in rural and remote areas, there may be opportunities for lawyers to meet those needs. This is not, however, a simple solution of 'matching lawyers to clients', as many clients cannot afford private legal services and not all lawyers wish to relocate outside of urban areas.

Exploring whether rural practice may provide opportunities for lawyers, as well as serve the community, has received some attention. As set out in Chapter Two, the significant gap in access to justice is widely acknowledged. Initiatives such as the Law Council of Australia's 2009 Regional Rural and Remote ('RRR') program[203] provide evidence of the change that can result with increased access to lawyers. Change must be sustainable. The program's online careers service,[204] which advertised positions for lawyers and law students undertaking Practical Legal Training placements, is no longer active nor is the RRR program website updated. Moreover, the program does not appear to have been

[200] Urbis and Law Council of Australia (n 147) 9.
[201] Ibid 70.
[202] *Hughes v Hill* [2019] FCAFC 1267.
[203] 'Rewarding Legal Careers in Rural, Regional and Remote Australia', *RRR Law* (Website) <http://rrrlaw.com.au/>.
[204] 'Rewarding Legal Careers in Rural, Regional and Remote Australia - Jobs', *RRR Law* (Web Page) <http://rrrlaw.com.au/jobs/>.

evaluated. However, it does highlight the ongoing need for sustainable initiatives. The need for further initiatives to promote RRR practice is discussed in Chapter Seven.

4.5.3 Mental Health

The participants interviewed in this study discussed their own mental health and observations of the mental health of others within the profession over a considerable period of time. This discussion offers valuable insights into the impact of solicitors' work on their wellbeing. Importantly, how lawyers can be supported in the management of their health has been identified. Moreover, it is recognised that a 'healthy' profession has benefits for consumers of legal services.

The impact of an unsafe culture on the health, particularly mental health, of the legal profession has received significant attention in the US and Australia throughout the last 20 or so years, with numerous studies showing that lawyers experience high rates of mental illness.[205] A seminal study of the Australian legal profession was undertaken by the Brain and Mind Institute at the University of Sydney. The 2009 *Courting the Blues* report revealed that the barristers, solicitors and law students who participated in the study had 'higher levels of psychological distress and depression'[206] than the general community,[207] and that law students had higher levels of distress and depression than other university student groups.[208] In relation to the solicitor population, 81.8% of respondents reported work as a source of stress.[209] Given that the study's objective was to assess attitudes and experiences relating to mental health across the profession and the law student population, the data does not reveal the number of sole practitioners who completed the survey.[210] However, the report's authors subsequently highlighted the

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[205] In the US: Susan Daicoff, 'Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism' (1997) 46(5) *The American University Law Review* 1337; Lawrence S Krieger and Kennon M Sheldon, 'What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success' (2015) 83(2) *The George Washington Law Review* 554; Patrick R Krill, Ryan Johnson and Linda Albert, 'The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys' (2016) 10(1) *Journal of Addiction Medicine* 46. In Australia: Beaton Consulting's 'Annual Professions Survey' cited in Beyond Blue, *06/07 Annual Report. Beyond Blue: The National Depression Initiative* (Report, 2007) 35 <https://resources.beyondblue.org.au/prism/file?token=BL/0260>. See also Kelk et al (n 141); Law Council of Australia, *Draft Report on Mental Health, Prepared for the Productivity Commission* (Report, 7 February 2020) <https://www.pc.gov.au/__data/assets/pdf_file/0008/252098/sub1204-mental-health.pdf>.
[206] Kelk et al (n 141) 42.
[207] Ibid.
[208] Ibid.
[209] Ibid 34. 924 solicitors, 741 law students and 756 barristers responded to the survey. Ibid 33.
[210] Ibid 85. Although the survey does include a question about the number of solicitors in a firm, and sole practitioner is one of the options for response. The demographics of the solicitor participants consisted of

challenge that results from the absence of possible support from workplace colleagues, in particular for sole practitioners and those in rural and regional areas.[211] The relevance of *Courting the Blues* for this thesis is its acknowledgment that psychological distress across the legal profession is a valid concern. The impact of this acknowledgement and the profession's response, as experienced by sole general practitioners, is evaluated in Chapter Seven.

In Australia throughout the last decade, as part of the recognition of the critical need for the advancement of wellbeing in the profession and in response to research concerning an unhealthy culture, there has been a focus on work-life balance. For example, corporate firms employ mental health and wellbeing managers and provide professional support for employees, professional associations offer resources on wellbeing and mental health for members,[212] and law schools expose students to the issue of mental health and wellbeing.[213] What must be assessed is the value of resources for lawyers on their own who do not have access to workplace support.

This thesis adopts the definition of work-life balance as *the impact of work on personal life*, which was applied by Chan, Poynton and Bruce in their study of work culture and stress in the Australian legal profession.[214] In 2012 and 2013, the authors undertook a survey of 1,008 lawyers, including 749 solicitors,[215] with the objective of exploring the impact of workplace culture and structures on the 'job satisfaction, effort and reward

articles, lawyers in early years of practice, associates, senior associates, special counsel, partner/principal and other.

[211] Sharon Medlow, Norm Kelk and Ian Hickie, 'Depression and the Law: Experiences of Australian Barristers and Solicitors' (2011) 33(4) *Sydney Law Review* 771, 796.

[212] The NSW Law Society offers an Outreach Service, resources and continuing professional development on wellbeing and mental health to assist members. The Outreach Service includes three free counselling sessions a year and urgent telephone counselling at any time. 'Mental Health and Wellbeing in the Law', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/resources/mental-health-and-wellbeing>. The Law Institute of Victoria offers an Employee Assistance Plan, also with three free sessions per year and a wellbeing program. 'Member Benefits - Wellbeing and Personal Development', *Law Institute of Victoria* (Web Page, 2021) <https://www.liv.asn.au/Membership/Member-Benefits>. In 2011, the Institute and the Victorian Bar established a Wellbeing and the Law Foundation that offers support to members. 'WATL Foundation Home', *Wellbeing and the Law Foundation* (Web Page, 2012) <http://www.watlfoundation.org.au/Home>.

[213] For example, the *Wellness for Law Network* established by Professor Rachael Field in 2011 encouraged law schools and law student associations to develop programs around wellbeing and resilience for law students. *Wellness Network for Law* (Website, 2020) <http://wellnessforlaw.com/>.

[214] The authors use the Work-Family Conflict questions developed by Netemeyer, Boles and McMurrian to gather data on the impact of work on personal life. Janet Chan, Suzanne Poynton and Jasmine Bruce, 'Lawyering Stress and Work Culture: An Australian Study' (2014) 37(3) *UNSW Law Journal* 1062, 1064, citing Richard G Netemeyer, James S Boles and Robert McMurrian, 'Development and Validation of Work-Family Conflict and Family-Work Conflict Scales' (1996) 81(4) *Journal of Applied Psychology* 400.

[215] Chan, Poynton and Bruce (n 214) 1069. The authors caution that the small sample size cannot be considered as representative.

imbalance, work-life balance, organisational culture and self-rated stress level and job-stressors'.[216] The survey found that 'some respondents reported improvements in their working conditions' as a result of opting for sole practice.[217] This move was described as an opportunity 'in sole practice to balance work and family commitments'.[218] The relevance of this finding for this thesis is confirmation of the propensity for female participants to leave large law firms and establish sole practices in order to balance family responsibilities.[219] The other main reason for opting for sole practice that emerged from Chan, Poynton and Bruce's study was an escape from the 'toxic'[220] environment of corporate practice. These experiences are also identified in the *NARS Report*.[221]

Similarly, in this study, several individual lawyers made the decision to opt for sole practice as an alternative to distressing workplaces.[222] However, escaping to sole practice does not alleviate all harmful features of a large and/or corporate practice. Indeed, in highlighting workplace practices in larger organisations, the research may have overlooked the health-related needs in singular and smaller workplaces.

Sole practice is not an escape to *nirvana*, as confirmed by some participants who spoke about poor mental health in the sole practitioner cohort. This discussion also included reference to a sense of abandonment, which is a principal theme concerning both the research about this cohort within the legal profession, and the response to their needs, some of which may have developed as a result of earlier careers.

Drew et al advocate that work-life imbalance in the legal profession is the responsibility of the profession and not the individual lawyer.[223] They argue that there needs to be a 'wider systemic change in cultural attitudes, values and expectations'[224] to ensure that the negative aspects of legal practice are addressed, namely mental health concerns, high

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[216] Ibid.
[217] Ibid 1092.
[218] Ibid 1069.
[219] Ibid. A few practitioners referred to family responsibilities being better managed in sole practice than in large firms.
[220] Ibid 1094. The reference to 'toxic' in Chan, Poynton and Bruce's study related to a female solicitor's description of the small firm where she worked and which drove her to move to a corporate role. She left her former workplace because of bullying, racism and a lack of support. This experience highlights that negative workplace practices are not confined to large corporate firms.
[221] Urbis and Law Council of Australia (n 147) 39–44.
[222] Ibid.
[223] Natalie Mei-Chuen Drew, Doita Datta and Jill Howieson, 'The Holy Grail: Work-Life Balance in the Legal Profession' (2015) 38(1) *UNSW Law Journal* 288.
[224] Ibid 322.

attrition rates and lack of work-life balance.[225] Baron also calls for a refocus of accountability in relation to lawyer distress on 'organisational and cultural contributors'[226] rather than on the individual.[227] Similar to the current expectation that ethical decision-making is an individual act rather than dependent on collective accountability,[228] the 'human side' of practice, such as values, ideals and personal life and health, are considered the responsibility of individuals. This is despite workplace laws and professional associations charged with advocacy for, and support of, their members.

Research relevant to the culture of the Australian profession discussed in this section evidences that significant issues of health, diversity and retention have been identified and somewhat responded to by professional associations and other cohorts within the profession. The impact of these responses on the profession is assessed in Chapter Seven, with particular consideration of the impact on sole practitioners.

4.6 Conclusion

Since 2000, the legal services market has been dominated by the neo-liberal mark of corporatisation, an unparalleled expansion into global markets, and a technology-led transformation in the delivery of legal services. The private profession has continued to diversify in its client base and structures, whilst remaining under the guise of one solicitors' profession. The potential impact on the traditional structure of sole practice is not yet fully known, whilst the actual impact requires discrete research on the position of sole and sole general practitioners.

The impact of changes in the legal services market over the last 20 years has been twofold for sole practitioners. Incorporation and technology have exposed opportunities, including new approaches to business. In particular, the COVID-19 pandemic has shown how advantageous technology may be in the delivery of legal services. Concurrently,

[225] Ibid.
[226] Baron (n 149) 118.
[227] Ibid.
[228] Although the Uniform Law provides for discipline against a lawyer or law practice under *Uniform Law NSW* (n 58) s 262, there are very few cases against the partners or directors of firms.

competition from non-lawyers and 'NewLaw'yers[229] has challenged the sustainability of sole and general practice.

These challenges to the existence of the sole and general practitioner have wide impact. This thesis evidences the importance of the physical presence of the legal practitioner for the community. Law is arguably more than the text – in the case of the sole practitioner, this thesis suggests the humanity or 'common' element of the common law system is critical. The history of the profession discussed in Chapter Three, followed by the state of the legal services market throughout the last two decades set out in this chapter, demonstrate that the sole practitioner remains an enduring and resilient component of the Australian legal profession. The question is whether and how that will remain the case.

Whilst the segmentation of the profession initially grew out of the commercialisation of law firms throughout the last century, the post-GFC external factors of corporatisation, internationalisation and technology have accelerated the divide between the 'big' and the 'small' ends of town. In relation to the legal services market shifting the profession to a business, it is arguable that the debate has moved its focus to the business side, as evidenced by the accepted reference to the legal 'industry' away from the legal 'profession'. What needs to be examined is whether professional ethics, including the matrix of lawyers' duties, have been abandoned with the industrialisation of the profession.[230]

The urgency of this issue has accelerated this century with the corresponding expansion of the corporate firm. This growth has attracted a degree of scrutiny of the internal structure of corporate firms and a landscape of largely dysfunctional workplaces has emerged. An examination of workplace culture, particularly in the last 10 years, has led to findings of unlawful and unethical conduct. Whilst these findings have caused workplace changes[231] and professional associations' initiatives,[232] the responsibility for responding to unlawful and unethical conduct is often that of the individual. Research identifying the negative internal influences on workplace culture, which adversely affect

[229] For example, legal start-ups.
[230] Certainly, many of the interview participants spoke of their professional values, whilst managing a successful business. These included responsibility for clients' care, awareness of the lack of access to the law, reduced fees and duty to the court.
[231] Law firms are appointing Diversity and Inclusion managers. Sam McKeith, 'Diversity and Inclusion: Building Diversity in the Legal Profession' [2019] (56) *LSJ: Law Society of NSW Journal* 38.
[232] The Law Council of Australia introduced its *Diversity and Equality Charter* in response to the *NARS Report*. 'Diversity and Equality Charter', *Law Council of Australia* (n 155).

some lawyers, requires examination. This review is important, not least of all because a career in the corporate world continues to be the 'holy-grail' for many law graduates.

The impact from the catalysts of change identified in this chapter, particularly competition, regulation, technology and the culture of the profession, are discussed by the participants in this study and inform their experiences as sole practitioners. The method by which this discussion is structured and analysed is presented in the next chapter, including the methodological approach to the representation of the participants' lived experience and narratives.

5 PHENOMENOLOGY: METHODOLOGICAL FORM AND RATIONALE

Phenomenology not only finds its starting point in wonder,
it must also induce wonder.[1]

5.1 Introduction

This chapter introduces the methodological approach taken in this thesis. Its aim is to explain the value of using phenomenology to understand the motivations and challenges of the sole practitioner, and why this approach best suits an investigation of this cohort.

This thesis applies Interpretative Phenomenological Analysis ('IPA'), an evolved application of phenomenology. Phenomenology is chosen as it constitutes an open and authentic approach to the study of human experience, which examines the 'everyday'[2] in

[1] Max van Manen, 'Seeking: A Phenomenologist is a Seeker of Meaning', *Phenomenology Online* (Web Page, 2011) <https://www.phenomenologyonline.com/inquiry/writing/seeking/>, referring to Max van Manen, *Researching Lived Experience: Human Science for an Action Sensitive Pedagogy* (State University of New York Press, 1990) 44–5 ('*Researching Lived Experience*').
[2] van Manen, *Researching Lived Experience* (n 1) 9.

order to highlight the ordinary and the extraordinary and the way in which the two intertwine. It is the ideal approach for the study of lawyers in the 'everyday'. Phenomenology aims to make sense and gain deeper understanding of participants' lived experience through a collaborative, semi-structured process. As discussed in earlier chapters, sole general practitioners receive scarce attention within the legal profession. This chapter offers a novel application of phenomenology to analyse this sub-set of the solicitors' profession. Phenomenology allows for the opportunity to examine 'what it is like to be a sole general practitioner' both in the profession, and more broadly, in the community.

Importantly, my own experience as a former solicitor and as an educator has granted me a unique two-way window into the world of the sole practitioner. I was accepted by the interview cohort as having some knowledge and understanding of their experiences. This position of equality and perception of shared encounters in relation to the participants I interviewed provided me with a distinctive platform of investigation. My engagement with the participants aligned with Vagle's interpretation of phenomenology as, at its 'core',[3] an 'encounter'.[4] Notably, in order to adhere to an authentic interpretation of the participants, it is essential that my approach, as the researcher responsible for narrating their encounters, is open, attentive and consistent. There is both an acknowledgment of the common and the unique experiences of general practice and respect for the participants who are generously sharing their experiences.

This chapter is divided into three parts. In the first part (Sections 5.2 and 5.3), the phenomenological approach applied in the thesis is discussed to demonstrate its methodological appropriateness in relation to the research questions. In the second part (Sections 5.4 and 5.5), the methodology, as the framework of the research approach, is explained. The third part (Section 5.6) details how the method has been applied to the research data. It presents a semi-structured process of examination, including the roles of the participants and the researcher.

[3] Mark D Vagle, *Crafting Phenomenological Research* (Routledge, 2nd ed, 2018) xii.
[4] Ibid.

5.2 The Use of Phenomenology: Form and Rationale

As defined by US phenomenologist Vagle, an encounter is 'a way of being, becoming, living and, moving through the world'.[5] For the 23 lawyers who participated in this study, their profession is a significant part of their lives. Their openness in sharing their encounters provides rich perceptions into their understanding of their role in the communities in which they practise law.

This study offers novel insight into, and a shared understanding of, sole general practice. Therefore, the aim of this qualitative research is not to provide a 'typical' view of either sole practitioners or solicitors in general practice. Rather, this study considers a sample of sole general practitioners in order to better understand firstly, their experiences of maintaining a general practice in an environment of increasing specialisation, and secondly, their perception of their role in their communities.

This exploration is framed and guided by the two overarching research questions:

1. *How do lawyers experience and understand their role as sole general practitioners?*
2. *What do they understand their impact to be on the communities in which they practise law?*

The objectives underneath these questions are to:

1. *Describe the participants' experience of sole and general practice*
2. *Understand the environments in which they practise*
3. *Identify the ways in which sole general practitioners work, in order to consider the future for this sub-set of the profession*

A phenomenological approach aligns with these objectives, as it enables an open and fluid method for the exchange of inquiry between participants and researcher. Within this

[5] Ibid.

exchange, participants' narratives of their *being*,[6] *doing* and *feeling* allow for an authentic understanding of their experiences, insights and environments.

The overarching rationale for employing phenomenology is its association with 'giving a voice' to clusters of people who share a common experience. These clusters include professionals in careers where there is a significant duty of care, and often a greater need for empathy, such as health and education.[7] Empathy, as a core element of understanding and connectedness, is relevant to teachers and health professionals. These are professions characterised by a duty of service to communities that may be vulnerable.

However, *empathy* is not a word commonly associated with lawyers. Many barristers and solicitors practise in areas where empathy is important in the lawyer/client relationship. Lawyers frequently represent vulnerable clients and advocate for law reform in order to facilitate access to justice. In addition, the notion of a duty of service, including an understanding of legal needs, is familiar to the legal profession. Lawyers owe duties to the administration of justice and the court[8] and the client,[9] and are obliged to 'be honest and courteous in all dealings in the course of legal practice'.[10] This is particularly relevant for sole practitioners, who are often instructed by individuals, some of whom are vulnerable in the legal system.[11] A degree of empathy in fulfilling this duty to the client[12] is particularly relevant to lawyers in whom clients place their trust and reliance. Individual clients with legal problems can feel helpless within the legal system, particularly when the other party is in a more powerful position. They can also be exposed to legal fees that are uncertain in litigation and prohibitive in other areas. As

[6] Heidegger refers to 'being' as a means of understanding. See ibid 20. Heidegger identified the 'Hermeneutic Circle' as a concept through which relations between persons and with things are interpreted and understood: at 15. The narratives of the participants in this study must be understood in the context of being a lawyer and with a commitment to ongoing interpretations as to how the phenomena continue to present.

[7] Phenomenological studies have focused on 'caring' professions, such as health professionals and teachers. See Max van Manen, *Phenomenology of Practice: Meaning-Giving Methods in Phenomenological Research and Writing* (Left Coast Press, 2014) 213 ('*Phenomenology of Practice*').

[8] *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* r 3.1 ('*Australian Solicitors' Conduct Rules*').

[9] Ibid r 4.1.1.

[10] Ibid r 4.1.2.

[11] In the interviews, participants referred to clients who could be considered vulnerable, such as victims of violence, farmers during drought, elderly people and social security recipients.

[12] In order to comply with the *Australian Solicitors' Conduct Rules*, in particular rule 4.1.1, which states: 'A solicitor must also act in the best interests of a client in any matter in which the solicitor represents the client', and rule 7.1, which states: 'A solicitor must provide clear and timely advice to assist a client to understand relevant legal issues and to make informed choices about action to be taken during the course of a matter, consistent with the terms of the engagement, a solicitor must have a level of understanding and a capacity to relate to the client'. *Australian Solicitors' Conduct Rules* (n 8).

presented in Chapter One, these clients are the 'missing middle', being the low- and medium-income earners who are ineligible for legal aid and who cannot afford legal representation in litigious matters.[13]

The narratives of the participants provide a context as to why sole practice continues to be a strong presence within the profession, including the facilitation of access to legal services for the 'missing middle'. The participants' accounts of their experiences as lawyers, how they see themselves, how they believe others perceive them and their day-to-day world allow for a holistic understanding of this cohort and their unique place within the solicitors' profession. In summary, the joys and challenges of sole practice and the role that these solicitors play in their communities are well served by a phenomenological approach.

5.3 The Complexity of Phenomenology

The word phenomenology derives from a hybrid of the Greek 'phainomenon' and 'logos', meaning an account 'of various phenomena, of the various ways in which things can appear'.[14] In a sense, the complexity of phenomenology as a research approach reflects this self-embodied plethora of phenomena. Whilst one may think that an approach centred on human experience and the collective thoughts, beliefs, actions and consequences of individuals, grounded in 'sense-making',[15] should have a correspondingly functional and universal research context, as a theory, phenomenology is complex with no single common definition. According to English scholar Finlay, phenomenology is a developing research field that is influenced by time, discipline and culture.[16] For the researcher who wishes to understand and explain the lived experience of a community with shared realities, the lack of an agreed definition is challenging. Whilst the description of a lived experience is simple, the underpinning approach of its intention and application is multi-layered.

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[13] Productivity Commission, *Access to Justice Arrangements: Overview* (Report, Australian Government Productivity Commission, 3 December 2014) <https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>.
[14] Robert Sokolowski, *Introduction to Phenomenology* (Cambridge University Press, 2000) 13, cited in Vagle (n 3) 22.
[15] Sense-making is a feature of IPA. Jonathan A Smith, Paul Flowers and Michael Larkin, *Interpretative Phenomenological Analysis: Theory, Method and Research* (Sage, 2009) 45.
[16] Linda Finlay, 'A Dance between the Reduction and Reflexivity: Explicating the "Phenomenological Psychological Attitude"' (2008) 39(1) *Journal of Phenomenological Psychology* 1, 29 ('A Dance between the Reduction and Reflexivity').

In working with the participants in this study and the qualitative data using the phenomenological approach, complexity occurs on two key levels – the approach between the descriptive or interpretative analysis of data,[17] and the subjective or objective role of the researcher.[18] In responding to this complexity, phenomenologists build on the philosophies of the early theorists, and on the approaches of their peers, to offer their own interpretation of phenomenology.[19] The method used in this thesis adheres to that evolution of approaches to data analysis and to the role of the researcher, and identifies the evolving approaches that most accurately respond to the research questions. I found this aspect of phenomenology, where the involvement of the researcher is fluid, to be acutely relevant to my involvement in this study.

This interconnectedness of subjectivity and objectivity, acknowledged as both a complexity and a strength of IPA, provides a suitable methodological approach for this study. More specifically, the theory presented by Finlay is the most appropriate framework for this study because it acknowledges that phenomenology does not offer a universal definition, but rather consists of a range of approaches that offer compatibility, relevance and value. Accepting the vicissitudes of phenomenological approaches to studies, Finlay stresses that phenomenological research can be a fusion of approaches that are curated and applied to a study, provided that the philosophical interpretations are rational and receptive. She explains:

> …phenomenological research is phenomenological when it involves both rich description of the lifeworld or lived experience, and where the researcher has adopted a special, open phenomenological attitude which, at least, refrains from importing external frameworks and sets aside judgements about the realness of the phenomenon.[20]

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[17] Vagle (n 3) 13–14.
[18] Ibid 8.
[19] For example, Finlay does not fully subscribe to Edmund Husserl's commitment to 'bracketing' all worldliness, subjectivity and connection with subject of the research in order to capture its essence. Instead, she offers an approach that she likens to a 'tango', where the researcher moves with the participant between objectivity and subjectivity. Finlay, 'A Dance between the Reduction and Reflexivity' (n 16) 1. IPA adheres to Husserl's approach to going 'back to the things themselves'. Smith, Flowers and Larkin (n 15) 1. Van Manen builds on Husserl's core approach of phenomenology as revealing what is hidden through highlighting that this interpretation calls for an attention or openness to meanings in daily 'encounters'. van Manen, *Phenomenology of Practice* (n 7) 28. Vagle extends Heidegger's focus on hermeneutics as manifestations of experiences to what he terms 'post-intentional phenomenology', being a fluid and 'dynamic' approach that connects all aspects of the phenomenon. Vagle (n 3) 32.
[20] Linda Finlay, 'Debating Phenomenological Research Methods' (2009) 3(1) *Phenomenology & Practice* 6, 8.

In relation to the first layer of complexity in applying an authentic phenomenological theory, the research framework is presented as either a descriptive[21] or interpretative[22] approach. Finlay sees the research approach as a continuum, bookended by description and interpretation.[23]

Regarding the second layer of complexity, as to whether the researcher's role is subjective or objective, Finlay explains:

> …whatever variant of phenomenology, the task remains profoundly dialectical: researchers need to straddle subjectivity and objectivity, intimacy and distance, being inside and outside, being a part of and apart from, bracketing the self and being self-aware, and so on.[24]

Finlay's theory acknowledges that data analysis can move between the descriptive and interpretative, whilst the researcher can also move between a subjective and objective role. What is important is that the researcher consciously interprets the approach they are taking throughout the data collection and analysis stages.

Finlay builds on the work of the creators of phenomenology, including Edmund Husserl's (1859-1938) vision of a phenomenological philosophy of the 'essence' that underpins the natural world and which is grounded in description, and Martin Heidegger's (1889-1976) definition of phenomenology as hermeneutic (interpretative).[25] Husserl's and Heidegger's philosophical approaches have guided the practice of phenomenology and have been followed, to varying degrees, by researchers, philosophers and practitioners. Their interpretations of phenomenology have been applied to studies of professionals, mainly those considered to be in 'caring' professions,[26] less so of the legal profession.[27] Husserl is considered the 'founder'[28] of

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[21] Led by Husserl and discussed below.
[22] Led by Heidegger and discussed below.
[23] Linda Finlay, *Phenomenology for Therapists: Researching the Lived World* (John Wiley & Sons, 2011) 19 ('*Phenomenology for Therapists*').
[24] Linda Finlay, 'The Phenomenological Attitude', *Dr Linda Finlay: Integrative Psychotherapist and Academic Consultant* (Web Page, 2014) <http://lindafinlay.co.uk/wp-content/uploads/2014/05/The-phenomenological-attitude.pdf> ('The Phenomenological Attitude').
[25] Linda Finlay, 'Unfolding the Phenomenological Research Process: Iterative Stages of "Seeing Afresh"' (2013) 53(2) *The Journal of Humanistic Psychology* 172 ('Unfolding the Phenomenological Research Process'). In this article Finlay addresses the differences and shared features of phenomenological approaches.
[26] Finlay, *Phenomenology for Therapists* (n 23) 139. Finlay refers to 'psychotherapy and healthcare researchers'. See also van Manen, *Phenomenology of Practice* (n 7) 22. Van Manen refers to research in

phenomenology and his 'transcendental'[29] philosophical approach, being a conscious focus on the 'particular and essential features'[30] of experiences, is absorbed in IPA.[31] His focus on *intentionality* recognises that individual consciousness is the understanding that an object can transcend its meaning to immerse itself with the subject to be both independent and interdependent.[32] Vagle notes that intentionality, as applied by Husserl, is the integrated relationship between human beings, as subjects, to other objects in the world.[33] In this study, the subjects are sole general practitioners and the object is their conscious experience of managing a 'mixed' legal practice as a solitary lawyer and their awareness of how they 'fit' in their communities.

Heidegger's hermeneutic method is based on a belief in, and commitment to, interpretations of manifestations.[34] As such, it differs from Husserl's emphasis on the essence of the connection between subject and object. Heidegger views interpretation as a means of understanding human existence through drawing on concepts of dwelling, 'being' and language.[35] Although Husserl and Heidegger come from different streams of phenomenology, their approaches are both relevant to the research questions in this study. Heidegger's focus on *interpretative understandings* is well-suited to questioning *how* and *why* the phenomenon of sole practice is experienced. Husserl's focus on the *essence* of phenomena is relevant to an understanding of the *being* of a lawyer on his or her own. Conclusively, features of both approaches are relevant and applied to this study.

Vagle combines the philosophies of Husserl and Heidegger;[36] he describes Husserl's approach as interest in the essence of people's intentions[37] and that of Heidegger as a

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'psychology, education, nursing, medicine, geriatric care, preventative health care, counseling, pedagogy, and human ecology'.

[27] 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* 481. Mundy undertook a phenomenological study of 15 female and eight male solicitors practising law in rural, regional and remote Queensland as an analysis of the experiences for women solicitors in country Queensland.

[28] Smith, Flowers and Larkin (n 15) 12.

[29] Ibid 14.

[30] Ibid.

[31] Ibid.

[32] Amedeo Giorgi, 'The Theory, Practice, and Evaluation of the Phenomenological Method as a Qualitative Research Procedure' (1997) 28(2) *Journal of Phenomenological Psychology* 235, 237.

[33] Vagle (n 3) 28.

[34] Ibid 31.

[35] Linda Finlay, 'Engaging Phenomenological Analysis' (2014) 11(2) *Qualitative Research in Psychology* 121, 138 ('Engaging Phenomenological Analysis').

[36] Husserl's and Heidegger's interpretations of phenomenology began as a shared one. Vagle describes their subsequent point of difference when Heidegger 'broke away from Husserl's reliance on consciousness in favour or more ontological (being-in-the-world) explanations'. Vagle (n 3) 30.

belief in manifestations.[38] He further develops their philosophies within the context of a post-intentionality or post-structural world, in which intentionality is present and recognised as a fluid and multi-layered approach.[39] In the post-structural world, such an approach allows for active integration amongst the participants, their stories, the researcher and the researcher's observations.[40]

Husserl and Heidegger's emphasis on an approach, rather than a methodology or a method, is a significant feature of phenomenology. The phenomenological approach to understanding the lived experience of an individual or collective is discussed below. This study of how the phenomenon of sole general practice is experienced is well-suited with Finlay's classification of phenomenology as an approach to a research question.[41] Her preference for an approach, rather than a methodology, is based on a belief in the essential need for 'empathetic openness'[42] coupled with 'reduction and reflection',[43] which is also discussed below.

Finlay describes openness as '…being empathetic and genuinely curious while also being reflexively mindful (i.e. being critically self-aware) of our own position and perspective given our particular personal, cultural, and historical location'.[44] Her approach to 'reduction and reflection' is less restrictive than that of Husserl, who advocates for a commitment to bracketing encounters to 'let the phenomenon show itself in its presence'.[45] Finlay describes Husserl's approach as a 'radical self-meditative process'.[46] In contrast to Husserl, Finlay notes that Heidegger sees interpretation as 'inevitable'.[47] She differs from Husserl and Heidegger; instead, she offers a moderated and fluid approach:

> Here, the researcher steps away from initial pre-understandings to gain sufficient distance from which to critically and reflexively interrogate them. As new thoughts and

[37] Ibid 31.
[38] Ibid.
[39] Ibid 32.
[40] Ibid.
[41] Finlay, 'A Dance between the Reduction and Reflexivity' (n 16) 17.
[42] Ibid 4.
[43] Ibid 1.
[44] Finlay, *The Phenomenological Attitude* (n 24).
[45] Finlay, 'Unfolding the Phenomenological Research Process' (n 25) 176.
[46] Ibid.
[47] Finlay, 'A Dance between the Reduction and Reflexivity' (n 16) 8.

> insights begin to challenge these pre-understandings, the researcher makes interpretative revisions and the ground is re-covered. And the 'dance' steps begin once more... [48]

This study adheres to Finlay's holistic theory of understanding and implementing an approach that is freely influenced by other scholars. She proposes an 'attitude' of utilising open but co-reliant core 'benchmarks',[49] which provide a 'provisional map'.[50] Her approach is grounded in feminist theory and has valuable synergies with the research questions and rationale of this study. Whilst the analysis presented herein is not based on feminist theory,[51] it uses a similar theoretical lens that offers an empathetic, open and measured framework through which to describe and interpret the participants' narratives. Finlay acknowledges possible criticism of her approach, such as it being too open and imprecise yet prescriptive, particularly through its diagrammatic representation of the 'iterative stages of the phenomenological approach'.[52] However, as noted earlier in this chapter, Finlay views phenomenology as an emerging area that is influenced by time, disciplines and culture.[53] This study comes within Finlay's sense of a developing field because it is, as far as I am aware, the first phenomenological study of sole lawyers in general practice. It is certainly the first such Australian study.

Finlay's empathetic approach builds on van Manen's 'gaze',[54] which he describes as being informed by 'interpretive sense-making'[55] and openness. This concept of the gaze is discussed below. An open and empathetic attitude resonates with the narratives of these lawyers, some of whom believe that they are viewed as outliers in the profession.[56] Applying both scholars' approaches provides a framework with which I, as the researcher, have been able to make sense of the world in which solicitors, practising law across several areas and having sole accountability for their practice, manage their

[48] Ibid 17.
[49] Finlay, 'Unfolding the Phenomenological Research Process' (n 25) 194.
[50] Ibid 196.
[51] Linda Finlay, 'Debating Phenomenological Methods' in Norm Friesen, Carina Henriksson and Tone Saevi (eds), *Hermeneutic Phenomenology in Education: Method and Practice* (Sense Publishers, 2012) 17, 31.
[52] Finlay, 'Unfolding the Phenomenological Research Process' (n 25) 196.
[53] Ibid.
[54] Van Manen refers to the 'phenomenological gaze' as the elevation of an ordinary experience to an extraordinary one 'when we lift it up from our daily existences and hold it with a phenomenological gaze'. See van Manen, *Phenomenology of Practice* (n 7) 38.
[55] Ibid 44.
[56] Many participants believed that the NSW Law Society did not value their work as compared with solicitors in larger firms. This theme is discussed in Chapter 6. For a discussion as to a perception of sole practitioners, see Jerome Doraisamy, 'Sole Practitioners, Boutiques and Behaviour', *Lawyers Weekly (Sydney)* (online, 7 February 2019) <https://www.lawyersweekly.com.au/partner-features/24983-sole-practitioners-boutiques-and-behaviour>.

business and their professional responsibilities. Furthermore, the adaptation of Finlay's and van Manen's methods is informed by Vagle's method of data analysis as a hybrid of a structured process and an unstructured movement flowing across boundaries.[57] Drawing on these three scholars' work, this study develops a method for the gathering, analysing and synthesising of the qualitative data. This method is set out below (see Section 5.6).

In summary, the aim of this study is to understand the practice of sole practitioners who offer a range of legal services – their *doing* and *being*.[58] The methodology centres on an examination of the participants' sense-making of their lifeworld.[59] It sits on Finlay's continuum with two distinct principles – firstly, analysis of the individual case building up to the collective narrative, and secondly, recognition that both participant and researcher are embedded in the process. This continuum is best realised by applying the qualitative methodology of IPA developed by Smith, Flowers and Larkin,[60] discussed below (see Sections 5.5 and 5.6).

5.4 The Phenomenological Approach to this Study

The complexity of phenomenology should not be a deterrent against its application. Its appeal is in its *openness* as an approach and framework rather than a prescriptive process. Whilst acknowledging its complexity, at its simplest, the phenomenological approach unites a theoretical framework with a rigorous role for the researcher and the participant. This framework is underpinned by a phenomenological 'attitude',[61] being a curiosity and a commitment to be open, to listen and reflect on the learnings shared by the subject of the study. In this section, the course of the phenomenological approach for this study is set out.

[57] Vagle (n 3) 110.
[58] See n 6.
[59] Smith, Flowers and Larkin (n 15) 1.
[60] Ibid 12.
[61] Several researchers and scholars refer to the phenomenological attitude. Van Manen gives an example of someone meeting an old friend for coffee and then capturing the story's moments, which have passed and are now reflection – moving from the 'subjectivity of living presence into an object of reflective presence'. van Manen, *Phenomenology of Practice* (n 7) 34. Vagle identifies the move from the natural to the phenomenological attitude, referring to Sokolowski's approach 'to look at what we usually look through'. Vagle (n 3) 88.

5.4.1 A Theoretical Approach to the Research Questions

As with Finlay, Moustakas considers the intention of phenomenology to be an approach. He identifies three elements in an 'empirical phenomenological approach',[62] namely the achievement of a detailed description, the application of a 'reflective structural analysis'[63] and the rendering of the 'essences of the experience'.[64] This approach brings together elements of Husserl and Heidegger, which allows for both descriptive and interpretative elements within the participants' narratives. It is applied in this study on the basis that description is a precursor to interpretation. Each participant's reflection on their past (why they came to sole practice and earlier practice experience), their present environment (their work, the joys and challenges) and their thoughts as to future practice must, firstly, be described to enable my conscious observation to interpret the narratives. This observation is intended to be objective with the researcher setting aside subjectivity.

