



Summary Report

**Department of Innovation, Industry, Science
and Research**

Industry and Small Business Policy Division

— Small Business Dispute Resolution —

June 2010

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I. Introduction

A. Background

The Department of Innovation, Industry, Science and Research (DIISR) was investigating the extent to which there is an unmet demand for dispute resolution processes by small business.

Specifically, the research was to focus on disputes between these small businesses and other, Australian-based businesses – as opposed to disputes between small businesses and government, employees, or other parties.

ORIMA Research was contracted to conduct this research in May 2010.

This report presents the results of the research.

B. Research Objectives

The objectives of the research were to:

- ◆ gauge the incidence of disputes experienced by the small business community in Australia;
- ◆ gauge if such disputes are concentrated in specific industry sectors;
- ◆ identify the common issues and themes that characterise these disputes;
- ◆ identify the range of mechanisms currently being used to resolve the disputes;
- ◆ assess whether there is an unmet demand for dispute resolution processes by small business;
- ◆ gauge the current awareness and understanding of Alternative Dispute Resolution solutions;
- ◆ gauge the cost on a business of managing disputes (where there is a dispute in progress or in the recent past);
- ◆ measure the proportion of businesses that had sought (or would have liked to have had) support in resolving a dispute with another business thus to gauge the proportion of businesses who were not able to find appropriate support.

C. Methodology

Research Design

The methodology contains three major components:

- Desk research (into the range of dispute resolution mechanisms available, conducted by the DIISR prior to the main body of the research);
- In-depth qualitative interviews – specifically targeted at business stakeholders who may be in a position to provide high level insights about the use of dispute resolution processes including mediation (e.g. accountants, solicitors and a small number of small businesses); and
- A telephone survey – representative of the small business community, enabling reliable statistical extrapolations.

Questionnaire Development

The questionnaire was drafted based on findings from the desk research and in-depth interviews and further developed through a two-hour questionnaire development workshop, for which the draft questionnaire will form a basis, with the DIISR project team.

Survey Administration

Interviews were conducted by ORIMA Research’s fieldwork partner (Lighthouse Data Collection), using a Computer Assisted Telephone Interview (CATI) system.

Sample was drawn from Yellow Pages business listings.

Fieldwork was split into two components, as shown in the table below:

- ◆ A preliminary “pilot” phase tested the workability of the questionnaire and provided an indication of the incidence of businesses that had recently (in the past 5 years) experienced a dispute with another Australian business.
- ◆ A second phase was then conducted, with sample drawn so as to allow for approximately 300 interviews with businesses that had recently experienced a dispute with another Australian business.

Stage	Fieldwork dates	Businesses with serious disputes (longer survey)	Businesses with no serious disputes (shorter survey)	Total interviews
Stage 1	10-14 May 2010	50	238	288
Stage 2	20 May to 1 June 2010	254	1,465	1,719
Totals		304	1,703	2,007

II. Survey Findings

A. The Incidence of Dispute Experienced by Small Businesses

Overall, slightly fewer than one in five of those Australian small businesses surveyed had experienced a disagreement or dispute of some kind over the past five years. The nature or seriousness of these disputes varied considerably across businesses, ranging from being (see Figure 1):

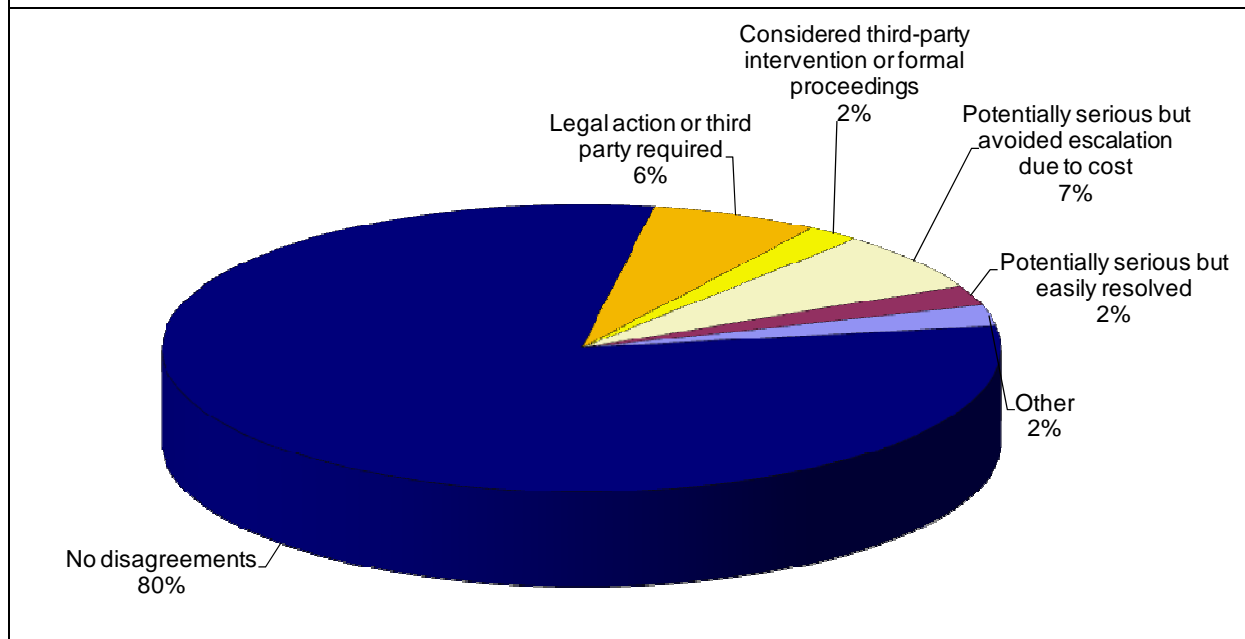
- ◆ routine and minor, not something to worry about (1.5%)
- ◆ potentially serious but easily resolved without escalation (2.3%);
- ◆ potentially serious but avoided escalation due to potential costs (6.6%);
- ◆ serious enough to consider utilising third-party intervention but did not actually do so (2.0%);
- ◆ of a nature that required intervention by a third party or self-representation in formal proceedings (1.8%); to
- ◆ serious enough to result in legal action being taken by either business involved in the dispute (4.6%).

Just less than 1% of businesses had experienced disputes with overseas businesses or in regards to franchising or retail tenancy. These disputes are not considered within the scope of this research and will not be reported on further.

80% of respondents noted that they had not experienced a dispute or disagreement in the last five years.

Figure 1: Incidence of different types of disputes¹

(Base: all respondents, n=2007)



Incidence of disputes by industry sector

The incidence and seriousness of disputes experienced varied across industry sectors. As can be seen in Figure 2, the small businesses that were more likely to have disputes where they needed to take legal action or involved third party intervention tended to be concentrated in the following sectors:

- ◆ Mining (17%);
- ◆ Wholesale trade (17%);
- ◆ Electricity, gas, water and waste services (13%); and
- ◆ Construction (12%).

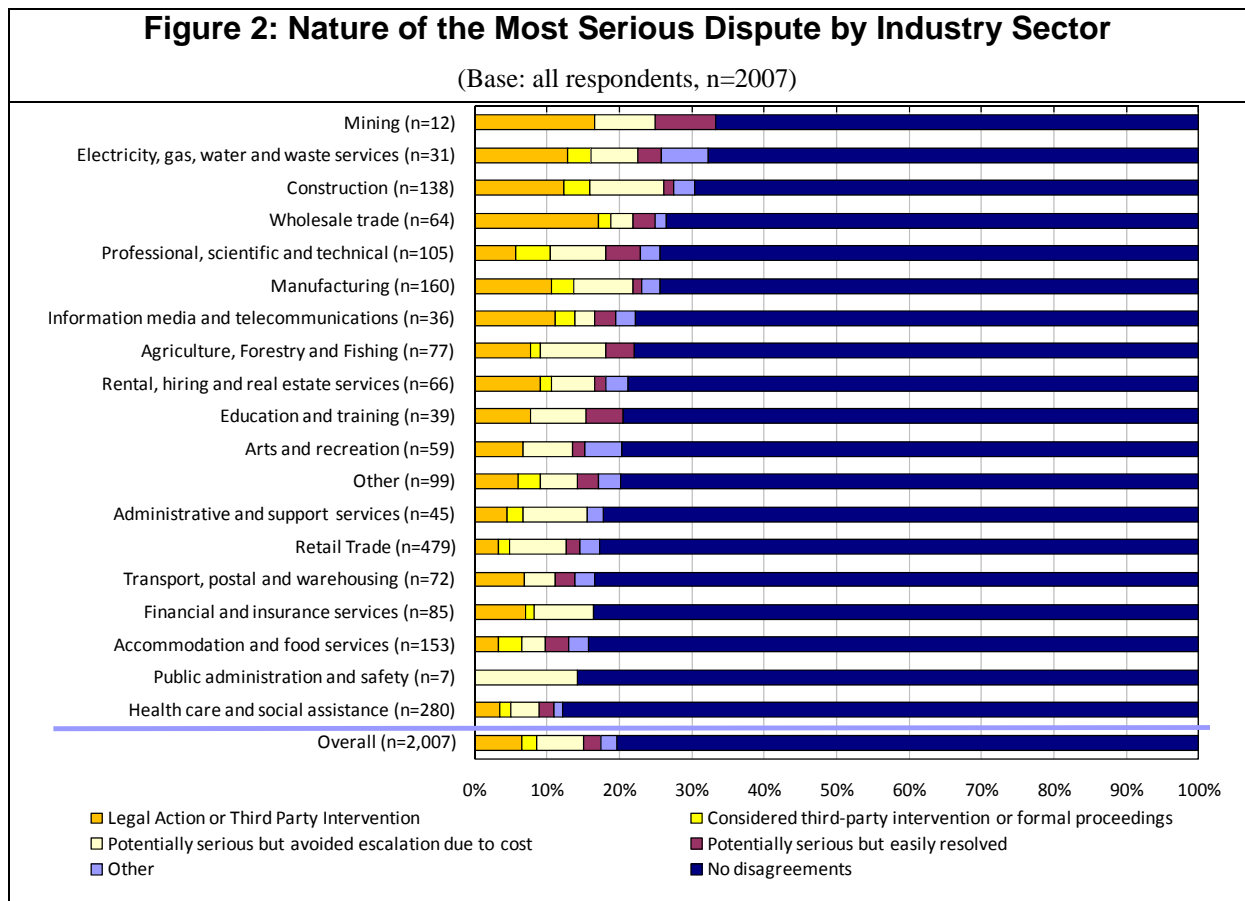
The sectors least likely to have any kind of dispute (including those that were easily resolved) were the:

- ◆ Health care and social assistance (12% disputes overall); and
- ◆ Public administration and safety sectors (14% disputes overall).

¹ An 'Other' type of disagreement here refers to routine and minor disputes, disagreements with overseas businesses only, and disagreements in regards to franchises or retail tenancy only.

The spread of types of disputes also varied across industries. For example, the mining industry had the highest percentage of disputes that were easily resolved (8%), followed by education and training (5%).

