

PACIFIC RIM REAL ESTATE SOCIETY

**Fourth PRRES Conference
19 - 21 January 1998**

Perth, Western Australia

NON SOLICITOR CONVEYANCERS IN SOUTH AUSTRALIA

by Trevor Mills

**Diploma of Business (Real Estate Management), Advanced Diploma of Conveyancing
Lecturer in Conveyancing, University of South Australia**

1. Introduction

There are almost as many interpretations of the perception of a Conveyancer's profile as there are Conveyancers which in South Australia could mean over 800. This figure does not include any legal practitioners who provide conveyancing services. Some of this number may still retain their registration but no longer practice and even may never have practiced.

Conveyancing has been a changing and progressive industry like many others in the 90's. Innovations have included the creation of a national institute, implementation of national competency standards and its subsequent effect on the content of the educational programs, the option of either a University degree in property majoring in conveyancing and a Graduate Certificate in Advanced Conveyancing or the upgraded TAFE qualification of an Advanced Diploma. These changes have taken place without much qualified information regarding the people who are the practitioners, their backgrounds, characteristics, practices, likes or dislikes.

Until the end of 1995 there had been no comprehensive survey made of the non-solicitor conveyancing industry.

2. Why conduct a survey of Conveyancers

There are many issues that, although not necessarily contentious, can generate animated discussion and diverging opinions amongst Conveyancers. For instance one of the most topical and recurring issues for a number of years since the fees are no longer able to be prescribed has been the question of whether or not to "discount" fees in order to obtain enough work. It is thought that many conveyancers use the old recommended fee structure as a basis for setting their current fees. Some practitioners subscribe to the view that the professional status of conveyancers is impaired and the industry is "cheapened" if there is a departure from the previously recommended level of fees, which after all represented what was then considered to be a fair and reasonable charge for the work and responsibility undertaken in the course of their work. An issue which is connected to the number of practitioners compared with the available work for conveyancers.

Other matters which are spoken of fairly frequently include the education system that produces conveyancers. How adequate is it and what are the implications of recent changes for educators in this field. ? One hypothesis is that many conveyancers became qualified because it used to be only a one year part time course and was open to almost anyone regardless of their level of education. Some people saw this old course as being an easy way to change careers, or to start one, without the rigours of a University degree or diploma. In earlier years this attitude was probably also responsible for the extremely high failure rate vis-a-vis the number who started the course as well as for the high number who took more than one attempt to pass the examination.

Another item of discussion amongst practitioners is the conveyancer's relationship with Land Agents. Obviously any Agent who sells property will be among the first to know when a person is likely to need the services of a conveyancer. It follows that if a conveyancer can tap this source of information, and be recommended by the Agent to the client then it could be a steady and reliable source of income. Notwithstanding that the client has the right to select any person they like to act for them, many are in the market so infrequently that they are happy to take the recommendation of someone, like the Agent, rather than have to go to the trouble of finding one themselves. The Agent probably expects that any transaction introduced to a conveyancer in this way will be acted upon without unnecessary delay and be brought to a successful conclusion. This expectation, and because of the reliance upon this source of work, could tend to intimidate a conveyancer into giving less than proper service to the client who is paying for that service. As well, some Agents get conveyancers to carry out the Section 7 enquiries, the disclosure of outstanding encumbrances and charges, which are mandatory for Agents to make by virtue of the Land and Business (Sales and Conveyancing) Act, in the expectation of conducting the settlement when the contract is signed. Apart from some of the legal issues involved in the rights and wrongs of these activities there is also the further issue of some Agents using their influence to determine the level of fees that the conveyancer should, or will, charge for their involvement.

In addition to the matter of whether the Agent or the Conveyancer should make the enquiries from which come the Section 7 statements referred to previously there is also some disagreement on where the responsibility starts and stops for others to make the same searches. For example a typical sale transaction often results in these searches being made just prior to, or at the time of writing the contract, then again by the vendor's conveyancer and at the same time and quite independently again by the purchaser's conveyancer. The question arises is it really necessary for it to be done more than once since the answers all come from the same source, most of the time show no impediments to residential land and are only legally required from the Agent and the vendor. Many conveyancers see these searches as being a convenient way of allowing them to fulfil their role in giving a large degree of certainty in fulfilling their role to protect the interests of their client. It is an issue on which the industry would do well to make a definitive statement so that all practitioners maintain a proper standard.

Dealings with other participants in the settlement process e.g. Banks, Solicitors and other Conveyancers often creates tension and ill-will because of what could well be isolated instances brought about by unique circumstances at the time and which represent no more than passing occurrences. At the time they may seem disproportionately important and even have inconvenient results but that is not necessarily a reason to harbour ill feeling against all of that genre.