I acknowledge the significance of this point, given my own life experiences as a suburban solicitor in general practice. Although I was not a sole practitioner, I had matters with solicitors in sole practice and I also observed these solicitors working, for example, at court, in mediations, at exchanges and settlements and local Law Society events. I am mindful that interpretation, grounded in objectively-recorded description, draws out meanings in individual case studies. Synergies and connections across the case studies are then discovered. It is also important to acknowledge that the interpretation offered by myself, as the researcher, is drawn from my own subjective professional and personal experiences. To check the subjectivity of this observation, this study relies on my conscious commitment to objectively interpret descriptions offered by the interviewees. This separates description, interpretation and observation, allowing observation to be the objective bridge between the subjective acts of interpretation and description. This step ensures that the researcher is neither censoring nor glorifying the narrative, as described by van Manen below.

Van Manen's approach to understanding another's experience and drawing out meaning is one of 'sense-making'.[65] He identifies that a core challenge with interpretation is

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[62] Clark Moustakas, 'Human Science Perspectives and Models' in *Phenomenological Research Methods* (SAGE Publications, 1994) 1, 9 <https://methods.sagepub.com/book/phenomenological-research-methods>.
[63] Ibid.
[64] Ibid 10.
[65] van Manen, *Phenomenology of Practice* (n 7) 44.

finding the truth or the sense between participants' raw narratives and the filtered representation of the researcher. He describes the requirement for sense-making:

> …the challenge of phenomenology is to recover the lived meanings of this moment without objectifying these faded meanings and without turning the lived meanings into positivistic themes, sanitized concepts, objectified descriptions, or abstract theories.[66]

Van Manen, as highlighted by Vagle, considers that understanding comes through an application of 'in-ness'.[67] He describes the phenomenological approach as a transition, of both participants and the researcher, from an 'ordinary' experience to an 'extraordinary' one, 'when we lift it up from our daily existence and hold it with our phenomenological gaze'.[68] This 'gaze' is characterised by its openness, sensitivity and capacity to invite stories, contemplation and retelling. As an approach, grounded by its qualitative design, van Manen's phenomenology encourages freedom of thought, detailed narratives, and co-existing similar and different content and perspectives guided by the researcher. This encouragement and guidance allows the participants to view their experience through a lens by which they are able to reflect on, understand and describe or interpret the phenomena of feelings, emotions and contexts. Both researcher and participants have a role in the unfolding of the narrative. These roles are discussed below.

5.4.2 The Role of the Participant

The participant is an active player in the interview exchange. Their role is to bring life to the question: 'what is this experience like?'[69] In so doing, participants may draw on pure description; for example, 'I come into the office on Saturdays'. Or they may interpret their own experience; for example, 'Although my wife doesn't approve, I come into the office on Saturdays'. They are, of course, subjective. They may also be objective and interpretative; for example: 'From my wife's perspective, it is not a good idea to go to the office on Saturdays. On the other hand, my clients appreciate this service'.

The phenomenological 'gaze' that van Manen refers to enables the descriptive narrative within its context to be understood and reflected upon. Participants may be descriptive, interpretative and reflective and they may move across all approaches. The role of the

[66] Ibid 817.
[67] Vagle (n 3) 62.
[68] van Manen, *Phenomenology of Practice* (n 7) 812.
[69] Ibid.

researcher is to respect and represent the participants' narratives. Therefore, it is critical that participants are welcomed into a safe and comfortable interview environment. The role of the participant is to offer their experience of the phenomena. To experience that 'lift from (our) daily existence',[70] participants draw on their own resources. An example of this 'lift' and 'gaze', which occurred across many of the interviews in this study, is the use of humour by the participants. Humour, directed at self or others and evidenced by words, phrases, descriptions and laughter, was a constant surprise. Use of humour, as well as other 'human' or everyday characteristics, such as storytelling, imagery and comparisons with others, were common elements throughout the interviews. These characteristics come within van Manen's reference to the 'lifeworld' and the interpretative flow of how humans move in the lifeworld.[71] This concept of the lifeworld is well-suited to studies of people-centred professions,[72] where the relationship is person-to-person rather than person-to-entity.

5.4.3 The Role of the Researcher

Finlay's interpretation of the role of the researcher having empathetic openness and a capacity for reduction and reflection, which has been applied in this study, recognises that moving back and forth between objectivity and subjectivity requires conscious decision-making. With this approach, it is essential that the participants' narratives are represented as their experiences and their perceptions. This means that my role as the researcher, as a *guest* in these solicitors' worlds, acts at the descriptive stage of the research analysis as their mouthpiece.

Reduction and reflection are core elements in many phenomenological approaches. These measured processes, described by Finlay as 'conscious',[73] enable studies to be trustworthy. Reduction calls for a commitment by the researcher to self-awareness to ensure that preconceived conclusions, bias and subjective feelings are identified, disclosed and suspended in the representation of the participants' stories. Finlay acknowledges that the process of reduction is a challenge because of the need to isolate the researcher's pre-understandings, particularly when initially gathering data and

[70] Ibid.
[71] Vagle (n 3) 62.
[72] See Erika Goble et al, 'Habits of Mind and the Split-Mind Effect: When Computer-Assisted Qualitative Data Analysis Software is Used in Phenomenological Research' (2012) 13(2) *Forum: Qualitative Social Research* art 2, 6.
[73] Finlay, 'A Dance between the Reduction and Reflexivity' (n 16) 17.

subsequently analysing data, in order to resist their 'seductive power'.[74] To not do so may overlay the researcher's presumptions on the individual's narrative. Reflection requires unreserved thought in order for the researcher to achieve a deep level of clarity and understanding of participants' narratives. Both the participant and the researcher are required to undertake a reflective process, with the researcher having a duty to represent the participants' experiences with respect and integrity. This openness is tempered by a parallel self-awareness of the duty to be truthful to the participants' narratives, both in description and interpretation. Finlay summarises: 'Our goal is to move beyond what the participant (or text) says of experience to what is revealed in the telling'.[75]

5.5 Methodology: Interpretative Phenomenological Analysis

IPA is a relatively recent stream of the hermeneutic school, having first been considered in 2006. As Finlay relates, IPA is a 'version of phenomenology whose use has burgeoned rapidly over the last decade'.[76] This methodology is suited to this study, as its three major criteria align with the research questions. Firstly, the IPA framework follows the hermeneutic theory of interpretation, which offers a capacity for deep analysis and a fluidity for the researcher to shift between, and around, different data.[77] Secondly, hermeneutic theory centres on the concept of the *hermeneutic circle*.[78] Here the researcher moves from a participant's single experience of practice, for example, their account of the client who refused to pay their bill, to the entirety of all the participants who spoke about the challenge of fees. Finally, idiography is the component of the framework that requires a level of detail as a 'commitment to the particular',[79] as well as a focus on 'the perspective of particular people, in a particular context'.[80] Used in this study, idiography does not allow for generalisations or representations, but rather seeks patterns across the narratives.[81] Both the detailed and the particular emerge from the narrative. Each interview is unique, with common experiences and shared perceptions emerging across the interviews. The sum of the narratives allows for 'convergences'

[74] Ibid.
[75] Finlay, 'Unfolding the Phenomenological Research Process' (n 25) 180.
[76] Finlay, *Phenomenology for Therapists* (n 23) 139.
[77] Smith, Flowers and Larkin (n 15) 21.
[78] Ibid 27.
[79] Ibid 29.
[80] Ibid.
[81] Finlay, *Phenomenology for Therapists* (n 23) 140.

(shared themes)[82] and 'divergences' (particular ways themes are played out for individuals)'.[83] Applying this method, each participant's narrative is examined and interpreted as its own case study. Collective case studies are then analysed for similarities and differences, patterns and outliers.

As discussed earlier in this chapter, the role of the researcher is both objective and subjective. Objectively, the researcher consciously withdraws from the interview for the purpose of sense-making, 'wanting to stand alongside'[84] the participants as an outsider, whilst subjectively being with the participants, as a guest, and 'standing in their shoes',[85] or possibly *understanding* in their shoes. The researcher must remain self-aware and committed to this process, which is underpinned by a conscious and continuing openness to the participants' stories.

Freeman suggests that with studies of 'real human beings', 'there is no more sensible way of doing so than through the stories they tell, whether big, small, or in-between'.[86] He describes the process as a 'hermeneutic schema',[87] in which the reader is making sense of the narrative through anticipation, definition and interpretation and finally, situating the narrative in a wider context. Freeman's reference to sense-making through 'tacking back and forth between part and whole'[88] aligns with both IPA methodology and Vagle's approach to gathering and analysing data.

5.6 Method

In this thesis, the approach to the research questions follows the structure of IPA, whilst drawing on Finlay's 'empathy and openness',[89] van Manen's 'reflecting'[90] on the living meanings of everyday experiences',[91] and Vagle's guiding principles for phenomenological data gathering[92] and analysis.[93] These methods share the core

[82] Ibid 141.
[83] Ibid.
[84] Smith, Flowers and Larkin (n 15) 36.
[85] Ibid.
[86] Mark Freeman, 'Narrative as a Mode of Understanding: Method, Theory, Praxis' in Anna De Fina and Alexandra Georgakopoulou (eds), *The Handbook of Narrative Analysis* (John Wiley & Sons, 2015) 21, 28.
[87] Ibid 31.
[88] Ibid.
[89] Finlay, 'A Dance between the Reduction and Reflexivity' (n 16) 17.
[90] van Manen, *Phenomenology of Practice* (n 7) 23.
[91] Ibid.
[92] Vagle (n 3) 86. Vagle refers to an 'open mindset' in the gathering of data.

characteristics of a structured process, a liberal approach to the descriptive and interpretive forms of analysis, and a commitment to the connectedness between the practitioner as the subject and the experience of sole general practice as the object.[94] IPA has the further distinctive philosophical approach of conducting initial analyses of individual cases, then moving to the collective insights across the cases.[95]

The primary data analysed in this thesis have been collected from unstructured interviews. The method of unstructured interviews provides participants with the space to reflect on their own practice, including reasons for moving to sole practice, its joys and challenges, their role and their thoughts on the future of their cohort. The unstructured interview enables participants to share their experiences, thoughts and beliefs in a space that enables unhurried recollection, deep reflection and, at times, intense consideration.

The secondary data are my observations and reflections. Observations of the participants' environment, including space and place, inform the interview findings. Visual observation was possible in 21 of the 23 interviews; two were conducted by telephone. My reflections on the interview and the participants' engagement, captured in observational notes, followed the interviews.

A description of the steps in the IPA method follows an explanation of the process of participant selection and the interview method.

5.6.1 Participants

The participants were selected via three methods. Some participants were selected in response to a call for volunteers through the NSW Law Society. The Society published information about the research project and the call for sole general practitioner participants in its weekly electronic newsletter *Monday Briefs*. This newsletter is distributed to members and associate members of the Society. From the newsletter, 11 solicitors, who met the criteria of general and sole practice, responded. The remaining participants were recruited through a call-out from a branch of the Law Society and through professional networks.

[93] Ibid 108. Vagle's analysis centres on the 'whole-part-whole' process discussed in this chapter at Section 5.6.3.
[94] Ibid 110; Smith, Flowers and Larkin (n 15) 83–4.
[95] Smith, Flowers and Larkin (n 15) 92–6.

Because the research questions address two aspects of legal practice, that of sole and of general practice, as well as the role of these practitioners in their communities, it was important to have a relatively equal sample from rural, suburban and city regions. Polkinghorne, a phenomenological scholar, recommends between five and 25 participants.[96] Whilst 23 participants is at the higher end of Polkinghorne's recommendation,[97] it provides for reasonable equivalency across gender and location.

In relation to location, the ABS guided the categorisation of geographical boundaries for urban and rural areas. The ABS, using the *Section of State Structure of the Australian Statistical Geographical Standard*, defines *Major Urban* as a centre with a population of 100,000 or more.[98] The other major category is *Rural.* In this study, major urban or city practitioners were defined as those who practise in the Sydney Central Business District. They constituted the highest number with ten participants. In the rural category there were seven practitioners. The remaining six suburban practitioners were those who practise within Greater Sydney.[99] NSW and Victoria were chosen as they are the two Uniform Law states and they draw on the greatest number of solicitors than other states and territories. Regrettably, attempts to reach Victorian solicitors were not successful. Therefore, all participants are from NSW and whilst this is only one state, its solicitor population is the highest of all states and territories.[100] Most importantly, the participants represent rural, suburban and city areas.

It was also imperative to have a gender balance that replicates the proportion of female and male sole solicitors. In 2016 in NSW, the percentage of female sole practitioners was 33.6% compared with 66.4% male sole practitioners,[101] and the percentage of female sole principals with employees was 55.4% compared with 44.6% male.[102] The greater number of female sole practitioners who employed staff compared to their male colleagues is not

[96] John W Creswell, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (SAGE Publications, 2nd ed, 2007) 61.
[97] Ibid.
[98] Australian Bureau of Statistics, *Australian Statistical Geography Standard (ASGS): Volume 4 - Significant Urban Areas, Urban Centres and Localities, Section of State* (Catalogue No 1270.0.55.004, July 2016) <https://www.abs.gov.au/ausstats/abs@.nsf/mf/1270.0.55.004>.
[99] Ibid.
[100] NSW has 43% of solicitors, whilst Victoria has the second highest population with 26%. Urbis and Law Society of New South Wales, *2018 National Profile of Solicitors: Final Report* (Report, 17 July 2019) 5 <https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors.pdf>.
[101] Urbis and Law Society of New South Wales, *National Profile of Solicitors 2016: Report* (Report, 24 August 2017) 22 <https://www.lawsociety.com.au/sites/default/files/2018-04/NATIONAL%20PROFILE%20OF%20SOLICITORS%202016.compressed.pdf>.
[102] Ibid 23.

reflected in this study, where four females and six males employed staff. Given the small number of participants in this study, it is not surprising that they do not exactly mirror the general private practitioner population. As a general observation, the participants' gender balance of 12 female to 11 male approximately follows that of the population of NSW solicitors in private practice, with 56.9% female and 43.1% male.[103]

The table below shows the breakdown of participants by gender and region.

Table 5.1 Participants by Gender and Region

Region	***Female Participants***	***Male Participants***
City	5	5
Suburban	5	1
Country	2	5

Ethics approval was obtained (see Appendix B). All participants received a Participant Information Statement explaining the details of the research. All participants signed a Consent Form. The Statement and Consent Forms are annexed to the thesis (see Appendix C and D). The participants have been de-identified and given fictitious names. The interviews were conducted between mid-2017 and early 2019.

5.6.2 Interviews

Lawyers in private practice, especially those who primarily practise on their own with an individual client base, are immersed in an environment where the 'interview' is a familiar part of their practice. A significant aspect of their work is interviewing clients. However, in this research, the roles are reversed with the lawyer as interviewee rather than interviewer. This prompts the question of whether participants engage in the interview process with the same considerations that they bring to a conference with a client. Within the professional context, where the narrative is the primary source that sets up the solicitor/client relationship, are values of trust, reliance and openness. Solicitors

[103] Ibid.

are familiar with the interview process and context. Van Manen identifies that, in professions where conversations form a core part, both 'spoken words as well as silences',[104] there is a more perceptive understanding of the client. He offers: 'It is in moments like this that the deeper and the more fragile inner secrets may come to the surface and be shared in this trusted conversational space'.[105]

Arguably, this professional experience with the interview process results in a high level of confidence that the patterns emerging from the data are also authentic and reflective. This space of the interview for the participants, now the interviewee, is one where embedded core values of trust, reliance and respect ensure the integrity of the interview process. Reliance on the interview narrative as an authentic encounter continues with a structured method of interpretation and analysis.

As the vehicle for answering the research questions, the interview process was methodically designed. Importantly for a phenomenological approach, preparation included my reflection on being open and non-judgemental through a conscious commitment to placing aside assumptions and subjective assessment during the interview. In addition, a search to ascertain whether participants had a web presence was undertaken. For the solicitors with a web presence, as listed in Table 6.3, I was able to confirm that they offered a general practice, to determine their approach to the business aspects of their firm, and to examine the use of technology to advertise their services. The areas of practice and advertising are discussed in Chapter Six.

The interview was carefully framed with a clear introduction about the study's objectives and explanation of the interview structure. Prior to, and throughout, the interview, I was conscious of my role as a guest of the interviewee. I was both observer and participant, although my role as a participant was constrained by my conscious understanding and practice that the primary participant was the owner and storyteller of their experience. My role as participant was to encourage the solicitors' narrative, to clarify where necessary, and to be an empathetic and open listener. I also had the role of observer, which included taking visual notes of demeanour, body language, office location, space, furnishings and the common evidence associated with a legal practice, namely files, documents and books.

[104] Max van Manen, 'Phenomenology in its Original Sense' (2017) 27(6) *Qualitative Health Research* 810, 817.
[105] Ibid.

Several phenomenologists follow Husserl's philosophy that the researcher must bracket their beliefs in order to ensure that the data are absolutely objective.[106] Others acknowledge that there is room for subjectivity and that indeed, it is not possible to completely purify the process.[107] I understood that my core responsibility for each encounter with the participants was to be open to hearing a unique experience, whilst being conscious of my preconceptions, and actively putting aside biases if they crept in during the interviews, by focusing on the participants' words and actions. This process follows Finlay's suggestion that researchers should 'attempt to disentangle'[108] bias and predeterminations from the study and acknowledge that 'interpretation cannot be exorcized from the ongoing revelation of the thing under scrutiny'.[109] This approach enables the participant to both describe and interpret their narrative, whilst the researcher brings their own interpretation and understanding, informed by the narratives, to the analysis.

Phenomenology is characterised by the 'closing off' of data once saturation is achieved. Saturation is evident when common components of narratives recur, with the researcher recognising repeated themes. This recurrence is not based on same or similar words, examples or experiences. Rather, as offered by van Manen, closure is reached when 'unique' examples become common,[110] that is, when the unusual becomes the usual. For these participants, recurring patterns included negative perceptions of the Law Society, the benefits of autonomy and the challenges of a work-free holiday.

5.6.3 Data Collection and Analysis

The procedure for data collection involved using a commercial transcription service to transcribe the interview recordings, followed by a preliminary read of the transcripts to amend any superficial errors or omissions, and checking the transcripts with each participant.

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[106] Finlay argues that the role of a researcher is not to achieve attachment given the human interaction involved in research but rather to be 'open' and 'reflective'. Finlay, 'Unfolding the Phenomenological Research Process' (n 25) 177. The focus on reflection is also characteristic of van Manen's approach, which he terms 'doing phenomenology'. In this process the researcher reflects in a 'phenomenological manner on the living meanings of everyday experiences, phenomena, and events'. van Manen, *Phenomenology of Practice* (n 7) 23. Van Manen's reference to 'doing phenomenology' is taken from Herbert Spiegelberg, *Doing Phenomenology: Essays On and In Phenomenology* (Springer Netherlands, 1975). van Manen, *Phenomenology of Practice* (n 7) 18.
[107] See Finlay, 'A Dance between the Reduction and Reflexivity' (n 16) 17; Vagle (n 3) 14.
[108] Finlay, *Phenomenology for Therapists* (n 23) 113.
[109] Ibid.
[110] van Manen, *Phenomenology of Practice* (n 7) 353.

In addition to the IPA method, the process of analysis followed Vagle's approach to crafting phenomenological research. This method was chosen because of its thoroughness and ability to blend automated and manual analysis of the narratives, as well as its emphasis on meanings formed by the participants' voice and the researcher's holistic interpretation of their interrelatedness. For Vagle, his approach must include the following features, which he describes as 'commitments':[111]

1. whole-parts-whole process;
2. a focus on intentionality and not subjective experience; and
3. a balance among verbatim excerpts, paraphrasing, and your descriptions/ interpretations.

The IPA method,[112] interspersed with Vagle's method, is set out in Table 5.2 below.

Table 5.2 Method of Analysis

Steps	Process	Features/Results	Vagle's Commitments
1	Reading and re-reading (Manual)	'Immersing oneself in the original data',[113] interview by interview; Reacquainting with each interview; Enhancing the imagery of each participant.	Whole-parts-whole process
2	Initial noting – descriptive, linguistic, conceptual (Manual and NVivo)	Identifying and commenting on transcript (words, phrases, expressions, examples); Noting interesting, unusual or unique references (layers of meaning, hidden meanings); Awareness of own responsive experience; Identifying unusual, unique references – use of metaphors, humour.	Whole-parts-whole process A focus on Intentionality
3	Developing emergent themes (NVivo)	Identifying insights as potential patterns and for further investigation; Focusing on parts of the transcript; Moving from whole-part-whole.[114]	Whole-parts-whole process A focus on Intentionality

[111] Vagle (n 3) 110.
[112] Smith, Flowers and Larkin (n 15) 82–106.
[113] Ibid 82.
[114] Ibid 91; Vagle (n 3) 110.

4	Searching for connection across emergent themes (NVivo)	Clustering meanings; Reshaping meanings, whilst maintaining objectivity; Noting frequency; Identifying common unusual or surprising references – e.g. comparison with other professions.	Whole-parts-whole process A balance among excerpts, paraphrasing and descriptions/ interpretations
5	Moving to the next case (NVivo)	'Bracketing'[115] analysis of earlier case/s; Being open to new themes.[116]	
6	Looking for patterns across cases (NVivo)	Identifying recurring themes; Shaping (Re- Shaping) recurring themes; Clustering themes and sub-themes.	An understanding of 'crafting' a text

Vagle's method of data analysis, as a hybrid of a structured process and an unstructured movement flowing across boundaries, adds a rich layer to the identification of themes.[117] This is achieved through a framework connecting subject (sole general practitioners) and object (lived experience of legal practice), applying both a descriptive and interpretative analysis (Finlay's continuum) and acknowledging that the researcher, whilst conscious of the need to be truthful to the participants' stories, can never be a completely objective bystander.

The data collection process established a dual method for analysis, consisting of manual and technological NVivo tools. Manual analysis was used for the initial reading, re-reading and checking of the transcripts. NVivo, a qualitative analysis software program that enables transcripts to be manipulated and coded into various components, was used alongside the manual analysis. NVivo is particularly valuable because it allows the researcher to deeply interrogate the data. To ensure that the phenomenological approach is not superseded by 'computer speak', or short neutral groups of words, it is essential to isolate the purpose of the program as providing a platform for identifying and highlighting insights.[118]

[115] Smith, Flowers and Larkin (n 15) 100.
[116] Ibid.
[117] Vagle (n) 109.
[118] Ibid.

NVivo was used to identify text within the transcripts that was firstly, unusual or interesting, and secondly, that had been referred to in earlier transcripts. The first stage is obviously a subjective one where the researcher is defining the unusual or interesting. It must be recognised that this determination is partially based on the researcher's own background and experience. In my case, my earlier career as a solicitor in a mid-sized suburban practice, interacting with, and observing, sole general practitioners, influenced my subjective perception of their world. It is the conscious commitment to objectivity that ensures the unusual, surprising and interesting are also identified by the context of the participants' experiences.

5.6.4 Observations and Reflections

IPA recognises that additional material serves to contextualise the interview data.[119] In this study, additional data highlighted the individuality of each participant's story, as well as the shared uniqueness within the collective experiences.

This second stage of the analysis consisted of my reflection on the participants' narratives, their environments and the interview itself. This analysis consisted of notes taken after each interview and throughout the data gathering and analysis. These notes described my observations, including of non-verbal actions, and my reflections on the interviews, including my responses to the interview.

The contribution that the observational and reflective notes bring to the results is the depth they add to both the descriptive and interpretative analysis. Examples of observational data include place and communication. Place consists of practice location, interview space, size of practice and presence of staff. Communication includes internal features, such as participants' demeanour and personality, and external features, including web presence and signage. Examples of reflective data include acknowledging and understanding participants' experiences towards their clients, their communities and their professional association, as well as their thoughts on the future of sole practice.

5.7 Conclusion

Notwithstanding the different approaches to phenomenology, both stark and nuanced, it is agreed by scholars and researchers that the most important requirement of

[119] Smith, Flowers and Larkin (n 15) 73.

phenomenology is that its approach is defensible.[120] In this study, phenomenology is defensible because this approach best serves to highlight the narratives of the participants who, because of their place in the profession, are in an 'ambiguous' position. As a cohort within the solicitors' profession, they form a significant membership. However, as a 'lobby group', they are invisible, or at least perceive themselves to be.

Phenomenology's foundations of openness, authenticity and reflection serve as an appropriate base from which to build knowledge and understanding of sole general practitioners. Given the limited data and research about this cohort from which to test a proven theory, to base this study upon more traditional methodological approaches is problematic. In contrast, phenomenology invites an opportunity to establish original knowledge and understanding. In this sense, the point of this thesis is to work from the assumption that this cohort is different and that their needs, roles and interest are worthy of exploration. Here the intention of the thesis is to create its own starting point, or its own hypothesis. From there, the qualitative data on how this cohort experience and understand their role can be analysed. Phenomenology offers an approach that facilitates an original contribution to the limited scholarship that exists on this numerically dominant, yet understudied, cohort of the Australian legal profession.

Following the first research question, the lived experience of the sole general practitioner offers an understanding and awareness of the contributions of these practitioners, both in the law to clients, primarily individual and small business, and more broadly, to the community. This understanding and awareness informs the second research question as to their impact on the communities in which they practise law. It is through making sense of their experiences, and the environments in which they practise law, that we can imagine how this cohort fits within the broader solicitors' profession. The common patterns that emerge from these encounters are discussed in the following chapter.

[120] Finlay, 'Engaging Phenomenological Analysis' (n 35) 137.

6 THEMATIC INSIGHTS FROM THE PARTICIPANTS: CHOICE, SERVICE, SUPPORT AND FUTURE CONSIDERATIONS

I don't want to write a requisition form when I need a new pen. I like that flexibility. So yeah, probably the best part about sole practice is, although you're tied to the desk leg, you are flexible. You're as flexible as you allow yourself to be, I suppose. You're in control. You're driving it. And if you want to be tied to the desk, well, you can be, but I've tried not to be.[121]

6.1 Introduction

The above description, offered by Lara, one of the participants in this study, emphasises the appeal of the flexibility of 'being the boss' and is characteristic of the 23 participants' motivations for, and/or experiences of, sole practice. Freedom and self-reliance are core to their perception of their place as lawyers and their role in the community. For each solicitor, the joy of sole practice is about having both control and flexibility. However, this joy can be tempered by the challenges of isolation and loneliness, 'working' holidays and being the sole contact for the client.

This chapter applies the phenomenological method, outlined in Chapter Five, to the qualitative interview and observational data collected in this study in order to identify and explore the collective major themes of the lived experience of 23 sole general practitioners. Throughout the interviews, these practitioners shared their insights and

[121] Lara.

understandings through their narratives, which, accompanied by their expressions and environment, have enabled rich insight into their 'lifeworld'.[122]

The participants' typical practice areas and client profiles provide the grounding for their collective experience. Their common experiences of the benefits and challenges of sole practice result in a shared narrative. Applying the IPA method and Vagle's 'commitments' approach[123] discussed in Chapter Five, the main themes are identified and examined. The result of this dual methodological approach, undertaken with a conscious commitment to immersion within the data, ongoing reflection on emerging patterns, and understanding of the subject (the practitioners) and their 'lifeworld', is a state of saturation where recurring themes become well defined.

The chapter begins with an overview of the participants, presented in Sections 6.2 and 6.3. The participants were drawn from a cross-section of locations, practice areas and backgrounds. This diversity is noteworthy given their shared and common experiences.

This chapter reinforces the findings in the thesis up to this point. It serves as the core of the thesis in that it reveals the participants' personal life stories, which are embedded in their narratives. The four themes in this chapter – *Opting for Sole Practice*; *Serving the Community*; *Supporting My Practice*; and *Reflecting on the Future* – develop the patterns that have emerged from the individual and collective 'lifeworlds' in response to the research questions. Each theme highlights preceding discussion in Chapters Two, Three and Four about the unique and evolving place of the sole general practitioner within the legal profession and wider community. The four themes inform responses to the two research questions outlined in Chapter One.

In particular, the participants reveal an uncertain future for *general* legal practice. Whilst participants identified the benefits of their practice as autonomy and choice, they also experienced challenges, such as an absence of professional support and the use of technology. Rapid advances in technology, discussed in Chapters Four and Seven, signal considerable change to the delivery of legal services, impacting on traditional structures and requiring new skills and resources to embed new tools.

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[122] This term was introduced by Husserl to mean the 'world of human experience'. Mark D Vagle, *Crafting Phenomenological Research* (Routledge, 2nd ed, 2018) 7.
[123] Ibid 110.

6.2 The Participants

A noteworthy number of participants reported common experiences across all themes. Importantly, this commonality is often tied to gender, location and length of practice. For example, as discussed later in this chapter, more female participants left large corporate practice because of its entrenched attitudes; rural solicitors had more expansive practice areas, compared with city colleagues; and the youngest lawyer relied on technology to a greater extent than other practitioners.

As set out in Chapter One, 12 female and 11 male sole practitioners participated in the study, including 10 city, six suburban and seven rural solicitors. The gender, location and range of years since admission as a legal practitioner in NSW, at the time of the interviews, are set out in Table 6.1 below. At that time, these practitioners were 'senior' lawyers, with 12 solicitors having been admitted for over 30 years and all but one having been in practice for at least 15 years. Whilst it must be acknowledged that these solicitors had not been in sole practice for the entirety of their careers,[124] it is critical to recognise the significant experience they collectively bring to the research questions.

Table 6.1 Participants' Gender, Location and Years since Admission

Admission	***City***		***Suburban***		***Rural***		***All Regions Total***
	F	*M*	*F*	*M*	*F*	*M*	
1961-1970		1					1
1971-1980	2	1	1			2	6

[124] All NSW and Vic solicitors must complete a period of supervised practice before commencing as a sole principal. *Legal Profession Uniform Law 2014* (NSW) s 49(1) ('*Uniform Law NSW*'). All participants have been either employed solicitors or partners prior to establishing their sole practice.

1981-1990	2	1				2	5
1991-2000	1		2		1	1	5
2001-2010		2	2		1		5
2010 onwards				1			1

All participants offered legal services across a range of areas, from mixed practices to targeted matters within one general broad area, for example, business and commercial law. These comply with the definition of three or more practice areas, as presented in Chapter Three. The majority came from an Anglo background, although one solicitor was of Asian heritage,[125] another of Greek heritage[126] and two were South African.[127] The summary below provides a brief description of each participant.

City Practitioners

Jason described himself as a 'mature-aged entrant' to the profession at age 53, with 'streetwise knowledge'. His diverse litigation practice included civil, criminal, family law and tribunal work. He was one of the few solicitors with a significant litigation practice. Some participants practised in the local or family court in the earlier stage of their practice, though subsequently discontinued advocacy work. Jason's focus on advocacy grew from his early practice in agency work. He continued to offer agency work, although this had significantly decreased with online court appearances. Jason described his agency work as being 'thrown in the deep-end' when the instructing principals 'get it all wrong'. Following his family's background in small business, Jason's two earlier careers were in his own business. This experience gave him confidence with the management of the practice and informed his decision to opt for sole practice.

Similar to Jason, **Mike** studied law following earlier careers. He commenced as a solicitor in a general practice in rural NSW. His reason for leaving the country and opting for sole practice in the city was because of his wife's Sydney-based career. His first subsequent position was in a suburban firm where they played 'games with the timesheets'. This led him to set up practice on his own. Mike's client base was varied

[125] Jason
[126] Melina
[127] Issa and Christina.

and sourced from advertising and referrals. Within his general practice, his main area was advocacy in criminal law and traffic matters, where he appeared in several local courts in the CBD and neighbouring areas. Working in criminal law meant he had clients in custody in the city and suburbs. Mike also saw clients in their homes and undertook legal aid criminal work. He spoke about assisting self-represented parties at the local court, describing this as: '…it's helping people out, again a servant of the court, but it's the perception that you give people that is important, I think'.

Also similar to Jason, **Karen** came from a family business background and this influenced her emphasis on law as a business, her approach to practice and the work she undertook. Her practice was predominantly in private commercial law. This focus resulted from her previous work in a corporate firm. Karen's reasons for opting for sole practice were twofold. She was employed with one of Sydney's large law firms during the recession of the early 90s, and although bringing in higher fees than some of the partners, she was told 'we can't make partners anymore for quite a while'. Concurrently, influenced by her father's career in his own business, she decided to move into sole practice. Karen's client base reflected her commercial practice and included businesses and companies with referred clients from her former employer. Her commercial practice also encompassed litigation, in which Karen described her role as project manager of a team of experts working for clients. She believed that 'everyone should litigate because that is where the mistakes turn up'. Karen served on a church finance committee and was a committee member of her local law society.

Like Karen, **Sally** worked in a large firm prior to sole practice, and her reason for opting for sole practice was due to a toxic workplace in a mid-tier firm. Sally described that practice as having 'pretty dreadful politics' and 'billing pressure'. She was an accredited family law specialist and also practised in powers of attorney, enduring guardianships, wills and estates, including estate litigation. Sally's practice had a geographically wide client base that included interstate and overseas clients. She estimated that 95% of her work was referred, including second generation clients. Sally considered that referred clients 'form a bond with you before they even meet you'. As a female solicitor, Sally believed that family law clients expect more emotional support than they would from a male practitioner.

As an established, city-based sole practitioner, **Robert** practised in litigation, commercial, conveyancing, probate and international trade law together with notarial

work. His main area within general practice was equity and commercial litigation. Robert worked for a small firm and then for a sole practitioner, before establishing his own practice in 1982. He opted for sole practice because of problematic experiences in his previous practice due to the other solicitor's alcohol addiction; he recalled: 'I was running the practice for him'. Similar to Sally, Robert had a wide client base, including interstate and international clients. Like Jason, he undertook agency work for country, suburban, interstate and overseas lawyers until this work was reduced. In Robert's experience, the loss of agency work was due to country and suburban solicitors undertaking their own work, as well as growing competition from barristers. He became 'increasingly aware of many people who could not afford legal services'. Robert believed that if sole practitioners decline, many clients would not be able to afford to instruct larger firms because of high hourly rates and a hierarchical team approach, in which several staff work on the matter, thereby increasing the legal costs.

Susan, as with Karen, Sally and Robert, was a senior practitioner. Her first position as a solicitor was in rural NSW, followed by two mid-sized city firms and local government work. Susan's father was a self-employed professional and this provided her with the confidence and capacity to set up as a sole practitioner. She opted for sole practice after being made redundant from a mid-tiered practice. Susan's practice included commercial law, conveyancing, civil litigation, wills and estates, and governance advice work. In her early years of practice, Susan was involved in NSW Young Lawyers and the Law Society of NSW, including a role in the introduction of flexible work policy and anti-discrimination and anti-bullying measures. As a young lawyer contributing to these issues, she was frustrated by the politics within the Law Society, noting that other young lawyers and herself 'weren't interested in the political games they were all playing'. In terms of a role in the community, Susan believed that female lawyers help to restore the lost notion of the profession's community standing because they 'get involved in their community, then they're involved in their kids' schools, they're involved in their church'.

Josephine was a senior practitioner with a mixed practice. She trained as an articled clerk with a principal, where she stayed for 36 years. Her reason for opting for sole practice was because she had been treated 'awfully' by the son of the principal solicitor in the small practice, where she had a significant level of responsibility. Josephine purchased an existing practice close to the city from a sole solicitor she met at a party, and continued for a time working both in her newly acquired practice and for her master

solicitor. Josephine's client base included third generation families, evidencing the significance of referral work. She described her practice as 'law for families, but not family law'. Her clients also sought her advice in non-legal matters. Josephine undertook volunteer work and chaired two owners' corporations, one of which she had a financial interest in.

Duncan was also a senior practitioner, formerly a sole practitioner and currently a consultant with a small firm. His work, at the time of the interview, mainly consisted of business and commercial law, conveyancing and wills and estates. Similar to Josephine, Duncan commenced his legal career as an articled clerk. His career was lengthy and varied, from partnerships in small firms of one or two partners, and sole practice in the country and Sydney. After a period of partnerships, Duncan established his own firm in 1966. He was particularly proud of the mentor role he had fulfilled in his lengthy career, with several of the solicitors he trained also establishing their own practices. Duncan discussed how his longevity in the profession had granted him insight into the conduct of a few lawyers relating to practice management, which troubled him. Regarding sole practice, he concluded: 'I really can't think of any reasons why I would warn people off being a sole practitioner because I made a good living out of it'.

Christopher's practice was diverse, consisting of residential conveyancing, commercial work, civil litigation, wills and estates, with occasional criminal law, defamation and family-related matters. His main client base derived from referrals and friends with some repeat clients. Christopher commenced practice with an established mid-tier firm, with whom he worked for 10 years. He left the mid-tier firm where he was an associate solicitor due to being overlooked for partner, when other lawyers who commenced after him were promoted to partnership. Subsequently, he worked in a two-partner general practice firm for a year before leaving that practice when it dissolved as a result of an 'acrimonious dispute' between the two partners. He then established his own practice, 20 years ago. Christopher spoke about the move to sole practice as one where 'I wanted to have a go at establishing my own firm, but I was conscious of how I was going to make money and pay the expenses'. Christopher noted that people asked him for general advice because he is a lawyer. He served on his local law society committee.

