

lawyers, lawyers and more lawyers!

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Can the profession cope with the growing number of law graduates?



We are often reminded of the startling fact that there are more students currently studying to be lawyers in Australia than there are lawyers practising law. And the expansion of law schools over the past 10 years means that there will be more and more law graduates entering the labour market in the future. So will there be a crisis in employment in the Australian legal profession in the near future? Will the new graduates have difficulties finding work? And will the practising profession have difficulties absorbing the graduates? While it is clear that the legal services industry faces a major increase in supply of legally trained graduates it is probably still too early to predict what the precise consequences will be. And it is probably too early to argue that there is a crisis looming. Nevertheless it is worth asking whether we can currently detect early signs of problems in the industry.

Two problems

There are at least two potential problems flowing from the growth in law school places. First, there is the problem of oversupply of legal services; that there will be too many lawyers providing legal services. The profession is concerned, for example, that the amount of legal services needed in the society will not grow quickly enough to absorb the growth in the number of graduates. As a result there will not be enough work for all the graduates coming out of the law schools. And there may not even be enough work for all those who are practising law. We will have to wait and see whether there is in fact an oversupply. But whether there is an oversupply will at least partly depend on how many graduates actually want to practise law. And we should not assume that they will all want to. Currently about 50% of graduates do not enter legal practice but instead use law as a general qualification for a variety of careers. Law is increasingly used in much the same way that a BA was used 20 years ago. That is, it is used as a basic qualification for interesting and well-paid jobs. It is particularly useful for entry into careers in public service or industry where legal skills are valued.

A good way to examine the concern about an oversupply of lawyers is to identify the current rate of employment growth in the legal services industry. In particular we need to identify whether large numbers of legal graduates are currently being absorbed. If there is going to be a problem in the future we may be able to detect signs that employment of graduates is already a problem. But if the industry is currently experiencing rapid growth and absorbing large numbers of graduates then the same trend may very well continue into the future. If there is evidence of a trend of large scale absorption of graduates then this may actually signify that the industry is in a process of rapid change that is resulting in rapid growth. Rapid employment growth may therefore continue into the future.

We can also compare the legal service industry's growth with the growth in the labour force generally to check how that industry is faring

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relatively. If it is growing at a slower rate than the labour force then this might suggest that the industry is already saturated with lawyers. On the other hand if growth is higher than the labour force then it suggests that the industry is not saturated. This sort of data, on its own, will not completely allay fears about the industry's capacity to absorb graduates in the future. But it does paint a picture of the current situation and identify some trends which may continue.¹

A second problem concerns income. Will a rapid increase in the number of lawyers result in a decline in all lawyers' incomes? The profession is certainly concerned that an over-supply of lawyers will lead to a decline in the price paid for legal services. And that as a result lawyers' incomes will decline. Again this may or may not be correct in the future. The Federal and State Governments have recently pushed through reforms to improve competition within the profession. These reforms may result in lower prices for legal services. But as any high school economics student knows, lower prices should also stimulate more demand: there should be more demand for legal work. The net result may very well not be a fall in the profession's income. On the contrary, the result may actually be an increase in income for the profession as a whole, and for most individual lawyers, due to an increased volume of legal work.

A good way to examine the problem is to analyse current income data for the industry. The data may demonstrate that the industry's income is currently in decline. On the other hand the data may demonstrate that the industry is experiencing rapid income growth. But at least we will have an idea of what is currently happening and what might continue to happen if the trend persists. We can also compare the income growth for the legal services industry with the economy generally to identify whether the profession is performing relatively better or worse. Such a comparison identifies at least short-term trends for the future.

The two problems are best dealt with as questions that can be tested empirically. Reliable and relevant data can inform us about the current growth in employment and income, and help us to identify the likely future trends if nothing else changes. But does this sort of data exist for the legal services industry in Australia? Fortunately the Australian Bureau of Statistics recently published its second survey of the 'Legal Services Industry'.² The survey is conducted every five years and provides a snapshot of key features of the industry. In addition the two surveys can be used to identify trends over time.