Many people love to make fun of the Government and their departments and public servants generally. A conveyancers working life means frequent and continuing dealings with Government Departments especially LTO, SA Water and Stamp Duties Office. Each of these offices has significantly improved the facilities that are available to serve the public as well as provide more reliable and efficient service to conveyancers. Again this survey was designed to give an indication of the level of satisfaction for these facilities amongst the conveyancers.

Consistent complaints have circulated about conveyancer's dealings with Local Councils. Every sales transaction requires contact with the Council thus these dealings are very frequent. The Act provides that Councils must respond to requests within a given time frame but a frequent complaint is that the time taken is inordinately long. Is this a legitimate complaint or is it just unfounded heresay ?

Many seem to believe that the number of practicing Conveyancers relative to the work available is much of the reason behind "discounting" fees and hence a drop in the standard of professionalism which the industry should be exhibiting.

What do practitioners think of the efforts of their fairly new professional body, the Australian Institute of Conveyancers (AIC) ?

It was against this background that the reason for a survey of all registered Conveyancers in the State emerged. This could produce an accurate profile of the practitioners to help with providing direction for the continued improvement of the professional status of conveyancers , implementing acceptable professional practices where appropriate and improving services for all conveyancers .

All registered Conveyancers were invited to respond to this survey regardless of whether or not they were members of the Australian Institute of Conveyancers. Of the 815 that were contacted 182 replies were received making a response rate of 22.3%. Some of the respondents chose to only answer selected questions thus reducing the effectiveness of some of the results in particular sections. Notwithstanding that, the results are still significant enough to obtain a reasonable understanding and profile of the Conveyancing practitioners.

3. Origins of the Conveyancer

Since 1886, the date of the enactment of the Real Property Act (RPA) in South Australia, legislative provisions have existed for the licensing of "fit and proper" persons, other than solicitors, to carry out the preparation of documents for the purpose of registration under the RPA.

Initially known as Licensed Land Brokers under the authority of the Registrar General, their name was changed in 1995 to Conveyancers whose activities became controlled by the Conveyancers Act 1994 under the authority of the Commissioner of Consumer Affairs. Under the new provisions a conveyancer is defined “ as a person, not being a legal practitioner, who carries on a business that consists of or involves the preparation of conveyancing instruments for fee or reward “.

In South Australian practice this has meant that conveyancers not only prepare the usual Transfers, Mortgages, Caveats, Applications, Leases, Discharges, Surrenders, Applications for Land Division in accordance with the RPA but also Applications under the Strata Titles Act and Community Titles Act. In addition they are permitted to prepare documents under the Bills of Sale Act 1886, The Stock Mortgages and Wool Liens Act 1924 and the Liens on Fruit Act 1923. Conveyancers are becoming increasingly involved in the preparation of Contracts for Sale and Purchase, assignments, tenancy agreements and other instruments arising from and incidental to the whole range of property transactions.

The Australian Institute of Conveyancers has met this involvement by issuing appropriate stationery including a standard form of Contract Note and Mortgage for the exclusive use of members.

The Conveyancer's role often culminates in the certification of documents lodged for registration at the Lands Titles Office. The certification, which is a requirement of the RPA, puts the onus on the Conveyancer to ensure that the details of the transaction, the parties involved and the circumstances surrounding the dealing are indeed *bona fide*. This then allows the Registrar General to rely on that information to support the Government guarantee of the title that will issue after that registration.

4. Typical activities of a Conveyancer in the Settlement Process

To better appreciate the results of the survey it is necessary to have an understanding of the usual activities that Conveyancers undertake during the typical settlement process for a residential property. The structure of this process remains the same for most transactions involving a Conveyancer and will only vary by degree for other types of properties.

4.1. Stages in the Settlement Process for Purchaser's Conveyancer :

1. Conveyancer receives a copy of the contract, the Section 7 statements (specific disclosure by both Vendor and Agent) and the Agent's Story Sheet.

Most Conveyancing work originates through an Agent who has obtained the disclosure information, negotiated the terms of the transaction, prepared the contract note, attended to the signatures of both parties, given each party a copy as required by law and sent the details on to the elected Conveyancer. In the absence of directions from the parties to the contract the Agent will forward the details to the Conveyancer with whom some form of “relationship” exists. Hence the importance of the Agent to the Conveyancer.

2. Confirm instructions

In this day and age, because of the competition for work, it is prudent to obtain written confirmation of the instructions of the client rather than rely solely on the Agent's actions.