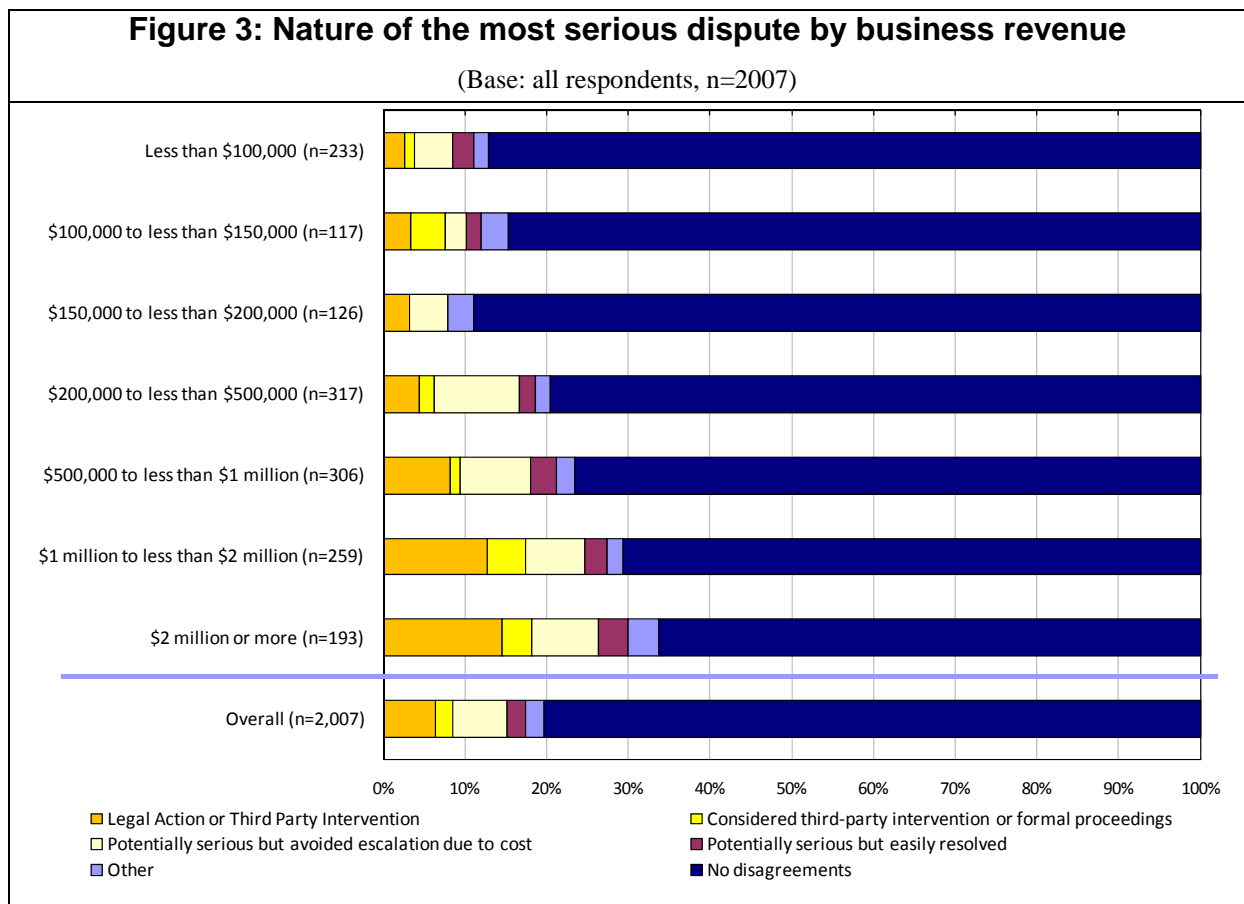
In contrast, public administration and safety (14%) had the highest level of disputes for which third party intervention was considered, followed by construction (10%).



Incidence of disputes by business characteristics

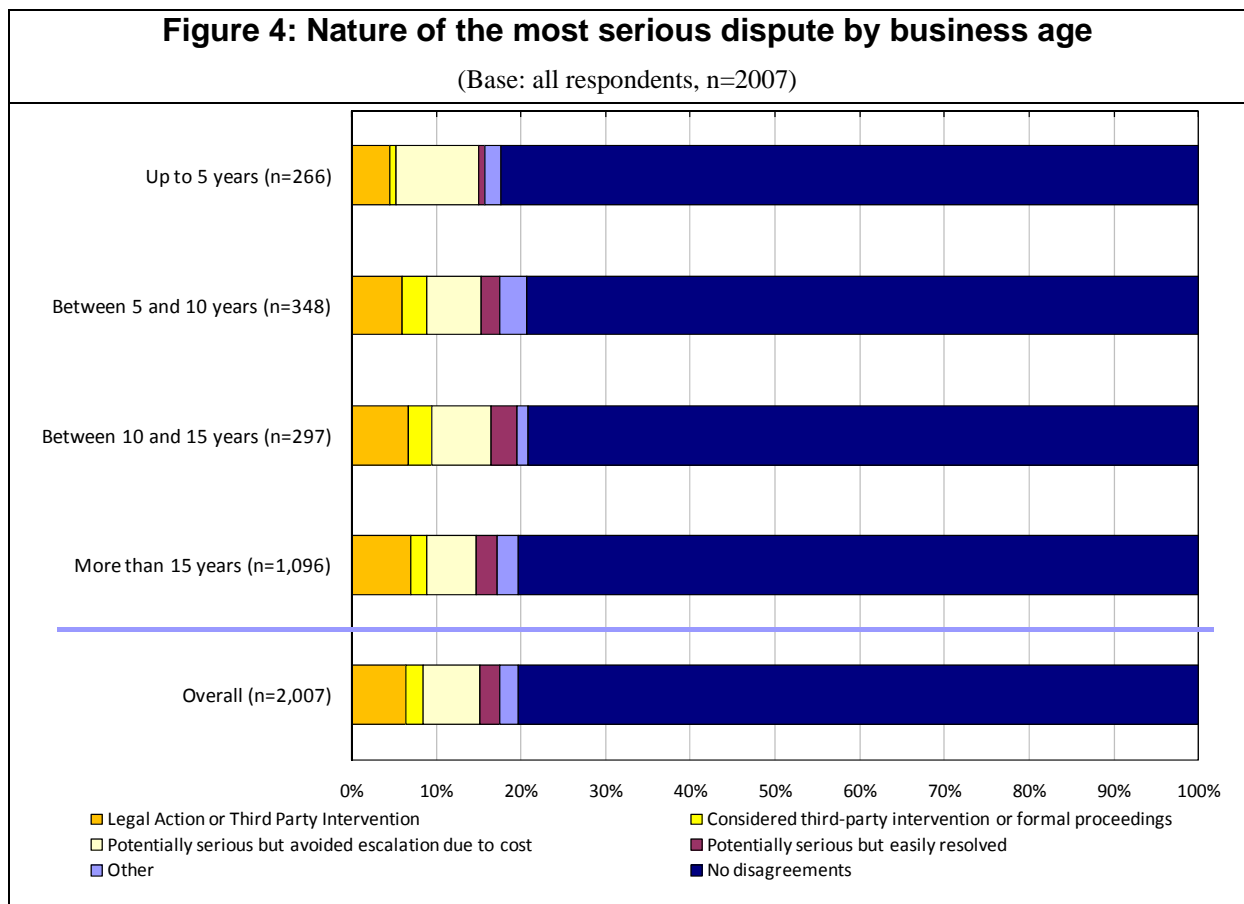
The level of self-reported business revenue of the respondents had a relatively linear relationship with the incidence of disputes and their seriousness (as seen in Figure 3):

- ◆ Those businesses whose revenue was over \$1 million were considerably more likely (18% average) than those of a lower revenue bracket (6% average) to have experienced disputes where they had at least considered third part intervention (or had actually undertaken such intervention).
- ◆ Businesses that fell into the \$200,000-\$500,000 revenue bracket were most likely to have experienced a potentially serious dispute where they avoided escalation due to the potential cost (10%).
- ◆ Businesses that fell into the \$150,000-\$200,000 revenue bracket were least likely to have had any kind of dispute (11% disputes overall, including those that were easily resolved).



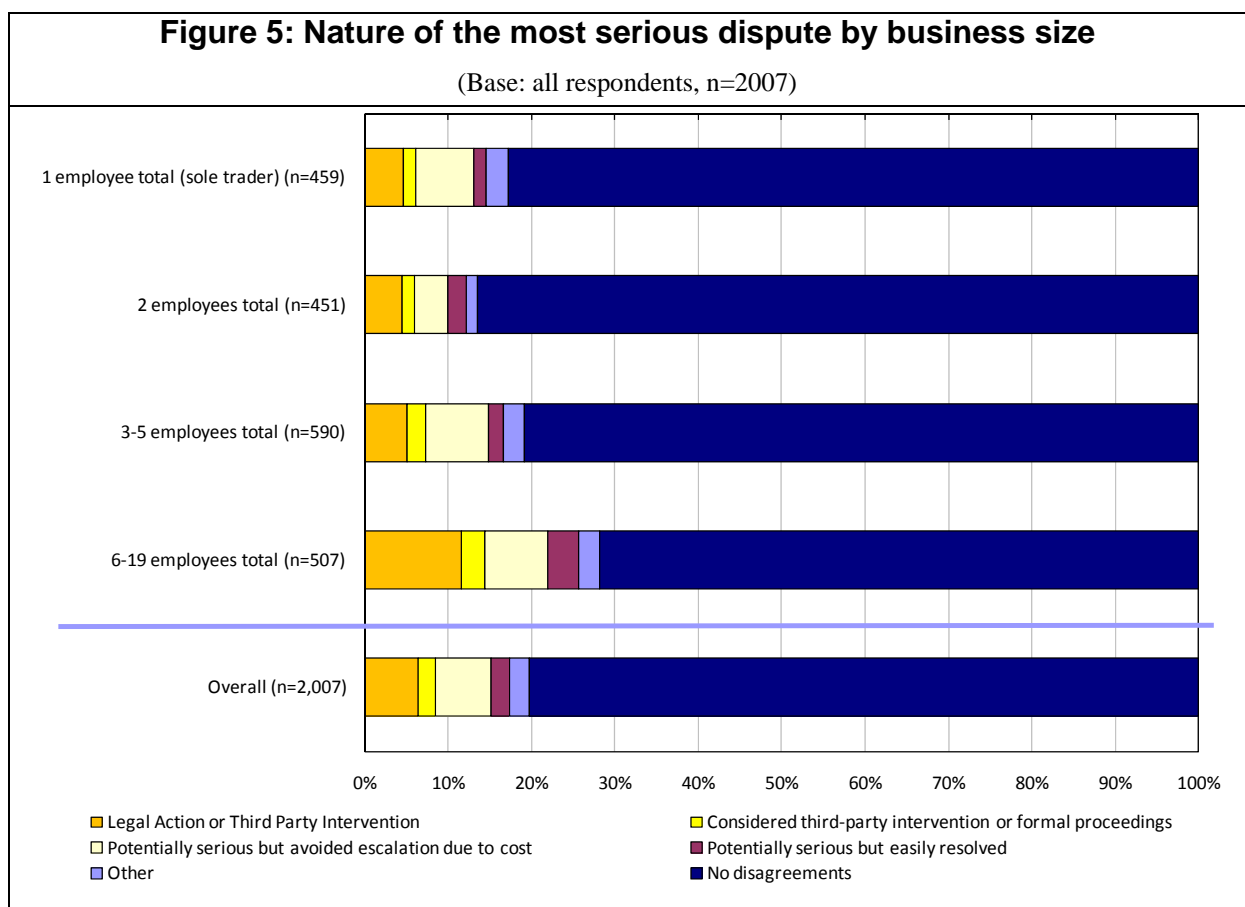
As can be seen in Figure 4, when examining the relationship between the length of time the business had been operating and the type of disputes the respondent had experienced, there was very little differentiation, other than the following:

- ◆ Businesses younger than 5 years old were least likely to have considered third party intervention at all, with only 5% of them having involved a third party or taken legal action.
- ◆ These businesses were also the most likely to have avoided dispute escalation due to the potential cost of such an action (10%).