Jane studied undergraduate and postgraduate law overseas and taught at a university prior to commencing as a solicitor with a large Sydney firm. She became a partner and remained with the firm until 13 years ago. The expansion of the firm meant that there

were colleagues she never met, but critically, partners with a 'degree of self-interest that was absolutely appalling' and that she would not have chosen to work with. Additionally, Jane's desire to do less management and more legal work led her to establish her own practice. She described her work as 'generally as I am a lawyer, I like being a lawyer – actually providing legal assistance to clients'. Given her background, Jane practised primarily in commercial work, business law, regulation and compliance and advice work. Jane was one of the key lawyers in establishing a long-standing community legal centre and acted as a mentor to younger lawyers.

Suburban Practitioners

Melina had a general practice that included wills and estates, estate litigation, leasing, criminal and traffic matters. She decided to discontinue conveyancing work when PEXA was introduced. Being of Greek heritage, her clients included members of the Greek community. She had been a sole practitioner since 2008, firstly in the city, then the suburbs in a home office. Melina also taught on a casual basis at a university. Melina described her first position as an employed solicitor in a small practice as 'demanding and stressful' because of fee targets, long hours and weekend work seeing clients in jail. This negative experience led Melina to sole practice. Her work in the Greek community also included pro bono work.

Angela's practice consisted of conveyancing, wills and estates, sale and purchase of businesses, leasing and uncontested family law. Clients came from referrals from the previous small suburban firm she worked in, and via self-promotion, such as leaving her card with local businesses and placing advertisements in the local paper. She left a small suburban firm to undertake locum work and then set up her own practice. Like Melina, Angela undertook casual university teaching and practised from a home office. As with a few other participants, Angela acted for a second generation of clients. In terms of being seen as an advisor, she reflected: '…any advice that I give that's not legal advice, I certainly have to make very clear, "I'm not qualified to give this advice. I'm a lawyer. If you want my opinion on something, I'll give it, but that's all it is." By training, we always tell that.'

Issa trained as a lawyer in South Africa where she practised in a large firm. In Australia, her 30-year sole practice included family law, criminal work, conveyancing, and wills and estates. She had developed a diverse client base. Initially, clients were referrals from her then-husband and parents from her children's school. Subsequently, Issa obtained the

'bulk' of her clients from 'word of mouth' and through her roles on the Legal Aid panel, as a director on the board of a local business enterprise and as a contracted consultant in family law for a large firm. Issa opted for sole practice when her children were young in order to balance her role as a parent with part-time practice. As well as legal aid work, Issa offered her clients the option of conducting components of their matter themselves, such as completing forms, in order to lower their legal fees.

Larry established his sole practice seven years ago in the local area where he grew up, and worked as a law student and employed solicitor. His experience as a young person working and studying full-time and working in insurance gave him the confidence to set up on his own, once he obtained his unrestricted practising certificate. Larry's practice was situated in a low-rise commercial area. His practice was broad and primarily consisted of criminal law and advocacy, insurance, business law and property work, including conveyancing and leasing. Larry's clients were sourced from 'word of mouth', referrals from existing clients and his role as a panel solicitor for Legal Aid. It was important for Larry that clients 'deal directly with him'. His work included acting for international clients and for local clients in global matters. Of all participants, Larry integrated the greatest amount of technology in his practice. He was a strong advocate of the benefits of technology for effective practice management.

Allison practised in wills and estates, guardianships, powers of attorney, small business work and family law. Her practice also included working as a contractor for other lawyers. She previously worked as in-house counsel in the construction industry. Allison's reason for opting for sole practice followed her wish to practise law that assisted people, for example, drafting wills and advising not-for-profits. She explained, 'I have a genuine desire to help people. I wanted to know my clients'. Her clients came through social media contacts, parents at her children's school and referrals from 'existing clients, friends, families, acquaintances and previous colleagues'. Using her experience and skills as a lawyer, she was a proactive community member; she advocated against an excessive development in her street and assisted the school with policy work and some legal matters, such as intellectual property. Allison also undertook discounted legal work for a not-for-profit and tailored her fees and fee payments for clients 'who could not otherwise afford it'. Allison conducted her practice from home, which, she explained, her husband considered meant that she 'watches television all day'.

Marion had been practising in her local area for 20 years, firstly from home and then in business premises on a main road in a residential area. She had previously been a teacher. Marion's practice consisted of wills and estates, powers of attorney, small business work and conveyancing. Her client base came from referrals, including second generation locals and older clients. Marion's client base also grew partially as a result of her involvement in her children's school and sports community. She explained that part of her role was 'helping families who can't see their way clearly sometimes'. This meant she would meet with clients, listen to their problems, which are not always legal ones, and not charge for her time. In her early years of practice, Marion undertook home visits, but her practice at the time of the interview was too busy to allow for this. Marion identified large suburban firms as competitors, referring to solicitors who are enticed to these practices as going to 'the dark side'. She also acknowledged the valuable work of city agents for her suburban practice and lamented their demise.

Rural Practitioners

Adam described his practice as 'family and general'. His work included commercial, criminal, family law and property. Adam's clients came from a 'huge cross-section' in the city and country, including rural areas outside of the town in which he practises. They were primarily repeat clients or from referrals and included individuals, businesses and councils. Adam was born in the regional city where he has been in sole practice for 25 years, following a 12-year period in a different smaller regional city, further west of his current practice. He noted the increase of solicitors, commenting that 'country towns used to have a pub on every corner. Now we have a lawyer'. During his time as a solicitor, Adam had served on '20 or 30 boards or committees' in 'some capacity or other'. He was committed to providing opportunities for local people in his practice, often selecting staff from diverse non-legal backgrounds.

Kieran's practice focused on litigation and advocacy, almost akin to barristerial work. Of all participants, he undertook the greatest degree of advocacy. Kieran practised in family law, commercial and estate litigation, personal injury and transactional work in conveyancing, and wills and estates. He had been a country solicitor for 33 years, with approximately half of this time spent as a sole practitioner and the other half as a partner. His reason for opting for sole practice was due to challenges with previous partners and a preference for practising on his own. Kieran grew up and studied law in Sydney. He moved to the country, as he saw this as an opportunity to gain greater advocacy

experience than he would in the city or suburbs. Kieran described his client base as from a 'wide socioeconomic' group. In his early career, he focused on criminal and local court advocacy, before moving into family, federal and district court practice. Kieran undertook legal aid work in the past, but found the work to be 'just not profitable'. He served on a local school council.

As with Kieran, **Kelvin** grew up and studied law in Sydney. He moved to the country on the recommendation of a work colleague, who suggested that he 'try his luck' in the colleague's rural hometown. Kelvin's practice consisted of conveyancing, family, wills and estates, probate, commercial law, leases, small business, local court and a small volume of personal injury and commercial litigation. Also, like Kieran, Kelvin had been in partnerships and in sole practice. He had a branch office approximately 30 kilometres from his principal office. He described his client base as a 'very good mixture of town and country clients', both business and individual. At the time of the interview, Kelvin was the chair of a local board, on which he had served for 28 years. He was also involved in local sporting clubs, particularly when his children were at school. Kelvin noted that clients sought his advice for non-legal as well as legal matters.

David practised in wills and estates, powers of attorney, enduring guardianships, conveyancing, family provision claims, leasing and business law. Approximately 30 years ago, he moved from the Bar to sole practice in order to have more time with his young family. Like Josephine, the opportunity to buy a sole practice came from a personal connection. Similar to several other participants, he saw generations of families as clients. David likened the role of a sole practitioner to that of a general medical practitioner, with the ability to discuss problems face-to-face and provide that 'little bit of extra service'. David was involved in his local community through service on boards and committees. He also gave community-based presentations in his specialist area of wills and estates. David was an active member of the Law Society and the Law Council.

Gavin practised in family law, business law, conveyancing, and wills and estates. At the time of the interview, he had been a sole practitioner for nine years; prior to this, he was an employed solicitor for approximately 17 years. Gavin's reason for opting for sole practice was as an alternative to the previous sole practitioner he worked for, who ran a large practice that, as Gavin described, was 'operating a meat-grinder where clients would be fed in one end'. The majority of his clients were referred from previous or existing clients. He also undertook locum work. Gavin described himself as having

'fairly strong community ethics'. Examples of this include locally-based initiatives that he organised, supporting charities, sponsoring the local football club and financially assisting a local athlete. Gavin's strong interest in education had led him to volunteer in the Law Society's mock trial competition and to give lectures in legal studies at the local high school. He also taught at a university on a casual basis and had previously taught in a community program for young entrepreneurs. Gavin did fee-reduced work and had previously undertaken legal aid and pro bono work. Similar to Kieran, he ceased this work because of its low remuneration.

Lara was the sole principal of a practice, in which she had worked from the commencement of her legal career as a clerk 34 years ago. She was an employed solicitor until the death of her husband, who had been the sole principal. When speaking about the decision to continue her husband's practice, Lara explained that she 'wasn't prepared to walk out on my staff and walk out on the community'. Lara's clients were individuals and businesses from across the state. Her practice areas were conveyancing, powers of attorney, wills and estates, land and environment court cases, water, rural leasing, by consent family law matters and elder law. She previously undertook local court work. Lara was the only permanent solicitor in the town and, unlike Adam, had seen the decrease of local law firms. Wellbeing was an important consideration for Lara as evidenced by her practice opening four, instead of five, days a week. Following her husband's death, Lara engaged a locum when she needed to take a break. Like Gavin, Lara had a strong sense of community, which was evidenced through her references to her staff, her children's school, the church, and the generosity of the local community, particularly when her father passed away. Her involvement in the community had lessened in the last few years. However, her commitment was focused on older clients in situations where she was mindful of elder abuse. Lara's work with the elderly included referrals from the local retirement village, where she saw clients, as well as home visits. Lara also referred to clients, including farmers during the drought, for whom she provided free advice.

Christina was a sole practitioner working from her home for approximately four years. Her previous work as a solicitor was in a large firm with four branch offices in South Africa. She chose sole practice for its flexibility, as she had two young children. An earlier offer of employment as a solicitor with a practice, 20 kilometres away, was not tenable given the lack of flexibility with working hours and the costs of childcare. Her client base was mainly older, predominantly from the local area, and included repeat and

referred clients. Her main areas of work were conveyancing and wills and estates. She also practised in small business. Like Lara, Christina had a commitment to older clients whom, she explained, she got on 'particularly well with', possibly because she was an 'old person at heart'. Both Lara and Christina saw clients in their homes, and both identified challenges for older clients dealing with Centrelink. Like Allison, Christina's husband was critical of her work. His view was that spending so much time with clients, without charging for the entirety of time, was a 'waste' of her time. Christina's involvement in her community included talks to local groups and some pro bono work through the Law Society's scheme.

6.2.1 Practice Areas

In Chapter Three, it was proposed that in order to qualify sole solicitors as 'general practitioners', they are required to practise in three areas of the law. An analysis of all areas undertaken by the participants in this study reveals nine main categories, plus one general category for more narrow areas of practice:

1. Business Law, including insurance, financial services;
2. Civil Litigation, including claims on estates, equity, defamation;
3. Commercial Law, including leasing;
4. Compensation, including personal injury;
5. Conveyancing;
6. Criminal Law;
7. Family Law;
8. Local Court, including debt recovery;
9. Wills and Estates, including Powers of Attorney and Enduring Guardianships; and
10. Other, including general advice, elder law, superannuation, international trade and notary work.

Most of the above areas are more relevant to the legal needs of individual and small business clients, rather than corporate, government and big business. As discussed in Chapter Three, general practice has origins in the historical growth of the profession from everyday areas, such as minor court matters, property, debt recovery, estates, small

business and succession. Corporate legal needs emerged, and the profession responded, resulting in the establishment of corporate and commercial law and associated specialist areas, including international law. Corporate legal needs became the 'general practice' for corporate law firms.

At the other end of the legal services continuum is the traditional understanding of general practice. This practice requires a breadth of knowledge and currency of the law in several mainstream areas; an evolving client base, usually individual and small business clients; and a suite of barristers to brief in specialist or complex matters. Generally, the participants in this study met these requirements.[128] All participants spoke of individual client matters. Eight participants[129] (35%) specifically referred to corporate, institutional and not-for-profit clients, although these were individual corporate clients rather than a cluster of commercial clients. As shown in Table 6.2 below, across all regions, the majority of participants practised in areas that are typically associated with individual and small business clients. All participants practised in at least three areas, with some describing their practice areas in terms of 'mainly' this area/s and 'a little work' in this area/s.

[128] As noted in Table 6.2, Jane's city practice focused on business and commercial law.
[129] Karen, Robert, Susan, Jane, Allison, Larry, Adam and Kelvin.

Table 6.2 Participants' Practice Areas

City Participants	
C1 Jason	Civil Litigation, Criminal Law, Family Law, Local Court
C2 Mike	Conveyancing, Criminal Law, Wills & Estates
C3 Karen	Conveyancing, Commercial Law, Civil Litigation, Wills & Estates, Other (Financial Restructuring, Project Management)
C4 Sally	Family Law, Civil Litigation, Wills & Estates
C5 Robert	Business Law, Civil Litigation, Commercial Law, Conveyancing, Wills & Estates, Other (international trade, notary)
C6 Susan	Business Law, Civil Litigation, Commercial Law, Conveyancing, Wills & Estates
C7 Josephine	Civil Litigation, Conveyancing, Wills & Estates, Other (general advice)
C8 Duncan	Business Law, Commercial Law, Conveyancing, Wills & Estates
C9 Christopher	Civil Litigation, Commercial Law, Conveyancing, Criminal Law, Wills & Estates
C10 Jane	Business Law, Commercial Law, Other (Regulation & Compliance, Financial Services)
Suburban Participants	
S11 Melina	Civil Litigation, Conveyancing, Criminal Law, Wills & Estates
S12 Angela	Business Law, Commercial Law, Conveyancing, Family Law, Wills & Estates
S13 Issa	Conveyancing, Criminal Law, Family Law, Wills & Estates
S14 Larry	Business Law, Civil Litigation, Commercial Law, Conveyancing, Criminal Law
S15 Allison	Business Law, Commercial Law, Family Law, Wills & Estates
S16 Marion	Business Law, Commercial Law, Conveyancing, Wills & Estates
Rural Participants	
R17 Adam	Business Law, Civil Litigation, Commercial Law, Conveyancing, Criminal Law, Family Law, Local Court, Wills & Estates
R18 Kieran	Civil Litigation, Conveyancing, Commercial Law, Family Law, Local Court, Wills & Estates
R19 Kelvin	Business Law, Conveyancing, Local Court, Family Law, Wills & Estates
R20 David	Business Law, Civil Litigation, Conveyancing, Commercial Law, Wills & Estates
R21 Gavin	Business Law, Conveyancing, Family Law, Wills & Estates
R22 Lara	Business Law, Commercial Law, Civil Litigation, Conveyancing, Wills & Estates
R23 Christina	Business Law, Conveyancing, Wills & Estates

Whilst conveyancing has been regarded as the 'bread and butter' for small law firms,[130] the most common area of practice is Wills and Estates, with 87% of participants undertaking this work. Conveyancing remains a popular area of practice, with 78% of participants offering this service. The introduction of electronic conveyancing, because of its perceived technical complexity, was a concern for several solicitors.[131] The general impact of technology, discussed later in this chapter, is a collective experience and core theme of the study.

Not surprisingly, given their city-centric practice, 40% of city practitioners[132] undertook a narrow general practice with a focus on corporate and business law. Sally concentrated on family law with ancillary practice areas stemming from the family law practice. The seven rural solicitors[133] managed a varied general practice, with all offering conveyancing, either business or commercial law and wills and estates and, all but one,[134] some litigation. Eleven participants[135] (47.8%) did advocacy work, mainly in the family court, with one practitioner, Kieran, managing a large litigation practice, including the family, district and federal courts. Twenty solicitors[136] (82%) practised in litigation, many in estate matters. This is not surprising, given that estate litigation generally arises from estate transactional work.

Several participants had refined their practice through the abandonment of some areas, such as debt recovery, criminal law, family law, local court work and, as referred to

[130] Robyn M. Duncan, *A Study of the Learning Needs of Sole Legal Practitioners for Survival in the Eighties* (Centre for Legal Information and Publications, College of Law, Kuring-Gai College of Advanced Education, 1985) 10. Duncan's survey of 214 NSW sole practitioners (21.8% response rate) resulted in the most frequent area of work being conveyancing (90.1%) followed by wills (80.3%) and dissolution of marriage (47.6%). These results are not surprising given that this was prior to the introduction of licensed conveyancers in NSW in 1995 and before dissolutions of marriage were often undertaken by parties without legal representation.

[131] Melina ceased conveyancing work when PEXA was introduced. At the time of the interview, Josephine was about to undertake her first PEXA conveyance and was not looking forward to the experience. When Lara realised that PEXA was to be introduced, she implemented a file management system to ensure her practice was technically up-to-date in order to increase the prospects for sale to a younger solicitor. Angela referred to older solicitors and sole practitioners who were likely to retire, with PEXA being the 'death note' for them. Christopher spoke about the 1 hour and 40 minutes he spent on the phone trying to resolve a problem with PEXA. David referred to 'one of my colleagues tells me that there is a silent F in PEXA'. Mike referred to 'having to come to grips with the devil called PEXA'.

[132] Karen, Robert, Duncan and Jane.

[133] Adam, Kieran, Kelvin, David, Gavin, Lara and Christina.

[134] Christina, although she had completed one local court matter on a pro bono basis.

[135] Jason, Mike, Sally, Christopher, Melina, Larry, Allison, Adam, Kieran, Kelvin and Gavin.

[136] Duncan, Jane and Marion did not currently undertake litigation, although Duncan and Marion had previously done so.

above, conveyancing. Also, as noted earlier, two participants[137] had abandoned legal aid work. The narrowing of general practice also emerged as a pattern in the discussion of the future for sole practitioners.

Clusters of client profiles emerged from the participants' description of their matters, including families, older clients, connections through business or social interactions, referrals from existing and previous clients and business and commercial clients. Participants with shop-front offices spoke about 'walk-in' clients. This client profile informs the first research question, with participants understanding their role as an embedded and accessible solicitor with a broad client base. The overwhelmingly discovery is that for the majority of participants, their clients were referrals from other clients, friends and connections. Of the 23 participants, 14 (60.9%) had a website. The web presence of the participants is listed in Table 6.3 below.

Table 6.3 Participants' Web Presence

Location	***Website***	***Online Directory Listing***	***Other***
City	5	3	1 – no presence 1 – listed as a consultant on firm's webpage (previously a sole practitioner)
Suburbs	2	4	0
Rural	7	0	0
Total	14	7	2

Given the prevalence of advertising on the Internet, the fact that 40% of participants did not have a web presence was initially unexpected. However, given the dominance of referrals as 'advertising', the value of a website, particularly given the work involved in maintaining the site, was diminished. Interestingly, all rural practitioners had a website, but only one-half of city and one-third of suburban solicitors did. Several practitioners settled for a splash page, had a limited budget for their website or created their own webpage.[138]

[137] Gavin and Kieran.
[138] Mike, Christine and Larry.

6.3 Professional Identity as Experiences

In this study, a unique professional identity for sole practice is informed by the four themes that emerged from analysis of the interview and observational data. These themes reflect the participants' perception of their role as lawyers and the distinguishing characteristics of sole practice compared to other legal practice models. Whilst the patterns within these themes are not relevant to all participants, they are nonetheless overwhelmingly recurrent and distinctive. They also answer the research questions as to how these participants experience and understand their role and impact as lawyers and in the community in which they practise.

The four themes are:

1. *Theme One: Opting for Sole Practice (6.4)*
2. *Theme Two: Serving the Community (6.5)*
3. *Theme Three: Supporting My Practice (6.6)*
4. *Theme Four: Reflecting on the Future (6.7)*

The themes reveal the unique identity of sole general practitioners. As explained below, these four themes underscore the need, identified in this thesis, to develop a definition that recognises the existence of sole practitioners as a distinct cohort of legal practitioners.

Holistically, the four themes represent the participants' perspective of their professional identity as lawyers, which encompasses their obligations to their clients and their place within the community. These phenomena interconnect, and in so doing respond to the twin aims of this thesis. Allison's comment on law as a 'living object' illustrates one aspect of professional identity: '…there are people in here. It's not just a building. There's a live feel to this. The contract's not a dusty thing there. It's people and it's interactions and it's relationships.' Gavin's commitment to his community adds another perspective to professional identity: 'I think that I'm a part of the community and I should participate in the community, and that law is an important structure in the community so that I add to community well-being by being a lawyer.' Jason's belief is also a component of professional identity: 'We represent our clients, but our obligation is to the court and to advise the client of the law, how the law will be instituted, and how

their matter fits within the law and what they can do and cannot do.' Mike's articulation of the duties of a lawyer is significant:

> [I]t is a privilege that we have for [clients] to put their trust in us, to exercise the knowledge and experience we have, to get the best result for them, and they give us that. And we need to be very mindful of that as a profession at all times.

These common experiences are united by the participants' perception of their professional identity as individuals, and as collective sole practitioners within the profession and their communities. Their professional identities have evolved from the traditional values associated with the legal profession, mitigated with the necessity to manage an effective business.

As discussed in Chapters Two and Four, there is ongoing debate in the literature about the practice of law as a profession versus as a business. Whilst a few participants acknowledged their practice as a business and recognised the importance of successful business management, most participants saw their role as a member of the profession rather than as a small business owner. The business side of private professional practice is secondary to the overarching mark of the legal profession as 'noble'. The narratives that emphasise the virtues of the profession include insights as to 'standing in the community',[139] 'sounding board',[140] 'respect'[141] and 'privilege'[142] and a 'genuine desire to help people',[143] shared with experiences comprising of 'being in the community',[144] pro bono work,[145] serving on local boards[146] and in voluntary organisations.[147] These narratives are reinforced by participants' use of these descriptions and phrases as part of their natural language, as well as the earnestness of their demeanours when they spoke about being a sole practitioner.

[139] Angela.
[140] Chris.
[141] Mike.
[142] Mike.
[143] Allison.
[144] Christina and Gavin.
[145] Allison.
[146] Adam, Issa and Kelvin.
[147] Josephine.

6.4 Theme One: Opting for Sole Practice

All sole practitioners, as set out in Table 6.2, address this theme. 'Opting for sole practice' captures the reasons why the participants moved to sole practice. Primarily, these solicitors considered the autonomy that underscores sole practice to be the greatest benefit. This was an immediate advantage. The impact of the change to sole practice also resulted in ongoing consequences. Within the theme of 'opting for sole practice', two sub-themes emerged:

i. the autonomy of 'being my own boss'; and

ii. the consequence of autonomy for managing a business.

6.4.1 'Being My Own Boss' – The Lived Experience of Autonomy

'Being my own boss' was overwhelmingly the most consistent reason for opting for sole practice, with 22 (96%) of the 23 participants citing this as the catalyst for the move. Kelvin succinctly expressed this: 'Being your own boss is number one. It means that I'm not beholden to anyone else. I do what I want to do'. The sub-theme of 'Being my own boss' emerged in response to the opening question: 'What are the joys of sole practice?' Autonomy was described in terms of being the 'boss' and not having to answer to an external/another 'boss'. Christina explained: 'The joys? Well, no boss I guess is always quite nice. No one to yell at you'. For these practitioners, their prior experience of being employed or in partnership with another lawyer had been, at times, a negative one. An undesirable working environment had prompted the move to sole practice. For others, it was the flexibility that resulted from 'being the boss'. Mike described this flexibility for himself: 'Being my own boss. I can set my hours. If I know I'm working late one night, I can have a bit of sleep in and come in at 10, 11 o'clock'. As shown in Table 6.4 below, on a general level, the positive outcomes of being the boss are shared across city, suburban and rural participants.

Table 6.4 Positives Outcomes of 'Being my own Boss'

	City	***Suburban***	***Rural***
Autonomy	5	6	4
Flexibility	2	2	1
Choice of Clients	2	4	0

Choice of Work	2	4	2
Improved Professional Life	2	2	2
Improved Personal Life	0	2	2

Furthermore, a greater number of female solicitors spoke of positive outcomes in terms of flexibility and improved professional and personal life. The examples they shared included the ability to work from home and manage child-care and the positive move from a negative experience of large practice. These are illustrated below in Table 6.5.

Table 6.5 Positives Outcomes of 'Being my Own Boss' by Gender

	Females	***Males***
Autonomy	9	6
Flexibility	3	2
Choice of Clients	4	2
Choice of Work	5	3
Improved Professional Life	5	1
Improved Personal Life	3	1

As shown in Table 6.6 below, on a general level, the positive outcomes of being the boss are similar across all participants, regardless of years in practice.

Table 6.6 Positive Outcomes of 'Being my own Boss' by Years since Admission

Date of Admission	***Since 2010***	***2001-2010***	***1991-2000***	***1981-1990***	***1971-1980***	***1961-1970***
Autonomy	1	4	4	3	3	
Flexibility		2	1		2	
Choice of Clients	1	3	1	1		
Choice of Work	1	2	3		2	
Improved Professional Life		2	2	2		
Improved Personal Life		2	1	1		

6.4.1.1 Autonomy

For city and suburban participants, autonomy was clearly the dominant outcome of 'being my own boss'. Marion described the benefits of autonomy as:

> I don't have to account for my time, I don't have to account for my behaviour to anybody but myself and the client, and if I really don't like a client or don't want the work, I can just say no, I don't want to do it, I don't want to deal with you.

Autonomy was less prominent for rural participants. The reason for the greater emphasis on autonomy for city and suburban practitioners may be because of their previous work in larger firms, whereas the rural practitioners, with the exception of one,[148] had come from smaller firms.

The positive outcome of autonomy occurred on two levels. For all except Lara, it was the catalyst for moving to sole practice. Participants made the conscious decision to be sole solicitors on the basis that they were not happy in their previous positions. Subsequently, once in sole practice, participants acknowledged that they had the ongoing benefit of independence through choice of clients and conditions of work.

[148] Christina.

Participants related with clarity and precision that a lack of autonomy and an unhealthy workplace were the most prominent factors causing them to leave either a large firm or a partnership and move into sole practice. For five female participants,[149] sole practice was the alternative to being in a large law firm in which they felt a lack of control[150] and acknowledgement of their work,[151] with Sally also emphasising hostile politics and billing pressure.[152] As discussed in Chapter Four, these experiences have been acknowledged in research[153] and scholarship.[154] The move for some female participants was likely to be the last chapter of their career, and as highlighted by Sally, not wishing to look back on a career that ended in a workplace with 'dreadful' office politics. For three male participants,[155] sole practice resulted from the dissolution of a partnership, whilst Christopher left as a result of an acrimonious partnership dispute and Robert left when his principal's practice deteriorated because of the principal's heavy drinking and declining health.

Although expressed as an overwhelmingly positive outcome of sole practice, autonomy was also recognised as having a negative side. Mike referred to being a 'jack-of-all-trades'. In contrast to the positive perception of autonomy, Adam considered that the demands of clients, challenges with staff and competition from other lawyers outweighed the joy of being your own boss. Humorously, he related:

> I heard a bloke explain, he had a sandwich shop on Macquarie Street in Sydney and people said to him, 'It must be wonderful to be your own boss.' 'My own boss?' He was Italian or Greek or something. 'My own boss?' He said, 'I've got to have 30 different sorts of cheese in the place. I've got 600 bosses' [laughter].

As with autonomy, independence also had a negative aspect. Practitioners articulated that independence did not mean having clearly delineated breaks from work, such as a 'usual' seven-hour working day, work-free weekends and holidays. Additionally, for some

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[149] Jane, Christina, Karen, Issa and Sally. Christina and Issa's large law firm experience occurred in South Africa.
[150] Jane and Sally.
[151] Karen, Issa and Christina.
[152] Sally.
[153] See for example, Urbis and Law Council of Australia, *National Attrition and Re-Engagement Study (NARS) Report* (Report, 2014) <https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>.
[154] See for example, Paula Baron, 'The Elephant in the Room? Lawyer Wellbeing and the Impact of Unethical Behaviours' (2015) 41(1) *Australian Feminist Law Journal* 87.
[155] Duncan, Kieran and Kelvin.

participants the negative aspects of the isolation[156] and loneliness[157] of sole practice partially mitigated the joy of autonomy. These 'hidden' and accepted consequences of sole practice are discussed later in this chapter in the context of wellbeing and support for sole practitioners.

6.4.1.2 Flexibility

Ongoing autonomy was also related to flexibility. The ability to be flexible is multi-dimensional and relates to such factors as choice of clients, type of work and conditions of work. Examples given by participants included determining billing practices, hours of work and direction of business, as well as increased family time. The participants strongly articulated these benefits, some by way of contrast and comparison to their previous work. As Kieran explained: 'I like doing things my own way. So, it means that you don't have to worry about a lot of the concerns that you have if you're in a partnership, or I guess if you're an employed solicitor too'. Melina shared the benefits of flexibility: 'The joys are the flexibility, being able to work the hours that I would like to work, being able to choose my clients and the work that I do, the kind of work that I do, and no billable hours'.

These comments demonstrate the push/pull factors present across all but two[158] participants as to their motivations for sole practice. *Push* because of the undesirable aspects of their previous practices – political workplaces, difficult bosses/partners and unhealthy working conditions. *Pull* because of the perceived promise of sole practice – autonomy and flexibility, changed business structure and clients. These push and pull considerations varied amongst participants but were mostly present in tandem, illustrating that the allure of sole practice is partly determined by shortfalls in other legal practice options.

6.4.1.3 Choice of clients

Several participants had a planned strategy for determining clients. Some were driven by pragmatic reasons, as represented by Jason, Sally and Larry (respectively):

[156] Christopher, Gavin, Issa and Mike specifically referred to isolation.
[157] Allison, Angela and Melina specifically referred to loneliness.
[158] Larry and Lara. Larry did not move into sole practice because of a negative experience. His career goal was to establish a sole practice upon receipt of his unrestricted practising certificate. Lara did not wish to be a sole principal, but she took over the practice upon the death of her husband.

> It is my own business. I have control within certain parameters and that's the same within any business that you have. I deal directly with my clients and I've got the choice whether I take them on or not take them on.
>
> The good thing about sole practice is that I can. If I don't like the look of a client, I send them away. If they don't pay, I send them away. I don't have to take clients that the firm would otherwise have expected me to act for.
>
> 'Yes, I will steer my business that way,' or, 'I want to target quality clients as opposed to volume'.

Others were driven by their sense of service, particularly in completing work at reduced fees or at no cost. Allison spoke about the ability to charge lower fees, as working from a home office contained her overheads. She said, 'I do it my way, and I get to give legal services to people that can't otherwise afford it'. David spoke of the advantages of knowing the community and being able to provide additional service:

> That's part of being part of a community and partly because I've now been here 30 years. So I've dealt with the parents and now dealing with kids, but you get to know them, and so there are shortcuts you can take, but also some extra services you can provide because you know enough about them to be able to say, 'What about this? What about that?'.

These comments illustrate the satisfaction that can arise in private practice from being part of, and having impact in, a community.

6.4.1.4 *Choice of work*

Closely connected to decisions concerning clients are decisions regarding areas of work. As a part of general practice, within their areas of practice, participants noted that choice of work was 'important'.[159] For example, Jane stated, 'I have freedom to do the work that I want to do, and I have enough contacts that I can very politely refer work to other places'.

Workflow is a factor with sole practitioners. Although no participants referred to taking on matters in areas in which they did not practise because of a 'quiet' period, Mike recognised the need for a continual client base: 'The joys are you can select your work.

[159] 'Being able to choose your work. That's pretty important'. Gavin.

That said, the work's got to come in first [laughter], and that is a challenge in itself'. Some solicitors combined legal practice with other work, such as teaching and consulting in the area of governance. This work added another area of expertise and an income stream.

6.4.1.5 A 'bond' of sole practice

Jason's reference to 'taking control of your own destiny' represents the overarching motivation for sole practice. Common to all participants was a capacity for control and independence that created a 'bond' of sole practice and was a distinctive feature of 'opting for sole practice'. Because the participants had previously worked in law firms, many with lengthy experience,[160] they offer a strong comparative reference point between large or small firm practice and sole practice. Their narratives are interspersed with references to sole practice as a cohort, such as: 'we're more concerned';[161] 'we are trusted members of the community';[162] 'we are officers of the court';[163] and 'we do a lot of pro bono work'.[164] This is further highlighted in the discourse concerning the theme *Lack of Support*, discussed later in this chapter.

6.4.1.6 Summary

The shared experience of the overwhelming majority (91%) of participants was that sole practice provides autonomy, flexibility and escape from a work environment that they felt had a negative impact on their professional and/or personal lives. They were primarily motivated by self-concern rather than other factors, such as a duty to serve the community. The initial reason for opting for sole practice was the opportunity to be autonomous, self-directed and independent of an employer. The ongoing reasons for sole practice were flexibility, choice and freedom.

The decision to opt for sole practice is one that requires further research for the benefit of this cohort, the profession and the community. This research should examine the reasons that motivate some practitioners to leave large private firms, and whether the culture of corporate firms has changed in recognition of the concerns raised by some participants in this study and documented in the literature. These 'push' factors reveal critical issues for

[160] Larry was the only participant who did not have lengthy experience prior to sole practice. He moved into sole practice upon obtaining his unrestricted practising certificate.
[161] Allison.
[162] Gavin.
[163] Jason.
[164] Jane.

the profession that, whilst beyond the scope of this thesis, are nonetheless important for the health and wellbeing of all practitioners.

6.4.2 Managing a Business

For the majority of participants, the decision to opt for sole practice led them to their first experience of managing a business.[165] Managing a business is a significant and broad component of legal practice and includes areas such as office administration, systems and processes, premises, staff, billings and regulation, and compliance. Each is discussed below.

Although participants' narratives did not focus on business management, it was apparent from general references and examples that the 'business' of managing a practice was a constant component of sole practice. The lack of direct reference may be because the participants did not consider the business side of practice to be significant compared to the core business of legal work, as identified by Susan: 'When you are completely caught up in the work that you're doing, you forget to run a business'.

Certainly, the solicitors who did reference the business of legal practice had a well-defined approach to the management of their practice. The four female participants who discussed their practice as a business had clear guidelines regarding financial sustainability. These included incorporation,[166] time charging,[167] effective staff management[168] and a strong referral base.[169] Three male participants identified fee structure,[170] legal structure[171] and quality of premises[172] as important elements of a successful business. Three participants highlighted experience in business management as an advantage for sole legal practice.[173] For many participants, managing a business and a legal practice was onerous, and it was apparent that this is the main area where these solicitors would benefit from acknowledgement and assistance.

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[165] Jason had prior experience in a non-legal business.
[166] Susan.
[167] Karen.
[168] Lara.
[169] Jane.
[170] Kelvin.
[171] Larry.
[172] Robert.
[173] Jason, Karen and Susan.

6.4.2.1 Administration and management

Analysis of participants' responses to an open question about the challenges of sole practice illustrates that many of the difficulties for sole practitioners relate to the business side of practice. This important finding can inform the types of support that could be offered to general practitioners, as well as choices to facilitate expert and practical assistance for small practitioner business models.

Christopher described the tension between his role as a sole practitioner, and the need to be diligent about managing a business, and his role as part of the law, as a member of the 'noble profession' with a higher calling:

> And my whole emphasis changed. Whereas before I went out on my own, the law was something that was very, I suppose – how would you put it? – revered. But also it was sort of a principled thing, and you worked within those – I don't even know how you'd express it. Your emphasis was more on people's legal rights and the principles of law and all that sort of stuff. But when I became a sole practitioner that had changed, so the emphasis became more on running a business and a little bit away from the esoterics of law…

Christopher's insights represent the profession-business tension discussed earlier in the chapter as part of professional identity. This tension was evidenced throughout the study, with many participants balancing the push to manage a profitable practice with the pull of *being* a local lawyer.[174]

On a practical level, Christina articulated her concern with managing a business based on a lack of experience: 'I was terribly nervous about going on my own. It scared me because I'd never really been a businessperson. And especially in a professional capacity'. Christina's comment highlights a disconnect between sole practice as a profession and a business, as well as an evident lack of support for this area of general practice. Participants used practical examples to illustrate a lack of acknowledgment of the difference between a small practice and larger firms in terms of expenses and revenue. Several participants referred to LEAP, a software system developed for the legal profession. In particular, they discussed the unreasonably high expense of the software and its monopoly in the profession. Susan explained that she was 'hounded' by the

[174] For example, a local lawyer may service the legal needs of people who may not be in a financial position to pay the usual fee, such as older clients, farmers and single mothers.

company to take up the software, Marion's experience was that 'once you're in, they've got you' and Kelvin described LEAP as 'overpriced', adding that 'if there was an alternative, I'd look at it very carefully.' A few participants referred to other lesser-known systems that they had independently sourced, and which suited their practice. Gavin noted his frustration with the Law Society Trust Inspector promoting expensive trust account software.

6.4.2.2 Location of premises

One of the most prevailing discussion points relating to the business of legal practice was office location. The decision to practise from either a commercial or residential location prompted considerably emphatic views. The predominant choice of premises was commercial (78%).