3. Plan appropriate actions

The Conveyancer assesses the conditions of contract and all of the circumstances surrounding the transaction to determine a course of action and the timing of events to avoid working unnecessarily on a file which may or may not be finalised.

4. Search title and compare information

The starting point of any transaction, certainly for a Conveyancer, must be the title to establish that the property details are correct, that there are no impediments to the dealing and that the proper people are involved.

5. Search rates and taxes; Special Meter Reading

A contract provision is for the rates and taxes, income and expenditure of a property to be adjusted as between the parties as at the day before settlement occurs. The adjustment includes payment of the estimated amount for water consumption since SA system does not give any water allowance but rather has a “pay as you use” system. For the Conveyancer this means arranging the special meter reading and obtaining the appropriate details for adjustment and eventual inclusion in the settlement statements.

6. Section 7 searches

The Land and Business (Sales and Conveyancing) Act provides that the vendor and the Agent must make certain enquiries and give certain information to the prospective purchaser under threat of being liable for damages or at the risk of allowing the purchaser to avoid the contract at any time. Often a Conveyancer, who has a “relationship” with an Agent, will provide the Agent with this information in the expectation that the cost will be reimbursed by the vendor when the settlement is effected by that Conveyancer.

Many Conveyancers, both for the Vendor and the Purchaser, see these enquiries as being part of what the Conveyancer should do anyway to ensure that there are no outstanding charges on the land and that they should be done independently of whether or not they are done by the Agent. This is a bit of a grey area as regards responsibility, other than what is specified in the Act, and is deserving of further investigation and discussion elsewhere.

Suffice it to say that these searches, together with the signed contract, will start the two day cooling off period which most purchasers are entitled to before being committed to the contract. It therefore has a large bearing on the outcome of the settlement.

7. Prepare Transfer document

A standard contract condition makes the Purchaser, and hence the Conveyancer, responsible for the preparation, and cost in all things, of the Memorandum of Transfer. Costs include Stamp Duty and registration fees as well as the Conveyancer’s fees. This document must be signed by all parties and returned to the Purchaser’s Conveyancer prior to settlement for stamping purposes.

8. Receive Vendor’s statement

The practice is for the Vendor’s Conveyancer to send an “adjustment statement” to the Purchaser’s Conveyancer, setting out the amount of the balance owing at settlement and the manner of payment required. This statement accounts for the appropriate adjustments to outgoings and income and deposit paid, according to the contract conditions.

9. Confirm Purchaser’s finance arrangements

The Purchaser normally deals direct with their Mortgagee to finalise signing documents and paying fees and charges so that it only remains for the Conveyancer to finalise cheque details for settlement and arrange for settlement to occur.

10. Prepare Purchaser’s statement

The Purchaser’s Conveyancer prepares a statement to show the client an itemised list of all costs associated with the transaction, except those charged separately by the Mortgagee, and gives instructions regarding time and manner of payment.

11. Check Transfer

The signatures and witnessing details are checked by the Purchaser’s Conveyancer, to ensure that all is correct before accepting it for settlement.

12. Prepare reconciliation statement

To assist the Conveyancer to identify the amount, source and destination of all money to be received at settlement the reconciliation statement is a must for all Conveyancers to prepare for settlement.

13. Check payment of Purchaser's money

Money must be received either in cash or bank marked cheque or by ordinary cheque in time for it to be cleared well before settlement to enable it to be drawn upon.

14. Arrange settlement

Either Conveyancer is at liberty to instigate the actual time of settlement on the due day but each is responsible to have in attendance any other parties who are involved because of their clients e.g the Purchaser's Conveyancer is responsible for the Purchaser's mortgagee. All settlements take place at the Lands Titles Office in a designated area.

15. Attend Stamp Duties Office

As a result of the contract condition making the Purchaser responsible for the costs of the Transfer, their Conveyancer must attend the Stamp Duties Office prior to settlement, usually immediately prior, to have the documents stamped. It is also a practice that only properly stamped documents will be accepted by all at settlement since they are lodged for registration immediately afterwards and the Lands Titles Office insist that they bear the proper stamp notification.

16. Title Check Search

Searches can only be relied upon for a maximum of 90 days without the possibility arising that documents which may have been registered in the meantime do not show on the screen thereby leading the reader to falsely assume that the title is in the same condition as it was three months ago. These searches are essential to show whether there are any unregistered documents in existence.

17. Attend Settlement

Here documents and money are exchanged and the controlling party, usually a mortgagee, will lodge the documents at the conclusion of the settlement.