In comparison, when examining this relationship by the size of the business (see Figure 5), there was some differentiation:

- ◆ Businesses with between 6 and 19 employees were the most likely to have experienced a dispute where they took legal action or utilised a third party intervention (12%);
- ◆ These businesses were also most likely to have experienced disputes overall, with 28% having experienced a dispute of some kind (including routine and easily resolved disagreements).
- ◆ Sole traders and those with only one other employee were the least likely to have experienced a dispute, and were proportionally more likely to have avoided a dispute due to the potential cost of such an action.



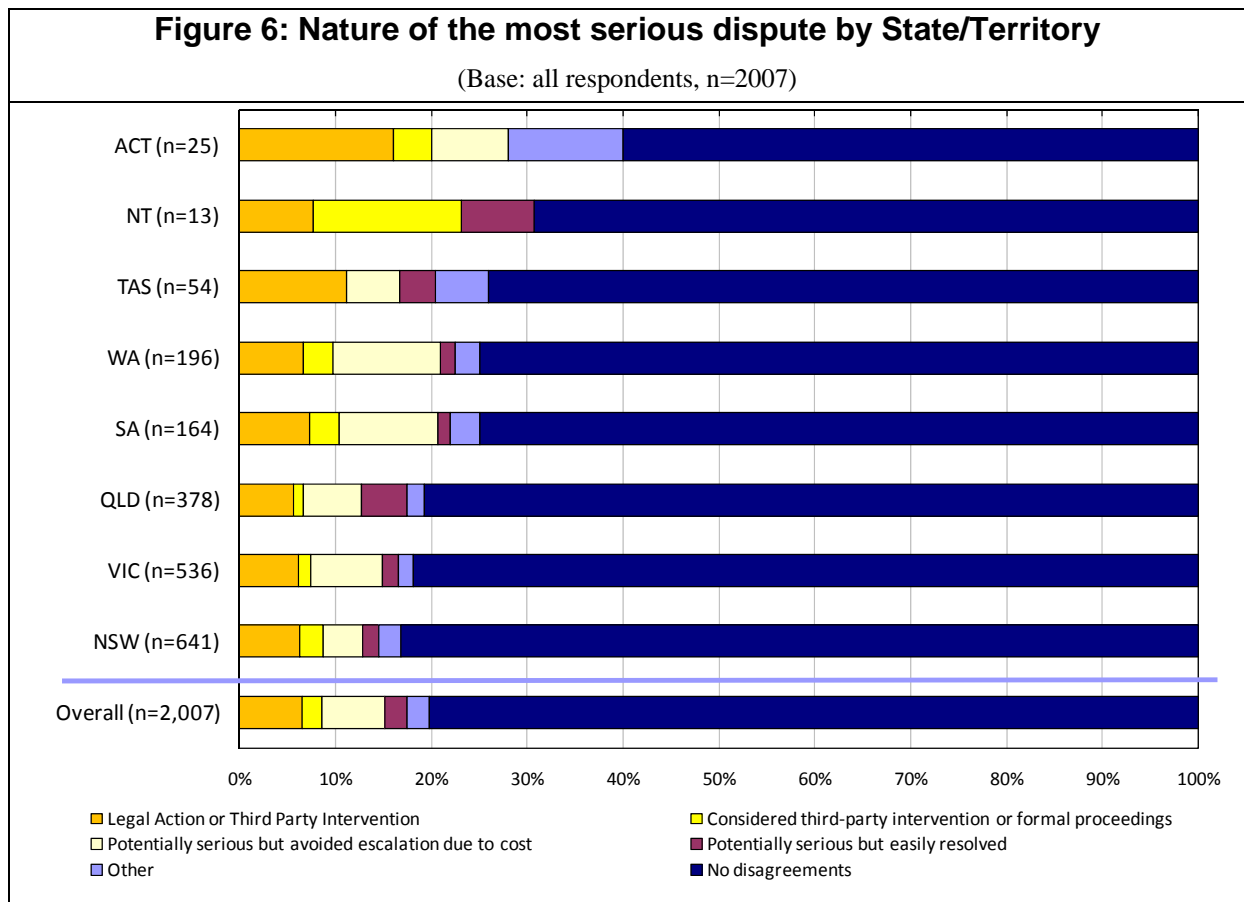
Incidence of disputes by location

Two indications of location were collected from respondents. The first was the respondents' State or Territory; and at first glance it appears to have significant differentiation in terms of the incidence and nature of the disputes experienced, as seen in Figure 6.

- ◆ However, these results must be interpreted with caution, given the small numbers of businesses sampled in the Australian Capital Territory and the Northern Territory (for example, only four people in the ACT noted that they had utilised legal or third party intervention).²

It is interesting, nonetheless to examine these results:

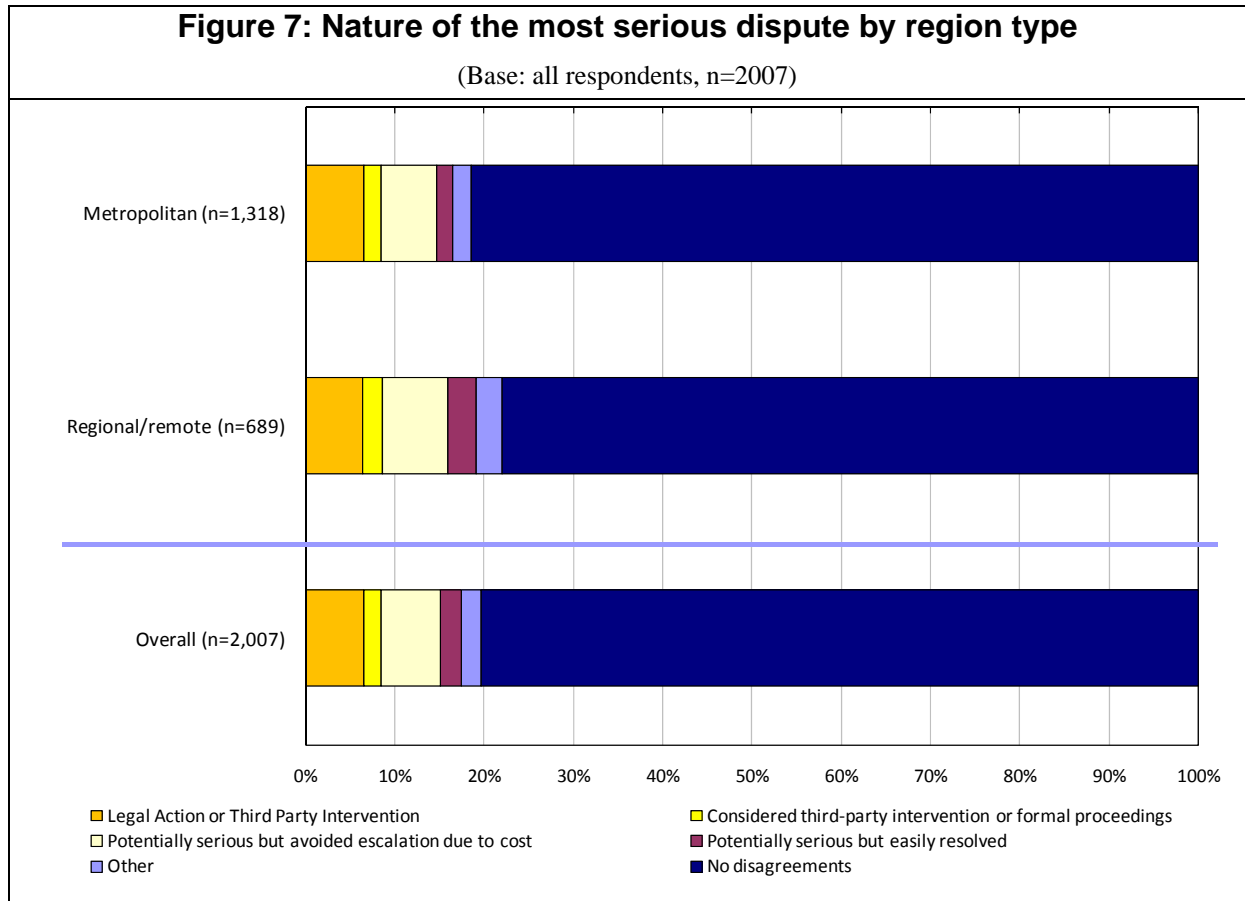
- ◆ Businesses in Western Australia (11%) and South Australia (10%) were more likely to have avoided escalation due to the potential cost.
- ◆ Businesses in Tasmania were the most likely, outside of the ACT, to have experienced a dispute that required legal action or third party intervention (11%).
- ◆ Businesses in the NT (8%) and Queensland (5%) were most likely to have had disputes that were easy to resolve.



² This caution should extend to the remainder of the report for data from the ACT and the NT, due to sample sizes. Although the samples from these Territories are relatively proportionate to their population levels, these sample sizes could lead to perception of an effect where they may truly be none.

The second indicator of location collected in the survey was whether respondents were based in metropolitan, regional, or remote areas. As can be seen in Figure 7, there is little difference between the businesses in metropolitan versus regional and remote areas.

- ◆ Businesses in regional and remote areas were slightly more likely to have experienced any kind of dispute (22%) as opposed to those in metropolitan areas (18%).



B. Characteristics of disputes

Parties involved

Of the 9% of businesses who had experienced a dispute where they had taken legal action, involved a third party, or considered such action (henceforth referred to as a 'serious' dispute), the majority identified that the counterpart to the dispute was a client or business customer (54%).

- ◆ 33% noted that it was a supplier for their business;
- ◆ 5% said that it was a business partner or associate; and
- ◆ 4% said that it was a competitor.

4% of respondents noted that it was someone else, including subcontractors or other parties, such as the bank or a body corporate.

Current status of the dispute

Of the 19% of businesses who had experienced any kind of dispute (including routine and minor disputes), 35% overall noted that they had avoided escalation of the disagreement due to the potential cost of such an action. A further 20% explained that their most serious recent dispute had been easily resolved or was routine and minor.

Those who had experienced a serious disagreement (45% of businesses who had experienced a dispute, 9% of all businesses) were somewhat more spread out in terms of their current status:

- ◆ 17% were ongoing;
- ◆ 7% were resolved to the satisfaction of both parties;
- ◆ 9% were resolved to the respondents' satisfaction; and
- ◆ 12% were completed, but not to the respondents' satisfaction.

Issues that the disagreement(s) encompass

The 9% of respondents who had experienced a serious disagreement (that necessitated use of a third party or legal action, or consideration of such action) were asked to classify the types of issues that the disagreement had encompassed.

- ◆ 65% indicated that it had been a disagreement over payment for goods or services;
- ◆ 30% indicated that it was over other contractual obligations (excluding payment, retail tenancy and franchising issues); and
- ◆ 7% indicated that it was another issue.

Responses to further inquiry about the types of issues these might entail revealed a number of issues, including the following:

- ◆ A client had been unable to pay the bill (45%);
- ◆ Respondents had had disagreements with their suppliers in regards to the quality of the goods or services provided (27%);
- ◆ An agreement of some kind (whether formal or informal) had been broken or contravened (20%);
- ◆ Respondents had been charged erroneously by suppliers (14%);
- ◆ The respondent's client had been unhappy with their product or service (10%); and
- ◆ A client had been unable to pay their bill due to bankruptcy or liquidation (9%).