Below I examine the two problems using the ABS data. First I summarise some of the main features of the Australian legal services industry in order to provide some details of the overall nature of the industry. Then I discuss findings of the survey relating to change in employment and income. Contrary to the concerns that have been expressed, I conclude that the legal services industry is currently experiencing very healthy growth in both employment and income. Whether these trends will continue into the future is unclear but currently the industry seems to be in a good position to continue its rapid growth.

Key features in 1993

The legal services industry employs a large number of people and generates a large income. At the end of June 1993, the industry employed 63,108 people in a total of 8850 legal practices. Women accounted for three-fifths of all employment (see *Table 1*).

Table 1
Employment in the Legal Service Industry 1993

Employment at end June 1993	No.	%
Male	24,941	39.5
Female	38,167	60.5
Total	63,108	100.0

The total value of the legal work undertaken was \$5144 million and the profit before tax was \$1666 million. But the value of the industry's production was just 1.8% of the production of the whole economy, excluding the farm sector. So it is actually a small industry in relation to the economy as a whole.

The survey also identifies some characteristics of legal work. It demonstrates, for example, that much legal work is document based rather than court based. This is reflected in the fact that most legal businesses are solicitors' practices (63%) and most of the rest barristers only (see *Table 2*).

Table 2
Number of Legal Service Businesses by Type, 1993

Businesses at end June 1993	No.	%
Solicitors	5579	63.0
Barristers	3184	36.0
Other	87	1.0
Total	8850	100.0

The industry generates its income from many areas of law but the largest proportion comes from commercial, financial and business law (32%). Conveyancing, or sale of houses and land, is still the second highest income earner for the profession despite the freeing up of restrictions on who can do that work over the past few years. Conveyancing still accounts for 15% of the profession's income (see *Table 3*). When we see this sort of income flowing from conveyancing we begin to appreciate why some sections of the profession have resisted government moves to break the profession's monopoly over this work. Conveyancing is a very lucrative form of work indeed, generating \$748 million of the profession's income. Nevertheless, we should not assume that this is complex legal work. It is, of course, usually fairly straightforward clerical work. In legal firms, it is usually undertaken by clerks under the supervision of lawyers, and in those States where non-lawyers are allowed to do this work, the cost of conveyancing is considerably cheaper than where lawyers maintain the monopoly.

Table 3
Source of Income for Legal Service Industry 1993

Income from legal services	\$ million	%
Commercial, financial & business	1637.4	31.8
Property conveyancing	747.8	14.5
Other property work	320.9	6.2
Family law	307.8	6.0
Criminal law	241.9	4.7
Probate	185.1	3.6
Environmental	82.3	1.6
Other law	1199.3	23.2
Other income	421.5	8.4
Total	5144.0	100.0

We are also reminded that most legal work is not undertaken for ordinary citizens. *Table 3* demonstrates that very little of the profession's work is concerned with the ordinary legal problems of citizens, such as family, criminal, and wills and estates (or probate). In this light it becomes clearer why the profession has been slow to consider reforms to practices which might reduce legal costs to the citizens.

The Australian legal services industry is highly concentrated in NSW and Victoria if measured in terms of the number of businesses and the total employment or the gross income (see *Table 4*). The ABS notes that 60% of Australia's population lives in those two States but that almost three-quarters of the country's legal work is conducted there. Why is this? Because those two States are the financial and commercial centres of the country. Also conveyancing, or sales of houses and land, is undertaken by non-lawyers in other States such as SA and WA, thereby reducing the profession's income.

Table 4
State Breakdown of Legal Services Industry 1993

State/Territory	No. of businesses	Total employment	Gross income \$million
New South Wales	3590	25,208	2243.5
Victoria	2884	16,932	1427.8
Queensland	1341	11,136	742.7
South Australia	397	3222	240.7
Western Australia	378	3774	304.7
Tasmania	108	1092	61.2
Northern Territory	40	400	29.9
ACT	113	1,344	93.5
Australia	8850	63,108	5144.0