18. Notify Authorities of change of ownership

The Conveyancers should notify the Agent, the rating Authorities and Strata Corporations that the dealing has been concluded. The Vendor's Conveyancer will attend to payment of the Agent's commission as part of the settlement process.

19. Finalise file.

Tidy up any loose ends, finalise trust account, confirm registration of documents and retain file for up to 7 years.

The Vendor's Conveyancer follows much the same pattern with some exceptions that follow the contract requirement that the Vendor is to deliver at settlement a "clear" title. This means that documents required for this purpose, e.g a discharge of a mortgage, are produced in registrable form at the settlement. The Vendor's Conveyancer would have been instrumental in liaising with the mortgagees or other encumbrancees to satisfy their requirements to remove their charge from the title and to make the documents available at settlement. They would most likely be responsible, or have earlier been responsible, for obtaining the Section 7 information which is sometimes shared with the Purchaser who contributes half of the cost.

5. A profile of the average conveyancer

A summary of the survey data reveals that the average conveyancer, theoretically, is :-

- A male over 40 years old who has been in practice for 14 years.
- He works full time in his own practice and puts in 35.4 hours per week.
- He is responsible for an average of 190 transfers, 52 mortgages, 37 discharges of mortgage, 9 leases, 5 caveats, 3 Strata Applications, 7 Land Division Applications, 9 grants of easements, 6 transmission applications, 2 applications for substitute titles, 22 contracts, 4 business contracts, 18 other unspecified documents per year.
[Note : these averages are influenced by the data from a few conveyancers whose business may be abnormally large or which specialises in one particular document such as mortgages and discharges]
- He does 6.5 settlements per week and his average income per settlement is about \$250.
- He has approximately 20 files currently being worked on in preparation for settlement.
- His average recreation leave is 13 days per year.
- He will usually attend settlement in person and will most likely post out the documents for signature by his client. He only checks a client's identification when he thinks that it is necessary.
- Most of his work is directed to him by an Agent, his friend and relations or past clients.
- He most likely has a computer, typewriter, fax and copier in his office.
- He will certainly have a copy of Jessup's Forms and Practices most likely have Strata Facts and almost certainly will have his own file of precedents for reference.
- If he had sufficient business to warrant taking on another person he would be prepared to pay an experienced conveyancer a salary of about \$30000 p.a. He would pay an inexperienced conveyancer about \$25000 p.a.
- He would have had professional indemnity in place for about 10 years and believes that it should be compulsory for all practicing conveyancers. While he is quite concerned about the prospect of possible litigation from a client and the need to protect against it, he is not likely to personally know of any claims against anyone else's policy.
- He probably thought that his education was lacking in practical experience and application and did not feel competent when he graduated. In fact he felt that it took him up to 2 years to feel competent but now feels more than adequate. He most likely undertook some form of further education even if it was only attending seminars or personal development programs. He would have attended the seminars conducted by the Australian Institute of Conveyancers, since he is most likely a member although it is quite possible that he thought he had not received much benefit from doing so.
- He knows little if anything about the degree course for Conveyancers that is offered by the University of South Australia .
- He believes that a conveyancer's right to practice should be dependent upon demonstrating a minimum standard of practice.
- He feels under a real obligation to negotiate his fees and while he generally charges less than the previous "recommended fee" , he believes that he should be charging according to the

complexity of the transaction. Generally his prospective clients ask for a quote before committing themselves and he must compete for the appointment.

- He believes that the Australian Institute of Conveyancers is performing its perceived functions at least adequately and he always reads its magazine.
- He thinks that the facilities offered to conveyancers by the Lands Titles Office, Stamp Duties Office and SA Water are at least adequate. He has the same thoughts about the standard of service not only from these government departments but also from Banks and Local Councils. He is happy with the communication between conveyancers and the government departments although he has a few suggestions regarding areas, which have room for improvement, amongst all of these Authorities
- He has an equal number of complaints against solicitors, banks and his fellow conveyancers.
- Two of his most constructive comments for the benefit of the industry are (1) conveyancers should stop feeling threatened by each other and be more cooperative and (2) education should be coupled with full time participation in the industry to become properly competent (*before being allowed to practice*).

6.0. The Survey:

6.1. Characteristics of conveyancers :-

South Australia has almost twice as many male (64%) conveyancers as female (36%) in the industry. In the last 2 years at the University of South Australia the ratio of male to female in the conveyancing students is more like 1: 5 which would tend to indicate that young females are finding interest in this profession.