Cost of the dispute

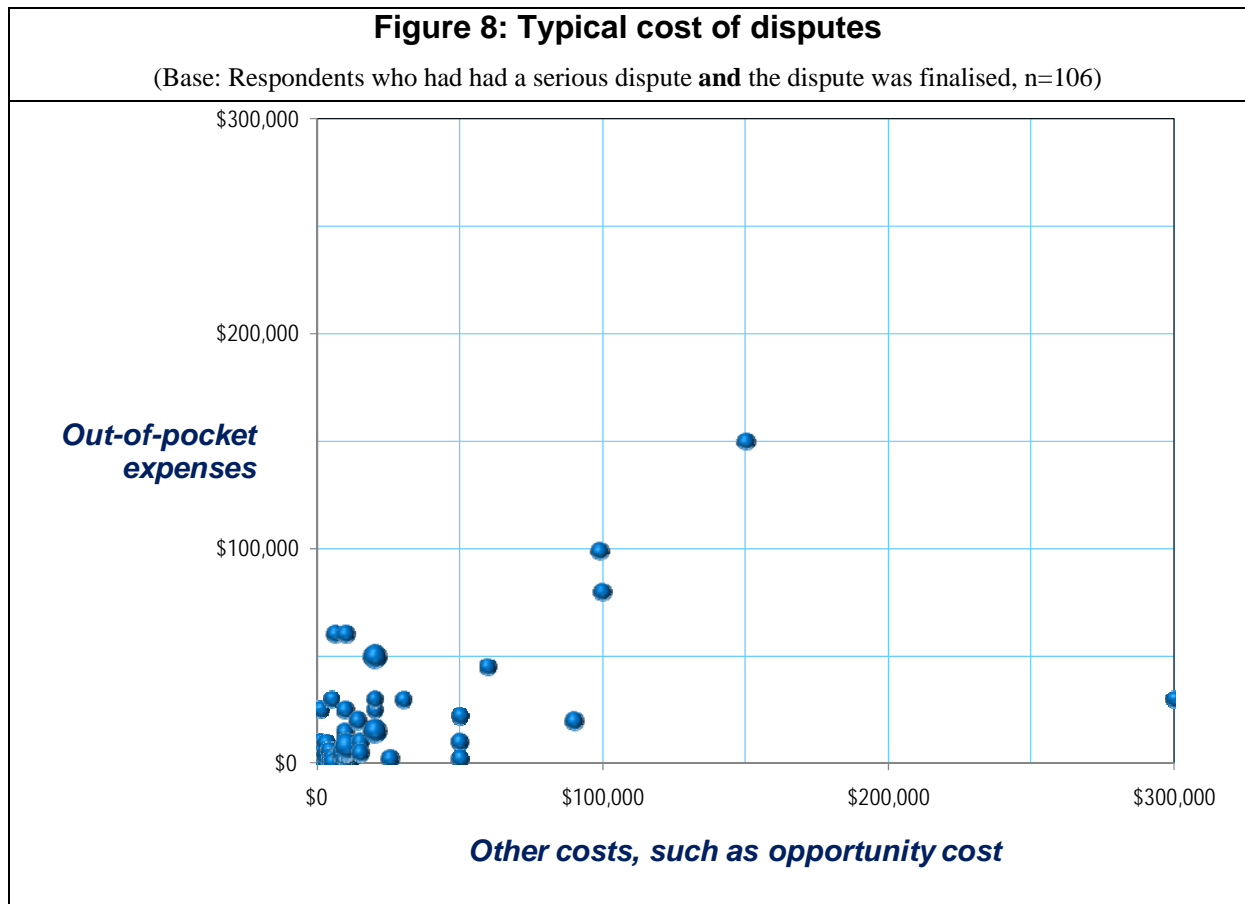
Respondents who had experienced a dispute were asked to estimate their out-of-pocket expenses for their most serious dispute in the last five years, as well as their lost business opportunity and other costs.

The out-of-pocket costs ranged from \$0 (6%) to \$ 160,000 (1%). The costs were relatively evenly spread. 50% of respondents indicated that their out-of-pocket expenses had been \$2,000 or less.

Figure 8 explores the relationship between the disclosed out-of-pocket expenses and other costs that respondents felt their business had suffered as a result of the dispute they had experienced.

- ◆ The figure shows that out-of-pocket costs were indicated over a smaller range than 'other' costs.³ However, in both cases the vast majority (around 90%) of costs were clustered below \$50,000.
- ◆ Generally respondents' 'other' costs were considered to be larger than their actual out-of-pocket expenses were for the dispute.

³ Figure 8 also excludes two outlying data points that cited \$750,000 and \$1,000,000 as the other costs they had/would incur as a result of the dispute.



The findings show that there was some variability in out-of-pocket expenses by State. The following values show the median out-of-pocket expenses in each State. An analysis of the median values by State showed that South Australia had significantly higher out-of-pocket expenses than Queensland.

The median values indicate that 50% of respondents in the following States had out-of-pocket expenses equal to or less than the following:

- ◆ South Australia (n=11): \$6,000
- ◆ New South Wales (n=31): \$2,500
- ◆ Victoria (n=28): \$1,000
- ◆ Western Australia (n=13): \$1,500
- ◆ Queensland (n=14): \$500.

The ACT, Tasmania and the NT are not included here due to very small sample sizes.

A similar analysis was performed in terms of revenue of the business. In this case, there seems to be a linear relationship, such that businesses with higher revenue generally disclosed higher out-of-pocket expenses for their most serious dispute in the last five years.

Median out-of-pocket expenses by revenue are as follows:

- ◆ \$200,000 to less than \$500,000 (n=14): \$1,000
- ◆ \$500,000 to less than \$1 million (n=17):\$1,300
- ◆ \$1 million to less than \$2 million (n=27): \$2,500
- ◆ \$2 million or more (n=24): \$5,000.

C. Dispute resolution mechanisms used

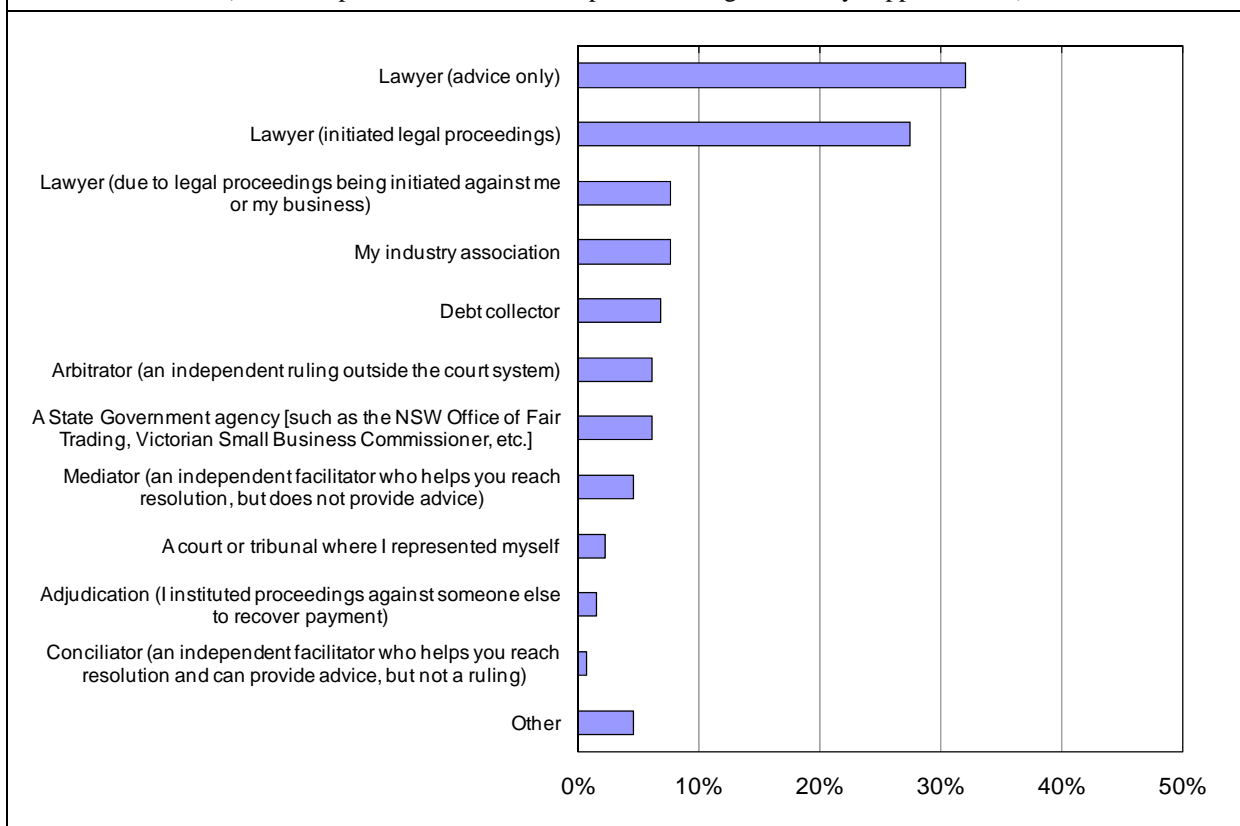
Third Parties that were approached

Figure 9 identifies the range of third parties approached by the 6% of all respondents who had experienced a dispute and approached a third party to help resolve the matter. The main third parties approached were lawyers, industry associations and/or debt collectors. Dealings with lawyers ranged from simply seeking advice through to proceeding with or defending legal action:

Of those respondents who underwent legal proceedings, 26% had their case heard in court.

Figure 9: Use of third party dispute resolution support

(Base: Respondents who had a dispute and sought 3rd Party support n=131)



Across states, there were similar patterns of use of third parties, with legal advice and initiation of legal proceedings being the two most popular for all states. The one exception was Tasmania, where they were likely to have approached a lawyer for advice (33%) or to have represented themselves in front of a court or tribunal (33%; bearing in mind that only 6 respondents answered this question).

Use and satisfaction with Government services

15% of all businesses had serious or potentially serious disputes (they utilised third party or legal support, considered it, or avoided escalation due to the potential cost of disputes). These businesses were asked whether they had used government information sources to help in resolving their dispute.

Table 1 summarises the use of government phone hotline or website services among these respondents (n=304).

Table 1: Use of Government Support Services

Base: Respondents who utilised third party or legal support, considered it, or avoided escalation due to the potential cost of dispute (n=304)

<i>Level of Government</i>	<i>Hotline</i>	<i>Website</i>	<i>Total (hotline or website)</i>
Australian Government	2%	3%	4%
State Government	5%	7%	10%
Government (cannot recall which)	2%	6%	6%
Total Government	10%	15%	19%

Of the businesses that had utilised Government services, 43% felt that the information or guidance that was provided was helpful in resolving the dispute.

57% of the businesses that had used Government services were satisfied with the quality of the information or guidance provided.