Table 6.7 Office Premises by Region and Gender

	City		***Suburbs***		***Rural***		***All Regions***
	F	*M*	*F*	*M*	*F*	*M*	
Commercial	5	5	1	1	1	5	18
Residential			4		1		5

As shown in Table 6.7 above, five female participants managed their practice from home, and four of these participants were suburban practitioners. The reasons given for running a home office included a preference to work on a part-time basis and the expense of commercial premises. The participants with a home office worked part-time because of caring for children,[175] having other employment[176] or transitioning to retirement.[177] As noted earlier, two participants with children noted that their families did not consider their practice from home was a 'real job,' but rather thought they watch television all day (husband)[178] or are 'the maid' (family).[179] The challenge of part-time work, particularly

[175] Issa, Allison and Christina.
[176] Susan and Angela.
[177] Angela.
[178] Allison.
[179] Christina.

for female solicitors, has been identified in the professional literature[180] and is discussed in Chapter Seven.

Angela set up an office at home after she left practice as an employed solicitor with the intention of reducing her workload:

> I consider I'm almost semi-retired in terms of my practice. I don't need to turn over a load of income. So, working from home means I don't have the outgoings of being in an office where I have to commit to knowing that I have got this expenditure each week.

Expenses, as Angela notes, were also the reason why Melina moved from a commercial to a residential office:

> I moved into the home office because it was just too expensive to run a city practice, even though there were another two of us and they were both… so we're all sole practitioners, and we sort had a very loose cooperative where we shared the rent, the outgoings, and things like that, but it just became too expensive to run.

Three of the solicitors[181] who worked in commercial premises had, in the early days of their sole practice, operated from a home office. They considered that a home office is disadvantageous for several reasons. Robert commenced his practice as a sole solicitor from home, but then moved to a city office in a mixed commercial/residential building. He explained:

> I found working from home had a number of limitations, and on balance, it is something which I would not recommend or suggest to people, other than those who want to operate a small, part-time, very focused practice.

Gavin had briefly shared an office with his wife and, subsequently, moved to a commercial office:

> So, when I first set up my practice, I just hung the shingle out. I actually worked from home for about three weeks. I never wanted to work from home. I think it's unprofessional; it doesn't set the right tone. And I think working in an office is important just in terms of establishing your credentials, your bona fides as a lawyer. You just look unprofessional working from home.

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[180] For example, Urbis and Law Council of Australia (n 33) 23.
[181] Jason, Gavin and Robert.

Others considered working from home a disadvantage because of their need 'to talk to people'[182] and get away from home distractions,[183] and their preference 'to get up and get dressed and come into the office'.[184]

6.4.2.3 Staff

The five practitioners who worked from home did not have staff. However, this was not a feature restricted to residential office practice. As evidenced in Table 6.8 below, the majority of participants did not have staff.

Table 6.8 Practice Staff

	City		***Suburbs***		***Rural***		***All Regions***
	F	*M*	*F*	*M*	*F*	*M*	
Staff	1	2	1	1	1	4	10
No Staff	4	3	4		1	1	13

Participants discussed both advantages and disadvantages relating to staff. The general observation was that practitioners who employed staff worked in commercial premises and offered a broad range of practice areas. Unlike the divide between commercial and residential offices, a closer balance exists between solicitors with staff (44%) and those without staff (56%).

The challenges faced by participants with staff included the ongoing obligation of remuneration, the need for a regular source of work to delegate, poor performance of staff and problems with staff 'fitting in' to the culture of the practice. Jane explained the core challenge of the ongoing obligation of remuneration:

> I do not want to be responsible for food on anyone else's table. I want to have the ability to say, 'Sorry. I'm off.' You can't do that. For legal staff, you have to give them

[182] Jason.
[183] Josephine described this as: 'And I get too distracted at home because there are all these other things to do. Find a nice book to read, or… [laughter]'.
[184] Jason.

> diversity of work. You have to monitor them. You have to mentor them and help them. For secretarial or admin staff, you've got to make sure that there's enough to do.

As Adam explained, employment of staff can provide greater challenges for sole business proprietors compared with larger firms:

> It's not so much finding the right people. It's making sure that everything is going well. That you don't have the wrong people that you need to get rid of. And you cannot dismiss people because they're not a good fit. And something slightly bizarre about the industrial relations scene, that I can leave my job because I don't get on with my boss. In fact, my boss is bad if she doesn't organise farewell drinks. But I, as the boss, can't get rid of someone because I don't get along with them.

Adam endeavoured to overcome staff challenges by employing staff with no legal experience and supporting them through training, mentoring and encouraging study to learn new skills. Other practitioners responded to staffing needs by contracting lawyers in busy periods,[185] bringing in a locum[186] or outsourcing work, on a paid basis, to lawyer friends.[187]

The challenge of employing staff is balanced by the advantages of delegating work, ability to increase client load, reliance on staff to manage systems and processes, such as PEXA, and the absence of a sense of isolation. A surprising observation was that not all participants with staff were able to enjoy a complete break from practice during holidays. Therefore, it cannot be assumed that a larger sole practice provides a more supportive environment. This is further discussed below in the theme *Supporting My Practice*.

6.4.2.4 Fees

In relation to billing, the shared experience of many participants was that this is a particularly challenging component of practice. Four solicitors gave examples of a client who refused to pay their bill.[188] Many spoke of reducing their bills,[189] not charging for work[190] or undertaking poorly paid legal aid matters.[191] As Gavin stated: 'I think almost

[185] Larry.
[186] Lara.
[187] Christopher.
[188] Jason, Christopher, Duncan and Gavin.
[189] Allison, Christina and Marion.
[190] Christina, Lara and Gavin.
[191] Gavin. Issa, Larry and Mike were undertaking legal aid work at the time of the interviews. Gavin and Kieran had previously undertaken legal aid work, however, had discontinued due to the low remuneration.

every sole practitioner does do reduced-fee work'. Two solicitors shared their 'personal failing' of delay in the rendering of bills.[192] Participants relied on the range of billing methods commonly used in practice, including time-costing,[193] fixed fee[194] and estimates.[195]

Karen, commenting on the necessity of time costing, clearly articulated the correlation between this traditional billing method and a successful business:

> [A]ll we've got to sell is our time. We've got nothing else. We don't sell widgets and work out the cost of all of that. So, yeah. It's a business, but it is a profession. So, I've sort of moderated a bit. It's that you've got to make money. What's the point if you're not making money? Don't tell me you can live off thin air.

Gavin's observation of the common occurrence of reduced fee work recognises the amount of pro bono work undertaken by sole practitioners. Other participants referred to providing free initial advice[196] and discounting fees.[197] Unlike corporate firm legal work, this pro bono work does not provide reputational value for sole solicitors. By contrast, the large international and national firms dominate the pro bono discourse. As noted in Chapter Seven, prominence includes leveraging reputation based on pro bono outputs. This is further discussed below in relation to the theme *Serving the Community*.

6.4.2.5 Regulation and compliance

As identified in Chapter Four, regulation and compliance are significant challenges for sole practitioners. Within the participants' narratives, examples of over-regulation and disproportionate compliance included an imbalance between clients' rights and those of the solicitor; particularly excessive costs process through the NSW Office of the Legal Services Commissioner;[198] lengthy costs agreements;[199] heavy-handed action by the trust

[192] Jason and Duncan.
[193] Karen.
[194] Christopher.
[195] Jane.
[196] Lara.
[197] Allison and Gavin. Issa provided unbundled legal services.
[198] Gavin. This is in reference to his experience with the NSW Legal Services Commission in relation to its poorly handled work in managing a complaint against him.
[199] Robert.

inspector in relation to minor record-keeping with the trust account;[200] unfair costs assessment process[201] and unnecessarily detailed forms, including e-forms.[202]

Some challenges of managing a business are based on the dominant view that there is a lack of support for, and understanding of, sole practice. Participants' references to the 'regulator', including the Law Society and the Legal Services Commission, were in the context of over-regulation. The unanimous experiences of over-regulation and excessive compliance were irrespective of mode of sole practice.[203] Whilst these experiences may be shared across the legal profession, particularly for private practitioners, the strong collective narrative of the participants was that they were either 'unsupported' in meeting obligations or 'easy-targets' for the regulators. The challenges associated with regulation and compliance are discussed below in the theme *Supporting My Practice*.

This lack of support undermined participants' capacity to comply with their regulatory obligations, including those relating to trust account administration, client engagement and staff management. These areas are often the subject of complaints and misconduct proceedings.[204] This aligns with the literature referring to misconduct reviewed in Chapter Two. Such misconduct can occur in cases of sole practitioners lacking competence in managing a business, or behaving dishonestly without detection from a fellow partner or director. The circumstances of sole practice and the correlation with misconduct findings were noted by seven participants,[205] who spoke about sole practitioners they knew who had breached the trust account regulations. Robert, who had served on the Law Society's conduct committee, shared his knowledge of the correlation between sole practitioners working from home and misconduct matters. Given that these solicitors share the 'bond' of sole practice and could be connected through contacts or location, it is not surprising that they would know of examples of dishonest conduct.

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[200] Marion and Duncan.
[201] Jason.
[202] Robert.
[203] For example, these challenges are experienced by single practitioners, those employing legal staff or non-legal staff.
[204] See Chapter Two. The recent case *Council of the Law Society of New South Wales v Davidson* [2020] NSWCATOD 71 provides an example of a sole practitioner's misuse of the trust account. In this case, the sole practitioner intermixed trust monies and failed to comply with record keeping in relation to the trust account. The Respondent argued that she did not understand the trust account requirement not to use one client's trust monies for another. Prior to sole practice, she had been employed as a government lawyer for 14 years and had not dealt with trust monies.
[205] Gavin, Duncan, Kieran, Mike, Robert, Susan and Sally.

6.4.2.6 Summary

The participants' discussion of the advantages of opting for sole practice contrast with their narratives of managing a business. Interestingly, there were few references to indicate that participants perceived themselves as small business owners.[206] The common experiences discussed in this theme illustrate the heavy burden of managing a business for the general practitioner. The high costs of managing a practice, difficulties with fee recovery and obstructive regulation resulted in participants feeling unsupported.

Participants' experiences of managing a business focused on challenges in areas where external support could assist, such as tailored and less expensive office systems and processes. This is particularly relevant for sole practices, where there is often little or no internal support, as humorously highlighted by Mike:

> The downside, as I said, is that you have to be the jack-of-all-trades. I literally am the receptionist, the cleaner [laughter], the business development manager – Marketing – the IT manager, which is a frightening concept [laughter]. A truly frightening concept.

As discussed in Chapter Seven, the practice of many participants would be improved by support in managing the business of legal practice.

6.5 Theme 2: Serving the Community

> It's interesting that when you look at those surveys of the most trusted professions in the community, lawyers are right down the bottom near politicians, but I actually don't believe that because my interactions with people suggest something completely opposite to that. And I don't think it's just my personal skills that make me a trusted member of the community, I just think we are, lawyers are, trusted members of the community.[207]

As discussed earlier in this chapter, the major catalyst for participants opting for sole practice was the desire for a better alternative to their experience in large private practice firms. This push for autonomous management of their professional lives informed the decision to be a sole practitioner, rather than the pull of general practice or having a leading role in the community. *Being* in sole practice provides opportunities for community connections and impact.

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[206] Susan and Karen.
[207] Gavin.

Although a call to be a general practitioner or to contribute to community life may not be a deciding factor in 'going solo', general practice allows for broad legal services and a public presence, which provides visibility and results in opportunities for lawyers to have a role in the community. This community presence informs the aim of this research to understand the *essence* and *place* of these solicitors. As Allison acknowledged: 'I think that's the difference with sole practitioners. I think we're more connected'.

Among the participants, this connection was demonstrated by the role of the 'family' lawyer, with several solicitors taking instructions from their clients' adult children. Allison spoke of this in reverse, or as she termed it, 'going up rather than down', with her clients referring their parents for wills and, in one case, an unresolved property settlement. The retention of participants as 'family' lawyers, or being the sole solicitor for families' legal matters, provided a continuing connection and access to the law within their communities. There is a level of comfort and willingness when consulting the 'family' GP or solicitor, compared with a lack of awareness of what to do when confronted with a legal problem.

This connection was also illustrated by the several participants who conducted home visits. As Lara noted, 'people are so grateful for that little bit of extra-service' and for taking time to allow for non-law related conversations to take place through the 'interaction of having a coffee and not only talking about the work but also things going on in the town'.[208] The broad notion of service includes connecting with the local community. This ideal of service is partly attributable to the role and responsibility of lawyers as exclusive knowledge-holders and gatekeepers of the law. Literature concerning the duties of lawyers centres on a cascading suite of responsibilities, from the highest duty to the administration of justice to the 'lowest' ranked duty to the public. Three participants specifically referred to lawyers' responsibilities beyond the duty to the client; they described lawyers as 'officers of the court'[209] and 'pillars of the community'[210] with a 'true sense of community justice and love of the actual law'.[211]

Whilst lawyers are required to adhere to their duty to the administration of justice and their role as officers of the court, it is the client who receives the most attention. This

[208] Christina.
[209] Jason.
[210] Gavin.
[211] Allison.

practice was demonstrated in the interviews by a pervasive focus on clients throughout the participants' narratives. It could be argued that the attention given to clients is not unexpected in a private practice environment, however, what is notable is the empathetic and respectful voice that participants used when speaking about clients.[212] What is also noteworthy is the participants' work in their communities, as discussed below.

6.5.1 Role in the Community: Experiences of Contribution and Engagement

The participants' connections to their communities were evidenced in several ways, including their position as trusted advisors and their service and leadership roles. These roles were underpinned by values of care, respect and trust. Some of these connections may have been made regardless of sole practice, although the work of a general practitioner results in a public presence and subsequent opportunities to serve. Consequently, the theme of *Serving the Community* is characterised by contribution and engagement – contribution to the collective community, and contribution to individual clients through engagement and facilitation of access to the law. At times, these components intersect, for example, when a solicitor provides legal advice and non-legal guidance to a client.

6.5.1.1 Access to legal services

It is the area of access to the law that the participants contributed to a recognised challenge in the community. Robert succinctly observed: 'I'm increasingly aware of many people who could not afford legal services. Frankly, I probably couldn't afford to hire myself for some of the large matters'. Similarly, Kelvin considered the cost of access to the law in relation to the livelihood of sole practitioners: 'One of the biggest challenges we face is the enormous cost of law'. Several participants responded to the 'enormous cost of law'[213] through the provision of 'discounted' legal work, including not charging for initial advice, spending more time than that billed to the client, and undertaking pro bono or legal aid work. Allison prepared a will for a client who paid the $200 fee by way of $50 fortnightly instalments. Christina participated in a pro-bono scheme.[214] Gavin spoke about writing-off bills, legal aid and pro-bono work, referring to legal aid work as 'essentially pro-bono' work. Lara spoke of not charging farmers for

[212] This is discussed at Section 6.3.
[213] Allison, Christina, Larry, Mike and Issa.
[214] As an overseas-qualified lawyer, Christina also undertook pro bono work to gain experience in litigation in Australia.

advice during the drought, giving free initial advice to walk-in clients, and home visits. Robert also spoke about the affordability of using a sole practitioner rather than having 'multiple people doing the same job', and Christina also referred to charging less hours than the actual time involved in the legal work.

There was also a recognition that legal aid work is poorly paid. As noted earlier, four participants undertook legal aid work whilst two participants had previously undertaken legal aid work, however, had abandoned it because of the low remuneration.

Jane expressed a strong point about sole practitioners undertaking work that should be the responsibility of government:

> We do a lot of pro bono. Not necessarily for the right sort of clients, but we all do pro bono work. But it should be better structured, and we should be more of a – the government shouldn't be just able to rely on that without properly funding legal services in this country.

Reduction of legal fees results in greater access to legal services and is particularly facilitated through clients having direct access to the 'familiar face' of a lawyer, being able to walk into the solicitor's office or having the solicitor visit in their homes. This is particularly important for older clients. Among the participants, this connection to the 'face' of a firm that solved a range of legal problems also resulted in leadership and service roles within communities.

6.5.1.2 Service

In relation to community engagement, the most prevalent volunteer work among participants was service on committees. Eight participants specifically referred to committee work,[215] with volunteer work mainly associated with local schools,[216] sports associations[217] and churches.[218] The idea of service also covered a range of experiences from the idealistic view of community recognition[219] to the realistic consideration of free advertising.[220]

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[215] Josephine, Karen, Issa, Adam, David, Kelvin, Lara and Allison.
[216] Issa, Allison, Kieran and Lara.
[217] Keith.
[218] Karen.
[219] Christina described this as: 'It is a bit romantic and I do like that aspect of it'.
[220] Kelvin described this as 'it is just being seen and involved is a very good reference. It is a lot cheaper than advertising and gets better results'.

Four participants[221] volunteered on boards. Kelvin had given lengthy service on a credit union board for 28 years, Adam served on 'between 30 and 40 boards', whilst Issa articulated: 'This board that I'm on has got a lot of big corporates, but they did want some small business people and I think one of the reasons is because I am a lawyer'.

Another common area of service was in the local school community. Several solicitors interviewed, especially female practitioners, referred to their children's school as a place of connection. Two solicitors were directly involved in their children's school, with Gavin giving lectures to high school students studying legal studies and assisting the mock trial team, and Allison providing assistance in relation to issues with legal and policy aspects. Kieran was a member of a school board, although not the school where his children attended. These roles are associated with leaders and trusted advisors who are expected to offer wisdom, security and composure to their community group. As set out earlier, Gavin defined this service as 'community ethics':

> I think that I'm a part of the community and I should participate in the community, and that law is an important structure in the community so that I add to community wellbeing by being a lawyer.

Gavin connected community ethics with lawyers' motivations to provide a valuable service to clients, because lawyers are 'real people, they're going to pay real bills themselves, and they're sympathetic to their clients'. This perspective provides a contrast to the belief that sole practitioners' conduct is less accountable and honest than solicitors in larger practices.

Employment, training and retention of staff, especially in rural communities, also emerged as a contribution to the community, particularly in relation to employing staff who were seeking part-time work because of family responsibilities. For the five rural practitioners who employed staff, the wellbeing of their staff, in terms of training and flexible work, was an important part of their practice.[222] These practitioners employed several staff across a range of administration roles and in particular practice areas, such as probate and conveyancing. Adam detailed the process of employing staff in the practice, noting that one of the advantages of a rural location is background knowledge

[221] David, Issa, Adam and Kelvin.
[222] Adam, Kieran, Kelvin, David and Lara.

about many of the locals who apply for positions and having a level of confidence that they will stay in the community.

6.5.1.3 Leadership

Lawyers have a reputation as problem-solvers, advocates and negotiators. Lawyers, including legally-trained politicians, occupy leadership positions in society. Several participants took on volunteer work that required leadership skills of advocacy, negotiation and organisation. Allison described these skills: 'Well, you're a lawyer. You know how to speak – you know how to talk the talk and walk the walk'. She shared the example of her key role in lobbying for a road safety crossing at her children's school and against an oversized proposed development in her street. Kelvin served on a board in the key positions of president and treasurer. Two practitioners had been involved in groups with a social justice focus, being the establishment of a community legal centre[223] and leading support for a soup kitchen.[224] Such roles come within the perception of lawyers as leaders and champions, whose work is based on trust and reliance. The perception is also of the lone lawyer single-handedly serving the community.

6.5.1.4 Trusted advisor

Similar to lawyers' status as leaders is that of the trusted advisor. Participants discussed being sought after for their legal knowledge, as well as their reputation as honest and trustworthy. Interestingly, the trusted advisor role was not limited to clients and legal matters. Rather, it was grounded in the status as '*the responsible one, the sensible one, the honest one'*.[225] This status means that a community may seek out its known lawyers regardless of whether the problem is legal or not. As Josephine noted: 'And sometimes the problem they want solved is not a legal one. It's more of a social problem or it's something you can't solve anyway'.

Examples of problems from several participants related to clients' families, their businesses and government issues, such as dealing with Centrelink. Several solicitors also referred to their role as advisor in the context of being sought out for guidance and wise counsel. As Allison described, clients 'know they can call me up and say, "We've got this issue. What do I do about it?"' This included general legal advice, at times in

[223] Sally.
[224] Gavin.
[225] Marion.

relation to family members, and non-legal advice, such as dealing with government and other agencies. Evidence of clients' trust in their lawyer highlights the 'generational' lawyer – the lawyer who establishes themselves as an advisor, with clients referring generations of family members to them, thereby enabling sustainability of access to legal services.

Josephine was asked to chair two owners' corporations. Similar to the advisory role, participants referred to being sought after as referees, being invited to give talks to local community groups and to see people who 'drop in' to the firm. Kelvin shared how this advisor role takes place in a social context: 'You go in for a drink after work [laughter]. You'll often get people coming up to ask you how to manage legal affairs'.

Melina acquired clients from the Greek community, particularly in her early days of practice. The clients 'trusted' her. They provided a solid and ongoing client source across several practice areas. Marion discussed the practical implications of such client trust:

> And very often that results in me sitting with them for an hour and then not getting any work out of this, I'm okay with that because they trust me, then they know I'm not going to just want their money.

The role of advisor was tempered by concern for the demise of the solicitor as a trusted 'sounding-board'. This demise is reflected in the profession versus business debate, discussed in Chapter Four. Mike described the loss of respect for the legal profession, bank managers, the medical profession and religious leaders. Sally also referred to the loss of respect for bank managers, as well as the legal profession. Marion recalled how she had been in a respected position but was currently only respected by older clients. Christopher discussed how the 'sounding board' role has two dimensions, one as an advisor and the other, a form of free legal advice:

> It's almost in the context of, "You're a lawyer. What do you think of this?" And they'll ask you, but I think they're always asking you as a sounding board, and I don't think that they're specifically asking for legal advice. Well, I suppose its contradictory, but, at the same time, I think they're asking for some sort of free advice.

The aspect of reliance that Christopher refers to aligns closely with trust as an embedded value in the profession. Paradoxically, trust is also the value that receives the greatest

attention in anti-lawyer humour.[226] Yet, interestingly, many participants used humour when describing their experiences of, and reflections on, their role as lawyers.

6.5.1.5 Professional and community values

The predominant value that collectively emerged from participants' narratives was one of care for clients. This value was expressed in various ways: 'having a genuine desire to help people';[227] the 'real joy for me is dealing with my clients';[228] an appreciation for seeing the same client throughout the entirety of their matter;[229] and solicitors making home visits.[230]

Complementing a practice of care is respect for clients. Participants discussed assisting clients beyond the usual client/solicitor relationship that takes place in the private practice office environment. From my observations as the researcher within the context of the phenomenological approach set out on Chapter Five, the facial expressions and tone of voice of participants reinforced their statements about respect for clients. Examples of the additional effort were home visits, including retirement villages and nursing homes, reduced legal fees and free advice.

Connected to the role of trusted advisor is the value of trust and reliance that clients and others place on their lawyer. This was articulated as being able to protect the interests of others[231] and spending time at no cost with potential clients, even if a retainer did not result from the initial meeting.[232]

A general sense of care for clients does not mean that all interactions with clients are positive experiences. A few participants spoke of difficult clients who had refused to pay their fees. These examples were relayed in a tone and manner that indicated frustration and annoyance rather than disrespect for the client. Examples of frustration included self-criticism for delays in sending bills to clients[233] and surprise that the client refused to

[226] For example, 'Trust me, I'm a lawyer'.
[227] Allison.
[228] Christina.
[229] Larry.
[230] Lara.
[231] Josephine, in the context of chairing two body corporate meetings as requested by 'little old ladies who think that I can sort of protect their interests and that's why I'm there'.
[232] Marion, in the context of 'I'm okay with that because they trust me, then they know I'm not going to just want their money'.
[233] Duncan and Jane.

pay the bill despite the solicitor achieving a good outcome.[234] Humour was again used as a way to describe clients, including the frustrating ones. Examples include Christina's reference to business clients instructing her in small matters, but not for 'anything too highfalutin'; Issa's family law clients returning to instruct in other matters, not because they are getting 'divorced ten times'; and Larry's query: 'Would you go to a doctor, get treatment, get advice, and then say, "No, I can't pay you?"'

From the interviews, it is apparent that whilst the law is not recognised as a 'caring' profession (unlike teaching, social work or nursing, for example), there are solicitors whose connection to the community enables them to demonstrate a duty of care beyond the retainer. These solicitors practise within the 'personal sphere'[235] discussed in Chapter Two.

6.5.1.6 Summary

In sharing their experiences of sole practice, the majority of participants gave examples of how they are instrumental in the facilitation of access to the law. This took many forms, such as being the familiar and approachable 'face' of the law within their communities; providing reduced fee or free legal work; or assisting with non-legal problems. There was a general consensus that many sole practitioners discount fees, further highlighting their understanding of the communities in which they practise.

Whilst there were differences in experiences across the participants' groups, the majority of participants understood that they provide a service to their communities outside of their professional practice. Service was evidenced by the participants' insights into their public roles and the examples of engagement in their communities. Service was often accompanied by a leadership role. In particular, the rural practitioners recognised that they meet a broader need in their communities, beyond that of solicitor. All but one rural practitioner spoke of how their connection with the community was strengthened by lengthy service on committees, volunteering in local charities, sporting clubs or school administration.[236]

The lived reality of the participants echoes the attributes of lawyers as described in the scholarly literature reviewed in Chapter Two. Lawyers are sought after, as Allison

[234] Gavin and Jason.
[235] See Chapter Two, n 136.
[236] Lara, Kieran, Kelvin and Gavin.

described, for their skillset to 'draft, communicate, to sway people, to mediate, to negotiate'. Their knowledge of the law is also assumed to extend to business, political and community matters. Other skills include advising, leading and organising. As embodied in the *Solicitors' Conduct Rules*,[237] lawyers are required to be reliable, trustworthy and honest. These expectations of knowledge, skills and values emanate from their membership in the legal profession, rather than as a member of any profession. This may be through their direct dealings with clients, their external connections or because of the reputation of the profession. As noted by Gavin at the commencement of this chapter, lawyers are regarded as honest and trustworthy, having integrity, reliability and a commitment to their clients.

A significant part of the professional and personal lives of many participants was their contribution to the communities in which they practise. This finding aligns with scholarship about the legal profession as a calling to contribute to society beyond that of the lawyer/client relationship.[238] Additionally, the majority of participants shared insights and examples of service that were expressed as contributions, rather than a desire for new clients. Their intent to serve was based on the recognition of their capacity to contribute, often at a leadership level, to the life of their community.

Despite their commitment to their community, observations as to hardship and challenges were common. Interestingly, several participants referred to other professions, particularly medicine and accounting. These references were frequently used as comparisons in the context that other professionals are more fortunate than sole practitioners. Examples used by participants included other professions having greater support, less regulation, more diversity of work and, therefore, clients, and less need for involvement in the community.[239] Such perceptions reinforced a sense of abandonment. This comparison with other professions is discussed in the following theme.

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[237] *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.

[238] See Lillian Corbin, 'Australian Lawyers as Public Citizens' (2013) 16(1) *Legal Ethics* 57. A component of the NSW Law Society 2019-2022 strategy is to advocate for regulatory policy, and regulation that is accessible and workable for members of the community and the solicitors advising them. Law Society of New South Wales, *Annual Report 2020* (Report, 2020) <https://www.lawsociety.com.au/sites/default/files/2020-09/LSNSW_Annual-report_2019-20_2020-09-29_Final.pdf>.

[239] Examples include accountants, financial advisors and doctors, the latter in relation to undertaking less work in the community compared with lawyers.

6.6 Theme 3: Supporting My Practice

A recurring and decisive theme across participants from rural, suburban and city locations was their experience, as a collective cohort, of feeling unsupported and disconnected from the broader legal profession. Participants defined their observations in the context of a shared experience of sole practice as a sub-branch of the profession. They also drew on examples where they perceived a lack of support for either the cohort of sole practitioners or for themselves as individuals. Largely, the lack of support related to formal organisations, such as government and professional associations. This gap in support was partially addressed by informal mechanisms, including mentoring and like-minded groups. This finding from the interviews reflects the material in Chapters Two, Three and Four concerning the absence of consideration.

6.6.1 Experiencing a Disconnect

According to the participants' narratives, the element of support includes assistance from government, professional associations, and locum solicitors sourced through a formal program. Participants frequently referred to government in terms of lack of support. They discussed how state governments have removed or reduced lawyers' work, particularly in areas undertaken by sole practitioners, such as personal injury, workers' compensation, victim compensation, tribunal appearance work, family law and conveyancing. According to the participants, the impact of this on sole practice is exacerbated by increased regulation, including disclosures relating to the retainer and fees. Given that their client base is predominantly individuals, this erosion of practice areas significantly impacts sole and small firm practices. Participants connected the government-driven removal of areas that had been the domain of the profession to a corresponding lack of support from their professional association, which they believed failed to advocate effectively for their members.

This lack of support from professional associations formed a definite pattern throughout the majority of interviews. As the formal professional association for NSW solicitors, the Law Society of NSW was the source of the greatest disconnect. Participants spoke emphatically, or at length, about their experiences. They used expressive language such

as 'as helpful as a hole in the head',[240] 'gutless',[241] 'useless',[242] and 'a very distant presence'.[243] Indeed, perceptions of the Law Society were distinctly negative:

> They just gradually let the whole profession be chewed up and done over by the regulators.[244]
>
> I'm not sure what their agenda is, but I don't think they're supportive for sole practitioners.[245]
>
> They're just too busy feathering their own nest, and in the hands and the pockets of the government.[246]
>
> I hold a very firm view that I think the Law Society wants to get rid of sole practitioners and small practices because they're too much trouble.[247]

At the time of the interviews, these participants were senior members of the profession with lengthy practice experience, as evidenced by the fact that some of their examples of lack of support took place several decades ago. The reduction of work in the areas of personal injury, workers' compensation, victim compensation and conveyancing related to legislation introduced in the 1980s. These examples related to a perceived lack of effective lobbying of the government by the Law Society. As Karen articulated: 'There's a lot of hand and glove that goes on with government'.

The majority of participants had experienced major changes to the law, which directly affected the work of sole and small firm practices. What was common across gender, location and years of experience was the belief that the Law Society, at a strategic level, does not advocate for sole and small firm practitioners in areas of legal work and legal practice against government, the regulator, large law firms and the public.

Individually, some participants felt a lack of support and connection that, in Melina's case, added to the experience of sole practice as a lonely profession: 'Not a lot of support

[240] Mike.
[241] Robert.
[242] Christopher.
[243] Kieran.
[244] Susan.
[245] Allison.
[246] Christopher. Susan referred to the self-interest of Law Society councillors who are focused on a political or judicial career.
[247] Josephine.

from the Law Society. There have been times, I have had some queries, some issues. And I just sort of felt alone. The support wasn't there. And so then I stopped calling the society'. Her comment reflects the experiences of other participants who identified a gap in assistance, with examples such as indecisive and unhelpful ethics advice,[248] unreasonable approach of trust account inspectors[249] to unintentional errors in trust account,[250] unreceptive local law societies,[251] expensive Continuing Professional Development ('CPD')[252] and a lack of support with complaints from unhappy (rather than wronged) clients.[253]

Views of the local law societies were varied. Some practitioners referred to them as helpful and supportive, speaking of their welcomes, networking and reasonably priced CPD. Others described them as unwelcoming and unhelpful because of distance,[254] expense of attending events, their close connection to the Law Society, or failure to address the interests of sole practitioners.[255] Issa shared a conversation she had with a member of the local society when she attended her first meeting. The other lawyer said: 'Don't come here, please. We don't need more lawyers here [participant's laughter]. We've got enough lawyers in the [name of local society]'.

As discussed in *Opting for Sole Practice*, there was a shared view among participants that the requirements for managing a practice are onerous. There was also a collective observation that professional associations could provide more effective support in relation to practice management, the need for which is increasing in relation to new products and services, developed as a result of innovation and technology.

Beyond concerns relating to the NSW Law Society, Gavin referred to the NSW Legal Services Commission's lack of impartiality in relation to its poorly handled work in managing a complaint against him. Adam spoke of the Law Council of Australia's lack of advocacy for the work of lawyers in protecting civil liberties.

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[248] Allison.
[249] Gavin in relation to the correct naming of documents.
[250] Marion and Duncan. Allison and Gavin believe that small firms' trust accounts are inspected more often than with larger firms.
[251] Issa, Christine and Marion.
[252] Christina.
[253] Gavin.
[254] This was a relevant factor for rural practitioners.
[255] Angela, Christine, Christopher, Kieran, Issa and Marion.

As shown in Table 6.9 below, participants identified several areas where sole practitioners could be better supported. These experiences and perceptions regarding assistance and representation relate to both formal and informal support.

Table 6.9 Experiences of Not Being Supported

Participants	***Perceptions/Experiences***
City	
Christopher	Self-interested ('feathering their own nests') Supporting the government Pro-consumer with increased regulation Attention on stress and depression in the profession does not translate into action Accredited specialisation preferences groups over those who are not part of a specialisation
Josephine	Would rather not have sole and small firms because 'they're too much trouble' Favours the 'big practices' because they have departments to do all the compliance
Karen	Could have advocated against onerous disclosure
Mike	Partially responsible for loss of respect and reputation Over-regulation Allowing 'bread-and-butter' work to be taken away, e.g. larger firms who offer cut-price conveyances
Robert	Do not advocate against poor quality legislation
Susan	Did not lobby against government or the regulator Previously not proactive in areas of diversity, sexual harassment, unpaid placement, large law firm pressure
Suburban	
Allison	Geared for the masses not the individuals Ethics Helpline points to the rules (which are known to the practitioner) without providing advice as to the best solution CLE is expensive (example of $450 for two hours)
Issa	Local Law Society – members not very approachable
Melina	No advice concerning practice management and ethical issues (e.g. conflict of interests) Delay in responding to requests
Marion	CLE, courses and meetings pitched at the 'big end of this small town'

Rural	
Christina	Local Law Society – dinners and fundraising are expensive Law Society Journal (focus on the 'well-toned and the well-dressed')
Gavin	Lack of advocacy to government concerning changes to motor accident, workers' compensation and victims' compensation
Kieran	Favour public interest Not supportive of practitioners facing complaints No practical support, other than the library

By contrast, Table 6.10 below presents participants' acknowledgment of areas in which they felt supported.

Table 6.10 Experiences of Being Supported

Participants	***Perceptions/Experiences***
City	
Christopher	Local Law Society – reasonably priced CPD
Jane	Involved and enjoys being a mentor in the Law Society's mentoring program
Mike	Ethics and trust accounting help
Sally	Ethics, costs and trust accounting help Library
Suburban	
Angela	Trust Account Inspector's advice
Larry	Proactive with practice management
Rural	
Christina	E webinars Monday InBrief (information as to changes to the law) Library (postal service)
Gavin	'Vital' that we have a Law Society Member of a 30,000 'strong' association Local law societies – supportive with finding staff, securing locum work

In contrast to the perceived lack of support from the professional association, three practitioners[256] spoke positively about the mission and work of the NSW Law Society, including representing its members and leading discussions on matters that impact the

[256] David, Gavin and Larry. Karen noted that the Law Society: 'is never going to help you run your business because that's not what they are here for.'

profession. As shown in Table 6.10, some of the participants, who were critical of the profession at a strategic level, acknowledged the Society's assistance at an operational level. It is also important to note that two participants had not sought the services or resources of either the Law Society or their local law societies.[257]

Two participants found smaller professional associations of value to their practice, including family law, commercial law and general practice.[258] Participants considered these smaller associations to be practical and accessible; they appreciated the provision of less expensive and more relevant continuing professional development, as well as the advice and 'sounding boards' available from a network of practitioners. Whilst these associations were not restricted to sole or small practices, the benefit of a network of solicitors, with the shared experience of a practice area, was acknowledged. The two associations referred to were city-based, making access for rural practitioners difficult. However, it should be noted that new ways of communication, resulting from COVID-19, are facilitating collaboration with less need for physical proximity.

6.6.2 Locums

The work of locums in assisting solicitors, who may require their services for a variety of reasons,[259] has not been widely examined. Lara spoke highly of the support a locum provided to the practice when her late husband, the then principal, was very ill. The locum's invaluable help continued, as he was retained to work in the practice. Kieran engaged two locums on separate occasions to fill-in as holiday relief. The first resulted in a negative experience because of the locum's lack of competence with legal work (as reported by staff) and lack of sensible behaviour when residing in the solicitors' home (as reported by neighbours). The second locum managed the practice effectively and, at the time of the interview, was due to return for another period to allow the practitioner to take a holiday. Adam had engaged a locum, however considered the use of one to be 'generally disruptive' as they had 'no interest in the business' and 'clients get unsettled'.

Gavin worked as a locum, explaining that this enabled him to step in to manage the practice of a sole solicitor, who had been in practice for 35 years and was on stress-leave,

[257] Angela and Kieran did not refer to the NSW Law Society or their local law society.
[258] These were 'Brothers and Sisters in Law' (Mike) and a practice group that organised an annual CPD weekend (Sally).
[259] Reasons include absence from the practice for reasons of ill health of principal and holidays.

as well as providing another income stream. Angela undertook locum work after leaving her employed solicitor position prior to establishing a sole practice.