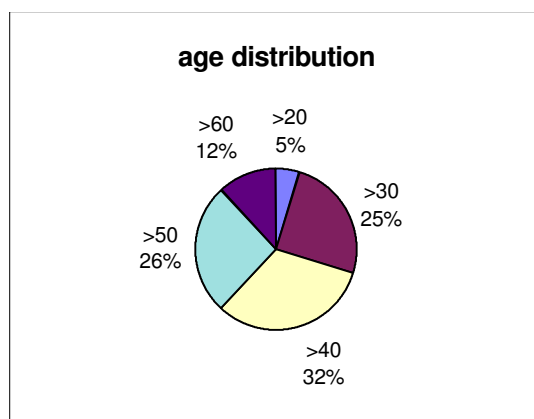


Fig. 1

It is not a young person's profession at the moment with the majority (71%) of conveyancers being over 40 including 5 conveyancers over 70 years of age !

As figure 2 shows, 60% of the conveyancers have been in practice for between 5 and 30 years which, when coupled with the levels of perceived competency, would indicate that the standard amongst practitioners is quite high. One person was licenced in 1940 and has been practicing ever since.

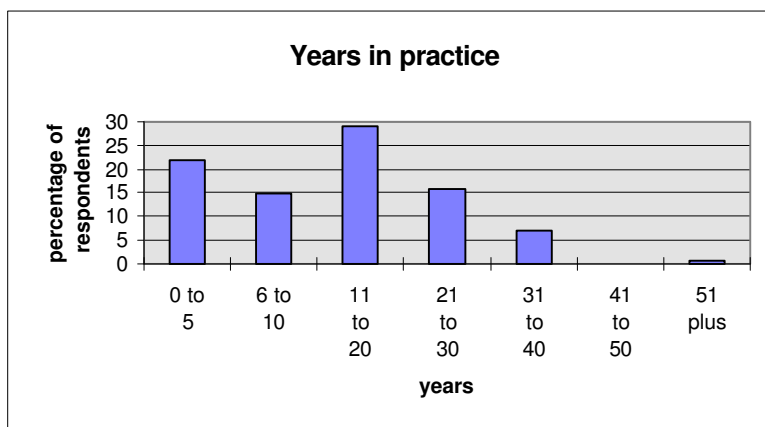


Fig. 2

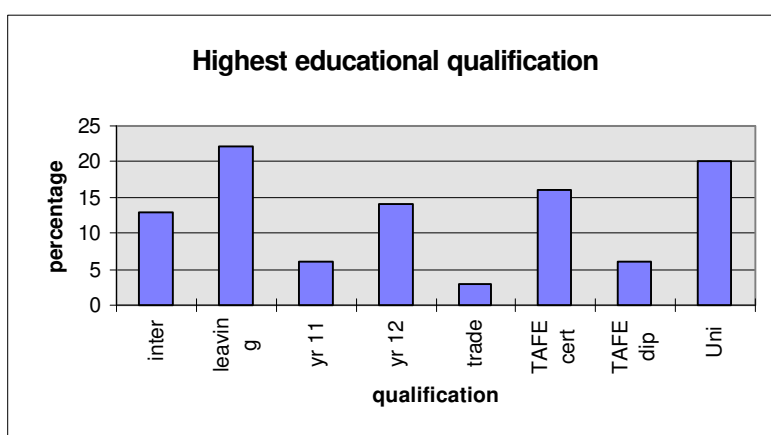


Fig. 3

The data in Fig 2 tends to support the theory that many saw this course as an easy means to obtaining a recognised qualification to start their own business and, in the earlier years, possibly a way of making a satisfactory amount of money. 55% had either intermediate/year 11 or leaving/year 12 high school standard education, 3% were qualified tradesmen, 22% had a TAFE certificate or diploma while 20% had a University degree.

Although some people may have other impressions, only 32% admitted to taking the examination more than once. While this apparently high failure rate could be due to a number of reasons it could also be a reflection of the high standards expected of a graduate. 84% obtained their licence or registration since 1970 while one person obtained the qualification in 1940.

Respondents were asked to give the main reason why they became a conveyancer. Unfortunately this part was incomplete but the indications are that,

- it presented a relatively easy way to obtain qualifications for advancement in the then current job,
- it enabled the person to fairly quickly make a career change with an acceptable qualification, and
- it was a pathway into a creditable business in which one could be self-employed.

A few saw this profession as a means to making “relatively easy” money after a fairly short learning period. One respondent admitted that it “was in a moment of madness”.