When examining the helpfulness of the information and satisfaction with the quality of the information by State or Territory (interpreting with caution given the very small sample of businesses being used):

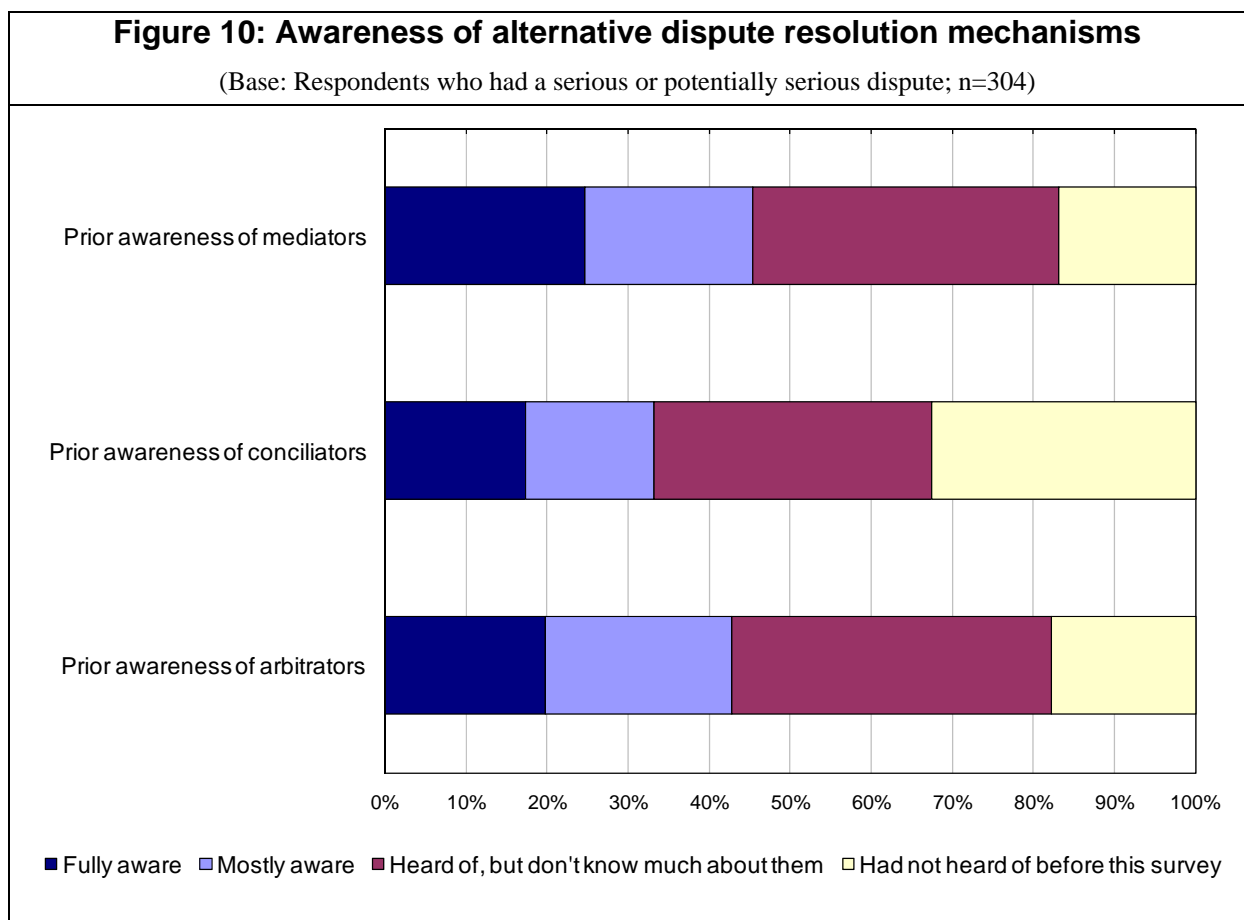
- ◆ South Australia seems to be the least satisfied, with 25% of these respondents strongly disagreeing that the information was helpful, and 27% being very dissatisfied with the quality of the guidance
- ◆ NSW was the most satisfied, with 73% agreeing or strongly agreeing that the information was useful, and being satisfied with the quality of the guidance.

Awareness and Understanding of Alternative Dispute Resolution mechanism

As can be seen in Figure 10, of the 15% of all businesses (80% of all disputes) that had serious or potentially serious disputes:

- ◆ 45% indicated that they were mostly or fully aware of the role played by **mediators**;
- ◆ 43% were mostly or fully aware of the services offered by **arbitrators**; and
- ◆ 33% indicated that they were mostly or fully aware of the role played by **conciliators**.

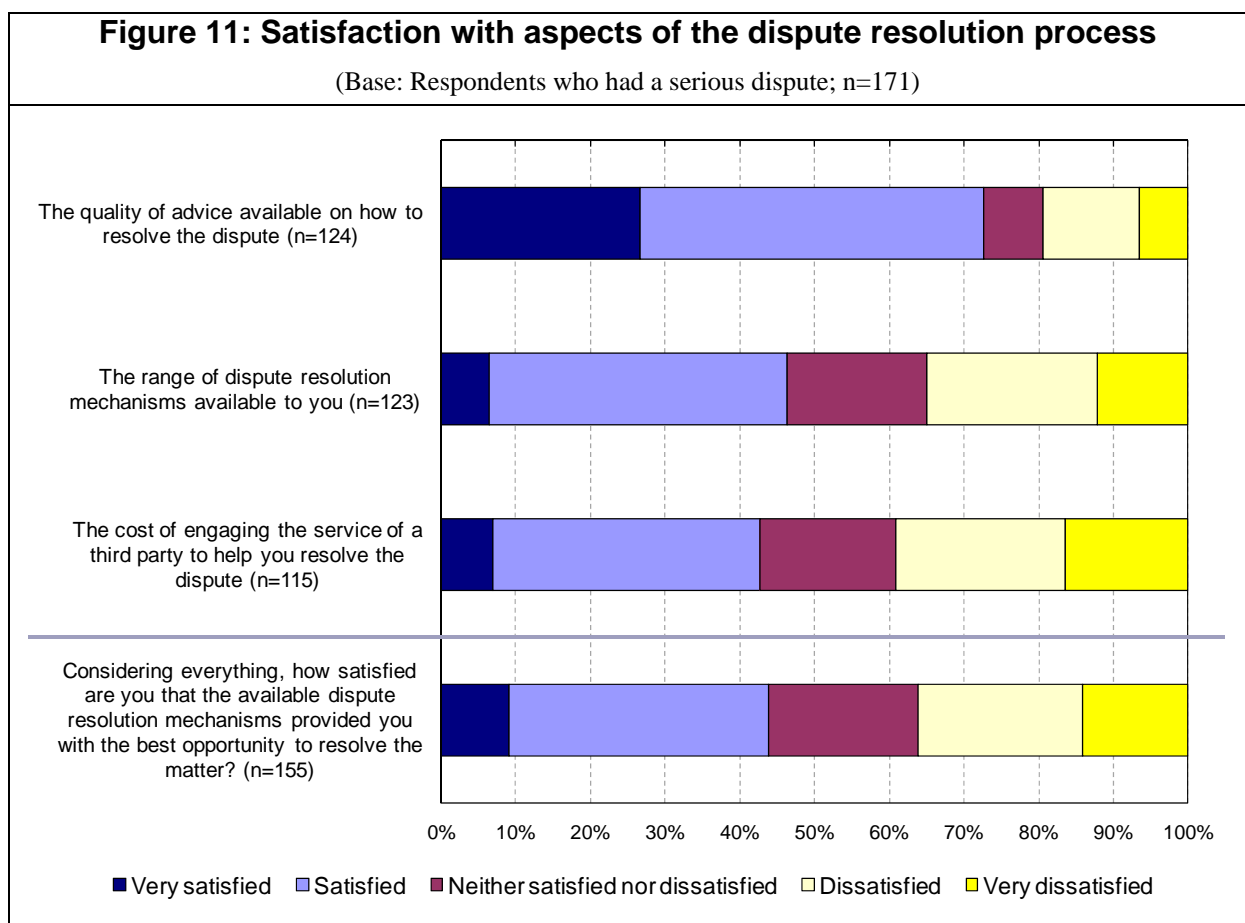
Awareness and understanding levels were the lowest for the role of conciliators, with 33% of these respondents not having heard of them, and a further 34% having heard of them, but lacking much understanding.



D. Satisfaction with available dispute resolution mechanisms

Of the 9% of respondents who had engaged or seriously considered engaging the services of a third party (43% of all businesses who had encountered disagreements), 44% indicated that they were satisfied that the dispute resolution mechanisms available to them provided them with the best opportunity to resolve the matter. As can be seen in Figure 11:

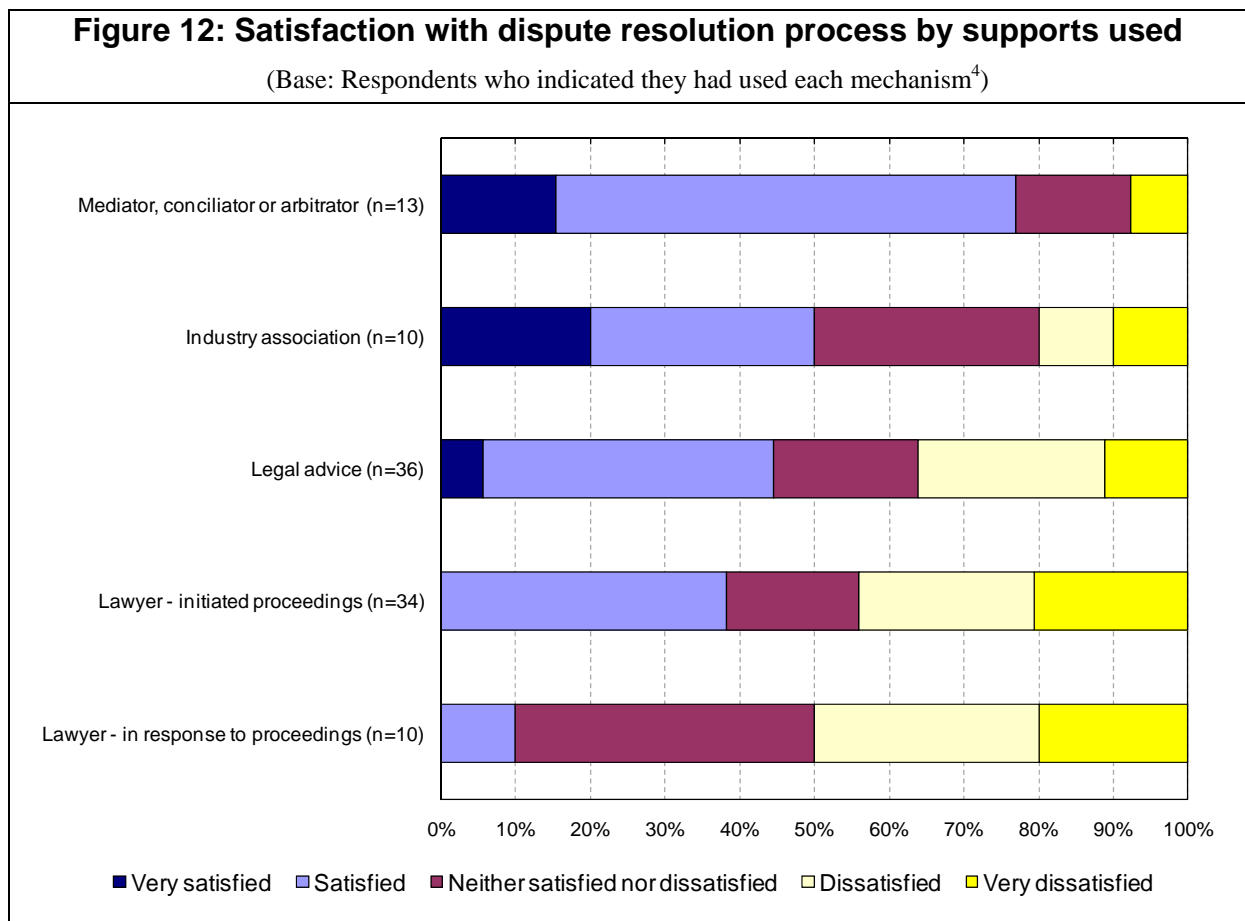
- ◆ 46% of these respondents were satisfied with the **range** of dispute resolution mechanisms available to them;
- ◆ 43% were satisfied with the **cost** of engaging the services of a third party; and
- ◆ 73% were satisfied with the **quality of advice** available on how to resolve the dispute.