The NSW Law Society and the Law Institute of Victoria both offer a locum service. The NSW Law Society describes its locum service as an:

> …interim staffing solution [that] has helped firms facing a range of situations, from solicitors needing to take an unexpected break, to those looking for extra or specialised help during a busy project.[260]

The Law Institute of Victoria offers a matching service for a fee.[261] However, neither website promotes the service for practitioners planning a holiday or period of leave.

Whilst the examples above are of 'formal' locums who have been specifically engaged for a set period of time, a few participants relied on 'informal' locums who assisted when needed. Angela called on a former employed solicitor to manage her practice when she took holidays. Sally's colleague in the neighbouring office 'kept an eye' on the practice whilst she was on holiday.

6.6.3 Informal Support

Participants discussed informal support across several levels, with the most common form being a contact when practitioners take holidays and when they have complex or novel legal matters. Some solicitors practised in office environments that provided frameworks of informal support. This applied to city solicitors[262] who either worked in a Chambers Practice[263] or shared office space,[264] structures not available to suburban or rural participants.

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[260] Law Society of New South Wales, *The Locum Service: Information for Locums* (Information Sheet, 2018) <https://www.lawsociety.com.au/sites/default/files/2018-10/Locum%20Information%20Sheet.pdf>.
[261] 'Legal Careers: Legal Locum Guide', *Law Institute of Victoria* (Web Page, 2021) <https://www.liv.asn.au/Professional-Practice/Supporting-You/Managing-Your-Career/Legal-Careers-Locum-Guide>. The fee is $35 +GST.
[262] Sally and Jason.
[263] Jeffrey. A Chambers Practice in NSW is defined as a: 'A group of professionals, usually legal practitioners in sole or small firm practice, who operate from a named Chambers Practice and who, for the payment of a licence fee, have the exclusive use of a room or rooms in the Chambers Practice and share certain facilities with others in the group'. This definition was approved by the Council of the NSW Law Society in 1999. Law Society of New South Wales, *Chambers Practice: A Guide to Assist Solicitors Establishing or Joining a Chambers Practice* (Report, October 2004) 1 <https://www.lawsociety.com.au/sites/default/files/2018-03/Chamber%20Practice%20guide_0.pdf>. The Law Institute of Victoria does not provide advice or guidance on Chambers Practice.

Several practitioners emphasised the benefit and value of assistance from colleagues. This type of informal support consisted of the links and groups formed by practitioners, with the objective of helping colleagues with such challenges as the need for supplementary legal knowledge across a range of areas and the need to enjoy a break from practice. Such informal support also addressed the challenge of loneliness and isolation referred to by several participants.

Participants discussed the informal support of mentoring, networks and connections. Interestingly, more male participants spoke about connections, whilst more female participants referred to networks they had established.

6.6.4 Mentoring

Participants considered that mentoring had an extremely positive impact on their professional lives. Ten participants[265] drew on their rich experiences as either mentors or mentees. Seven of the 10 participants (70%)[266] who spoke of the value of mentoring were male. Some participants benefited from mentoring earlier in their careers, whilst others had current mentors. Duncan captured the joy of being a mentor, and of succession planning: 'A lot of my employee solicitors went out to start their own practices. And I'm glad that they had the opportunity to do it'. Jane considered that mentoring enhances the skill level and reputation of the profession:

> Is it the perfectly legally crafted document that's not ambiguous or is it that near enough is going to be good enough? And I don't know. I still pride myself in doing a proper job. But I think it is some – I can't stop myself. That's how I was taught by some really fantastic people.

6.6.5 'Brains Trust'

Sally described her informal network as her 'brains trust'. Several participants referenced the importance of a like-minded group of colleagues. This was irrespective of whether the participants employed staff; it was the expertise of legal knowledge that they required. The four participants who had set up a 'brains trust' were female. Karen[267]

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[264] Sally, Mike, Josephine and Jane. Christopher had commenced his sole practice career in a shared office. Melina had been in shared office space before moving her practice to the suburbs.
[265] Adam, Christopher, Duncan, Jane, Karen, Mike, Lara, Larry, Gavin and Robert.
[266] Adam, Larry and Robert.
[267] A sole practitioner without staff.

brought together three other solicitors in her building who called on each other for advice. For Karen, the benefit of this neighbourhood group was being able to 'share the wear and tear'. Marion[268] set up a network that she could contact with complex legal problems. Her approach to her colleagues was: 'This is where my head's at. What do you think?' Sally[269] established a support system with four other solicitors (two sole practitioners and two former sole practitioners who had moved to firms) who provided advice, particularly to staff when the sole practitioner was on leave. Christina[270] invited two other sole practitioners to join an informal network to help with challenging legal problems. These networks were formed through pro-active initiatives for the purpose of reducing the challenges of sole practice. The 'brains trust' was highly valued by the participants. As an informal but reliable network, the participants found practical support, advice and comfort that emerged in conspicuous contrast to the professional association.

This concept of networking was used in a multitude of forms across the cohort. As well as mentoring and networks, participants looked to connections, such as lawyer friends,[271] barristers[272] and former colleagues for support, advice and guidance on an ad-hoc basis.

6.6.6 Consequences of Lack of Formal Support

As presented in Table 6.9, the areas where participants believed that they could be better supported mostly concern practice areas, regulation and compliance. Loss of work, increased regulation by government, the high cost of office systems and the preferencing of other cohorts within the profession were identified by participants as areas where support, particularly from the Law Society, is deficient. As discussed below, this lack of formal support can result in professional and personal consequences.

As noted earlier, some participants made comparisons with other professions, such as accounting and medicine, to illustrate this lack of support. The perception of participants was that they are not treated as well as their counterparts in other professions. Participants noted the increase of work for accountants caused by the proactive growth mindset of their profession,[273] the higher status of doctors in the community, despite the

[268] A sole practitioner with staff.
[269] A sole practitioner with a secretary working remotely.
[270] A sole practitioner without staff.
[271] Kelvin.
[272] Kelvin, Larry, Melina and Jason.
[273] Adam. Examples included the additional work for accountants created by government, such as the business that flowed from the introduction of the GST.

lack of expectation of ground-level involvement in the community,[274] the reputation of doctors, dentists and accountants compared with lawyers, who are not seen as 'adding value' to what clients want,[275] and the attitude of clients to paying legal fees as opposed to paying doctors' bills.[276]

6.6.6.1 Experiences of isolation and loneliness

As highlighted in the introduction to this chapter, whilst autonomy has substantial value for sole practitioners and is the hallmark of sole practice, there was a noticeable acknowledgement that 'being the boss' could also be isolating and lonely. Melina, who moved from a cooperative style practice in the city to working from home in the suburbs, explained: 'Being a sole practitioner, it's just quite a lonely experience, especially working from home, because it was just, you get up, you do your work, and it felt that you were always working'.

Angela acknowledged the challenge of loneliness and Gavin recognised isolation as a result of sole practitioners not wanting to show their vulnerability. Other participants spoke of the consequences of being isolated, including being the single decision-maker with sole responsibility for a client's outcome.[277]

Participants shared experiences that can be understood as negative outcomes of sole practice. However, not all participants described these experiences as negative or challenging; many indicated that they consider such experiences as weekend work and working on holidays to be part of practice. Table 6.11 sets out experiences that are, or could be considered, detrimental or harmful.

Table 6.11 Negative Experiences of Sole Practice

Participant	***Experiences***
General Challenges	
Allison	Not being able to switch off
Angela	Challenge is generally loneliness
Christina	Not having someone to 'bounce ideas off' 'I haven't got anyone checking on my stuff'

[274] Adam spoke about how doctors did not lose their patients if they took a week's leave and how, on a personal level, they contributed less to the community than lawyers.
[275] Mike.
[276] Larry.
[277] Sally.

Participant	*Experiences*
Gavin	Most sole practitioners are isolated Sole practitioners struggle with vulnerability of not wanting to admit to not having the answer
Issa	Isolating because of lack of interaction with other solicitors, people and staff
Josephine	Very isolated
Lara	'You're on your own. And you tend to try and get your work done and neglect yourself'
Sally	'The biggest challenge, I think, is the pressure. It's a different kind of pressure. But the buck stops with me, and there's no one else that I can say, "Look. Can you take this?''''
Relating to the Business	
Adam	'But the downside is that you sit there and think, "Crikey, I hope that some money comes in because we've got wages at the end of the week"'.
Christopher	Necessity to complete administration instead of (chargeable) legal work
Issa	Not having a secretary
Jane	Finding time to get bills out Updating services and researching cases
Kieran	Dealing with unplanned matters – clients phoning, walking in Having to leave concentrated tasks such as drafting an affidavit until evening or weekends Running a litigation practice as a sole general practitioner
Evening and Weekend Work	
David	Works six, sometimes seven days, a week
Adam	Works weekends and nights (usually until 6 or 7), often other engagements
Christopher	Long hours and weekends
Angela	Works six and a half days a week
Kieran	Works seven days a week
Adam	Works weekends
Gavin	Works long hours
Kelvin	Manages emails at night Sees clients on weekends
Marion	Previously worked evenings and weekends, no longer able to because of carer's responsibilities
Robert	Has previously worked 14 hours a day, seven days a week
Holidays	
Adam	Five holidays in 19 years An hour every morning doing emails and such
Angela	Checking emails daily

Participant	*Experiences*
Mike	Takes laptop and phone
Christopher	Restricting holidays to Christmas and New Year Continuing to email and phone clients (expense of internet connection) Missing a holiday because of an imposed date for a mediation
Issa	Hasn't had a holiday in a long time
Jason	Restricted to one week plus two weekends or one week plus a weekend
Kieran	Looking at emails, phoning the office
Larry	Hasn't taken a break since 2010
Melina	Works during holidays
Angela	Checks in half daily
Client Engagement	
Christina	Clients phoning after hours Having a mobile, clients thinking you are available 24/7
Jason	Doesn't need to tell clients he is on holidays with the use of Dropbox, email and mobile phones
Melina	Mobile calls in evening
Christopher	Clients ringing, emailing, messaging in quick succession - this cacophony of things just hitting you

6.6.6.2 Wellbeing

The experiences set out in the table impact on general wellbeing. As discussed in Chapter Four, this is an area of health that has received significant attention in the legal profession in the past decade. This thesis supports the ongoing need for this attention.

Several participants discussed issues related to lack of wellbeing. Gavin shared his experiences of knowing sole practitioner colleagues with mental health challenges. Robert spoke of the impact of drugs and alcohol, lack of planning, dishonest staff and poor-quality premises on the ability to effectively manage a practice. Three participants referred to their concern about becoming ill and not being able to work.[278]

Prior to the focus on mental health in the legal profession, 'work-life balance' was the precursor discussion topic.[279] The indicators of autonomy, flexibility and self-determination have a connection to improved work-life balance. Explicitly, Melina

[278] Angela, Lara and Robert.
[279] Advertisements for corporate counsel included the benefit of work-life balance.

equated her shorter hours as a sole practitioner with a better work-life balance, compared to long hours of 7am to 8 or 9pm as an employed solicitor. Issa highlighted that being a sole practitioner granted her 'my time' with her children. Robert noted that having access to an onsite gym was a positive outcome resulting from a practice located in a residential/commercial complex.

Participants developed their own mechanisms for managing sole practice. The main mechanisms were practical ones with a few solicitors having an embedded philosophy of practice. Practical steps included not accessing emails away from the office[280] or on weekends.[281] In relation to holidays, most practitioners continued to undertake some work each day, such as checking emails and phoning the office. Adam shared the example of returning from holidays on a Saturday, which enabled him to work in the office on the Sunday in preparation for the 9am phone calls from clients who would ask: 'I've heard you had a week off, how was it? Good? Where's my matter up to?' Christina related that she 'warns' clients that she is going on holidays.[282] Susan had a similar approach with ensuring she tells all relevant stakeholders that she is taking a holiday, chooses a quiet time and ensures she is organised. Angela restricted her holidays to one week each year at her sister's farm. As Jason explained, his clients never know he is on holiday, as he continues to work with the use of Dropbox, email and mobile phone. Christopher[283] and Jane[284] had co-tenants who 'keep an eye' on their matters when they are away. Melina also had a similar arrangement when she worked in a co-operative style practice in the city.

A philosophy of practice that aims to achieve a work-life balance is centred on the separation of the professional from the personal. Larry explained that he 'switches-off'[285] as soon as he leaves the office. Lara's practice was four days a week.[286] Sally and David related they have a complete break from practice whilst on holidays. Angela, who practised from home, had a disciplined approach, which included a segregated office that she does not access on weekends.

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[280] Christopher, noting that he worked long hours and on weekends.
[281] Sally. Allison did not access emails on Sundays by putting her phone in a drawer.
[282] Christina also acknowledged the potential benefit of completing settlements remotely with PEXA.
[283] Christopher advised that his co-tenant attended to a few settlements.
[284] Jane described the assistance as '[Co-tenant's name] literally sits in my seat when I'm away'.
[285] 'I take off the lawyer coat as soon as I walk out of that building when I end my day'.
[286] Jane had also planned, some years ago, to work four days a week, however this lasted for three weeks.

6.6.7 Summary

Whilst autonomy is the primary objective and outcome of sole practice, and is generally perceived as a positive one, it is apparent that it can be tempered by loneliness, isolation and habitual work practices, including long hours, weekend work and either scarce or brief holidays or holidays intermingled with work. As shown in Table 6.11, the majority of participants experienced at least one aspect of loneliness, isolation or habitual work practices that would be considered detrimental to a work-life balance. As set out above, a few practitioners developed a philosophy to address these negative effects of sole practice, although the majority endeavoured to manage the challenges in an ad-hoc manner.

As David pointed out, he considered the management of his professional and personal practice as his sole responsibility. Whilst this needs to be understood within the context of a neo-liberal market in which work is regulated, professions have organisations charged with the representation of its members' interests. For the majority of participants, their experience was that the professional associations do not represent their interests. For some participants, they believed that their association was working against their interests. For the majority of these NSW solicitors, their perception was that the Law Society fails to support their practices. Paradoxically, in recent years, the Law Society and the other states' professional associations have designed tailored services for sole practitioners. This disconnect between the shared experience of abandonment and the professional associations' targeted work to support sole and small firm practices, discussed in Chapter Seven, requires further examination.

6.7 Theme 4: Reflecting on the Future

Considering the many roles that solicitors play in their communities, and the high regard for personal connections between lawyers and clients, it is frequently assumed that client needs determine that 'traditional' sole practitioners are highly sought after. Interestingly, only a small number of participants considered that sole solicitors in general practice have a future. The majority of participants suggested that a new 'form' of sole practice will replace the current sole general practitioner. The shape of the new form proposed by participants entailed a narrowing of general practice, which was surprising considering we are living in a time when technology could enable a broad practice to thrive.

6.7.1 'Backbone of the Profession': The Continuation of Sole Practice

Karen and Gavin shared a view that the traditional profile of the sole practitioner will continue. With humour, Karen noted that she was told 30 years ago that there was no future for sole practitioners. Gavin's support for this view was based on his belief, one that he referred to often, that because they are part of the community, sole practitioners are the 'backbone' of the profession.

Two senior city-based practitioners[287] shared the view that the traditional model of articles served as a successful structure for ensuring the succession of sole and small firm practices. They acknowledged that this succession continues today, to a lesser extent, through training and mentoring by a senior 'master' solicitor to a younger employed solicitor. In this model, there is an expectation that the master solicitor becomes the consultant, and the previous junior solicitor becomes the principal. Robert believed this to be a feasible career pathway for younger solicitors who do not intend to work in large firms. Alternatively, as experienced by Duncan, the employed solicitor learns 'the trade' and then leaves the senior solicitor to establish a sole practice. Duncan considered that part of the training and handing-down of experience from master to clerk is the importance of building a family client base, with the lawyer being the 'family solicitor', looking after the family's personal and business legal needs.

The participants who were confident in the future of the current model of sole practice were mainly solicitors practising without staff. Their perceptions were directed at the concept of the 'office' of the sole practitioner as an independent practitioner who is the guardian and advisor of the law. This belief in the traditional sole practitioner is aligned with the image of the hero lawyer who single-handedly achieves justice. This image is set within the pragmatic context summarised by Robert: 'I think that for well-organised and capable sole practitioners there is a profitable future, but I think it's going to be harder than what it has been'.

6.7.1.1 Personal interaction

Similar to Gavin's belief in the human connection to the community, many participants spoke of the critical personal interaction between lawyer and client. Their perspectives rested on their experience of the role they have in not only delivering a legal service, but

[287] Robert and Duncan.

in ensuring that the client understands the advice, and also in 'adding value' to the service by providing guidance on non-legal problems. Christopher acknowledged the value of personal service when he spoke of his understanding that companies are moving their business away from the large law firms because they lack personal service. Good-humouredly, he noted that the 'managing director of BHP hasn't knocked on my door'. Karen opined that clients follow their 'individual' lawyer, and Issa and Josephine agreed with the need for the individual interaction, particularly for families and in personal matters such as family law and wills.[288] Larry, a proactive adopter of technology, noted the importance of some face-to-face communication with clients. Jason also considered that, from the lawyer's perspective, personal interaction is important in determining the client's demeanour and instructions.

6.7.1.2 'A dying breed': The discontinuation of sole practice

In contrast, a few participants were less confident about the future of sole practice. Kelvin saw sole practitioners as a 'dying breed'. This view had some support from Melina. She gave the example of friends who are sole practitioners being less busy, and of self-represented parties utilising websites that set out the legal steps to follow in areas such as probate application and guilty pleas. Angela perceived that younger solicitors do not see sole practice as an attractive option and that, without the opportunity to experience sole or small practice that was previously enabled by the practice of articles, younger solicitors will continue to reject sole practice. In Marion's experience, the challenges of sole practice meant that some can be tempted to the 'dark side' with offers of income security from larger suburban firms. Marion also queried whether the previously attractive offer of a high number of safe custody documents[289] remains a strong incentive to purchase a practice.

These findings from the interviews contrast with Levin's conclusion in her 2001 study of 41 US solo and small firm attorneys that they are 'hardly a dying breed'.[290] In fact, several participants affirmed that sole practice, in some form, is sustainable. Melina and Christina suggested that if sole practitioners continue in their current work, they may

[288] Issa referred to matters involving children. Josephine referred to cases where a testator or testatrix left a family member out of a will and the family solicitor was able to counsel the client about doing so.
[289] Wills and Certificates of Title.
[290] As previously quoted in Chapter Two, n 125. Leslie C Levin, 'Preliminary Reflections on the Professional Development of Solo and Small Law Firm Practitioners' (2001) 70(3) *Fordham Law Review* 847, 848.

have to supplement their income[291] or will have difficulty being 'financially self-sufficient', particularly given the increasing numbers of solicitors. Similarly, Christopher was concerned that whilst 'small' work, such as conveyances and wills, will remain with sole practitioners, other work will go to larger firms, thus reducing the quality of the type of work that sole practitioners undertake.

As discussed above, the view of five senior practitioners[292] supported the sustainability of sole practice. This belief in the sustainability of sole practice extends the history of these lawyers, as discussed in Chapter Three, as having a continuing role in the legal profession and the communities in which they practise.

6.7.1.3 A new form of sole practice: Specialisation

A core insight shared by the majority of participants was that sole practice will continue, although in a different form. The participants considered the greatest change to be increased specialisation,[293] with general practitioners narrowing the work they do[294] and developing 'niche' areas of practice, similar to barristers. It was also considered that more sole practitioners will work in Chambers Practices or co-operatives.[295] Susan predicted that both specialisation and accreditation will be more sought after by clients.

Adam and David recognised that the future of sole practice may be secured by an expansion of the role of these solicitors. Drawing on the broad work of accountants as an example, Adam suggested that lawyers could take on the role of a 'trusted professional advisor', providing legal as well as non-legal advice to the client.[296] He saw this as an exclusive role, 'with less than 10% of the profession' equipped to move into this new area. David referred to the advisor role as one that, whilst 'not necessarily on a retainer', is involved in all relevant decisions. Susan also envisaged a broader role for sole practitioners in offering 'bespoke services'. She defined this as service beyond that of a lawyer, in order to be 'much more rounded in the advice that we're able to give'. Allison described this as bringing a 'commerciality of decision-making' to legal problems. Lawyers' traditional skills, such as interviewing and negotiation, were considered to be in demand in the future.

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[291] Melina, for example, through teaching.
[292] Duncan, Robert, Karen, Christopher and Gavin.
[293] Alison, Josephine, Robert, Kieran, David and Melina.
[294] Allison, David and Josephine.
[295] Robert.
[296] Adam was a lawyer and an accountant.

6.7.1.4 Impact of technology

The impact of technology is considered as both a 'friend' and a 'foe' by the participants. Positive engagement with technology includes established and more recent tools, such as AustLII and internet research,[297] email communication,[298] mobile phone communication,[299] legal software,[300] electronic searches,[301] e-filing,[302] online-shared documents,[303] promotion of legal services through Facebook and LinkedIn,[304] speech-to-text software,[305] cloud storage,[306] automated file management systems,[307] and reduction of paper files and need for storage space.[308]

In contrast, participants' concerns about technology include the risk with clients wanting to give instructions by text,[309] online 'self-help' precedents used by clients resulting in problems,[310] lawyers relying on irrelevant and lengthy precedent terms and conditions,[311] clients ringing on mobile phones outside of business hours,[312] IT collapses,[313] more recent ongoing requirement for IT updates,[314] need for IT assistance,[315] lack of opportunity to develop courtroom skills due to reduced court appearances,[316] loss of agency work,[317] loss of connection with people, such as registration and settlement clerks, government staff, fellow practitioners and agents,[318] ongoing work of maintaining a web presence,[319] possibility of fraud with digital signatures,[320] speed of matters and clients' expectations due to technology,[321] text communications,[322] scams with overseas

[297] David and Kelvin.
[298] David, Allison, Jason, Josephine, Kelvin, Kieran, Sally and Susan,
[299] Angela, Jason, Lara and Mike.
[300] Larry and Mike.
[301] Marion.
[302] David.
[303] Allison.
[304] Christopher.
[305] Jason
[306] Jason, Jane, Larry, Mike and Susan.
[307] Lara.
[308] Lara.
[309] Adam, Jane.
[310] Allison and Robert.
[311] Allison.
[312] Christina and Kieran.
[313] Christopher, Larry and Robert.
[314] Marion.
[315] Robert.
[316] Jason.
[317] Jason.
[318] Josephine and Robert.
[319] Karen and Mike.
[320] Kelvin.
[321] Lara, Marion, Issa and Susan.
[322] Melina.

automated services,[323] and unhelpful software packages.[324] The cost of technology is also a significant challenge.[325]

Participants acknowledged that traditional face-to-face interactions can be supplemented with technology. Conveyancing provides an example of participants' views about the impact of technology on a common practice area. The different responses to PEXA as the centrepiece of conveyancing illustrate the challenges with technology for sole and small firm practices.

As noted earlier in this chapter, Melina discontinued conveyancing work because of the perceived complexities of the PEXA system, which was mandated in NSW from 1 July 2018. PEXA, referred to as e-conveyancing, is an electronic platform for land dealings and transfers. At the time PEXA was introduced, some participants reluctantly moved to the new process, although they had concerns that it would be too complex because of its technical focus. Christopher expressed this concern in his reference to the new technology as a 'challenge' and was dissatisfied with the time of one hour and 40 minutes that it took to have his problem resolved by the 'PEXA people'. Lara confirmed the challenge of technology and the mandatory aspect of the PEXA system:

> Up until the 1st of July this year, our systems were totally manual. We all have computers, but we did our own thing. And our manual systems worked beautifully. And then, the state government decided that they would privatise the land titles registry and push everybody onto the PEXA platform for settlements. And so, it became pretty obvious to me that if I didn't want to get out, I needed to savvy up on technology.

In contrast, two participants[326] considered PEXA to be a positive change, with Christina noting that conveyances with PEXA meant that it would be easier to manage settlements whilst on holidays. Adam employed staff and said that he and his conveyancing clerk were 'loving' PEXA. The participants who employed staff and intended to continue their conveyancing practice with PEXA noted that they will rely on staff to learn to manage

[323] Mike.
[324] Robert.
[325] The cost of technology for smaller firms is also identified in Thornton's research, with one sole practitioner interviewee noting that engaging an IT person and purchasing 'specialised software licences' was prohibitive. Margaret Thornton, 'Towards the Uberisation of Legal Practice' (2019) 1(1) *Law, Technology and Humans* 46, 50.
[326] Adam and Christina.

the system and then train the solicitors.[327] The experience with PEXA demonstrates the positive and negative impact of technology on sole general practice.

Despite its challenges, several participants recognised that competence with technology in the delivery of legal services is essential. There was a general acceptance that client communications have changed, and will continue to do so, through technology. At the same time, there was strong agreement that personal interaction between lawyer and client remains important. David accepted that technology may result in online analysis of legal problems, but stated that clients 'might be better to actually go and sit down with somebody so that they can ask you what else are you feeling, what's happening in your life and so forth, and get that little bit extra service'. Several other participants highlighted the value of personal interactions with clients, including home visits. A few participants noted that older clients particularly appreciate personal communications. Interestingly, Issa questioned whether the younger generation, who have grown up with laptops, could consider a face-to-face conference as 'boring, pedantic and unnecessary'. This personal interaction is also an arguable reason as to why sole solicitors are able to rely on referrals for work rather than advertising.

In contrast, Allison believed that online law businesses with focused services will compete with traditional practices. Lara, Jane and Larry also acknowledged the change from traditional practice, based on the telephone, email and documents,[328] to new ways of practice delivered by 'tech-savvy young lawyers'[329] and clients who see Facebook as the best way to communicate with their lawyer.[330] These insights reflect the technology-driven disruption presented in Chapter Four.

Experiences with, and perceptions of the impact of, technology were not clustered by location or gender. Larry had been in practice for the shortest period. He embraced technology to the greatest extent. This is not surprising given that he was the youngest participant. Larry spoke about the benefits of technology in his practice with several software systems[331] for file management,[332] searches and client communications. He also used a relatively new form of staff employment through short-term contracts during

[327] Adam and Lara.
[328] Jane.
[329] Lara.
[330] Jane.
[331] Including one cloud-based system.
[332] Including time and billing records and preparation of tax invoices.

periods when the practice was busy. Lara recognised the need to modernise her office systems to ensure that the practice was more attractive to sell. Allison acknowledged the convenience of e-portals for court filing. Given that these interviews were conducted prior to the COVID-19 pandemic, there is now greater reliance on technology, as set out in the Epilogue.

Despite a general acknowledgement that technology is changing legal practice and the delivery of legal services, participants drew on the skills attributed to lawyers, such as communication and negotiation, as ones that could not be automated and replaced. Several participants acknowledged a lack of technical expertise, and a few shared their concern that the pressure to use technology will drive their decision to retire from practice. Angela referred to several older solicitors and sole practitioners who decided to retire as an alternative to learning new technologies. Angela indicated her 'reluctant' willingness to learn, drawing on her previous act of fighting 'this PEXA business tooth and nail' and subsequently, 'finding, in some respects, it's going to work quite well for me'. In contrast, Robert saw technology as a significant challenge for sole practitioners who do not have IT departments or young tech-savvy solicitors. Interestingly, Robert previously embraced technology as an early adopter of the electric typewriter, answering machine, facsimile machine and mobile phone. He considered that more recent technology has more 'disadvantages' than 'benefits' because it is 'too complicated, and erratic'

6.7.1.5 Summary

According to many (but not all) participants, in the future there will be fewer general practitioners and sole practitioners will specialise in particular areas, including areas currently outside the scope of legal services. The role of advisor, suggested as a new area of work, appears to be based on the perceived success of other professions, such as accountants and financial planners, in expanding their services.

If sole general practitioners narrow their areas of work, what will this mean for clients? The effect of fewer generalists may be that clients are unable to access the range of legal services they require, or that there are more sole practitioners offering different specialisations.

A few participants suggested that online services will replace some of the work undertaken by lawyers. As noted in Chapter Four, current online legal services are

focused on corporate and business clients rather than individuals. On a general level, the legal profession is aware that it must employ technology to ensure its viability, and this includes sole and small firm practices.[333] The participants also acknowledged the need to be 'technically-savvy' as an essential requirement for future sole practitioners.

6.8 Conclusion

As outlined in Chapter One, this thesis seeks to answer two primary research questions:

1. *How do lawyers experience and understand their role as sole general practitioners?*
2. *What do they understand their impact to be on the communities in which they practise law?*

The interviews with sole general practitioners, outlined in this chapter, reveal four themes that assist in answering these questions.

The first question, as to how lawyers experience and understand their role is largely addressed in the above discussion about *Theme One: Opting for Sole Practice* and *Theme Three: Supporting My Practice*. The second question, as to participants' understanding of their impact, is reflected upon in *Theme Two: Serving the Community* and *Theme Four: Reflecting on the Future*.

In relation to the first question, it is apparent from the interviews that there are shared and strong views as to how lawyers come to, and deal with, sole general practice. Pushed from their initial role as a lawyer either by workload, politics or negative workplace experiences, participants generally expressed a pull towards the autonomy and flexibility of sole general practice. Their understanding of that role was that they are not only their own boss, but they also have become responsible for a business and other

[333] Law Society of New South Wales, *The Future of Law and Innovation in the Profession (FLIP) Report 2017: Findings* (Report, 2017) 9 <https://www.lawsociety.com.au/sites/default/files/2018-03/1272515.pdf>.

generally unforeseen and challenging roles, for which they did not plan as part of their career in law.

In relation to the second question, there was a shared feeling of responsibility towards the community they serve and a feeling that they are part of that community. Here it is clear that many solicitors sacrifice profit or charging fees to prioritise access to legal services for the community they serve. The participants' understood their role as one that facilitates communication around rights and responsibilities – extending beyond the retainer, their clients and files to promoting and adhering to the law in schools and other community organisations.

The reflections of the participants in this chapter identify the complexity of the lived reality of being a sole general practitioner. The informality of the communities they operated in, including their clients, professional and personal networks, and family, were the strong point for many of the participants, whereas the formal assistance offered by the profession itself were seen as inadequate, unhelpful and not 'fit-for-purpose' for their needs and interests. Combined with the future challenges for this practice area, it is clear that the regulatory frameworks and support offered to these practitioners is important, not just for the individual lawyer, but for the wider community in which they live and work. How the complexities of the lived experience of the participants can be addressed is considered in the following chapter.

7 FURTHER FINDINGS AND DISCUSSION: TOWARDS A NATIONAL STUDY OF SOLE PRACTITIONERS

The professional achievement of lawyers will depend far less on recapturing the imagined felicity of the good old days than on their response to the challenge of providing remedies and protections to individuals in a world of large organisations.[1]

7.1 Introduction

Marc Galanter's above quotation captures the essence of this thesis' findings – that many sole general solicitors experience the practice of law in a contextual framework, in which individual and small business clients have a central presence. These solicitors understand their role to be one that enables a diverse client base to access the law across a range of areas. This access may not otherwise be available. For many, their legal and non-legal

[1] Marc Galanter, 'Lawyers in the Mist: The Golden Age of Legal Nostalgia' (2017) 122(1) *Dickinson Law Review* 549, 562.

contribution to the community in which they practise is integral to their role as an independent and accessible lawyer.

The purpose of this chapter is to analyse the findings of the thesis, drawn from participant interviews and earlier chapters, utilising a framework based on the thematic insights of the previous chapter. The findings are thus each linked to the core themes identified in Chapter Six. These are: *Opting for Sole Practice*; *Serving the Community*; *Supporting My Practice*; and *Reflecting on the Future*. These four themes answer the two primary research questions:

1. *How do lawyers experience and understand their role as sole general practitioners?*
2. *What do they understand their impact to be on the communities in which they practise law?*

Broadly, as described in Chapter Six, the two themes *Opting for Sole Practice* and *Supporting My Practice* respond to the first question, whilst *Serving the Community* and *Reflecting on the Future* relate to the second question. This alignment of the four themes to the two research questions is grounded in the participants' lived experience. Each finding is in turn allocated to one of the four themes. This has been done through a rigorous four-step analysis, including consideration of the finding's significance, the evidence that supports the finding, how the finding informs current knowledge, and finally, the contribution that the finding makes in response to the research questions.

The thematic insights offered in this chapter support the observations made regarding abandonment (Chapters Two, Three and Four), the absence of regulatory identification and data (Chapter Three), and the accelerating changes to the profession and the global marketplace (Chapter Four), all of which impact negatively on the sole general practitioner. Indeed, the analysis of the interviews, together with relevant existing literature, evidences the pressing need for structural change in order to improve and support the experience of sole general practitioners. Importantly, the point of this thesis is not to present report-style recommendations – rather, it is about giving a voice to, and mapping the lived experience of, the sole general practitioner. For this reason, the recommendations for structural change that are presented in this chapter are integrated with analysis of each of the four themes, together with the relevant findings for each

theme that emerged from the interviews. These themes form clusters of meaning and interests that endure across the participants' narratives, both individual and collective.

Recommendations that transpire from the findings are identified and located in the table in Appendix A. The primary proposal that emerged from an analysis of the findings is the need for a national study of sole and sole general practitioners. All findings are expanded to include the relevant actions flowing from the recommendations. The table also situates the recommendations within the relevant sections of the chapter.

7.2 Theme 1: Opting for Sole Practice

This theme is situated within the first question asked in this thesis – *How do lawyers experience and understand their role as sole general practitioners?* It identifies the motivations for the choice to practise alone across a range of areas. Using these findings, it explores both push and pull factors that lead to sole practice, as well as the expectations and unexpected challenges experienced by the cohort.

7.2.1 Introduction

The significant number of sole practitioners in Australia demonstrates the tenacity of this cohort. Yet, as outlined in previous chapters, negligible contemporary information is known about their needs, the work they do, the clients they act for, and their role in the communities in which they practise law. Furthermore, little is known as to why they opt for sole general practice.

As observed in Chapter Six, the participants in this study all willingly shared their reasons for moving to sole practice. Overwhelmingly, autonomy and flexibility are the clear motivating joys of the subtheme of 'being my own boss'. However, the burden of loneliness and the inability to 'leave' work are notable. Participants articulated the challenges and consequences of being a sole practitioner. In contrast, the collective consequences of 'opting for sole practice' for lawyers who chose to do so, and the communities in which they establish their practices, are unknown. Therefore, it is important for the sustainability of both sole and general practice to have informed knowledge and understanding of the solicitors who leave partnerships and corporate practice to 'go solo'.

7.2.2 Finding – Purpose of Sole Practitioners: Ambiguity in the Definition of a Sole Practitioner

As discussed in Chapter Three, a fundamental finding of this thesis is that there is no single definition of *sole practitioner*. The ambiguity in the Uniform Law is evidenced by the two extant definitions of a sole practitioner, as either as a principal of a law practice or a legal practitioner engaging in legal practice 'on his or her own account'.[2] The practices considered in this thesis come within both interpretations. Participants consist of solicitors working on their own without staff, as well as solicitors with several non-legal staff working in a small, rather than a sole, office environment. Given the common requirement that a sole lawyer has responsibility and accountability for the legal practice, one definition should encapsulate both models.

This thesis recommends the definition of sole practitioner be clarified to include the presence of employed legal and non-legal staff. As the Uniform Law gradually increases its state and territory membership,[3] it is critical to have an unambiguous definition for all practice structures, including sole practice. To ensure accurate reporting of solicitors' practice structures, a consistent definition is essential.

As proposed in Chapter Three, this thesis submits that a suitable definition of sole practitioner is 'an Australian legal practitioner who engages in legal practice on his or her own account and who may engage employees, consultants or agents[4] in the legal practice'. This definition includes sole traders, directors and solicitors with legal and/or non-legal employees, consultants or contractors. It aligns with the legal profession's regulatory framework and with its core responsibility for compliance with lawyers' legal, fiscal and ethical requirements.

As this thesis reveals, the absence of a definition and the coupling of sole and small firm practices may, in part, be responsible for the deficiency of scholarly and professional attention, highlighted in Chapters Two, Three and Four. The purpose of defining the sole practitioner is to better articulate in policy and legislation that sole practitioners are

[2] See Chapter Three, nn 10–12.
[3] Currently, NSW and Victoria are members, with WA set to join at a time after 1 January 2022. See Chapter Two, n 28.
[4] Employees, lay associates, consultants or agents are non-principals, directors, partners or officers. The terms are taken from the definition of associates in *Legal Profession Uniform Law 2014* (NSW) s 6 ('*Uniform Law NSW*').

singularly responsible for their business and their legal practice. In doing so, the framework of support and recognition is one that would be based on this definition. This is particularly relevant to the research question as to these lawyers' experiences as sole general practitioners.