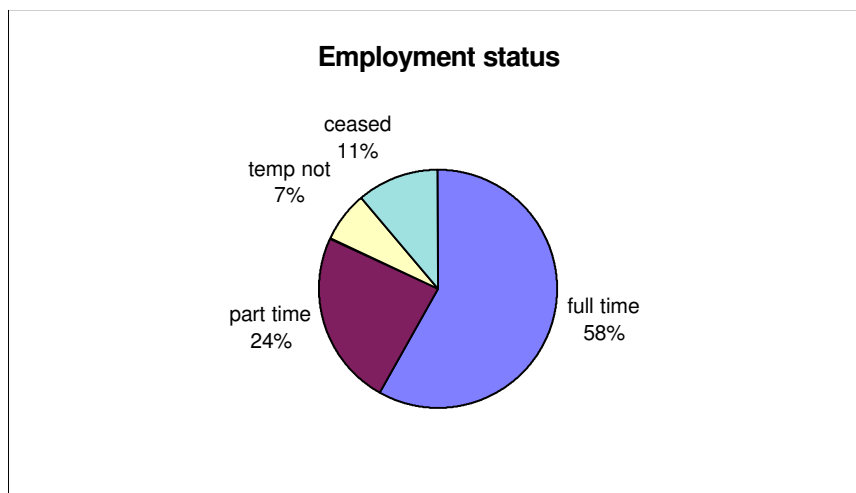


Fig. 4

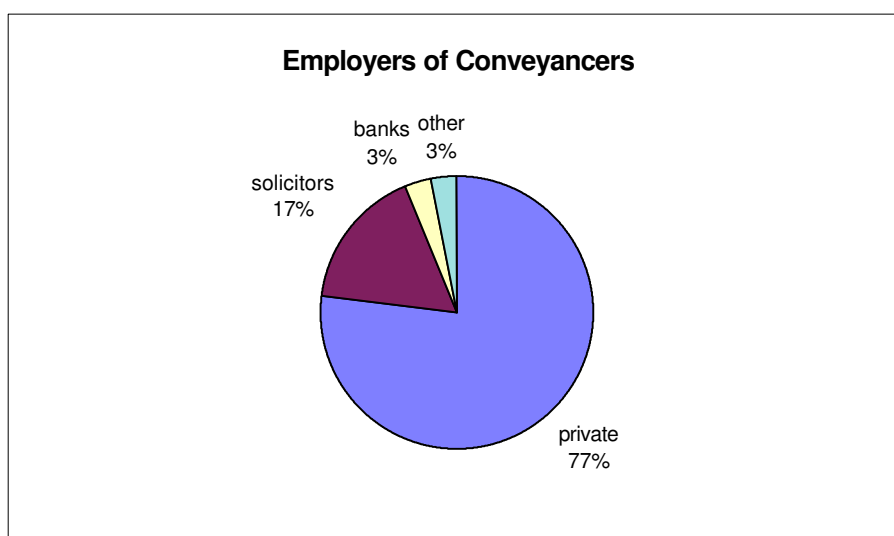


Fig . 5

It comes as no surprise to find that the majority (69%) of practitioners are in private practice, since the legislation prohibits the past practice of allowing conveyancers to be employed by Agents. It is interesting to note that 17% are employed by, or with, solicitors. This could be a reflection of the improved relationship between legal practitioners and conveyancers in recognising that conveyancers can in fact have a place to fill in cooperation with, and to complement, a legal practice .

24% say that they are only part-time practitioners which includes 8% of all respondents who are engaged in conveyancing work as a supplement to their main income. It is popularly rumoured that it is to remove these segments from the industry that the compulsory professional indemnity is being implemented in early 1998.

18% of the respondents have either temporarily or permanently ceased practice which, if a true sample of the total indicates that there are approximately 670 conveyancers still practicing to some degree. i.e. approximately 1 non-solicitor conveyancer for every 1800 people in the State.

6.2. Conveyancing Practices

Respondents were asked to give the approximate number of specified documents for which they were personally responsible during 1994.

The specified documents were:-

- | | |
|---------------------------------------------------------------------------------------------------------|------------------------------------------|
| *Transfer (of any interest) | *Land Division application |
| *Mortgage (of any property) | *Grant of easement |
| *Discharge of mortgage | *Transmission application |
| *Commercial lease | *Application for Substitute Title |
| *Caveat | *Contracts for sale and purchase of land |
| *Strata Title application | *Business contracts |
| *Other (e.g. assignments, trust deeds, changes of name, noting of marriages and other minor documents) | |

Almost all reported preparing more than 3 of the different types of documents listed, while 18% reported having prepared some of each category. These responses show how important it is that education programs for conveyancers must include instruction not only on drafting all of these documents but also the application and legalities of each. These results also show the areas into which conveyancers may pursue work, either to expand their businesses or if their main source of income is suffering for some reason. Clearly, since these are opportunities for a conveyancing practice, the conveyancer must be conversant with the current requirements and practices surrounding each document.