Over the five-year period the structure of the industry became more polarised into both small and large legal practices. Contrary to the concerns in the 1980s about the growing domination of the industry by large or 'mega' law firms the industry is actually dominated by small businesses. The number of small firms, those employing less than 20 people, grew by 40% over the five years to 1993. But the number of very small firms increased even more dramatically. Those employing less than four people increased by more than half to nearly 6000 practices over the period (see *Table 5*). The total employment in the firms employing less than 20 people increased from 28,000 to 33,500 over the period. The rapid growth of the small firms resulted in the average size of all Australian legal businesses declining substantially from 8.6 to 7.1 persons per business. The legal services industry is an example of an industry increasingly dominated by small businesses. It is also an example of an industry that has successfully absorbed large numbers of lawyers into small businesses. If such a trend continues, the future absorption of graduates may not be a problem.

At the same time as rapid growth occurred in the number of small firms, the number of very large law firms also increased. The number of practices employing more than 100 people increased by more than 50% in the five-year period. The actual number of very large firms increased from 42 to 64 and the total employment in these large firms increased from 9765 to 13,696.

Table 5
Change in Business Size in Legal Services Industry, 1988-93

Employment size (persons)	End June 1988	End June 1993	% Change
0-4	3722	5882	58.0
5-9	1480	1677	13.3
10-19	749	798	6.5
20-49	374	343	-8.3
50-99	92	86	-6.5
100 or more	42	64	52.4
Total	6459	8850	37.0

In effect, the industry grew dramatically at either end of the scale. The number of small and large firms increased. Did any section of the industry not grow? In fact the number of medium-size firms, those employing 20-99 people, declined by 8%. So it seems that neither the days of the sole practitioner, nor the large law firms, are over. But if the trend of rapid growth at both ends of the scale continues then the future employment prospects for legal graduates looks promising.

There has been substantial change in the gender balance of law students over the past 20 years or so. Women now make up more than 50% of those studying law. But the overall gender balance in the legal services industry has, paradoxically, declined due to the fact that male employment growth was the most rapid and that they were employed as practising lawyers. Employment of women and men grew rapidly over the period but the latter grew at nearly three times the rate of the former (see *Table 6*).

Table 6
Change in Employment in the Legal Services Industry by Gender, 1987/8-1992/3

Employment at 30 June	1987/8	1992/3	% Change
Male	20,301	24,941	22.9
Female	35,062	38,167	8.9
Total	55,363	63,108	14.0

The gender employment patterns have changed in other ways. While women account for 60% of employment in the industry they are, and have been, clustered at the lower levels of responsibility and income. So 85% of non-legal staff are women, employed as secretaries and paralegals. The gender balance among the legally qualified personnel has also changed substantially over the five-year period. But the gains have been patchy and overall are less than dramatic. For example, the proportion of all barristers and solicitors who are female increased by a dramatic 41% to 5411, over the five-year period. At the same time the proportion of women in the senior echelons of the profession (principals and partners), increased from 8 to 12%. While this is a massive 50% increase, it is from a very low starting point. It seems that women still find it hard to get to the top in this industry. The profession still has a long way to go in addressing gender employment patterns.

In the next section I discuss the data in relation to the two problems outlined at the beginning of the article.

Problem 1 — employment

The ABS survey demonstrates that the legal services industry has grown dramatically over the five years to June 1993. First, the number of legal businesses increased by a massive 37%. In addition, total employment grew by 14%. And employment growth is occurring in both large and small firms. Contrary to concerns that the small business sector is declining, the ABS survey shows that the small firms employing less than 20 people accounted for much of the growth. Total employment in these small firms increased from 28,035 to 33,473 over the five-year period to the end of June 1993. The small legal firms are flourishing and boosting overall employment in the industry in the process. At the same time, the large firms are also growing in number as is the total number of people they employ. The total number of people employed in the firms that employ more than 100 people increased from 9765 to 13,696 over the period from 1988 to 1993. That is a hefty 40% growth in employment.