7.2.3 Finding – Purpose of General Practitioners: Lack of a Common Definition of General Practice

More challenging than a definition of a sole practitioner is a common definition for a general practitioner. Why is a common definition necessary? What purpose does it serve? Interestingly, participants did not identify being defined as sole general practitioners as a matter of importance. They did, however, perceive that sole practitioners are largely marginalised.[5]

Unlike the well-defined community understanding of a medical doctor in general practice, the absence of a definition of general practice contributes to the overall lack of understanding of this cohort. Participants in this study did not refer to the opportunity to offer a general practice as a reason for opting for sole practice. This decision was motivated by a desire to enjoy a more fulfilling experience as a lawyer. The resulting joy from 'being my own boss', rather than 'being called to general practice', is a strongly convergent theme, thus suggesting that being a general practitioner is assumed.

The significance of 'being a general practitioner' is found in the role of these solicitors in the provision of legal services in several areas, which often match the legal needs of the communities in which they practise. Clients have a range of legal needs. As discussed in the theme *Serving the Community*, legal needs across a breadth of problems are identified in research as a challenge for legal service delivery.[6] Having one lawyer with several

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[5] Examples of marginalisation include: perceived lack of advocacy when the NSW government legislated to reduce the need for lawyers in personal injury; workers' compensation and victims' compensation matters; approval of licensed conveyancers and direct briefs to Counsel; a Law Society journal that appears to focus on high-end expensively-dressed corporate lawyers; some local law societies that do not cater for the needs of sole practitioners; no support in relation to client complaints; over-reaction to inadvertent trust account matters; expensive CPD; the introduction of PEXA; and no assistance with office administration, particularly in relation to the high costs of software and systems.

[6] Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in New South Wales* (Report, Law and Justice Foundation of NSW, August 2012) <http://www.lawfoundation.net.au/ljf/site/templates/LAW_NSW/$file/LAW_Survey_NSW.pdf>; Community Law Australia, *Unaffordable and out of Reach: The Problem of Access to the Australian Legal System* (Report, July 2012) <http://www.communitylawaustralia.org.au/wp-content/uploads/2012/07/CLA_Report_Final.pdf>; Centre for Innovative Justice RMIT, *Affordable Justice – a Pragmatic Path to Greater Flexibility and Access in the Private Legal Services Market* (Report,

areas of legal expertise embedded in a community allows for a diverse range of legal needs to be met.

Hence, as suggested in Chapter Three, a definition of sole general practitioner should include the minimum number and percentage of a practice area, as part of the total workload that constitutes general practice. This thesis illustrates that this is possible. As discussed in Chapter Six, some city practitioners tended to undertake commercial law work, whilst suburban and rural practitioners generally offered a greater mix of areas. As presented in Table 6.2, six of the seven rural participants offered a broad general practice. The decision to set up a general practice may have been motivated by the participants' previous practice areas, such as family, business and criminal law, the needs of the community, and the necessity to offer a range of areas in order to secure and sustain a profitable business. The lower ratio of solicitors to local population means that rural solicitors require a greater range of practice areas, whilst the concentration of business clients in the city enables CBD practitioners to offer a narrower range.

As acknowledged in Chapter Three, it is not the purpose of the Uniform Law to detail practice types. Accordingly, a definition for sole general practitioner must be determined elsewhere. As set out in Chapter Three, this thesis proposes that a sole general practitioner is a principal practising as a sole trader who may employ non-legal staff and/or non-principal lawyers, and who offers a range of legal services in three or more practice areas.

7.2.4 Finding – Inconsistency and Inaccuracy of Data

As identified in Chapter Three, the population of sole practitioners in Australia is neither accurately recorded nor reported. This gap in data includes inconsistent reporting about the size of the cohort, and most importantly, the number of sole practitioners who offer a general practice. Across each Australian jurisdiction, there are several methods of data collection for the analysis and reporting of information and statistics identifying sole practitioners. For example, some jurisdictions publish statistics on the number of sole practitioners,[7] whilst others publish statistics on the number of sole practices.[8] As with

October 2013) <http://mams.rmit.edu.au/qr7u4uejwols1.pdf>; Productivity Commission, *Access to Justice Arrangements* (Report, Australian Government Productivity Commission, 3 December 2014) <https://www.pc.gov.au/inquiries/completed/access-justice/report>.

[7] See Table 2.1 in Chapter 2.

[8] Ibid.

the absence of a definition for general practice, inaccuracy of data also adds to the broad deficiency of knowledge about this cohort. This deficiency further contributes to the general consensus of a forgotten cohort.

The finding in this thesis that the size of the profession is not accurately known, and as a consequence nor are its different cohorts, is not a new discovery. As highlighted in Chapter Two, a central concern is the inaction in remedying this deficit, recognised almost 50 years ago by Disney et al,[9] and a quarter of a century later by the Law Council of Australia.[10] Although the Council has not taken this up as an issue, its more recent studies have applied an effective method of data collection, referred to later in this section.

Despite the existing flaws of data collection set out in Chapter Two, the NSW Law Society's *2018 and 2020 National Profile of Solicitors* present the closest method of uniform reporting of the Australian solicitor demographic.[11]

The 2018 and 2020 reports also provide the most accurate and recent snapshots of the private profession in Australia. Diverging from previous reports, they offer a percentage break down of private practice firms, rather than a numerical total. A percentage break down is independent of increases or decreases of numbers of solicitors and can be used across years to compare the statistical status of cohorts. As set out in Table 2.2 in Chapter Two, in 2020, 42% of private practice lawyers were sole practitioners, constituting the largest cohort of private practitioners.

Such uniform methods of data collection and analysis across Australian jurisdictions will provide statistics on sole practitioners as a percentage of the private profession. If recognised as a separate cohort, statistics about sole general practitioners can also be implemented. Accurate data can inform decisions about strategic planning for the profession, professional support and the allocation of funding for legal services delivery. As referred to earlier, the Law Council has the jurisdiction to undertake this work, as

[9] Julian Disney et al, *Lawyers* (Law Book Company, 1977) 58.
[10] Law Council of Australia, *2010 Discussion Paper: Challenges for the Legal Profession* (Discussion Paper, 2001) 2.
[11] Urbis and Law Society of New South Wales, *2018 National Profile of Solicitors: Final Report* (Report, 17 July 2019) 27 <https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors.pdf>. Urbis and Law Society of New South Wales, *2020 National Profile of Solicitors: Final Report* (Report, 1 July 2021) 4-5 <https://www.lawsociety.com.au/sites/default/files/2021-07/2020%20National%20Profile%20of%20Solicitors%20-%20Final%20-%201%20July%202021.pdf>.

evidenced by other national research and reporting it has undertaken,[12] including the *2019 National Collection of Ethnic and Cultural Diversity*. The data that formed the basis of the research were sourced from practising certificate and membership renewal forms.[13]

The finding of a need for comprehensive and consistent data on the sole general practitioner population in Australia is also relevant for the reporting of misconduct cases. As discussed in Chapter Two, research into the regulation of lawyers through the complaints and disciplinary regime highlights the over-representation of sole practitioners. As acknowledged by scholars, there are systemic reasons for this, including the alternative avenues available to corporate firms for resolving client complaints, and the greater exposure to scrutiny of solicitors acting for individual clients. Practice details, such as sole or small firm practice, could be included in the reporting of disciplinary cases. This straightforward and readily available information could be placed with the details as to parties or included in the facts of the case. Such information will inform the research concerning regulation and discipline, and subsequently, the responses of regulators and professional associations to education, practice management and support.

7.2.5 Finding – Lack of Understanding of the World of Sole General Practitioners

When sharing their perceptions and experiences, practitioners emerge as a 'collective', with the mutual narrative that the world of sole practitioners is neither well-understood nor considered. There is a commonality in their shared assertion that they are under-acknowledged in the work they do, the contributions they make to the overall delivery of

[12] Urbis and Law Council of Australia, *National Attrition and Re-Engagement Study (NARS) Report* (Report, 2014) <https://www.lawcouncil.asn.au/docs/a8bae9a1-9830-e711-80d2-005056be66b1/NARS%20Report.pdf>; Law Council of Australia, *Diversity and Equality Charter* (Charter, 2015) <https://www.lawcouncil.asn.au/files/web-pdf/1508-Charter-Diversity-and-Equality-Charter.pdf>; 'Mental Health and Wellbeing in the Legal Profession', *Law Council of Australia* (Web Page, 2016) <https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/mental-health-and-wellbeing-in-the-legal-profession>; Law Council of Australia, *The Justice Project: Final Report* (Report, August 2018) <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20_%20Final%20Report%20in%20full.pdf>; Law Council of Australia, *Legal Futures Summit* (Background Paper, 13 September 2018) <https://www.lawcouncil.asn.au/docs/002689ca-c104-e911-93fc-005056be13b5/Background%20Paper%20-%20Futures%20Summit.pdf>.

[13] 'National Collection of Ethnic and Cultural Diversity Data', *Law Council of Australia* (Web Page, 20 May 2019) <https://www.lawcouncil.asn.au/media/news/national-collection-of-ethnic-and-cultural-diversity-data>.

legal services, and their role in upholding the profession's reputation. This contrasts, and highlights, a disconnect with the 'banner' headline that sole practitioners are the largest cohort within the solicitors' branch of the profession.

The finding that there is a lack of understanding of the world of sole general practitioners is evident in two ways – the tension between law as a business and as a profession, and humour as a form of resilience. These approaches, discussed below, influence the way the participants represent sole practice, both as sole business traders and lawyers. To varying degrees, they confirm that a successful, effective and ethical lawyer can serve this dual role.

7.2.5.1 The profession versus business debate

According to the participants' insights, discussed in Chapter Six, the reality of managing a business is a significant challenge, to the extent that it constrains the capacity of sole practitioners to undertake work as solicitors.[14] The complex dynamic between sole practice as a traditional way of legal practice and as a business is highly relevant to the 'profession versus business' debate, discussed in Chapter Four. Sommerlad suggests that modern legal professionalism in the corporate legal world is a 'complex mix of the old and the new'.[15] This same mix also applies to small firm and general practice, with the old, embedded in the tradition of the independent and trustworthy lawyer, analogous to Galanter's 'good old days',[16] and the new, looking to maintain a profitable business in an increasingly complicated world, described by Galanter as the 'challenge of providing remedies and protections'.[17] Within the professional identity of sole practitioners, this old/new union is evidenced in their values, client relations, practice management, and their place within the profession and the community. Dal Pont describes this as a 'tension'[18] between the need to manage a profitable business, particularly one that is

[14] Examples of administration that impact on legal work include preparation of bills for clients and dealing with client challenges to the bill, management of staff, and dealing with office systems. Mike described the business requirements as needing to be 'a jack-of-all trades'. An exception to this is Karen, who succinctly and clearly articulated that the two personas of professional lawyer and small business owner are not incompatible. See Chapter Six, Section 6.4.2. Karen noted, 'It's a business, but it is a profession. It's that you've got to make money. What's the point if you're not making money? Don't tell me you can live off thin air. Because you've got costs, rent, wages, blah blah blah'.
[15] Hilary Sommerlad, 'The Commercialisation of Law and the Enterprising Legal Practitioner: Continuity and Change' (2011) 18(1–2) *International Journal of the Legal Profession* 73, 95.
[16] Galanter (n 1).
[17] Ibid.
[18] GE Dal Pont, 'Profession vs Business: What is Pivotal?' [2020] (160) *Precedent* 32, 34.

achieved as a result of rigorous entry requirements and the obligation of public service.[19] Sommerlad draws on lawyers' awareness of the history and traditions of their profession[20] and the steadfast commitment to its 'clan-like culture'[21]; she discusses this in the context of the corporate law firm and competition for the best performing lawyers with the highest capacity to execute and adhere to the firm's culture.[22]

In contrast, the concept of the sole practitioner as an individual 'stand-alone' professional removes them from the clan-like culture, the community of the legal profession and, to an extent, from the assumption that law is a business. Sole practitioners as sole traders sit outside the 'clan', drawing on other sources, such as resilience, for their identity and understanding of their role and place.

7.2.5.2 Humour as resilience

The mythical image of the independent lawyer as a hybrid between a hero[23] (independent and resilient) and a buffoon[24] (incompetent and unfit) is reflected in participant responses. In many cases, the participants drew on humour to describe their role and place in the community. Examples include noting that solicitors have replaced pubs on corners of country towns;[25] that lawyers know how to 'talk the talk and walk the walk';[26] technology as sounding the 'death-note';[27] the reluctance of lawyers to work in rural areas, as if the law of NSW only applies as far as the Blue Mountains;[28] a young solicitor moving to a country town and being greeted on a Saturday morning by the neighbour leaning over the fence with 'Oh, you'd be the new solicitor in town, would you …

[19] Ibid.
[20] Sommerlad (n 15) 95. Sommerlad draws on the work of Philip SC Lewis, 'Comparison and Change in the Study of the Legal Professions' in Richard L Abel and Philip SC Lewis (eds), *Lawyers in Society: Comparative Theories* (UCLA Press, 1989) 27, 58.
[21] Sommerlad (n 15) 95. Sommerlad draws on the work of Michael Burrage, 'From a Gentlemen's to a Public Profession: Status and Politics in the History of English Solicitors' (1996) 3(1–2) *International Journal of the Legal Profession* 45 and her work with Sanderson in Hilary Sommerlad and Peter Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (Ashgate, 1998).
[22] Thornton connects the pressure on graduates and employees in corporate firms to support and increase profit maximisation with loss of autonomy, poor health and harmful working conditions in corporate firms. Margaret Thornton, 'Squeezing the Life out of Lawyers: Legal Practice in the Market Embrace' (2016) 25(4) *Griffith Law Review* 471, 486.
[23] Atticus Finch.
[24] Dennis Denuto.
[25] Adam.
[26] Allison.
[27] Angela.
[28] Lara.

[laughter]?';[29] when speaking about the privilege of representing people, not wanting 'to sound as though I am Mother Theresa on steroids';[30] the joy of sole practice having 'no office politics';[31] clients thinking their solicitor is sitting at an empty desk waiting for their next email;[32] the ongoing worry of managing a business with staff expressed as 'Crikey, I hope that some money comes in because we've got wages at the end of the week';[33] and finally, some philosophical insights from Kieran: 'It's a difficult job but, no, I've enjoyed what I've done. Mind you, I wouldn't want to do it again [laughter]' and Adam: 'Am I sorry I became a lawyer? No. Do I want to keep being a lawyer? No.'

This reliance on humour contributes to the understanding of sole practitioners as resilient, enduring and 'mortal'. From their perspective, they manage multipart roles of lawyer and business owner with clients, who are relying on their expertise, as the centre of their practice. Conceivably, their use of humour, especially self-deprecatory humour, indicate a method of managing life as a sole practitioner. In their consideration of the use of humour by the Australian judiciary, Oakley and Opeskin describe humour as a 'quintessentially human quality',[34] noting that Australians are known for their 'dry, irreverent and ironic' wit.[35] Certainly, many participants populated their narratives with good-humoured comments, laughter and witty self-effacement. This humour captured their insights into their role as solicitors, their normalisation of the mythical role of solicitors, as well as their perceptions of their impact in the community.

7.2.6 Summary

The number of lawyers who opt for sole practice, and the deficit of attention to, and evidence, about sole general practitioners, is demonstrated in the ambiguity in the definitions and data about sole practitioners, and more so, sole general practitioners. Notably, in response to the first research question of this thesis, how they experience and understand their role is informed by their sense of abandonment, their responding resilience and, as discussed later, their informal support networks.

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[29] Mike.
[30] Mike.
[31] Robert.
[32] Sally.
[33] Adam.
[34] Jack Oakley and Brian Opeskin, 'Banter from the Bench: The Use of Humour in the Exercise of Judicial Functions' (2016) 42(1) *Australian Bar Review* 82.
[35] Ibid.

How these practitioners understand their impact on the communities in which they practise law is answered within the theme of *Serving the Community.*

7.3 Theme 2: Serving the Community

This theme is situated within the second research question asked in this thesis – *What do these sole practitioners understand their impact to be on the communities in which they practise law?* Whilst the focus of the previous theme is on their motivation and experience as a practitioner, this theme focuses on their role. In particular, it focuses on their understanding of the role they perform in the community – how they serve it, at what cost and to whose benefit.

7.3.1 Introduction

As noted in Chapters One and Six, communities are defined as the group with which participants have a sense of connection. Above all, this thesis highlights the role that sole practitioners have within their communities. Of course, this role centres on the delivery of legal services, yet for most participants,[36] it extends to a non-legal role of service in their communities. This thesis finds that individual and local lawyers are well situated to serve clients and the broader community. The finding is supported by the participants' experiences[37] and by research that acknowledges the role of the private profession in providing access to the law.[38] However, there is scant research about the role of lawyers as leaders, advisors and citizens.

The research question asking how lawyers understand their impact on communities is examined in a legal and a non-legal context below. In a legal context, the work of these solicitors centres on providing access to the law. In a non-legal context, their contribution is centred on their roles as community leaders, trusted advisors and public citizens.

[36] Of the 23 participants, 15 served in a non-legal community based role and four served, or had served, as members of professional associations for lawyers.
[37] For example, several participants undertook pro bono and legal aid work and community education.
[38] Centre for Innovative Justice RMIT (n 6) 1.

7.3.2 Finding – The Critical Role of the Lawyer in Providing Access to Legal Services

Access to justice emerges as a major theme in the interviews. It is clear that the participants generally understood their role within their communities as one that facilitates access to legal services for their clients. For some participants, particularly suburban and rural practitioners, there was an awareness of their *impact* in facilitating access to the law. As identified in Chapter Six, examples of clients include older people,[39] single parents,[40] cultural groups,[41] farmers,[42] low-income earners,[43] individuals establishing new businesses[44] and clients who value personal interaction.[45] From the perspective of the participants, they provide a legal service that clients may not otherwise be able to access, or be able to access to the same level of personal and competent service, including reasonable fees and pro-bono work. This is clearly demonstrated by the majority of participants' core client base being referrals, including referrals from solicitors whom they had opposed in matters, and returning clients.

7.3.2.1 Pro bono work

As analysed in Chapter Six, many participants undertook pro bono work, defined as work for a reduced or no fee. Pro bono work is usually associated with corporate firms, with its promotion, through marketing and communication opportunities, to governments, clients and potential graduate students. Smaller firms engage in pro bono work in a different way, focusing on those who are ineligible for assistance from community legal centres or legal aid. Unlike the larger firms, pro bono work was not used by participants as a reputational tool.[46]

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[39] Marion. Lara, Josephine and Christina.
[40] Lara, Issa and Allison.
[41] Melina.
[42] Lara, Adam and Kelvin.
[43] Lara, Christina, Mike and Gavin.
[44] Larry and Adam.
[45] Participants' examples include: 'Sole practitioners are more connected' (Allison); 'You do have that sense of being a GP, especially with older clients, the over 80s' (Christina); '…continuity of practitioner' (Issa); 'I actually like clients' (Susan); '…do relate to people better if we know them' (David); '…dealing directly with clients (Jason); 'I do like helping people' (Marion); 'The feedback I have always had from my clients is they would much rather see… the same solicitor who knows who they are' (Josephine); 'People know my door is always open' (Lara); 'If I've had a day where I've made a positive influence on someone's life, I've had a good day' (Mike).
[46] Of the 15 participants' firms that had a web presence, none promoted pro bono work on their web page.

Although most participants did not refer to their work as 'pro bono', many provided legal services for a reduced fee[47] or no fee.[48] In addition, it was apparent that many applied a client-centred approach that included a high level of personal interaction,[49] consultations at clients' locations,[50] after business hours availability[51] and payment arrangements.[52]

As established in Chapter Two, the finding that this private practice cohort undertakes pro bono work is consistent with research concerning access to the law. This aligns with the role of lawyers, as described by the Law Council of Australia, 'to promote the administration of justice, access to justice and general improvement of the law.'[53] As the representative body of state and territory professional associations and Law Firms Australia, the Law Council provides advice to relevant stakeholders about how the 'law and justice system can be improved for the benefit of the community'.[54] This central role for the profession assumes that lawyers have responsibilities beyond the solicitor/client retainer.

The finding that sole general practitioners serve the legal needs of a range of clients, including some who may not otherwise have access to a lawyer, has implications for future planning of the legal services market. It is apparent from the interviews that local or connected solicitors fulfil a significant need in communities. For rural and suburban solicitors, being located in the community facilitates access to the law for many clients and results in a presence that promotes the role of the local lawyer.[55] If the current delivery of legal services to individual and small business clients alters as a result of either a decrease in solicitors opting for local or general practice or a new form of delivery driven by automation, the implications of these changes need to be evaluated.

Sole practitioners who undertake pro bono work hold a unique role in legal service delivery. The finding that pro bono work is a feature of sole practice should be

[47] Allison, Christina and Marion. See Chapter Six, Section 6.4.2.4.
[48] Christina, Lara and Gavin. See Chapter Six, Section 6.4.2.4.
[49] See n 46.
[50] Lara, Allison, Mike and Christina. Marion previously undertook home consultations.
[51] Mike, Angela and Kelvin.
[52] Lara and Allison.
[53] 'About Us - Our Role', *Law Council of Australia* (Web Page, 2020) <https://www.lawcouncil.asn.au/about-us/our-role>.
[54] Ibid.
[55] Of the 13 suburban and rural participants, 11 volunteered, or had volunteered, in community organisations, such as schools, sporting associations and local committees.

acknowledged and attributed the same value and recognition as pro bono work undertaken by corporate firms and included in the assessment of national targets.[56]

7.3.3 Finding – An Extended Role for the Lawyer as Both a Leader and Public Citizen

Broadly, lawyers act as gatekeepers of honest dealings, as advisors, organisers, communicators, strategists and negotiators. This study identifies that sole general practitioners, through their wide range of work and connections with clients and the community, serve their communities beyond legal work. This finding informs the second research question about the impact of this service. Their contribution outside of their practice forms part of their professional identity as highly competent, intelligent and trusted members of the community. Whilst their contributions were varied, it was evident that many participants had a leadership or advisory role. These roles enable a well-defined understanding of the value that this non-legal role contributes to the community. Additionally, serving the community outside of their practice and office hours also results in an opportunity to expand their client base.

There is an acknowledgement that being in general practice means that these solicitors are known 'around town' and approachable on a variety of matters, some non-legal. Within this general acknowledgment, participants had various perceptions of their impact in the community, including being the 'backbone' of the community,[57] having a sense of community,[58] serving the community[59] and the community being seen as a potential client base.[60]

The lived experience of participants reveals that the majority contributed to, and actively engaged with, their communities. This aligns with the scholarship about the legal profession as a calling to contribute to society beyond that of the lawyer/client relationship, often as a leader or advisor. This role is described by Corbin as the 'public

[56] As at 30 June 2020, there are 187 signatories to the National Pro Bono Targets, consisting of 147 law firms and ILPs, 28 individual solicitors and 12 barristers. Australian Pro Bono Centre, *13th Annual Performance Report of the National Pro Bono Target* (Report, September 2020) 8 <https://www.probonocentre.org.au/wp-content/uploads/2020/09/13th-Annual-Target-Performance-Report.pdf>. The 2020 National Pro Bono Target annual report notes that 52 large law firms (50 or more FTE lawyers) and 31 individuals (solicitors and barristers) submitted their pro bono work to the Australian Pro Bono Centre in 2020: at 6.
[57] Gavin.
[58] Lara.
[59] Allison.
[60] Kelvin.

citizen',[61] that is, the lawyer who incorporates the public interest in their service to the client, for example, providing advice based on a just outcome.[62] Drawing on Pearce's work, Corbin proposes that lawyers have a duty to act as 'intermediaries between the law and the people'[63] as well as a 'duty to commit to shaping our shared community'[64] The role of the public citizen aligns with the responsible lawyer.[65] These two images are evident in several participants' narratives.

This public service role would benefit from further investigation, from the perspective of sole general practitioners and that of the community. As with data about general or specialist practice, information about the legal and non-legal contributions of sole practitioners can be sourced from practising certificate and membership renewal forms.[66] This data collection method could be efficiently deployed without adding to the already onerous administrative workload that exists for these practitioners, as confirmed by this thesis. Further research on the legal services required by clients would also be beneficial, as would client perceptions or experiences of any broader contribution that local solicitors make to the community, and the consequences of not having access to a local solicitor. This availability of a local solicitor is particularly relevant in rural areas.[67]

7.3.4 Summary

Due to their locations and diversity of practice, sole general practitioners are well-placed to provide legal services to individual and small business clients. This is significant as

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[61] Lillian Corbin, 'Australian Lawyers as Public Citizens' (2013) 16(1) *Legal Ethics* 57, 57.
[62] Ibid 70.
[63] Ibid 65. Corbin quotes Russell G Pearce, 'The Legal Profession as a Blue State: Reflections on Public Philosophy, Jurisprudence, and Legal Ethics' (2006) 75(3) *Fordham Law Review* 1339, 1364–5.
[64] Ibid 72.
[65] Corbin (n 61) 60. Corbin draws on Parker's analysis of four approaches to the practice and professionalism of lawyers, with the 'responsible lawyer' approach being aligned with the lawyer as public citizen. Christine Parker, 'A Critical Morality for Lawyers: Four Approaches to Lawyers' Ethics' (2004) 30(1) *Monash University Law Review* 49, 57.
[66] This was the data collection method used in the 'National Collection of Ethnic and Cultural Diversity Data' (n 13).
[67] See Kim Economides, 'Strategies for Meeting Rural Legal Needs: Lessons from Local, Regional and International Experience' (2011) 16(1) *Deakin Law Review* 47; Trish Mundy, 'The Lone Wolf or Rural Justice Champion? Imagining "the Rural Lawyer"' (2016) 18(18) *Southern Cross University Law Review* 31; Law Council of Australia and Law Institute of Victoria, *Report into the Rural, Regional and Remote Areas Lawyers Survey* (Executive Summary, July 2009) <https://www.lawcouncil.asn.au/publicassets/68bc466f-d839-e711-93fb-005056be13b5/Report%20into%20the%20Rural,%20Regional%20and%20Remote%20Areas%20Lawyers%20Survey%20-%20Executive%20Summary.pdf>; Law Council of Australia, *The Justice Project Final Report Part 1: Rural, Regional and Remote (RRR) Australians* (Report, August 2018) <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Rural%20Regional%20and%20Remote%20%28RRR%29%20Australians%20%28Part%201%29.pdf>.

the private profession is not generally considered to facilitate access to legal services. The finding that these solicitors have a critical role in enabling clients to access the law through discounted or free legal work is significant, and at odds with the fact that their pro bono work is not widely acknowledged.

The empirical evidence that these lawyers have an extended role in their communities as leaders, trusted advisors and public citizens indicates that the notion of professional responsibility extends beyond the solicitor/client retainer. The extent of practitioners' non-legal contribution is partially dependant on their location in city, suburban or rural areas, although, as noted earlier, the majority of participants in this study were involved in some form of community work. This is a firm indication that lawyers are sought after for their expertise and skills outside of legal practice. In answer to the research question about how lawyers understand their impact on communities, the experiences of the participants in this study demonstrate a commitment to serve beyond their practice. However, despite their contributions to access to justice and the community, the participants' experiences as members of the legal profession were tainted by a sense of abandonment and perceptions of lack of support for their cohort.

7.4 Theme 3: Supporting My Practice

As with the theme *Opting for Sole Practice,* this theme of *Supporting My Practice* is situated within the first research question asked in this thesis – *How do lawyers experience and understand their role as sole general practitioners?* The focus of the findings that comprise this theme centres on the sense of abandonment of these participants within the profession, particularly by the professional associations that are charged with supporting members.

7.4.1 Introduction

The interviews reveal that the greatest challenge for sole general practitioners is a lack of support, both in their professional needs and in the management of their business. As outlined in Chapter Six, participants gave examples of the detrimental impact this had on their ability to manage their practice. This is despite attention given to this cohort by professional associations, as discussed later in this section. In response to this sense of abandonment, sole practitioners have initiated their own methods of sustaining their practices and themselves. These perceptions and experiences of isolation and dismissal are a significant issue for the sustainability of sole practice.

This section considers the impact of two culture norms in the legal profession – the abandonment of sole practitioners and the broader, unhealthy practices in workplaces – through the lived experience of some participants. In particular, this impact contributed to a poor work-life balance for some participants. This is a substantial challenge for this cohort. Based on the participants' experiences, suggestions for improvements in support are offered in response to the finding that these lawyers perceive their role to be one that is largely either ignored or misunderstood.

7.4.2 Finding – An Unhealthy Culture: Poor Health and No Wellbeing

The theme *Supporting My Practice* is closely connected with the *culture* of the profession. The finding of an unhealthy culture in the private profession is reinforced through examples of toxic or bureaucratic corporate environments that emerged from the interviews. As noted earlier, five female practitioners reported that they left large firm practice because of negative experiences;[68] Sally referred to the culture of her previous workplace as a 'boys' club'. Several male participants spoke of difficulties and concerns about ethical conduct relating to partners[69] and employed solicitors in previous partnerships,[70] which had prompted them to move to sole practice. In response to these experiences and others identified in reports,[71] a national study of sole practitioners would establish the reasons for movement within the profession, resultant from an unhealthy culture, and offer valuable information for the profession, particularly in relation to practitioner support.

Analysis of the interviews demonstrates that the move to sole practice with its resulting autonomy and independence also delivers challenges associated with health and wellbeing. These challenges were addressed by some participants. Discussing mental health, Mike disclosed that he sometimes 'cuddles up to the black dog'. Robert, with experience on conduct committees, noted that solicitors are 'falling by the wayside'

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[68] Christina, Issa, Jane, Karen and Sally.
[69] Duncan and Kieran.
[70] Christopher, Gavin, Mike and Robert.
[71] See Urbis and Law Council of Australia (n 12); Maryam Omari, *Towards Dignity & Respect at Work: An Exploration of Work Behaviours in a Professional Environment* (Edith Cowan University and the Law Society of Western Australia, August 2010) <https://lawsocietywa.asn.au/wp-content/uploads/2015/10/Towards-Dignity-Respect-Work.pdf>; Victorian Equal Opportunity and Human Rights Commission, *Changing the Rules: The Experiences of Female Lawyers in Victoria* (Victorian Equal Opportunity and Human Rights Commission, 2012) <https://www.humanrightscommission.vic.gov.au/media/k2/attachments/Changing_the_Rules_Web.pdf_Final_1.pdf>; Janet Chan, Suzanne Poynton and Jasmine Bruce, 'Lawyering Stress and Work Culture: An Australian Study' (2014) 37(3) *UNSW Law Journal* 1062.

because of alcohol and drug use. Gavin spoke of colleagues who had been affected by mental health challenges and the importance of connecting with other solicitors as a means of checking on colleagues' mental health. In relation to physical health, several participants acknowledged the risk to their practice and livelihood as a result of sickness.[72]

As noted earlier, the core concern about the culture of the legal profession is focused upon the private corporate sector.[73] It is thus notable, as discussed in the theme of *Opting for Sole Practice*, that several participants left top or mid-tier commercial firms because of concerns about corporate culture and its negative environment.[74] This finding aligns with evidence of a high attrition rate, set out in Chapter Four. This is particularly relevant for the female participants who left large corporate practice because of its unhealthy environment. Regrettably, the 2016 *NARS Report* confirms the same or similar negative experiences raised by some participants. One of the report's findings is that solicitors in private practice who opted to 'downsize from a large firm were commonly motivated by their unhappiness with the culture and leadership'.[75]

Because the participants in this thesis had left large corporate practice several years prior to the interviews, and as the studies addressed in Chapter Four were completed between 2012 and 2018,[76] it would be of value to review and monitor retention and attrition rates in the sectors where problems have been identified. Research on workplace culture in the profession, in particular the recommendations in the *NARS Report* outlined in Chapter Four, evidences the critical need for an evaluation of the initiatives implemented in response to the finding of unhealthy and unsafe behaviours and practices. One important aspect of this research is an analysis of why practitioners move to sole practice. The recent work associated with the *#MeToo* movement is highlighting workplace sexual

[72] Robert notes: 'But one of the problems, one of the very, very big problems of the sole practitioner, and perhaps even a fear that I have, is what happens if I get sick, really sick? I am not talking about the flu I had 10 days ago, when I worked through, but I mean if I get involved in a bad car accident or something like that. Potentially it could ruin my practice, and that is a real problem'. Lara notes: 'I know that if I don't look after myself, I'm not good to anybody'.
[73] Examples of toxic and negative cultures have been recognised in Urbis and Law Council of Australia (n 12) and in the qualitative research work in Chan, Poynton and Bruce (n 71).
[74] See nn 68–70.
[75] Urbis and Law Council of Australia (n 12) 77.
[76] See Urbis and Law Council of Australia (n 12); Omari (n 71); Victorian Equal Opportunity and Human Rights Commission (n 71); Chan, Poynton and Bruce (n 71).

harassment, including in the legal community,[77] providing an indication that previous recommendations have either not been implemented or are ineffective.[78]

Although sole practice provides an alternative to unhealthy, unsafe or unhappy work situations, 'being the boss' holds its own challenges, particularly in relation to lack of work-life balance.[79] As discussed in Chapter Six, several examples of this were shared by participants, such as working whilst on holidays and on weekends, concern about becoming ill and being unable to work, managing staff and administering a business. Whilst not all of these experiences were articulated by participants as 'unhealthy',[80] there was a general acknowledgement that they contributed to a lack of work-life balance.

7.4.3 Finding – No Work-Life Balance

Evidently, whilst a number of participants consciously left an adverse corporate culture, their wellbeing continued to require attention and support. Work-life balance is defined in the *NARS Report* as the existence of support for a personal life[81] and family commitment,[82] which are factors also referred to by participants in this study. Similarly, the factors that prevent work-life balance identified in the *NARS Report*, such as long working hours,[83] the pressure of billing[84] and lack of flexibility,[85] are also experiences shared by some participants. Achieving a balance between work and non-work time and

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[77] For example, Ipsos Public Affairs, *Sexual Harassment in the Victorian Legal Sector: 2019 Study of Legal Professionals and Legal Entities* (Report, Victorian Legal Services Board + Commissioner, 2019) <https://lsbc.vic.gov.au/sites/default/files/2020-03/Sexual%20Harassment%20in%20the%20Victorian%20Legal%20Sector%20Report.pdf>; Helen Szoke, *Review of Sexual Harassment in Victorian Courts: Preventing and Addressing Sexual Harassment in Victorian Courts and VCAT* (Report, Supreme Court of Victoria, March 2021) <https://www.shreview.courts.vic.gov.au/wp-content/uploads/2021/04/Report-and-Recommendations-Preventing-and-Addressing-Sexual-Harassment-in-Vic-Courts.pdf>; Kate Eastman, 'We Need to Address the Shame Culture of Sexual Harassment', *Law Society Journal online* (online, 31 July 2020) <https://lsj.com.au/articles/we-need-to-address-the-shame-culture-of-sexual-harassment/>.
[78] For example, the *NARS Report* recommended that there should be 'mechanisms to address bullying and sexual harassment'. Urbis and Law Council of Australia (n 12) 89.
[79] See Chapter 6, Section 6.6.6.2.
[80] Thornton refers to studies that also indicate that some lawyers, who lack balance between work and non-work, are satisfied with their professional life. She refers to an Australian study by Bergin and Jimmieson that demonstrated that just 28% of participants who lacked work-life balance were dissatisfied with their work. Thornton (n 22) 485, referring to Adele J Bergin and Nerina L Jimmieson, 'Australian Lawyer Well-Being: Workplace Demands, Resources and the Impact of Time-Billing Targets' (2014) 21(3) *Psychiatry, Psychology, and Law* 427, 434.
[81] Urbis and Law Council of Australia (n 12) 121.
[82] Ibid.
[83] Ibid 76.
[84] Ibid.
[85] Ibid 77.

commitment in the corporate sphere of the private profession is problematic. Work-life balance is often considered an illusion, at least, in the world of private practice.[86]

In answering the research question about how sole general practitioners experience their role, divergence emerges from the interviews regarding the issue of work-life balance. Patterns throughout the collective narratives indicate features of work that dominate and, at times, prohibit the attainment of work-life balance. Gavin referred to his marriage breakdown as partially due to the long hours he worked. Mike left rural practice because of his spouse's established career in the city. Duncan returned to the city to practise, as his wife did not settle in the coastal town where he had established a practice for a few years. Kieran and Kelvin shared that their wives did not like them working long hours, at night and on weekends, and that in consequence to their absence, their wives had assumed the main responsibility for parenting.

In contrast, working four days a week,[87] having regular holidays,[88] established working hours with no after-hours or weekend work,[89] access to an onsite gym[90] and lawyer support networks[91] were cited as positive outcomes resulting from the autonomy and flexibility of being a sole practitioner. For many participants, the flexibility of sole

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[86] Examples of the illusion of work-life balance are addressed in fiction, scholarship and case law. An example in fiction is Richard Beasley, *Hell Has Harbour Views* (Pan Macmillan, 2001). In their research into the mental health of the profession, Chan, Poynton and Bruce refer to one respondents' description of 12 hour working days, including at least one day of weekend work, being considered 'a badge of honour'. Chan, Poynton and Bruce (n 71) 1092. The *NARS Report* that solicitors who left large firm practice were 'commonly motivated by their unhappiness with the culture and leadership at their firm'. Urbis and Law Council of Australia (n 12) 77. In *Law Society of New South Wales v Foreman* [1994] NSWCA 408, the respondent's evidence as to her misconduct included the pressure of billing targets, the practice of weekend work and sleeping on the office floor. Kirby P noted at 481:

> What the solicitor did was wrong. But the wrong has to be understood in the context of the enormous pressure to which the solicitor was subjected in her firm to adapt the circumstances of a family law practice to the more mercantile activities of a commercial practice. The latter is obviously more readily susceptible to budgets for targeted costs than the former.