The respondents who reported preparing abnormally high numbers of one type of document and who would seem to be specialising in one area or from one source of work, also showed that they were barely, if at all, active in preparing any other documents.

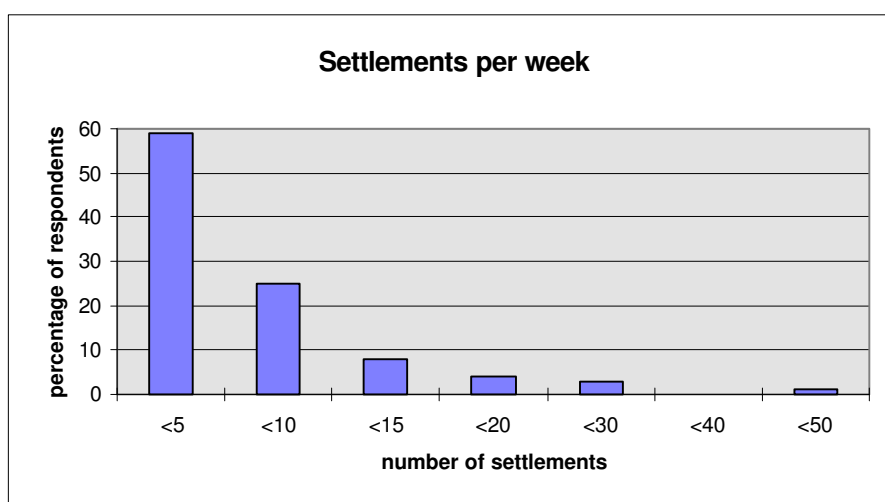


Fig. 6

The number of settlements undertaken each week varied enormously between the very small businesses and the very large. 84% of the respondents effect 10 or less settlements per week with 59% doing less than 5 settlements per week and 25% doing between 6 and 10 settlements. This would indicate that many conveyancers are probably earning about \$1250 per week gross if they were doing 5 settlements regularly

Work in progress relative to settlements approximately equates to the ratio of 3.5 in progress : 1 file settled

The majority of conveyancers seem to have the ability to take time off as well as work a “normal” week. There are a few unspecified practitioners who are still working exceptionally long hours. 19% of conveyancers did not take any recreation leave during the 1994 year and 8% took less than 5 days. Notwithstanding this, 57% work 40 hours or less per week. Of the remainder, 4% work more than 60 hours and of these one quarter works more than 70 hours.

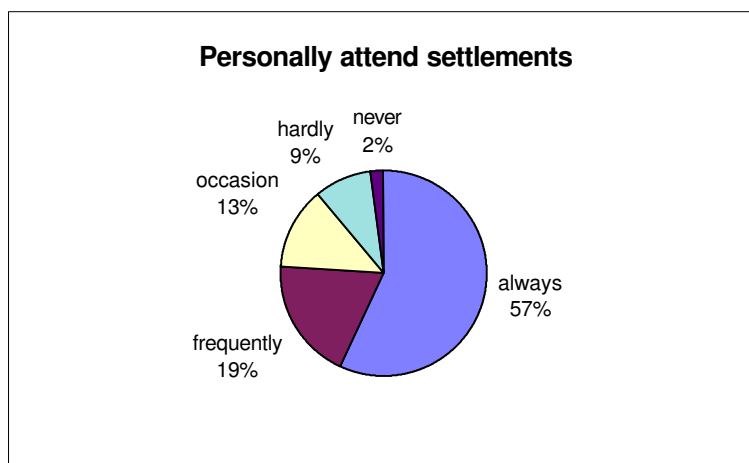


Fig. 7

A majority (76%) frequently personally attend settlements while 11% hardly ever attend. These figures would tend to confirm that the majority of businesses are only big enough for one or two persons who would of necessity have to carry out most of the work including the settlements while those who do not attend most probably represent large firms which have at least settlement clerks to act for them.