Respondents who had participated in a *voluntary* dispute resolution process with some sort of professional facilitator (i.e. a mediator, conciliator or arbitrator) were most likely to be satisfied that the range of dispute resolution mechanisms available provided them with the best chance for resolution (see Figure 12).

- ◆ 77% of respondents who had approached a mediator, conciliator or arbitrator were satisfied overall with dispute resolution mechanisms available (with just 8% *dissatisfied*).
- ◆ Unsurprisingly, respondents who sought legal assistance due to proceedings being brought against them were *least* likely to be satisfied with the range of dispute resolution mechanisms available (10% satisfied, 50% *dissatisfied*).

High levels of *dissatisfaction* with the helpfulness of dispute resolution mechanisms available were recorded among all groups of respondents who had sought assistance from a lawyer – whether for legal advice (36%), to initiate proceedings (44%) or in response to proceedings initiated against them (50%).



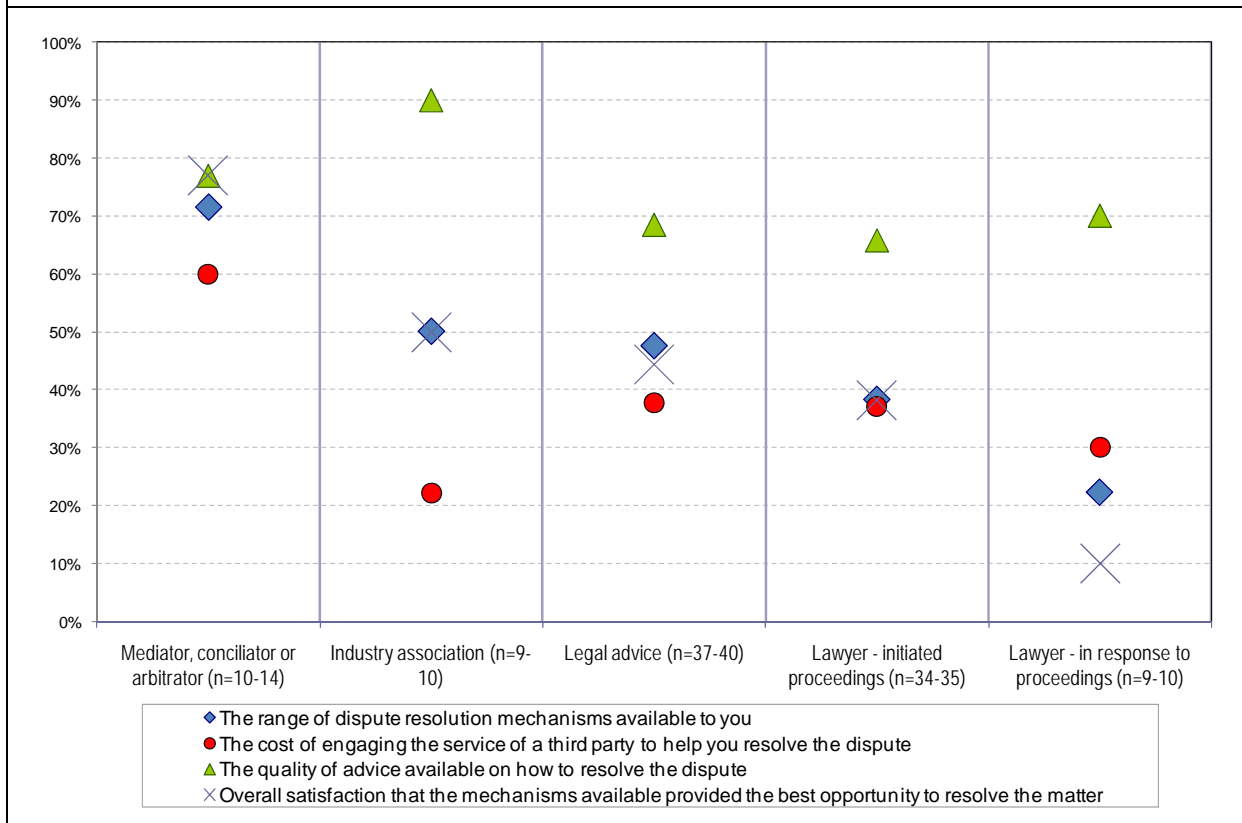
⁴ Mechanisms selected by fewer than 10 respondents not shown. Note that n=7 respondents indicated more than one of the five mechanisms shown, and thus are counted in two different groups. Most of this crossover (n=4) was due to respondents indicated seeking both legal advice and assistance from a mediator, conciliator or arbitrator.

As shown in Figure 13, respondents who had participated in a voluntary dispute resolution process with a mediator, conciliator or arbitrator were also most likely to be satisfied with the **range** of mechanisms available to them (70%) and the **cost** of engaging a third part (60%).

- ◆ Over three-quarters of this group (77%) were also satisfied with the **quality of advice** available, although satisfaction with this measure was comparably high among all groups of respondents.

Figure 13: Satisfaction with aspects of the dispute resolution process by type of support utilised

(Base: Respondents who indicated they had used each mechanism – % satisfied)



E. Perceived gaps in dispute resolution mechanisms

Analysis of unmet demand

To establish if there was any unmet demand for dispute resolution support, we combined respondents' satisfaction with available mechanisms with whether they felt that other mechanisms should have been available.

We defined unmet demand as being present when respondents were *dissatisfied* with the available mechanisms to resolve the matter **and** they felt that there should have been other mechanisms available to assist them in resolving their dispute.

The findings, as can be seen in Table 2, show that:

- ◆ 0.9% of all businesses (or 6% of business that had a serious dispute) can be classified as having unmet demand;
- ◆ 3% of all business (or 19% of those that had a serious dispute) felt their demand was partly met; and
- ◆ 11% of all businesses (or 75% of those that had a serious dispute) had fully met demand.

Table 2: Analysis of unmet demand for dispute resolution mechanisms.

(Base: all respondents, n=2007)

		Satisfaction with available mechanisms			Avoided dispute escalation	No serious disputes ⁵
		Satisfied	Neither satisfied nor dissatisfied	Dissatisfied		
Whether respondent felt that more mechanisms are needed.	Yes	0.6% (fully met)	0.4% (partly met)	0.9% (unmet)	0.6% (partly met)	84.9%
	No	2.8% (fully met)	1.9% (fully met)	1.8% (partly met)	6.0% (fully met)	

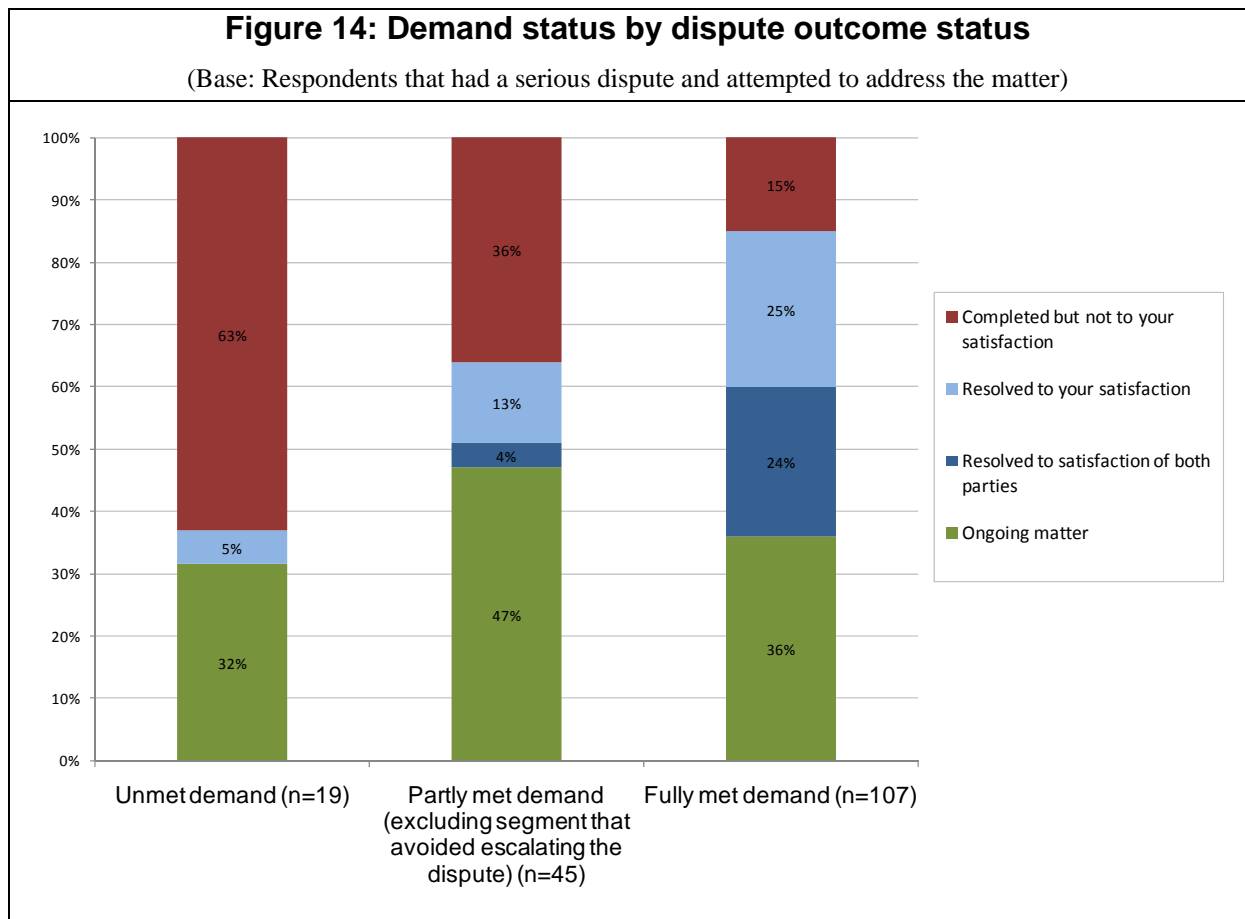
⁵ "No serious disputes" here refers to respondents who had experienced no disputes at all (80% of all respondents); disputes that were out of scope for the survey (0.6% of all respondents); routine and minor disputes (1% of all respondents); and potentially serious disputes that were easily resolved (2% of all respondents). This is the same for all charts that examine unmet demand.

Further analysis of the characteristics of the three groups of respondents (unmet demand, partly met and fully met groups) highlighted some notable differences in relation to the status of the matter in dispute (see figure below).

The majority of respondents in the **unmet demand** group (63%) had a dispute that was resolved, **but** not to their satisfaction. Furthermore, one in three businesses in this segment (32%) had a matter that was ‘ongoing’ (not yet resolved).

Respondents in the **partly met demand** group were more likely to have a matter that was ‘ongoing’ - although a significant minority (36%) were also dissatisfied with the outcome of the resolution process.

In contrast, respondents in the **fully met demand** group were much more likely to have had the matter resolved to their satisfaction (or to the satisfaction of both parties). Although, there were respondents in this group who had matters that were ongoing (36%) or resolved but not to their satisfaction (15%).



Perceived gaps by industry

There were some differences in terms of whether respondents felt there was unmet demand when examining the characteristics of the respondents' businesses.