The employment in the industry grew rapidly and it particularly favoured lawyers. Employment of legal graduates made up the bulk of the growth. The number of legally qualified members of the industry grew by a massive 31% over the five years but employment growth overall was only 14%. So the industry also changed the proportions of legal and non-legal staff. Many more lawyers were employed than non-lawyer support staff. As a result, legally trained staff became less reliant on support staff. For each barrister or solicitor there was 1.9 support staff in 1988 but this had declined to 1.6 support staff by 1993. The impact of technology and cost cutting would together account for this decline in support staff. This data suggests, therefore, that the industry is in a process of change. It seems to be increasingly relying on legal staff and it will probably continue to do so. The employment prospects for legal graduates may, as a result, continue to be very bright for the foreseeable future.

The ABS survey also demonstrates that the legal services industry grew at nearly three times the rate of employment growth in the Australian economy. The legal services industry grew at 14% over the five years while the economy generally grew at only 5%. Therefore the industry is growing rapidly, absorbing large numbers of legal graduates, and seems to be able to generate new legal work for them.

The data suggests that the industry may be able to employ large numbers of graduates in the future if the current growth rate continues. But we can't say for certain if the industry will keep absorbing new graduates. It is possible that there may be very few new jobs in the future, or that the industry's rate of growth may not be sustained. Alternatively, the high level of growth and the greater competition may result in more legal work and more employment in the future as Australian citizens are encouraged to use lawyers more to assist them with all sorts of problems. We will have to wait and see. But we can be reasonably confident that the industry should be able to continue to employ large numbers of new graduates. Whether this is enough to give legal work to all those who want it is of course another matter.

Problem 2 — income

The income generated by the legal services industry grew rapidly over the five-year period from \$3079.1 million to \$5144 million in 1993. This rate of growth of 67% far exceeded the rate of growth of the industry's expenses of 54.4%. As a result, not only did the income increase but also the industry's profits grew substantially. And the profits grew

rapidly despite the fact that the survey period included the 'recession that we had to have'. The ABS uses a number of different measures to quantify profitability but the legal services industry profitability was remarkable on any measure. For example, operating profit before tax for the industry as a whole, increased by 102%, or over 20% in each of the five years. Another measure is the average operating profit for legal services businesses. This increased by 47% over the period, or over 9% per year. This is healthy rate of growth to say the least. But it is even more healthy when you consider that the rate of inflation as measured by the Consumer Price Index increased by only 26% over the period. Profit per business grew by almost double the rate of inflation. Wages certainly did not rise by this sort of percentage over the period and nor did farm incomes. Finally, the ABS notes that the profit margin for all legal services businesses was nearly six times the profit margin for all non-farm businesses in the economy generally. This is undoubtedly an extremely profitable industry.

The data therefore demonstrate that the legal services industry generates a high level of income, that income has grown very rapidly over the past five years and far more rapidly than the economy generally. It is also a very profitable industry and more so than businesses in the economy overall. It is difficult not to conclude that the future prospects for the legal services industry are good. And it is therefore difficult to be too concerned at the moment about the profession's capacity to maintain its income as a whole, or for individual lawyers.

Conclusion

We have seen that the profitability and employment growth in the legal services industry have been very healthy over the five-year period to 1993. The healthy growth suggests that the concerns about the ability of the industry to absorb graduates and to maintain high rates of income growth are, in the short term at least, unfounded. Based on the performance of the past five years, there seems little to worry about in terms of the capacity to both absorb new members into legal practice and to maintain income levels. This is not to say that the future may bring substantial change, but at the moment there is little cause for concern.

The legal services industry is in fact a spectacular success story of the past five years. The ABS data suggests that one key to continued employment and income growth may be for the industry to continue to expand at either end of the scale, as both small and large businesses. In this way large numbers of graduates may continue to be employed. But the data also suggests that if the industry continues to become more competitive and diversify into new areas of legal practice then it may continue to absorb large numbers of graduates and maintain high levels of income growth. It is still relatively easy to get a job in this highly paid occupation and will probably continue to be so in the foreseeable future. This is more than can be said for a lot of other occupations.

References

1. The data therefore does not tell us whether all those who graduate and want to practice law currently are able to find jobs in the industry. The discussion here focuses on the growth in the industry not the demand for employment in the industry.
2. Australian Bureau of Statistics (1995), *Legal and Accounting Services, Australia 1992-93*, Australian Bureau of Statistics, Canberra (Catalogue No. 8678.0).