In *Brown v Maurice Blackburn Cashman* [2013] VSCA 122, evidence of female solicitors working on matters and being contactable whilst on maternity leave and non-work days was given by both the appellant and the colleague against whom allegations of bullying and harassment were made. Osborn JA noted the trial judge's conclusion that both women were 'under considerable pressure in their lives, both professional and personal': at [63]. The appellant was unsuccessful in her claim. The facts of the case refer to the importance of billing targets, expansion of the practice and acceptance of being accessible outside work hours.

[86] Lara.

[87] Lara.

[88] Jane.

[89] Allison, Angela, Sally and Susan.

[90] Robert.

[91] Christina, Jane and Sally.

practice, whilst not always 'tipping the balance' to more personal and family time, allowed for independence in decision-making as to the apportionment of work and non-work time.

This value of autonomous decision-making is supported by the *NARS Report* findings that 28% of female practitioners in small firms considered work-life balance as a main element of dissatisfaction,[92] compared with 38% in medium firms[93] and 42% in large firms.[94] Indeed, evidence from participants indicates that their collective experience as sole practitioners was more joyful than their previous non-sole practice contexts, with the clearest pattern being the benefits of 'being my own boss' and flexibility. Chan, Poynton and Bruce confirm this negative-to-positive experience, finding that lawyers who moved from a private law firm to sole practice 'reported improvements in their working conditions'.[95] Three participants in this study specifically referred to sole practice enabling them to work around family commitments.[96]

As proposed by Drew, Datta and Howieson, the challenge of work-life balance in the legal profession is the responsibility of the profession.[97] Importantly, in relation to the culture of work that unquestionably seeps into evenings and weekends through the absolute prioritisation of clients and profits, Thornton's view that 'law societies are unlikely to pursue the issue as they also represent the corporate law firm principals who are committed to capital accumulation'[98] challenges the prospects of such responsibility. Whilst the professional associations have implemented initiatives to improve the mental health of the profession,[99] these have not been evaluated, including their reach across all sectors of the profession.

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[92] *NARS* defines a small firm as between 1 to 10 partners. Urbis and Law Council of Australia (n 12) 128.
[93] *NARS* defines a medium firm as between 11 to 20 partners. Ibid.
[94] *NARS* defines a large firm as greater than 20 partners. Ibid.
[95] Chan, Poynton and Bruce (n 71) 1093.
[96] David, Allison and Christina.
[97] Natalie Mei-Chuen Drew, Doita Datta and Jill Howieson, 'The Holy Grail: Work-Life Balance in the Legal Profession' (2015) 38(1) *UNSW Law Journal* 288.
[98] Thornton (n 22) 486.
[99] The NSW Law Society offers a Solicitor Outreach Service, a Professional Conduct Advisory Panel and other resources, including webinars. The website hosts a Mental Health and Wellbeing page. 'Mental Health and Wellbeing in the Law', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/resources/mental-health-and-wellbeing>. The Law Institute of Victoria website also hosts a Health & Wellbeing page and offers a member assistance program, mentoring program and a 'LIVwell' program, including online resources, seminars and member-driven initiatives of a running and a walking group. 'Member Benefits - Wellbeing and Personal Development', *Law Institute of Victoria* (Web Page, 2021) <https://www.liv.asn.au/Membership/Member-Benefits>.

It is apparent from the interviews that many participants lacked work-life balance, although there was a general acceptance that the apportioning of work and personal time is a conscious decision for which participants acknowledged responsibility.[100] Whilst the non-existence of work-life balance can be considered a mark of the private legal profession in Australia, it is a concern that sole practitioners have challenges with work-life balance and managing a business. Certainly, the latter challenge was considered by participants to be an area where there was no support. It is also a concern that there are little data about the impact on the health and personal lives of these lawyers of the dual responsibilities of being a sole practitioner within a community and managing a business.

One factor that distinguishes sole practitioners is the blurring of the line between work and non-work. For some participants, this was experienced as catching up on emails at night,[101] seeing clients at the weekend,[102] taking files home[103] and working seven days a week.[104] The increasing use of portable electronic devices has resulted in even less of a delineation between work and home and between business days and hours, with working life becoming 24 hours, seven days a week. Several practitioners were aware of this blurring and had implemented practices to contain the working day or week. Lara introduced a four-day working week. Angela worked from home; however, she consciously avoided her office space on the weekend. Sally had separate personal and work mobile phones, with the work phone being turned off on weekends and at 5.30 or 6pm on weekdays. Similarly, Susan switched her mobile phone off at 6pm. Allison advised, 'you do need to actually put your phone in the drawer'.

7.4.4 Finding – The Detrimental Impact of Poor Support

A significant finding of this thesis is the participants' perception and experience of lack of understanding and support from their professional association. Indeed, as set out in Chapter Six, a small number of participants[105] used highly descriptive language to suggest that their professional association provided little or no support and treated sole

[100] For example: 'So to an extent, that work-life balance, I suppose, it's what I've made it. I can't really complain, though, since there's nobody else responsible but me' (Adam); and 'My work-life balance has been pretty bad to be perfectly honest. I'm not complaining about that because I enjoy what I'm doing' (Kieran).
[101] Kelvin.
[102] Kelvin.
[103] Josephine.
[104] Kieran.
[105] See Chapter Six, Section 6.6.

practitioners and small practices as a burden. To illustrate, Josephine commented that the professional association would like to 'get rid of sole practitioners and small practices because they're too much trouble'.[106] As noted earlier, this is unexpected, given the work of professional associations in relation to sole and small firm solicitors discussed below. Considering the frequency and longevity of examples, this finding is particularly important.

In addition, as the vast majority of participants were senior solicitors and had all worked in non-sole principal practices, they had well-developed and informed views about support. The experience of 'not being supported' was deeply felt by many participants, with some citing examples of the government-driven erosion of work since the 1980s. A strong sense of abandonment was directed at the professional association, which from the participants' perspective, failed to advocate for and promote the interests and viability of sole practitioners and general practice. Participants referred to the areas of practice traditionally undertaken by general practitioners, such as personal injury, workers' compensation, debt recovery and local court work.[107] References were also made to regulatory burdens, such as onerous costs disclosure,[108] unreasonable trust account inspectors[109] and lack of support with the regulator's complaints process.[110]

This finding challenges the representation of professional associations that they attend to the interests of all members, including sole and small firm practices. The perception that the Law Society of NSW does not represent sole practitioners must be analysed and understood in the context of the initiatives implemented by professional associations to support sole practitioners. For some senior practitioners, negative perceptions and experiences, based on the erosion of legal work and the increase in regulatory compliance across several decades of practice, may not be displaced by more recent forms of support.

In the last decade, professional associations have implemented initiatives aimed at sole and small firm practice. Prior to this, from 1992, all solicitors intending to become solely responsible for a legal practice were required to undertake a Practice Management

[106] See Chapter Six, n 127.
[107] Robert, Gavin and Susan.
[108] Gavin, Melina and Robert.
[109] Duncan, Gavin and Marion.
[110] Gavin.

Course.[111] In 2012, the NSW Law Society established the Small Practice Portal for small firms and sole practitioners,[112] although the portal is no longer on the website.[113] Targeted programs include CPD for sole practitioners, coupled with small firms and a checklist for commencing sole practice.[114] In 2018, the Law Institute of Victoria in conjunction with the Legal Services Commissioner of Victoria implemented a Law Practice Contingency Policy recommending that sole practitioners or sole directors appoint a personal representative as an alternate to step in if the practitioner is unable to maintain the practice.[115] From 2018, sole practitioners must include their contingency plan with their practising certificate renewals.[116] In 2020, the NSW Law Society also introduced a Contingency Plan for Sole Principals.[117] This is similar to the New Zealand scheme discussed in Chapter Three. An evaluation of contingency plans in Victoria and NSW would assess their effectiveness, including their purpose as either a regulatory instrument or a support service.

Options to remedy practitioners' negative experiences and perception and provide greater assistance for this cohort include: assistance with solicitors' professional obligations, including effective practical advice with ethical questions;[118] a more inclusive local society;[119] support during the client complaint process;[120] low-cost and online professional development;[121] less onerous regulation;[122] and business support, which is discussed below. Across the interviews, business management, compulsory professional

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[111] *Uniform Law NSW* (n 4) s 53 and *Legal Profession Uniform General Rules 2015* (NSW) s 16(b)(ii).
[112] 'History of the Law Society', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/about-us/organisation-and-structure/history>.
[113] As at 1 February 2021, there is a members-only private practitioner portal. 'Private Practitioners', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/legal-communities/private-practitioner>.
[114] Law Society of New South Wales, *Commencing Practice as a Sole Practitioner – Checklist* (Checklist, 8 November 2017) <https://www.lawsociety.com.au/sites/default/files/2018-03/Sole%20Practitioner%20checklist.pdf>.
[115] Victorian Legal Services Board + Commissioner, *Practice Contingency Planning Policy* (Policy No D-17-157420, 2019) <https://lsbc.vic.gov.au/sites/default/files/2020-02/Policy-Practice_Contingency_Planning-2019.pdf>.
[116] 'Practice Contingency Planning for Sole Practitioners', *Victorian Legal Services Board + Commissioner* (Web Page, 2 April 2020) <https://lsbc.vic.gov.au/news-updates/news/practice-contingency-planning-sole-practitioners>.
[117] 'Contingency Plan for Sole Principals', *Law Society of New South Wales* (Web Page, 2020) <https://www.lawsociety.com.au/contingency-plan-sole-principals>.
[118] Melina.
[119] Issa and Christina.
[120] Gavin.
[121] Low cost compared with private CPD providers.
[122] Robert, in relation to taxation obligations with foreign purchasers.

development and the complaints process were the areas where a lack of support was of greatest concern. Each one is discussed below.

7.4.4.1 The business of law

The interviews identify ongoing need for support and assistance, particularly in relation to business management and practice viability. As set out in Chapter Six, most participants discussed the challenge of maintaining a business. Surprisingly, only a few participants referred to business structures. This could be due to their acceptance of their existing practice structure or due to insufficient information or opportunity to consider other structures. Jason referred to the benefits of Chambers Practice, whilst Susan spoke at length of the advantages of incorporation. Susan acknowledged that incorporation was a significant reason for her financial success. As noted in Chapter Four, Chambers Practice may be relevant only to city solicitors and those in major suburbs and larger regional areas.[123] The potential of 'virtual' Chambers Practice requires further investigation, although all participants in this study had a physical work location.

As also noted in Chapter Four, the benefits of incorporation are applicable to sole and small firm practices. Given the minimal attention to alternative business structures by participants,[124] this is an area in need of further exploration. Are sole practitioners aware of alternative business structures? Assessment of this information is particularly relevant at a time when other business structures are emerging, such as 'NewLaw'[125] and, as a result, the discourse around legal practice is expanding to include technology and disruption.

As set out in Chapter Four, a benefit of incorporation was the SAP, previously mandated for ILPs.[126] The self-assessment consisted of ten facets of practice: negligence; communication; delay; liens/file transfers; costs disclosures/billing practices/termination of retainer; conflicts of interests; records management; undertakings; supervision of

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[123] The NSW Law Society has available on its website: Law Society of New South Wales, *Chambers Practice: A Guide to Assist Solicitors Establishing or Joining a Chambers Practice* (Report, October 2004) <https://www.lawsociety.com.au/sites/default/files/2018-03/Chamber%20Practice%20guide_0.pdf>.
[124] Three participants referred to alternate business approaches – incorporated practice, Chambers Practice and the engagement of contract lawyers.
[125] NewLaw is a term used to describe 'the non-traditional law firm that leverages technology with flexible client-focussed multi-skilled teams, and outcomes-based pricing'. Law Council of Australia, 'Legal Futures Summit' (n 12) 36.
[126] *Legal Profession Act 2004* (NSW) s 140(3) ('*Profession Act NSW*').

practice and staff; and trust account requirements.[127] Several of these relate to areas identified by participants as challenging, such as billing practices, records management, supervision of staff and trust account requirements. This self-assessment has disappeared as a resource or support tool.[128] The value of self-assessment for sole practitioners should be reconsidered.

From this study, it is also clear that sole practitioners would benefit from ongoing information, education and training in relation to business structures, management practices and ethical infrastructures.[129] As with the establishment of ILPs and the introduction of an AMS and SAP, an education program could be a joint initiative of the professional associations and regulators. Given the Uniform Law, the Law Council of Australia, through its Legal Practice section, also has a role in education and training. An education program could include the advantages and disadvantages of business structures, best practices and ethical infrastructures, including self-assessment processes and appropriate management systems.[130]

Current CPD training includes a compulsory area of Practice Management and Business Skills.[131] Solicitors are required to complete one hour of CPD in this area each year. Whilst the topics covered are relevant to business management, the time allocated to this area is inadequate to progress to a working knowledge of business structures, management practices and ethical infrastructures. In addition, this compulsory unit is aimed at all solicitors and is, therefore, not specifically designed for sole principals or directors.

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[127] 'Practice Management & Compliance', *Office of the Legal Services Commissioner* (Web Page, 14 February 2015) <https://www.olsc.nsw.gov.au/Pages/lsc_practice_management/lsc_practice_management.aspx>.

[128] There is no reference to self-assessment on the Office of the Legal Services Commissioner's website. Previously there was a form, setting out the facets that practitioners completed to comply with self-assessment.

[129] John Briton, *Rethinking the Regulation of Lawyer Conduct: The Centrality of Law Firm Management and Ethical Infrastructures* (Conference Paper, Australian Legal Practice Management Association National Conference, 15 August 2009) <https://www.lsc.qld.gov.au/__data/assets/pdf_file/0020/106193/rethinking-the-regulation-of-lawyer-conduct.pdf>. Briton suggests ethics checks, such as appropriate management systems, compliance audits, internal or self-assessment audits, external audits and web-based surveys.

[130] Ibid.

[131] This compulsory unit covers 'risk management, file management, court rules, business planning, financing a practice and effective use of technology'. *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015* (NSW) r 6.1.

Several commentators have identified the gap in business competency as a problem originating in lawyers' education.[132] A related wider discussion is the recognition that legal education includes legal knowledge, professional ethics and skills.[133] Specifically in relation to business skills, pre-admission training may encourage early career solicitors to move into sole practice following their period of supervised practice. The Practical Legal Training Competencies include 'Work Management and Business Skills',[134] although this is one of eight areas covered in the course where the focus is on practice areas.[135]

7.4.4.2 Continuing professional development

Participants frequently referred to the expense of mandatory CPD. Professional associations are providers of CPD, which includes the Practice Management and Business Skills discussed above, as well as the other compulsory CPD areas. Compared with private providers, their program fees are reasonably priced. Despite the lower fees, some participants considered the association's programs to be expensive, including those offered by local law societies.[136] There was an acknowledgement that online CPD is convenient for rural practitioners. Private study using audio/visual material is, however, restricted to 50% of CPD requirements.[137]

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[132] Giddings and McNamara note that the introduction of PLT programs to replace articles was not a substitute for on-the-job training. Jeff Giddings and Michael McNamara, 'Preparing Future Generations of Lawyers for Legal Practice: What's Supervision got to do with it?' (2014) 37(3) *University of New South Wales Law Journal* 1226, 1230. The Carnegie Report concerning legal education in the US identifies a gap in the law degree delivered at university and the practice of law. Whilst the report does not specifically refer to a gap in business competency, it does find that there is 'little attention to direct training in professional practice'. William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (Summary, The Carnegie Foundation for the Advancement of Teaching, 9 March 2007) 6 <http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf>.

[133] William M Sullivan et al, Ibid; Sally Kift, Mark Israel and Rachael Field, *Bachelor of Laws: Learning and Teaching Academic Standards Statement* (Report, Australian Learning & Teaching Council, December 2010) 8 <https://cald.asn.au/wp-content/uploads/2017/11/KiftetalLTASStandardsStatement2010.pdf>.

[134] Business skills are included with work management and are described as: 'An entry-level lawyer should be able to manage workload, work habits, and work practices in a way that ensures that clients' matters are dealt with in a timely and cost-effective manner.' *Legal Profession Uniform Admission Rules 2015* (NSW) sch 2 ('*Admission Rules*').

[135] Ibid. The practice areas are Civil Litigation Practice, Commercial and Corporate Practice, Property Law Practice, and two elective areas, consisting of Administrative Law Practice, Banking and Finance, Criminal Law Practice, Consumer Law Practice, Employment and Industrial Relations Law Practice, Family Law Practice, Planning and Environmental Law Practice and Wills and Estate Practice.

[136] It was noted that local law societies include CPD at their meetings, however, there is the added expense of the restaurant dinner.

[137] *Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015*. The requirement for no more than 50% private study using audio/visual material has been relaxed during COVID to enable practitioners to comply with the number of CPD hours. 'CPD', *Law Society of New*

As with other forms of support, there is an opportunity for further research into sole general practitioners' needs in relation to CPD, including its compulsory areas.

7.4.4.3 The complaints process

Another area where participants identified a lack of support is the client complaints process. As discussed in Chapter Two, statistics indicate that the majority of complaints relate to the sole practitioner cohort[138] and the greatest areas of practice complained about are those undertaken by general practice.[139] In New South Wales, the role of professional associations in relation to the complaints process is problematic, given its co-regulatory status. In relation to complaints concerning the trust account, the professional association is also the regulator.[140] This creates a tension between the associations' dual role of 'friend' and 'foe'.

In relation to general complaints, the external regulator manages the process.[141] Gavin suggested that support from the professional association during the regulator's complaint process would be helpful. The Law Society of NSW offers support through its Professional Conduct Advisory Panel[142] and the Law Institute of Victoria provides assistance through its Members Advisory Service.[143]As referred to earlier, it is essential that services such as these are evaluated, including their accessibility.

In summary, participants expressed feelings of abandonment by, and disconnect from, their professional associations. Given the lack of formal support, participants developed

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South Wales (Web Page, 2020) <https://www.lawsociety.com.au/news-and-publications/news-media-releases/impact-covid-19-legal-profession/cpd>.

[138] Linda Haller, 'Solicitors' Disciplinary Hearings in Queensland 1930-2000: A Statistical Analysis' (2001) 13(1) *Bond Law Review* 1, 11; Linda Haller and Heather Green, 'Solicitor's Swan Song?: A Statistical Update on Lawyer Discipline in Queensland' (2007) 19(1) *Bond Law Review* 140, 149.

[139] In Victoria, in 2019/2020, the highest practice areas of complaint were Family/Defacto, Other Civil, Probate/Family Provisions, Conveyancing and Commercial/Corporations/Franchise. Victorian Legal Services Board + Commissioner, *Annual Report 2020: Inspiring a New Beginning* (Report, 4 November 2020) 56 <https://lsbc.vic.gov.au/sites/default/files/2020-12/Report%20-%202020-11-06%20-%20Victorian%20Legal%20Services%20Board%20and%20Commissioner%20Annual%20Report%202020.pdf>. In NSW, in 2019/2020, the highest practice areas of complaint were 'family/de facto, personal injuries, conveyancing, other civil matters and criminal'. Office of the Legal Services Commissioner, *Annual Report 2019-2020* (Report, 2020) 9 <https://www.olsc.nsw.gov.au/Documents/2019%202020%20Annual%20Report%20final.pdf>.

[140] In NSW, this is the NSW Law Society.

[141] In NSW, this is the NSW Legal Services Commission. In Victoria, it is the Legal Services Commission.

[142] 'Professional Conduct Advisory Panel (PCAP)', *Law Society of New South Wales* (Web Page, 2020) <https://www.lawsociety.com.au/practising-law-in-NSW/complaints-and-discipline/PCAP>.

[143] 'Support Services & Resources', *Law Institute of Victoria* (Web Page, 2021) <https://www.liv.asn.au/Professional-Practice/Practice-Management/LIV-Support-Services---Resources#Compliant%20Process>.

their own informal support practices. These examples are likely to be common across the sole practitioner cohort.

7.4.4.4 Resilience and informal support

This study finds that sole practitioners source and rely on informal support to address professional challenges. Whether such initiatives are in response to the experience of abandonment, or are implemented regardless of the value of a state or national association, is unknown. Most practitioners spoke of informal support as a way of managing as a sole practitioner, enabling participants to be resilient to some of the challenges of sole practice, such as isolation, complex legal problems and inability to take a break.

The gendered approach to informal support is noteworthy. The majority of female participants had proactively responded to the challenges of sole practice through the establishment of a 'brains trust'. This occurred regardless of their location. These participants were involved in informal groups that provided assistance and support in relation to a range of matters, from legal questions to relying on each other during holidays, and they took the initiative of inviting other sole practitioners or solicitors in small firms to join. The isolating consequences of a lack of personal and professional connection are identified in Mundy's research into female lawyers in rural, regional and remote areas in Queensland.[144]

In contrast to a collective circle, some male participants drew on their connections, including former work colleagues, solicitor friends and barristers. Indeed, the traditional network of senior and junior lawyers may be an aspect of the 'boys' club', in which male solicitors were united in their shared careers, both actually and figuratively, in what was until a decade ago a male-dominated profession.[145]

7.4.4.5 Locums as support

A central component of work-life balance is the ability to be able to take a break from practice. It was also a common topic across the interviews. One option to enable sole solicitors to take a break is the engagement of locums. However, this study finds that

[144] 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* 481, 499–500.
[145] Mundy's empirical research identified the presence of the 'old boys' club in rural remote and regional practice. Ibid 490.

locums are not a common feature of sole practitioners' planning in response to circumstances such as holidays, ill-health and peaks of high workload. Only two participants[146] used the word 'locum' when referring to a solicitor who managed their practice for a short term, usually when they were on holiday leave. As well as managing his sole practice, Gavin also practised as a locum. Angela undertook locum work prior to establishing her sole practice. Robert suggested that there should be an accreditation scheme for locums to ensure a level of competence to successfully manage someone else's practice.

This study also finds that where locums are engaged, there are generally positive results and further, that locum-type work on a formal and informal basis also achieves beneficial outcomes.[147] This suggests that a locum service is a significant yet under-explored assistance scheme. This may be because the service is either not known or not trusted, despite the provision of a locum service by professional associations. The Law Society of NSW offers a locum service for 'a range of situations, from solicitors needing to take an unexpected break, to those looking for extra or specialised help during a busy project.'[148] The Law Institute of Victoria offers a locum guide for listing services as a locum and for finding locums.[149] Neither association's website promotes the service for practitioners planning a holiday or period of leave.

With regard to support for sole practitioners, further information about their awareness and possible use of locums would assist professional associations in their promotion of a locum service. This could include targeted promotion to sole practitioners. Additionally, focused attention on a locum service could include an emphasis on the benefits of being a locum to experienced practitioners, including solicitors looking for a change from fulltime practice.[150] Raising the profile of locums as a professional service for solicitors brings benefits to all sectors of the solicitors' profession, including sole practitioners. Other important considerations include professional development for locums in areas

[146] Lara and Kieran.
[147] This included three occasions where locums were engaged and one participant who offered a locum service.
[148] 'Locum Service', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/practising-law-in-NSW/managing-your-practice/locum-service>.
[149] 'Legal Careers: Legal Locum Guide', *Law Institute of Victoria* (Web Page, 2021) <https://www.liv.asn.au/Professional-Practice/Supporting-You/Managing-Your-Career/Legal-Careers-Locum-Guide>.
[150] Thornton suggests that senior solicitors wishing to leave fulltime practice may be drawn to independent contract work or setting up a NewLaw business. Margaret Thornton, 'Towards the Uberisation of Legal Practice' (2019) 1(1) *Law, Technology and Humans* 46, 57.

relevant to practice management, as well as an evaluation program of the effectiveness of an established locum service.

7.4.5 Summary

In summary, this thesis finds that sole practitioners are managing their professional lives and are generally enjoying practice as a sole solicitor, particularly in comparison to their former legal work. The negative experiences of sole practice create a representation of a community of service providers who work extremely long hours; do not have a 'free' weekend; are frequently available for, and contactable by, clients; face the challenge of managing a business; infrequently take holidays; and feel isolated. The references to stress, worry, loneliness and isolation indicate that there are professional challenges that impact on personal lives, including experiences of work-life balance.

As part of the national study recommended by this thesis, it is suggested that the health and wellbeing of sole practitioners should be investigated. Such a study, which has not been conducted in Australia, would enable examination of the impact of the work and role of sole practitioners on their wellbeing and work-life balance. The results would also inform the finding that sole practitioners are over-represented in the disciplinary system in cases where health issues are raised as relevant factors in lawyers' conduct.

The finding that sole practitioners identify a lack of both understanding of their role, and of the need for assistance in managing their practices, has implications for the success of this practice model and for the reputation of professional associations amongst its membership. In answering the research question about how lawyers experience and understand their role, the overarching response is an experience of abandonment within the legal profession and a perception that as a cohort, the work and needs of sole practitioners are not understood. This finding affords an opportunity to professional associations to effectively learn about sole and sole general practitioners through a targeted study.

The finding of a lack of support for sole practitioners highlights the disconnect between the experiences of this cohort and the work of professional associations in this area. The reasons for this require investigation. Additionally, the initiatives for support that sole practitioners have implemented require further analysis to assess their merit in their potential wider adaption across the profession.

Finally, it is clear that the empirical evidence that sole practitioners experience abandonment impacts on the question of the sustainability of sole practice.

7.5 Theme 4: Reflecting on the Future

The final theme explores the second research question – *What do sole practitioners understand their impact to be on the communities in which they practise law?* This theme examines the future of legal practice for this cohort. Again, the findings indicate concern about the ability of the sole general practitioner cohort to continue to practise law, and to have impact upon the communities within which they practice. Interestingly, much of the concern is attributed to the community of the legal profession, not just the community within which they are based. The majority of participants perceived their impact on the legal profession as negligible, and felt overwhelmingly unsupported and that the profession has failed them.

7.5.1 Introduction

Is there a future for sole practice? In considering the future of the legal profession, Hunter opines that 'we face a future that needs law a great deal, but lawyers a lot less'.[151] This need may provide an opportunity for sole practitioners. Certainly, the finding of this thesis, based on the collective experience of the majority of participants, is that sole practitioners will continue, but that sole practice will change, and it will be challenging. The significance of this finding is reflected in the research questions as to the role and place of these lawyers. Evidence from the participants indicates that there is a demand from clients for personal connection and interaction. Participants' lived experience of the challenges of sole practice also inform the finding that sustainability of sole practice may be dependent on innovative approaches, including the promotion of sole practice as a career, its recognition as an area of specialisation and the regulation of new business structures, including NewLaw.

In reflecting on the future of sole practice, participants naturally drew on their lengthy professional experiences, as well as their perceptions and observations of other professions, including the Bar. Their reflections on how practice will be different in the

[151] Dan Hunter, 'The Death of the Legal Profession and the Future of Law' (2020) 43(4) *University of New South Wales Law Journal* 1199, 1222.

future included a barristerial model with increased specialisation, including work as a trusted advisor.

In answering the research question as to how these solicitors understand their place within the profession, their perception as 'forgotten' emerged. Possible reparations to this perception are new ways of thinking about sole practice, and in particular, understanding it as a distinct career and as a specialisation. Building on current research and practice regarding business models for sole practice and technology-based innovations, the future of sole practice can be assessed in the context of the participants' observations and experiences.

7.5.2 Finding – The Hidden Career of Sole Practice

Generally, sole practice receives little attention as a career pathway for solicitors, including within the graduate market. Narratives about lawyers opting for sole practice appear to carry a stigma akin to 'opting out' of mainstream legal practice. Certainly, law graduates are not encouraged to consider sole practice as a future career, following the required two years of supervision and some years of practice experience. Steve Mark, the former NSW Legal Services Commissioner, described this abandonment of the sole practice stream within the solicitors' profession:

> Gone are the days where all law graduates wanted to do was to become sole practitioners. Today law graduates are seeking employment in a multitude of roles – some barely related to the practice of law.[152]

The *Affordable Justice* report, referred to earlier, suggests that junior solicitors should be encouraged to gain experience in sole and small firm practices.[153] For junior solicitors who opt to remain in sole or small practice, they should continue to be supported in the early stage of sole practice and, possibly, promoted as 'providing affordable services for clients with modest means'.[154] Other than the Law Council of Australia's campaign *RRR Law*, established in 2015 to promote careers in rural, regional and remote areas, support

[152] Steve Mark, 'Legal Education and the 21st Century Law Graduate' (Conference Paper, Continuing Legal Education Association of Australasia Conference, 16 October 2008) <https://www.olsc.nsw.gov.au/Documents/legal_education_21st_century_law_graduate.pdf>.
[153] Centre for Innovative Justice RMIT (n 6) 23.
[154] Ibid.

for early career sole practitioners has not come from professional associations. In fact, the *RRR Law* website is no longer active.[155]

Promotion of sole general practice as a viable and rewarding career would contribute to its sustainability. This must be considered in the context of specialisation, either for general practice as its own unique area or for a shift from general to specialist practice.

7.5.3 Finding – Sole Practice as a Specialisation

As discussed in Chapter Six, many participants considered the future of sole practice to be one of specialisation. They acknowledged that a broad practice is challenging, as demonstrated by their narrowing of practice with the abandonment of certain work that they initially undertook, such as local court criminal matters, family law, legal aid work and debt recovery.

In response to this observation, it is proposed that general practice could be its own specialisation. The advantages of specialisation include professional recognition, as evidenced by approval to use 'Accredited Specialist' in the promotion of legal services and by the expansion of new accredited areas of practice. The opportunity to affiliate with other accredited sole general practitioners, together with clearer information for the public as to this expertise, would promote the benefits of a specialist general practitioner, such as breadth of services and personal interaction that allows for holistic advice, being legal, quasi- and non-legal, provided the latter is within the practitioner's expertise.[156]

As noted in Chapter Three, general practice is not defined, recorded or reported by professional associations. Aligned with this shortfall is the finding of this study that sole general practitioners perceive their position primarily as a sole solicitor, rather than as a general practitioner. Being a general practitioner is focused on the 'being', with an obligation to take on a broader rather than narrower range of matters. There is an assumption that unless you are a specialist, your practice would be a general one. Some participants offered a broad general practice that could be defined as traditional general practice. Others focused on clusters of areas, such as business and commercial, family

[155] 'Rewarding Legal Careers in Rural, Regional and Remote Australia - Jobs', *RRR Law* (Web Page) <http://rrrlaw.com.au/jobs/>.
[156] Quasi and non-legal work does not include work that requires registration, certification or outside the scope of professional indemnity insurance.

and estates, or estates and succession planning. Several participants had discontinued some practice areas.[157]

General practice could be considered a specialisation with certain criteria requiring breadth of knowledge of the law, including currency; familiarly with procedures and processes across several areas; and an ability to effectively research substantive and procedural law. Lauw identifies the challenges with accrediting general practice as a specialisation, including a need for an agreed definition of 'what constitutes "general practice" and the formulation of appropriate standards for accreditation'.[158] This challenge could be overcome with the clear definition of general practice, as proposed in this thesis, and an agreed standard of competence, as set out below.

In relation to the definition of general practice, applying the NSW Law Society's definition of the requirement for specialisation as 25% of a solicitor's practice,[159] a general practitioner could be currently practising in three areas and be eligible for accreditation in each area. However, given that general practice specialisation requires different skills to a specialist, a more nuanced definition would provide greater accuracy. A possible solution to problems with the current specialisation criteria is to require general practitioners to devote a minimum of 20% of their practice in one area, with the condition being that they must claim at least three areas of practice. This definition aligns with the Law Institute of Victoria's definition of accredited specialisation as having 'substantial involvement'[160] in an area for at least three years prior to application.[161]

The standard for accreditation is:

> …that of a 'specially competent practitioner' in the core skills and practical capabilities in the selected area of the law, as assessed against the spectrum of capability of all practitioners in that area of the law. This standard is to be distinguished from the idea

[157] Lara no longer undertook local court work. Josephine discontinued family law work. Melina ceased her conveyancing practise.
[158] Inge Lauw, 'Specialisation, Accreditation and the Legal Profession in Australia and Canada' (1994) 1(2) *Murdoch University Electronic Journal of Law* s 8.4.2.
[159] In NSW, an applicant for Specialist Accreditation must have committed 25% of practice to the specialist area for three years prior to the application. 'Apply for Specialist Accreditation', *Law Society of New South Wales* (Web Page, 2021) <https://www.lawsociety.com.au/specialist-accreditation/applications>.
[160] 'Become an Accredited Specialist', *Law Institute of Victoria* (Web Page, 2021) <https://www.liv.asn.au/Learning-and-Networking/Accredited-Specialisation/Become-an-Accredited-Specialist/Specialist-Areas-Key-Dates>.
[161] Ibid.

> that Specialist Accreditation requires the highest technical legal knowledge across all aspects of the selected area.[162]

Applying the criteria discussed above could assess the standard of 'specially competent practitioner'.

The suggested future of sole practice as a specialist one also includes a new role of the trusted advisor. General practitioners informally fulfil this role with clients seeking their advice in relation to non-legal or quasi- legal matters. Such a role was discussed by several participants; it was particularly envisaged for clients requiring ongoing advice in relation to business or family structures. The role indicates a shift from a reactive approach, where a solicitor is consulted when a legal problem arises, to a proactive one. The objective here is a role for solicitors as trusted advisors, who are regularly consulted as part of clients' decision-making processes.

7.5.4 Finding – Traditional Business Models will be Challenged by New Business Models

The future of sole practice will also be shaped by the emergence of new business models, as discussed in Chapter Four. Generally, new practice models were not discussed by the participants in this study; the one exception was Larry, who had proactively integrated technology into his practice from its establishment. The absence of discourse about new business models may be due to the majority of participants being senior solicitors, who may not have been familiar with the work of start-ups and legal entrepreneurs. It may also be due to geographical and professional isolation. The reasons for this absence of technology within this cohort require further research.

The effect of legal start-ups and entrepreneurs on the legal profession and the delivery of legal services requires consideration. Thornton identifies the lack of scholarship concerning NewLaw in her research on flexible work policies in a neoliberal legal market.[163] For sole practices, with the current focus of legal start-ups and entrepreneurs on business and corporate clients, the individual and small business clients are largely ignored. However, these client markets are likely to expand to include individual and

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[162] Law Society of New South Wales, *Specialist Accreditation: 2020 Guide to Application and Assessment* (Report, 2019) <https://www.lawsociety.com.au/sites/default/files/2019-12/2020%20Guide%20to%20Application%20%26%20Assessment%20-%20FINAL%20v.1.pdf>.
[163] Thornton (n 150) 47.

small business consumers as a more technologically competent client demographic increases.

The Law Society of NSW took the lead in 2017 with its FLIP[164] Commission of Inquiry and report. The *FLIP Report* identifies a range of business models, including virtual offices,[165] 'legal hubs',[166] Chambers Practices[167] and 'single principals with panels of freelance lawyers'.[168] These business models require consideration as part of the response to the challenges of sole practice identified in this thesis.

7.5.5 Finding – Technology as a Change-Agent

As outlined in Chapter Six, sole practice is challenging. Throughout the interviews, participants discussed the lack of recognition of sole practice and the absence of accessible and reasonably-priced support, including in relation to technology. The participants' responses, discussed in Chapter Six, represent the range of views about the impact of technology, from positive engagement to trepidation.

Technology is transforming legal practice and leading to new ways of working. Early recognition of technology and its impact on legal services predicted that solicitors' traditional roles, service delivery and client expectations would change.[169] Similarly, participants' narratives demonstrate an understanding that technology will continue to have a significant impact on the way sole practitioners work. Some participants were ill-prepared for this impact.

These contrasting reflections demonstrate the disruptive nature of technology, as identified by the profession. The *FLIP* Commission of Inquiry found that 'Firms as well as sole practitioners will need support and may need expert assistance with strategic planning and the implementation of change.'[170]

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[164] Law Society of New South Wales, *The Future of Law and Innovation in the Profession (FLIP) Report* (Report, 2017) 6 <lawsociety.com.au/sites/default/files/2018-03/1272952.pdf\> ('*Flip Report*').
[165] Ibid 5.
[166] Ibid.
[167] Ibid. Jason was in a Chambers Practice.
[168] Ibid. Larry used contract lawyers during the busy periods in his practice.
[169] Richard Susskind, *Transforming the Law* (Oxford University Press, 2000); Richard Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services* (Oxford University Press, 2008); Richard Susskind, *Tomorrow's Lawyers: An Introduction to Your Future* (Oxford University Press, 2nd ed, 2017).
[170] Law Society of New South Wales, '*FLIP Report*' (n 164) 6.