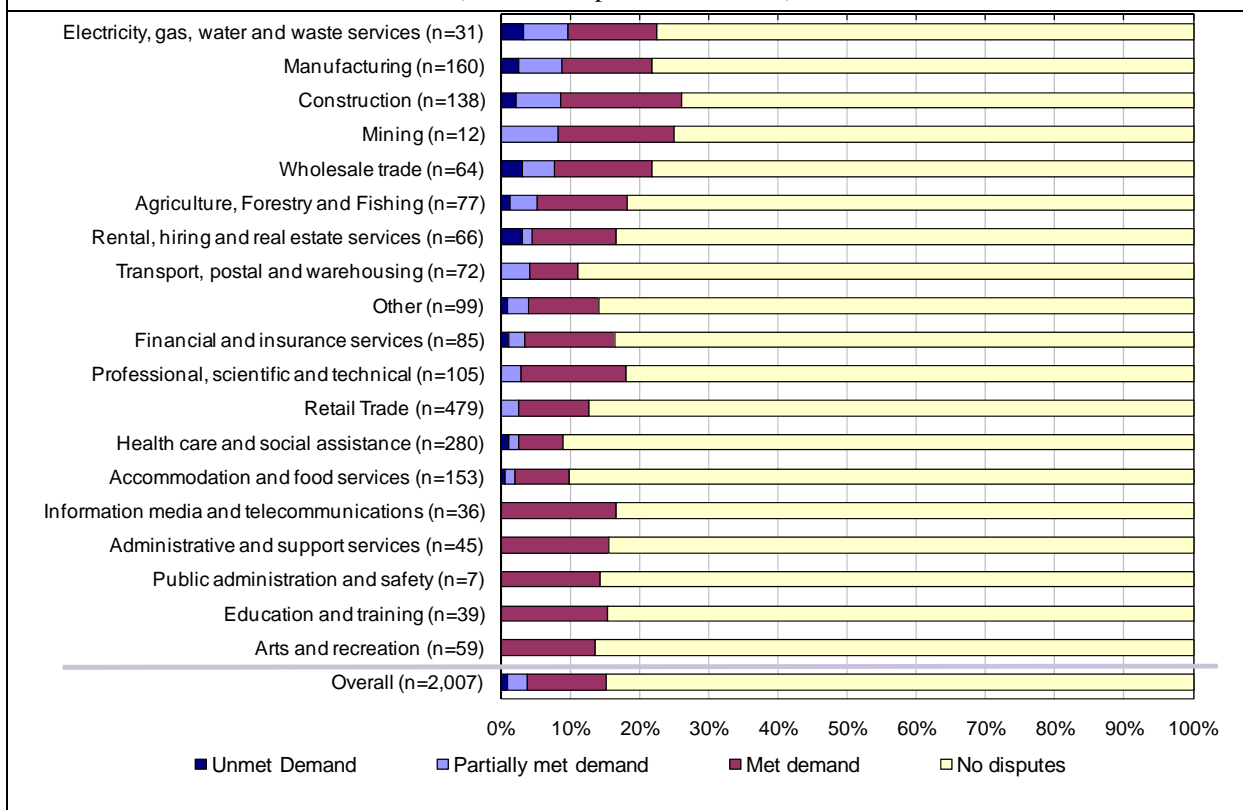
Firstly, as can be seen in Figure 15, the highest levels of purely unmet demand were centred in the following industries:

- ◆ Electricity, gas, water and waste services (3%);
- ◆ Wholesale trade (3%); and
- ◆ Renting, hiring and real estate services (3%).

Comparatively, the highest levels of partially met demand were concentrated in mining (8%), construction (7%) and electricity, gas, water and waste services (6%).

Figure 15: Demand for other mechanisms that were not available (by industry)

(Base: all respondents, n=2007)



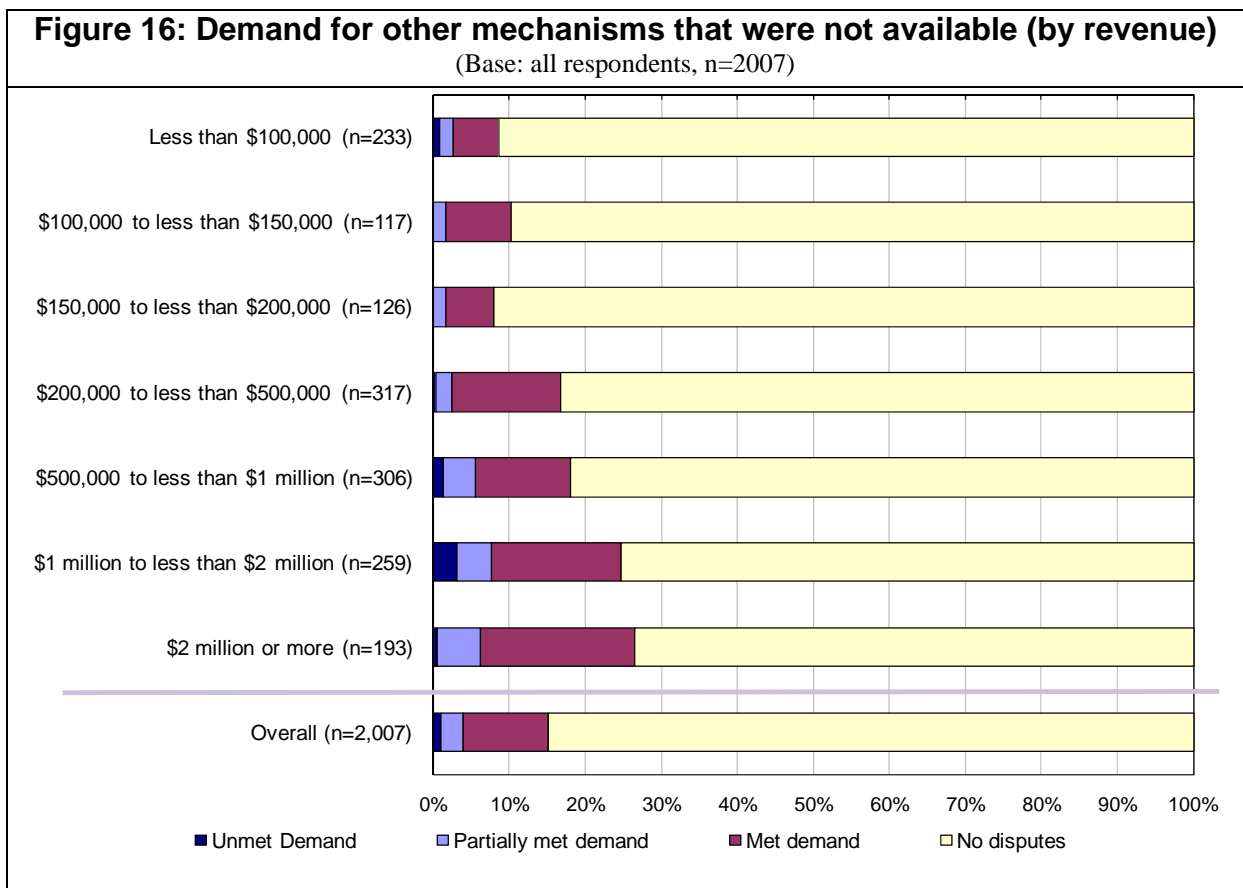
Perceived gaps by revenue

When examining the demand for dispute resolution mechanisms by the revenue of the business involved, there is a relatively linear relationship between unmet and partially met demand and revenue that mirrors the relationship between number of disputes and revenue.

As seen in Figure 16, the businesses with higher levels of revenue were more likely to have experienced more disputes, but they were also more likely to feel that the available dispute resolution mechanisms weren't completely satisfactory.

The exception to this pattern is most obvious for businesses with revenue of \$2 million or more – they were the most likely to experience a dispute (see also Figure 3) but only had 0.5% of unmet demand (and 6% of partially met demand).

- ◆ Comparatively, businesses with revenue between \$1 and \$2 million had a similar number of disputes but had unmet demand of 3% (and 5% of partially met demand).



Perceived gaps by size and length of operations

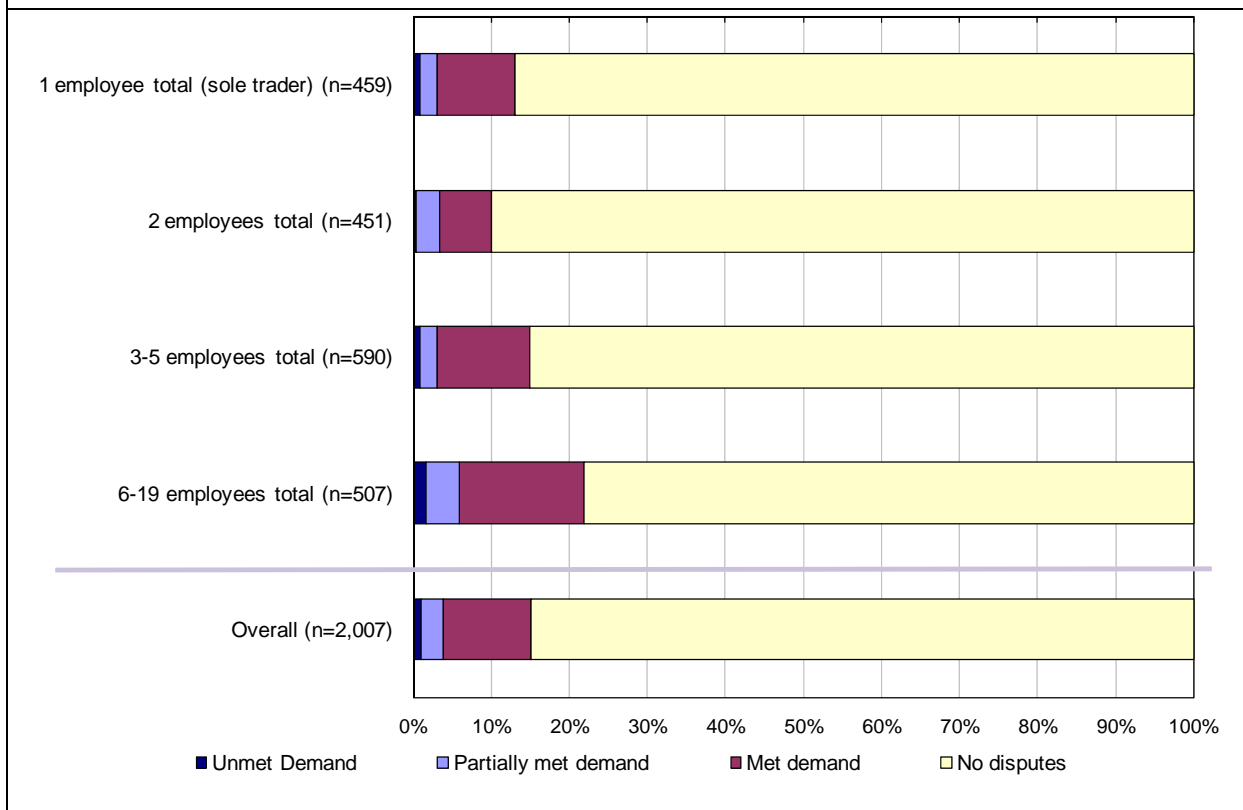
When examining the demand for business dispute resolution mechanisms by the length of time the business had been in operation, there was very little differentiation (the levels of unmet demand ranged from 0.7% to 1.3%).

When the size of the business was examined (see Figure 17), there was slightly more differentiation.

- ◆ Businesses with 2 employees total were the least likely to have unmet demand (0.4%).
- ◆ Businesses with between 6 and 19 employees total were most likely to have unmet demand (1.6%).

Figure 17: Demand for other mechanisms that were not available (by business size)

(Base: all respondents, n=2007)



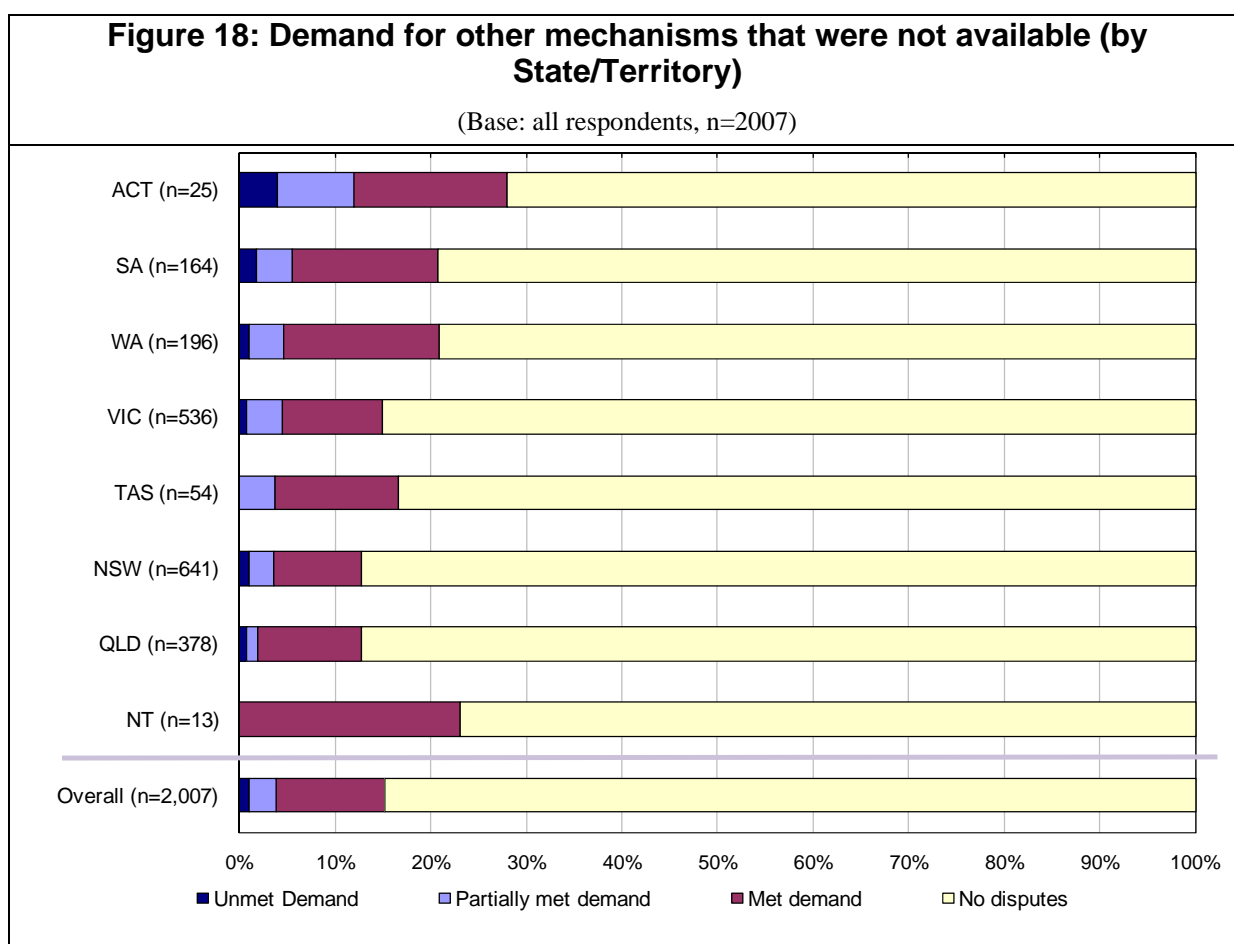
Perceived gaps by location of the business

There was very little difference when examining the demand for dispute resolution mechanisms by type of region (i.e. metropolitan vs. regional/remote) and for this reason it is not explored here.

In comparison, there were some differences when examining the data by the respondents' State or Territory.

The ACT was most likely to record a higher incidence of perceived unmet demand (4%); however, given the small sample size, caution needs to be exercised in interpreting this finding.

- ◆ South Australia had the highest level of unmet demand (1.8%), followed by Western Australia (1%).



Perceived gaps by number of disagreements

Perceived unmet demand was higher among businesses indicating they had had *more than one* disagreement with another business in the past five years (6%) than among businesses indicating only one disagreement (3%).

F. Demographic Profile

The businesses interviewed comprised:

- ◆ 32% businesses in NSW, 27% in Victoria, 19% in Queensland, 10% in Western Australia, 8% in South Australia, 3% in Tasmania, 1% in the ACT and 1% in the Northern Territory;
- ◆ a wide range of businesses from different industries, but most commonly retail trade (24%), health care and social assistance (14%), manufacturing (8%); accommodation and food services (8%) and construction (7%);
- ◆ 2% businesses that have been in operation less than 1 year, 5% for 1-3 years, 6% for 3-5 years, 17% for 5-10 years, 15% for 10-15 years, and 55% for over 15 years;
- ◆ a majority (58%) consisting of no more than 3 employees, counting the owner (23% sole traders, 22% with 2 people in total, 13% with 3 people in total);
- ◆ a range of revenue brackets ranging from under \$25,000 to over \$5 million, with the bulk of businesses falling into \$200,000 to less than \$500,000 range (20%), the \$500,000 to less than \$1 million range (20%), or the \$1 million to less than \$2 million range (17%).

Figure 19 and Figure 20 show a comparison of the sample of 2,007 businesses interviewed with ABS data for all businesses in Australia.⁶

⁶ Based on 2003-2007 Entry and Exit Statistics (released 21 December 2007).

Figure 19: Comparison between sample and population (ABS, 2007) for revenue levels

(Base: all respondents, n=2007)

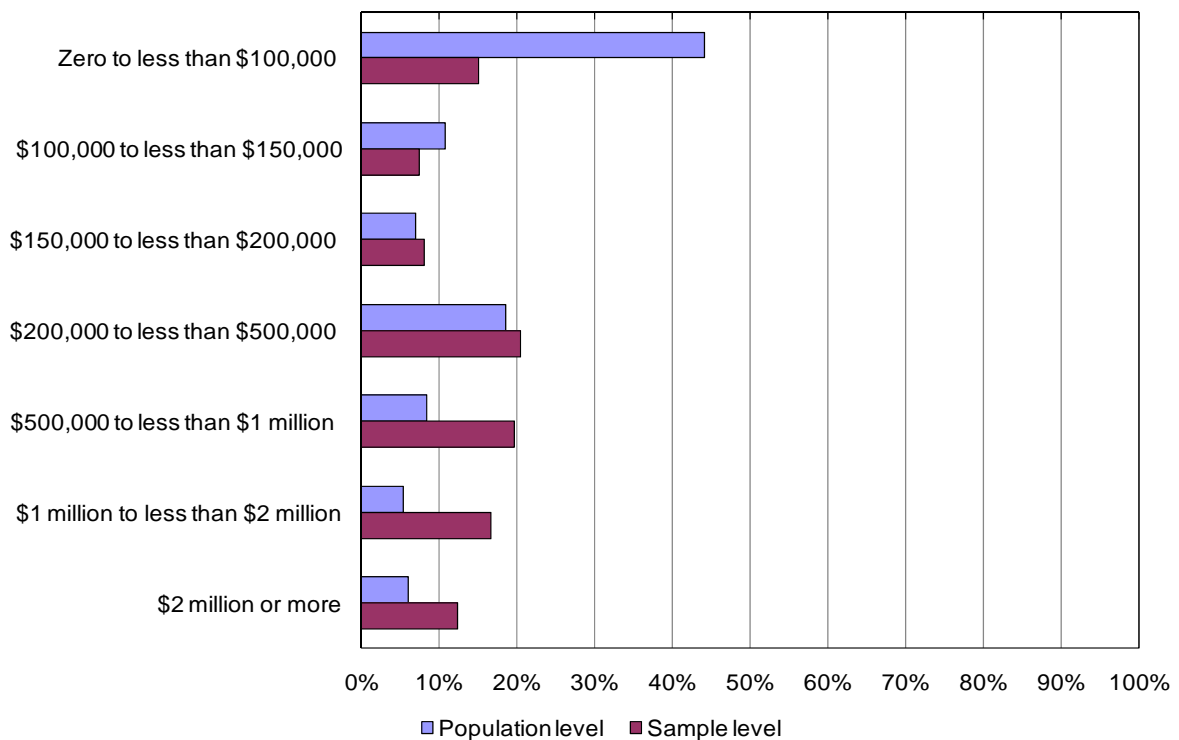
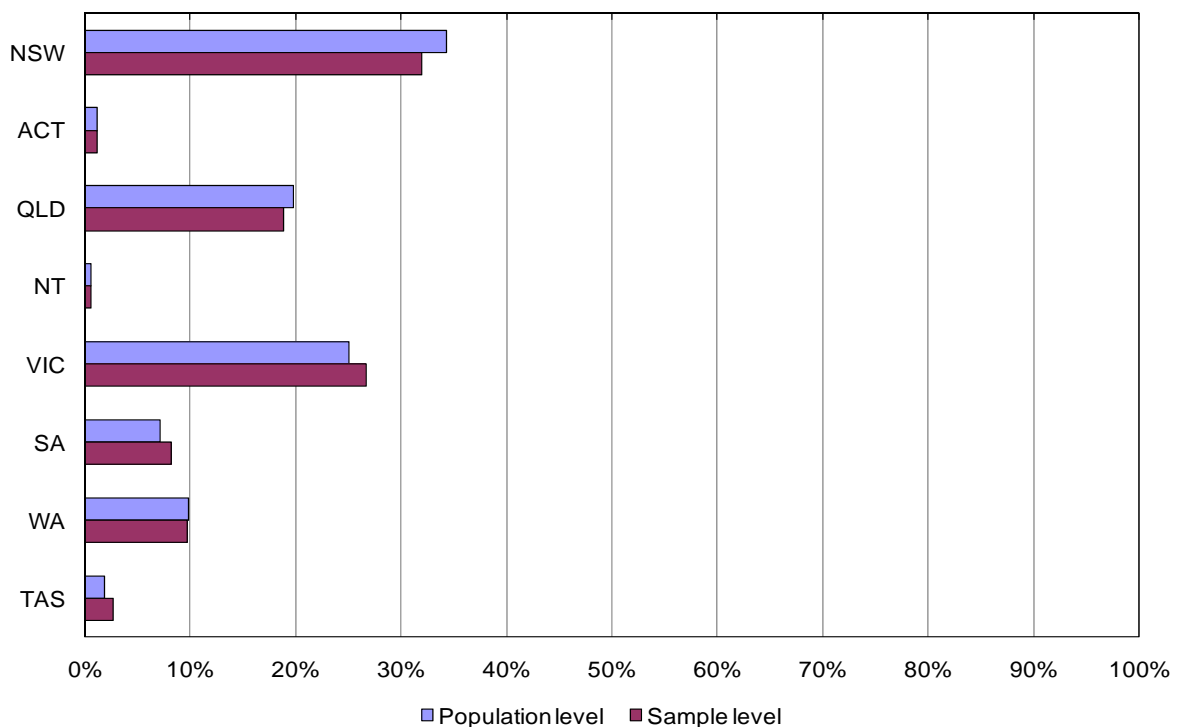


Figure 20: Comparison between sample and population (ABS, 2007) for State

(Base: all respondents, n=2007)



G. Appendices