7.5.5.1 Technology as a friend

As set out in Chapter Six, many participants' experiences with technology were positive and had transformed their practice, including in management systems and communications. Some of these experiences are identified in the *FLIP Report*, such as the application of technology to practice,[171] including products and services,[172] and the flexibility of work as a result of technology.[173] Other areas identified in the *FLIP Report* relevant to sole practitioners include the promotion of wellbeing,[174] education of the public as to the importance of legal advice and representation,[175] potential for online dispute resolution[176] and consideration of a lessening of onerous regulation.[177]

In relation to access to legal services, technology has the potential to significantly improve the communications relating to, and the dissemination of, legal information. The *FLIP Report* identifies that technology has a role in providing access to justice, which can be leveraged by initiatives that are 'created with expertise and oversight and ethics and design principles at their core'.[178] Concurrently, the report acknowledges the 'high level of unmet need for legal services in the community'[179] and the existing challenge of the lack of adequate funding. It concludes: 'A technology gap threatens to separate corporate and wealthy Australia, and disadvantaged people with legal problems.'[180]

COVID-19 has provided a significant opportunity for technology to demonstrate its benefit for professional services. Telehealth is one example of a valuable model for remote consultations. In response to COVID-19, from late March 2020, Telehealth Consultations through Medicare were made available to all Australian patients. In November 2020, just under 6% of Australians engaged a Telehealth service in the preceding month,[181] with the ABS advising that 49% of survey respondents advised that

[171] Ibid 4.
[172] Ibid.
[173] Ibid 5.
[174] Ibid 8.
[175] Ibid 10.
[176] Ibid 7,
[177] Ibid 10.
[178] Ibid 4.
[179] Ibid 4. The *FLIP Report* includes a chapter on 'Community Needs and Funding'.
[180] Ibid.
[181] The survey consisted of 3,400 respondents. 'Household Impacts of COVID-19 Survey, November 2020: Telehealth Service Use', *Australian Bureau of Statistics* (Web Page, 14 December 2020) <https://www.abs.gov.au/statistics/people/people-and-communities/household-impacts-covid-19-survey/nov-2020>.

they would be likely to access the service in the future.[182] The shift towards Telelegal consultations is inevitable. The result will be an increase in access to the law for rural and remote communities. However, replacement of person-to-person consultations may decrease opportunities for lawyers to establish a physical presence in these areas.

The integration of technology by corporate firms is in response to the needs of corporate clients. As noted above, this need has resulted in the proliferation of legal start-ups primarily for corporate clients. The next stage is likely to be individual and small business clients who, as their skill level increases, will expect a seamless integration of technology in the legal services they require, just as they have from other service providers. However, for many participants in this study, technology was viewed with caution, mainly based on a perception that the challenges will outweigh the benefits.

7.5.5.2 Technology as a foe

An increasing challenge of general practice is the requirement for lawyers to be competent across a range of areas, including with technology. In addition, practice areas are embedding technology, thus requiring practitioners to adapt to new and different systems and processes across these areas. Participants' concerns about technology, set out in Chapter Six, highlight the critical need for further consideration of the disruption of legal practice. Reports such as the FLIP are responding to this need and require monitoring and evaluation as to the implementation of recommendations.

At the same time, there was an overwhelming collective view among participants that solicitors' traditional skills, marked by personal interaction, face-to-face interviewing, communication and negotiation, are vital for current and future sole practitioners and their clients. However, there was also an acknowledgement that technology, particularly communication, is changing the way some clients expect their lawyer to interact. The level of technical skills and the needs regarding upskilling in technology for sole practitioners[183] and individual clients[184] is worthy of investigation. This is in recognition of the fact that lawyers should be, and certainly will need to be, competent with the use

[182] Ibid.
[183] Law Society of New South Wales, '*FLIP Report*' (n 164) 5. The report identifies that some solicitors are in need of 'encouragement and support' in relation to their ability to use, and appetite for, technology.
[184] Ibid. The report identifies the potential divide between advantaged and disadvantaged groups in relation to access to, and use of, technology.

of technology. The recognition may lead to the requirement to be competent in the application of technology, as has been embedded in the ABA's *Model Rules*:

> Rule 1.1 – To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.[185]

Consideration should be given as to whether a similar rule requiring technical competence should be included in the *Australian Solicitors' Conduct Rules*. Training and support tailored to general practice is essential to ensure a level of competency across the solicitors' profession in step with other aspects of the law, including the courts.

7.5.6 Summary

In answering the research question about how these solicitors understand their place within the profession, their perception as 'forgotten' emerged. Possible reparations to this perception are new ways of thinking about sole practice, in particular, understanding it as a distinctive career and as a specialisation. Building on current research and practice regarding business models for sole practice and technology-based innovations, the future of sole practice can be assessed in the context of the participants' observations and experiences.

The number of lawyers who opt for sole practice is notable, although this statistic is tempered by some participants' perception that sole general practice is not sustainable. The theme of *Reflecting on the Future* highlights the need for consideration of a structured approach to the promotion of general practice as a specialisation and sole practice as a valued career by relevant stakeholders, including the profession and legal educators. Whilst the impact of technology on the practice of law continues to develop, recognition and subsequent response to this impact must include sole practice. COVID-19 has accelerated the need for investigation and assessment of technology for sole practitioners, and for facilitation of access to legal services.

[185] American Bar Association, *Model Rules of Professional Conduct* (at August 2020) <https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/>.

7.6 Conclusion

For the majority of participants, sole practice remained as a viable and rewarding career, tempered with a sense that being a sole practitioner is more than being the only lawyer in the office. The findings discussed in this chapter demonstrate that the lived experience of the practitioners confirm research and scholarship about the legal profession in Australia, which specifically addresses the paucity of knowledge about their work and their professional identity. Most importantly for this thesis, it is apparent that the sole general practitioner is even less known than the general cohort of sole practitioners.

The four themes of *Opting for Sole Practice*; *Serving the Community*; *Supporting My Practice* and *Reflecting on the Future*, identified in Chapter Six, provide a foundation from which work is needed to address the shortfall in knowledge and understanding of sole and sole general practitioners. The findings discussed in this chapter, and outlined in the table in Appendix A, identify areas where the deficiency could be addressed, as well as offer ways to address this shortfall. At the very least, the participants' rich and extensive experience, as individuals and as a collective, identify a need for a national study of sole and sole general practitioners. This important empirical work should be succeeded by consideration of a definition of sole general practitioner, a recognition of general practice as a specialisation and an intention by professional associations to respond to the findings of a national study.

8 CONCLUSION

... and I couldn't see anyone, and I knew what the loneliness of the long-distance runner running across felt like, realizing that as far as I was concerned this feeling was the only honesty and realness there was in the world...[1]

8.1 Introduction

This thesis examines the professional, and where relevant, the personal lives of sole general practitioners, their experience of legal practice, and their legal and non-legal contributions to the communities in which they practise law. The purpose of this investigation is to address the gap in knowledge and understanding of this cohort in Australia. This gap exists within a further deficit in knowledge and understanding about the broader category of sole practitioners, which, in turn, this thesis also seeks to address.

This is the first piece of Australian scholarship to interrogate the role of these lawyers from a dual perspective, through an analysis of existing literature addressing the legal profession with a phenomenological study of the lived experience of sole general

[1] Alan Sillitoe, *The Loneliness of the Long-Distance Runner* (Vintage, 1959) 43.

practitioners. Notably, the thesis reveals that sole general practitioners are an enduring, albeit overlooked, cohort amongst Australian legal practitioners.

In response to this finding, the thesis proposes that the abandonment of such a numerically large, and professionally significant, cohort of Australian legal practitioners must be addressed. Arising from the assumption that sole general practitioners constitute a substantial and critical cohort within the profession, this thesis presents evidence of their resilience as individuals and as a collective. In addition, this research demonstrates that their role extends beyond the solicitor/client retainer to one of non-legal contributions to their communities as leaders, advisors and good citizens.

Significantly, having found autonomy, purpose and joy in sole practice, these lawyers, despite a sense of over-regulation and an absence of support, are long-standing contributors to the profession and the public. This notable endurance informs the conclusion that sole general practitioners represent a separate and identifiable category of legal practitioner, and that they should be understood and defined as such. Furthermore, this thesis concludes that enhanced and targeted efforts must be made to better understand their experiences and professional needs.

8.2 Research Problem and Purpose

The twin aims of this thesis are to better understand sole general practitioners by gaining knowledge of their *essence* and their *place*. In order to achieve these aims, two core questions emerged as critical to understanding the joys and challenges of sole general practice and the work of sole general practitioners:

1. *How do lawyers experience and understand their role as sole general practitioners?*
2. *What do they understand their impact to be on the communities in which they practise law?*

In this thesis, these questions are addressed through an analysis of the narratives and insights of 23 sole general legal practitioners, together with analysis of national and international scholarship. The questions have been purposefully framed to interrogate the curious position of this cohort within the legal profession in Australia, and in particular, in NSW, where knowledge and understanding of sole general practitioners is, I argue, both skewed and scarce. In this study, participants from urban, suburban and rural NSW

shared their experiences as sole solicitors in general practice. Individually and collectively, their narratives have been analysed to reveal a deep and nuanced understanding of this cohort. Their narratives are generally characterised by a sense of invisibility and neglect, and as such, mirror the inadequacy of knowledge regarding sole general practitioners within the scholarship of the legal profession.

The participants' experience and understanding of their role as sole practitioners raises the central and critical challenge of *abandonment*. This finding is evidenced across the three main areas examined in the thesis. Firstly, the sense of abandonment is reflected in the silence of the sole general practitioner's *voice* in the Australian literature with the perception that the sole general practitioner is a 'man' of myth and stereotype. The introduction to this thesis identifies the research problem in noting that the imagery of the lone lawyer, who defends the unwinnable client and ensures that justice prevails over injustice, creates a myth about the independent lawyer. This myth and stereotype are built on nostalgia, fiction and the mystique of the law. Depicted in this myth is the traditional image of the independent lawyer, built on narratives of wise leadership, trusted advisor, good citizenship and selfless service. Further, as Chapter Two establishes, much anecdotal information about the sole general practitioner reflects an irreconcilable dichotomy of views. On the one hand, sole lawyers are perceived as mythical heroes fighting for justice whilst, on the other hand, they are also perceived as inept, dishonest and incompetent. Drawing on empirical evidence discussed in Chapters Six and Seven, this thesis finds that neither view accurately reflects the sole general practitioner.

Secondly, the sense of abandonment is evident in the absence of sole general practitioners as a cohort in both historical records and current discussion of issues confronting the profession. As Chapter One highlights, the three collectives of small firm, sole practice and sole general practice are frequently bundled together in a profession dominated by the corporate firm and client. Whilst bare data evidence a significant population of sole practitioners, it fails to provide relevant information about the number of sole *general* practitioners. Importantly for this thesis, most legal profession scholarship neglects to distinguish the sole practitioner from the sole *general* practitioner.

The third area of concern is the profession's neglect of sole practitioners in terms of the lack of structural support it offers. Here the existing regulatory framework both forsakes,

and creates, a narrative of distrust around the sole general practitioner. The deficit in knowledge of solicitors who come to the regulators' attention, and of the remit of the regulator within a dominant corporate profession, contributes to the scarce and skewed representation of this cohort. Drawing on academic and professional literature discussed in Chapters Two and Four, this thesis finds that the lack of understanding of this cohort is replicated in the participants' lived experience.

Guided by the empirical framework discussed in Chapter Five, the response to the finding of a deficit in knowledge and understanding is achieved through the research method of phenomenology. This methodological approach offers an open and fluid opportunity to know and to learn about this cohort of legal practitioners. Through listening, absorbing and reflecting, together with the setting aside of preconceptions, the analysis of the lived experience of these lawyers addresses the research gap found in the literature and history of the profession in Australia.

The purpose of this thesis is not as a representation of sole general practitioners across Australia. Indeed, the purpose of a phenomenological approach is to identify patterns of shared experiences. These are not universal. Not all 23 participants were critical of, or experienced a lack of support from, professional associations. In contrast, one was an active contributor to representative bodies, and a few served on their local law society. Not all participants undertook community work through leadership or service roles, although most served, or had previously served, in a role connected to their reputation as a solicitor.

A limitation of this study is the concentration of long-serving solicitors, several of whom experienced a time in practice when areas of the law and, consequently, their livelihood was reduced by government. These experiences may have shaped their perspectives. Similarly, some older participants, having commenced practice in a time of typewriters, dictaphones and the DX,[2] were evidently challenged by new technologies.

8.3 Research Outcomes

The two prevailing observations about this cohort, that its members are abandoned and yet enduring, occur in both the literature and the participants' shared experiences, to the

[2] DX, or document exchange, was the main form of mail and document delivery previously used by solicitors to exchange correspondence.

extent that one reinforces the other. Many participants gave practical examples of areas where support is lacking and where they believe they have been ignored by professional associations, government and other cohorts within the profession. Several participants offered powerful examples of the ways in which other professions are more appreciated and successful, with particular reference to the medical profession. Indeed, it is surprising that the experience of abandonment exists despite work by professional associations targeting sole practitioners, further highlighting the lacuna in specifically addressing the lived experience of the sole general practitioner.

Despite their experience of being unsupported, sole general practitioners are a resilient cohort, as demonstrated by their sustained practice and their commitment to their role as lawyers. This commitment and their resilience are evident in the choice that several participants made following negative experiences in larger legal practices. They remained in the profession, opting for sole practice rather than opting out of the law. As individual autonomous lawyers, they are visible within the community, often resulting in strong connections with clients and communities. These leadership and service roles, together with pro bono work, evidence the impact they have on their communities.

In response to the isolation and, for some, loneliness of sole practice, many participants drew resilience from the informal support networks they created – the 'brains trust', mentors, practice groups, barristers and neighbouring practitioners. Whilst this finding is not unexpected, what is of interest is the gendered approach to informal support, with female solicitors proactively reaching out to establish 'brains trusts' and collaborative networks, and male solicitors looking to established connections.

That sole general practitioners are the forgotten cohort is evidenced across professional and academic literature, the development of the legal profession in Australia and the current legal services market. Scholarly attention to the sole practitioner has been cursory in literature, other than in the areas of regulation and population. Moreover, academic recognition of the sole general practitioner in Australia is mainly limited to two sociological studies in the 1970s.[3] The early history of the Australian legal profession focused on the Bar's domination of the political, legal and judicial pillars of the colony. The sole general practitioner, despite being present from the early NSW colony, has an

[3] Roman Tomasic and Cedric George Bullard, *Lawyers and Their Work in New South Wales: Preliminary Report* (Law Foundation of New South Wales, 1978); Margaret Hetherton, *Victoria's Lawyers: The First Report of a Research Project on 'Lawyers in the Community'* (Victoria Law Foundation, 1981).

unexplored role and place amongst Australian lawyers. Finally, in the last 50 years, the corporate firm has dominated the legal services market. This has subordinated the needs and experiences of sole general practitioners. Across these three fields, threaded through literature and history, is a continuous narrative of neglect of the sole general practitioner by government, professional associations and the profession more generally.

Chapters Six and Seven are critical in giving voice to this cohort. These chapters respectively provide evidence and analysis of the experience of the sole general practitioner. In doing so, they highlight their unique role, including the benefits of autonomy and flexibility, and the challenges of isolation and invisibility.

8.4 Contribution to Knowledge

This thesis contributes to knowledge of sole general practitioners in three areas: (1) their identification as a unique branch of the solicitors' profession, (2) their role in the community, and (3) their representation in the regulatory framework. In so doing, this thesis also identifies a pressing need for further research into this cohort.

Their absence of identification evidences a lack of knowledge and understanding of this cohort. Indeed, the structure of the legal profession is compromised through its absence of nuance, or perhaps more accurately, by the invisibility of sole general practitioners. To ensure accuracy and deepen analysis, this thesis argues that the sole general practitioner must be defined. The research and the lived experience of the participants presented in this thesis demonstrates that a definition for sole general practice is achievable.

The definition of the sole general practitioner, proffered in Chapter Three, embeds the type of practice and areas of practice. The thesis suggests that the sole general practitioner is identifiable by two core characteristics: (1) a principal practising as a sole trader who may employ non-legal staff and/or non-principal lawyers, and (2) offering clients a range of legal services in three or more practice areas. This definition is an original attempt to reflect the *essence* of the sole general practitioner. This definition is then augmented in Chapter Seven to highlight the feasibility of general practice being accredited as a specialisation by proposing that specialist practitioners devote a minimum of 20% each of their practice in at least three areas of practice. It is suggested that adoption of this definition will allow identification of sole general practitioners and

characteristics that define them – both in terms of the work they perform and their historical and contemporary place in the common law legal tradition.

There is evidence that the significant role of the sole general practitioner consists of legal, quasi and non-legal contributions to community. None are well acknowledged nor accurately documented by the legal profession. An example is the provision of discounted or free legal services offered by these lawyers, despite being private practitioners. As discussed in Chapter Seven, there is, however, a disconnect between the lack of acknowledgment of this work for sole practitioners, compared with the recognition given to corporate firms for their pro bono contribution and the opportunity this affords them to promote their good citizenship.

Importantly, in response to the second research question, this study finds that many sole practitioners are sought out and contribute to the functioning and interests of their community through leadership and service. As Chapter Six highlights, non-legal community work has a basis in the professional identity and ethics of the legal profession. This role represents a form of duty to the public, one that is beyond the client and lawyer relationship, and one that contributes to the reputation of the legal profession.

In contrast to the body of scholarship that identifies the 'important civic contributions'[4] of sole practitioners,[5] there is also research, considered in Chapter Four, that suggests the shift from the profession of law to the business of law is intrinsically connected to the prominence of the corporate firm and client.[6] The result is a growing disregard for the duty to serve the public.[7] In response to this tension, the participants' endurance, in establishing and maintaining their own firms, evidences that the two spheres of the business of law and the practice of law can co-exist.

Knowledge about sole general practitioners also encompasses the regulatory area of discipline, where the sole practitioner is over-represented. Chapter Two analyses the reasons for this over-representation, including the consumer-focus of the regulatory framework. Working within the current system, clearer reporting of the practice details of

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[4] Carroll Seron, 'The Status of Legal Professionalism at the Close of the Twentieth Century: Chicago Lawyers and Urban Lawyers' (2007) 32(2) *Law & Social Inquiry* 581, 592.
[5] Ibid; Lillian Corbin, 'Australian Lawyers as Public Citizens' (2013) 16(1) *Legal Ethics* 57, 68.
[6] Joanne Bagust, 'The Legal Profession and the Business of Law' (2013) 35(1) *Sydney Law Review* 27; Oliver Mendelsohn and Matthew Lippman, 'The Emergence of the Corporate Law Firm in Australia' (1979) 3(1) *University of New South Wales Law Journal* 78.
[7] Bagust (n 6) 36.

lawyers, such as type and areas of practice, would assist in identifying areas of concern and facilitate the tailoring of responses to reduce client complaints and losses, as well as providing greater clarity with regard to misconduct findings. In this area, this thesis contributes to understanding that the regulatory framework continues to discipline through a one-dimensional lens focused on the smaller end of the profession.

8.5 Recommendations

The participant interviews evidence the expansive role of sole general practitioners in their communities and their contribution to the role and function of the legal profession. In response, this thesis offers two practical recommendations to support the cohort and facilitate their work across their communities. As identified in Chapter Seven, these are firstly, the formation of a research program to conduct a broader and deeper analysis of this cohort, and secondly, the establishment of a source of support and acknowledgment.

Firstly, the deficit in knowledge and understanding informs the need for a national study of sole and sole general practitioners, in order for professional associations to realise their essence and place. Such a study, by way of a national survey and interviews, would source valuable information about the alignment of legal services delivery by the cohort with their communities' legal needs, their role in their communities and their needs in relation to effectively managing their practices.

In the present study, the participants' lived experience suggests that the *essence* of sole practice and the *place* of sole practitioners is sustainable, whilst *general* practice may be surpassed by specialisation. Accordingly, a national study should also examine the future of sole *general* practice, including solicitors' succession planning, as a career option for graduates, and the impact of technology.

Such a study would build on the insights presented in this thesis of the 23 participants who generously shared their experiences. Outcomes would provide evidence-based research for professional associations to lead regulators, government and other stakeholders, such as law schools, CPD providers and local law societies, in the development of strategies, policies and plans that acknowledge the work and role of lawyers who opt to be independent and offer a range of legal services. In addition, the role of these lawyers in their communities should be captured in order to assess its value in enriching the life of communities and the reputation of the legal profession.

Secondly, the recommendation of a source of support proposes the establishment of an improved and effective locum service that is well-resourced and includes accreditation and professional development for locums, and increased promotion amongst the profession. The recommendation of a source of acknowledgment proposes instituting specialist accreditation for general practice that enhances opportunities for consideration of a new role as trusted advisor and promotion of expertise in general practice. Accreditation can be sustained by ongoing professional development targeted to general practice.

8.6 Further Research

Against the background of individual difference, the participants' experiences and perspectives have, nevertheless, created a thematic perspective. This perspective diverges from the traditional stereotypical view of the sole practitioner. Importantly, the thematic analysis in this thesis demonstrates how an analytical approach that gives regard to participants' narratives can lead to a different conclusion to that of the profession's leadership, including professional associations and regulators. It is crucial to improve understanding of the dynamics between the profession's approach to this cohort and their experiences, as these will have significant implications for the effectiveness of legal service delivery, access to the law and, more broadly, the reputation of the profession. It is the role of professional associations to engage with all stakeholders, regardless of their economic status, influence and heterogeneity.

The research outcomes of this thesis, grounded in literature and confirmed by the participants' narratives, reveal three areas for further research. There is a fundamental need for acknowledgement of sole general practitioners as a distinct cohort within the solicitors' profession. This thesis has identified that such acknowledgement can be achieved through a common definition of sole general practice, as set out above, and based on that definition, data that identifies the statistical population of this cohort as a subset of sole practitioners.

Twinned critical areas of study with respect to the future of the profession are the relationship between the current 'traditional' form of sole practice and the role of technology in legal practice. In relation to technology, Chapter One questions whether the traditional legal practice, situated as a shop-front or commercial office, will be replaced by virtual practices, start-ups and entrepreneurs. This thesis partially answers

this question through the experience of those participants with a home office, the effectiveness of remote communication during the COVID-19 pandemic, and the possibility that legal start-ups will further expand their services to include small business and individual clients. The participants' collective experience indicates clients' preference for face-to-face service, which was managed, to an extent, through technology during COVID-19. At the same time, the pandemic accelerated the use of online and virtual services and elevated the status of the home office through the increased acceptance of remote working.

Finally, whilst autonomy is the mark of a sole practitioner, negative experiences of isolation, loneliness and habitual work practices, recounted by many of the participants, demonstrate the complexities of sole practice and support the pressing need for further work in this area. This includes the necessity for sole solicitors in general practice to remain competent across several areas at a time when the law is increasing in complexity. Of significance for further research is an examination of the informal approaches implemented by these lawyers to manage their practices and their professional and personal lives.

This thesis has sought to go beyond the myths surrounding sole general practitioners to understand their lived reality. The core finding of this thesis is that the limited presence of the sole general practitioner in literature and scholarship reflects many of the participants' lived experience of isolation and their sense of abandonment by the profession. This experience must also be considered in the context of the joys of sole practice and the reasons for opting for sole practice as a generalist. Collectively, the participants' lived experience offers insight into a cohort of Australian legal practitioners that is under-researched and, largely, undervalued. Despite their population, their work as lawyers and public citizens, and their often significant contribution to providing access to legal services, sole general practitioners are largely invisible within the profession. Many participants in this study perceived themselves as such.

This thesis evidences the urgent need to identify, acknowledge and support sole general practitioners. It is argued that, given the unprecedented challenges faced by the profession caused by globalisation, digital disruption and a lack of access to legal services for a significant section of the community, it is not sufficient to expect the sole general practitioner to remain a 'lonely long-distance runner'. Whilst resilient and steadfast, the participants in this study also revealed angst and uncertainty. This thesis is

a call to arms for a positive and rigorous professional response to this long-neglected cohort of legal practitioners.

EPILOGUE

The COVID-19 pandemic of 2020 had an extreme impact across the globe. One of the major responses to the closure of workplaces and face-to-face services was the widespread implementation of, and an accelerated move to, technology-driven systems and processes, in particular digital communications. Given the significant impact on service delivery as a result of the pandemic, and as the interviews in this study were completed prior to COVID-19, I invited the participants to share their experiences of practice in 2020.

For all the participants who shared their experiences, practice continued through reliance on measures implemented to manage the pandemic, including social distancing, limited face-to-face consultations, and telephone and video interviews, conferences and court appearances. As with other professional services, for example, Telehealth referred to in Chapter Seven, participants were able to increase their skills with technology, thus demonstrating their resilience and ability to adapt their practice.

In relation to the business of law, Jason and Gavin saw a reduction in work, whilst Kieran's business increased. Marion noted an increase in clients in March and April, who seemed to be 'getting their house in order' with wills and powers of attorney, and later in the year, an increase in conveyancing. Robert encountered hesitancy amongst business clients towards investing in growth, given the uncertainty of the economic impact of the pandemic. Susan's experience that, despite a 'slowing down' of work for a short period, business continued throughout the pandemic. Interestingly, Jason noted that as a result of the 'breadth of his practice', his business was able to return to pre-COVID-19 levels. Of note are the innovative ways that participants managed clients' matters. Marion witnessed wills from the footpath outside her office at a safe distance, with clients signing with a sterilised pen. Josephine met clients in their homes. Susan observed that the people she interacted with seemed 'much gentler'.

Importantly, initiatives introduced in order to facilitate the continuation of the legal process during COVID-19 may have ongoing benefits. These include greater use of technology. Due to court matters being held online, Kieran noted there was no need for solicitors to travel to attend court, which decreased costs for clients. Kieran also referred to two family law female clients, for whom the ability to give evidence by video removed

their fear of bullying behaviour from the husband in one case, and the husband's adult children from a previous marriage in another case. For Issa, the inability to observe the other party's body language and demeanour meant it was more difficult to assess their attitude and approach to a matter, such as a mediation. On the other hand, Issa acknowledged the benefits of reduced travel time. Although, she also noted that waiting time at court was often spent narrowing issues or settling matters, and phone or Zoom meetings did not provide that same opportunity.

Another initiative, identified by Christina, was an increased acceptance of the home office. She observed that COVID-19 has 'normalised work from home', thus enabling her to 'look more 'respectable' in the eyes of the community'. The ability to work remotely, including from a home office, may be both a benefit for sole practice, as well as a challenge, if the need for a local lawyer providing a face-to-face presence is threatened by online providers. Robert also identified the impact of online work, particularly in litigation, with many court attendances moving to online and, thereby, reducing the need to be located near a court. He also identified that agency work was further reduced, with rural solicitors undertaking their own online appearances.

As noted in the Conclusion to this thesis, the lone lawyer is resilient and enduring. Through their recognition that change does occur, and their capacity to respond to the change, these lawyers were able to successfully manage their business and their professional commitment to their clients.

APPENDIX A

Chapter Seven: Findings

Finding	*Recommendation*	*Stakeholders*	*Link to Chapter*
Theme 1: Opting for Sole Practice			
Deficit in knowledge and understanding of sole general practitioners	National study of sole and sole general solicitors, including information on reasons for opting for sole practice; practitioner needs, including CPD, business management; legal and non-legal work in their community; health and wellbeing; adaption of technology and innovation	Law Council of Australia and professional associations	7.2.1; 7.2.5; 7.3.2; 7.3.3; 7.4.2; 7.4.3; 7.5.4; 7.5.6
Absence of a clear and common definition	Consideration of a definition for sole general practitioner, such as: Sole general practitioner is a *'principal practicing as a sole trader who may employ non-legal staff and/or non-principal lawyers and who offers a range of legal services in three or more practice areas'*	Law Council of Australia and professional associations	7.2.2; 7.2.3
Inconsistency and inaccuracy of data as to the solicitors' population, including sole and sole general practitioners	Uniform method of data collection, analysis and reporting	Law Council of Australia and professional associations	7.2.4
Absence of data in reporting of disciplinary matters	Practice details, such as sole, sole general or small practice, be included in the reporting of complaints and misconduct cases	Courts and tribunals; professional associations and regulators	7.2.4
Theme 2: Serving the Community			
If there is a decline in sole general practice, what is the impact	A review of access to legal services be included in the national study	Law Council of Australia, professional associations and	7.3.2

Finding	*Recommendation*	*Stakeholders*	*Link to Chapter*
on the lack of access to a local solicitor		law reform stakeholders	
Extent of pro bono work by general sole practitioners is not known	All pro bono work should be included in the assessment of national targets	Law Council of Australia and professional associations	7.3.2
Public service role is not known	National study of sole and sole general solicitors, including public service; Information as to contributions to community could be sourced from applications for practising certificates	Law Council of Australia and professional associations	7.3.3
Theme 3: Supporting My Practice			
Findings as to unhealthy and unsafe practices within the legal profession, including bullying & harassment, poor mental health & lack of a work / balance were made several years ago and have not been evaluated	Review of recommendations in reports in relation to: Mental health: *Courting the Blues*; Attrition and retention rates: *NARS*	Law Council of Australia and professional associations	7.4.2; 7.4.3
Lack of understanding of the support needs of sole general practitioners, including CPD	Evaluation of Victoria's and NSW's contingency plans; Review of effectiveness of programs and support for sole practitioners	Professional associations	7.4.4; 7.4.4.2
Lack of understanding of the needs of sole general practitioners in managing a business	Consideration of further education in relation to the benefits of: Incorporation and compulsory self-assessment; Education and training in relation to business structures, management practices and	Professional associations and regulators	7.4.4.1

Finding	*Recommendation*	*Stakeholders*	*Link to Chapter*
	ethical infrastructures – lawyers and law students		
Lack of understanding of the needs of sole general practitioners in responding to client complaints	Support during the complaints process	Professional associations	7.2.4.3
Locums may offer a solution to practitioner needs in relation to breaks and busy periods	Locum service be promoted to both experienced practitioners as a career change and to practitioners requiring a locum	Professional associations	7.4.4.5
Theme 4: Reflecting on the Future			
Sole practice is not considered a career option	Promotion of sole practice as a career, including in regional areas, supported by a strategic program of training and mentoring	Professional associations and law schools	7.5.2
Absence of recognition of general practice as a discrete area of practice	Specialisation in general practice: Recommendation of three areas of practice with at least 20% of practice time in each area	Professional associations	7.5.3
Some practitioners lack technical adaptability and competence	Training and support in technology and innovation; Review of the role of new business models in the provision of access to legal services; Inclusion of a rule requiring a level of technical competence in Australian Solicitors Conduct Rules	Law Council of Australia and professional associations	7.5.4; 7.5.5

APPENDIX B

Ethics Approval

On 11 May 2017, at 12:52 PM, ResearchMasterEthics@latrobe.edu.au wrote:
** This is an automatically generated email, please do not reply. Contact details are listed below.**

Dear Paula Baron,

The following project has been assessed as complying with the National Statement on Ethical Conduct in Human Research. I am pleased to advise that your project has been granted ethics approval and you may commence the study.

Application ID: HEC16-116
Application Status/Committee: University Human Ethics Committee

Project Title: The loneliness of the long distance lawyer: the future of the sole practitioner?

Chief Investigator: Paula Baron

Other Investigators: Maxine Evers

Date of Approval: 11/05/2017
Date of Ethics Approval Expiry: 30/09/2018

The following standard conditions apply to your project:

- Limit of Approval. Approval is limited strictly to the research proposal as submitted in your application.

- Variation to Project. Any subsequent variations or modifications you wish to make to your project must be formally notified for approval in advance of these modifications being introduced into the project.

- Adverse Events. If any unforeseen or adverse events occur the Chief Investigator must notify the UHEC immediately. Any complaints about the project received by the researchers must also be referred immediately to the UHEC.

- Withdrawal of Project. If you decide to discontinue your research before its planned completion, you must inform the relevant committee and complete a Final Report form.

- Monitoring. All projects are subject to monitoring at any time by the University Human Ethics Committee.

- Annual Progress Reports. If your project continues for more than 12 months, you are required to submit a Progress Report annually, on or just prior to 12 February. The form is available on the Research Office website. Failure to submit a Progress Report will mean approval for this project will lapse.

- Auditing. An audit of the project may be conducted by members of the UHEC.

- Final Report. A Final Report (see above address) is required within six months of the completion of the project.

You may log in to ResearchMaster (https://rmenet.latrobe.edu.au) to view your application.

If you have any further questions, please contact the:
UHEC at humanethics@latrobe.edu.au
SHE College Human Ethics Sub-Committee at chesc.she@latrobe.edu.au
ASSC College Human Ethics Sub-Committee at chesc.assc@latrobe.edu.au

APPENDIX C

Participants Information Statement

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REGIONAL CAMPUSES
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Albury-Wodonga
Mildura
Shepparton

La Trobe University

University Human Ethics Committee

Participant Information Statement

THE LONELINESS OF THE LONG DISTANCE LAWYER: THE FUTURE OF THE SOLE PRACTITIONER?

Researcher's name: Maxine Evers,

Ethics approval reference number: HEC16-116

mmevers@students.latrobe.edu.au

PhD Student: School of Law

Supervisor: Professor Paula Baron

Project Description: This project considers the experiences of sole practitioners in general practice and the role that they have in facilitating access to justice for communities. The project has a focus on the changes to legal practice and the future of general practice for sole practitioners.

The project consists of interviews with generalist sole practitioners about the work they undertake, the clients they serve and their observations about legal practice and access to justice. Participants may also prepare written notes.

Project Details: The interviews are planned to be between 1 hour and 90 minutes. Participants will be asked to share their experiences as lawyers and to provide their insights as to the future of legal practice for generalist sole practitioners. The participants' observations of the connection between the role of general practitioners and the provision of legal services in communities are also sought.

This project is low-risk and should not cause any harm or discomfort to participants. If, as a result of the interview, participants experience difficulties, they will be encouraged to seek the counselling services provided by their professional associations.

Confidentiality: The confidentiality of participants will be maintained. All references to the participants will be de-identified. The interviews will be recorded and transcribed. The interview transcripts will be submitted to the participants for approval. The audio recordings and any written narratives from participants will be

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CRICOS Provider 00115M

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secured in a locked drawer and the electronic transcripts will be stored in a password-protected computer.

The de-identified data will be disseminated in a thesis, copies of which will be provided to the participants. The data will not be used for any other projects. The data will be securely destroyed at the end of the project. At any time prior to destruction of the data, the audio recording and transcript will be available to participants on request.

There are no adverse consequences for not participating in the research or for withdrawing consent during the project.

Notice to Participants: You have the right to withdraw from active participation in the project at any time. You may also request that data arising from your participation is not used in the research project provided that this right is exercised within four weeks of the completion of your participation in the project. You are asked to complete the "Withdrawal of Consent Form" or to notify the researcher by email or telephone that you wish to withdraw your consent for your data to be used in this research project.

The benefit to participants is the contribution they have made to increasing knowledge and information about sole practitioners and their role in access to justice. The project's finding may inform decisions concerning professional support for practitioners and funding for legal services.

If you are a sole practitioner in NSW or Victoria practising in at least three areas of law and interested in sharing your experiences, please contact Maxine Evers at mmevers@students.latrobe.edu.au.

Any questions regarding the project may be directed to Maxine Evers, La Trobe Law School on 042 222 2538 or mmevers@students.latrobe.edu.au

If you have any complaints or concerns about your participation in the study that the researcher has not been able to answer to your satisfaction, you may contact the Senior Human Ethics officer, Ethics and Integrity, Research Office, La Trobe University, Victoria, 3086 (P: 03 9479 1443, e: humanethics@latrobe.edu.au). Please quote the application reference number **HEC16-116.**

2 / 2

APPENDIX D

Consent Form

LA TROBE UNIVERSITY

COLLEGE OF ARTS, SOCIAL SCIENCES AND COMMERCE

Mailing address
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REGIONAL CAMPUSES
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Mildura
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La Trobe University

University Human Ethics Committee

Consent Form

THE LONELINESS OF THE LONG DISTANCE LAWYER: THE FUTURE OF THE SOLE PRACTITIONER?

Researcher's name: Maxine Evers,

mmevers@students.latrobe.edu.au

PhD Student: School of Law

Supervisor: Professor Paula Baron

I (participant) have read and understood the participant information statement and consent form and any questions I have asked have been answered to my satisfaction. I agree to participate in the project, realizing that I may withdraw at any time. I agree that research data provide by me or with my permission during the project may be included in a thesis, presented at conferences and published in journals on the condition that neither my name nor any identifying information is used.

I consent to the audio recording of my interview with the researcher.

You have the right to withdraw from active participation in the project at any time. You may also request that data arising from your participation is not used in the research project provided that this right is exercised within four weeks of the completion of your participation in the project. You are asked to complete the "Withdrawal of Consent Form" or to notify the researcher by email or telephone that you wish to withdraw your consent for your data to be used in this research project.

Participant's name (printed):

.....

Signature:

.....

Date:

ABN 64 804 735 113
CRICOS Provider 00115M

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