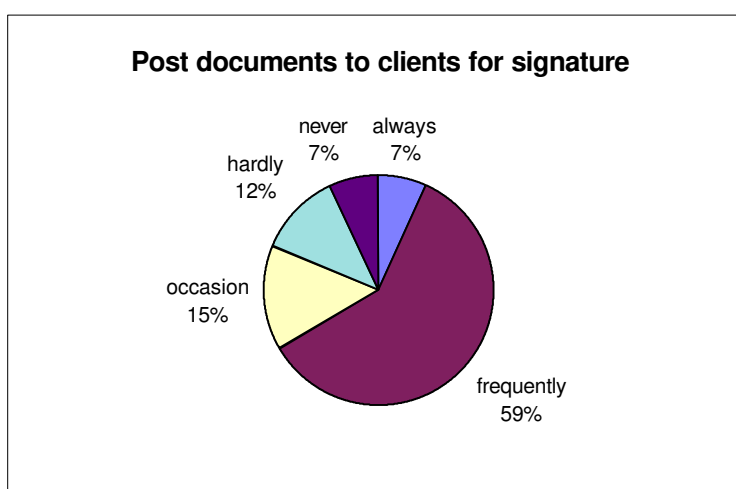


Fig. 8

The results in fig.8 could cause some concern, particularly in view of the stated role of the conveyancer and the obligations that are imposed regarding certification of documents. 66% of conveyancers either always, or frequently, post out documents for their client's signature. A further 15% occasionally adopt this method. This begs the question of how can the conveyancer certify the documents to be correct when it could be open to question about who in fact has signed and witnessed it. Could it mean that the conveyancer is being derelict in his/her duty by not establishing the identity of the proper person named in that document ? When asked how often the identification of the client was checked only 26% said always and 15% said frequently but 48% said when necessary, 8% said hardly ever and 3% said never. Unless the client is known to the conveyancer surely there is an obligation to ensure that the person signing is indeed the proper person.

Many of the comments in answer to the question "What is the source of most of your conveyancing problems or difficulties" could have been reasonably predicted but still provide confirmation of the thoughts that many entertain. For instance Land Agents come in for much criticism due mainly to their, or their staff's, poor contract drafting, threats regarding requests for the compulsory searches, to negotiate fees on behalf of the conveyancer and who provide details of transactions unnecessarily late so that conveyancers are as a consequence, under unnecessary pressure to complete settlement.

Clients also come under fire for not carrying out instructions properly and in time or who do not appreciate the seriousness of signing a contract and treat it with little priority. In this regard maybe one solution is for the Australian Institute of Conveyancers to promote the “education” of prospective buyers and sellers as well as guidelines for acceptable working relationships with the Agents.

Banks, without being specifically identified, also get a mention particularly where it is felt that there is a lack of experience in those people assigned to deal with transactions, a lack of cooperation, a lack of understanding, a large degree of inflexibility and a degree of arrogance shown to both the Bank’s clients and the conveyancers.

There was a large degree of dissatisfaction with other conveyancers, particularly those who are often late to settlement, who are part-time and therefore by extension not competent at the tasks they undertake, who discount fees and who adopt “unethical” practices. A few commented that there were too many conveyancers in the business. The implications for conveyancers from these and other results would seem to be a need for more education on ethics, business practices and professionalism. Practitioners could also take more pride and care in their work, believe in their role, be more cooperative and share more with their fellow practitioners.

There was the usual complaint about too much paperwork and labour intensive requirements forced on the conveyancers by Government and Banks alike. A few thought that the Banks could streamline their processes more and have more realistic requirements and expectations of conveyancers, especially where some information and signatures could have been obtained during their own interviews with their clients.

Solicitors were seen as a source of problems but, apart from being late and sending a “junior” to do the settlement, in a fairly non specific way. In fact fellow conveyancers were seen as just as much a source of problems.

Other sources of non specific problems included the high cost of professional indemnity insurance, public perception of conveyancers, obtaining conveyancing work, keeping up with legislation, time taken by Councils to supply information and dealing with the SA Water conveyancing branch.

Outstanding in these responses was the refreshingly different comment by one conveyancer who took a positive attitude and said that “any problem or difficulty is there to be overcome”

6.3. Sources of work for conveyancers:

Most conveyancers had more than one source of work although there was usually one main source. As might be expected most of the work originates through an Agent, (88% of conveyancers derived some fraction of their work through this source), friends and relatives (84%), past clients (83%) and business associates (61%). Developers accounted for some work to 46% of respondents.

These results just serve to re-emphasise the importance of promoting a good reputation and maintaining a continuing good relationship with these groups of people i.e. being known to business acquaintances, friends and relatives and adhering to the timeless business adage of satisfying the customer so that they will not only return with repeat business but also recommend their friends.

In one or two isolated cases friends and repeat business accounted for 100% of the business.

Acceptable and realistic working relationships with Agents would seem to be essential to most conveyancers. Thus guidelines prepared by the professional Institutes may be necessary to remove the perceived differences between the two professions.

Figures 8 to 11 inclusive show the proportions of work from the four main sources

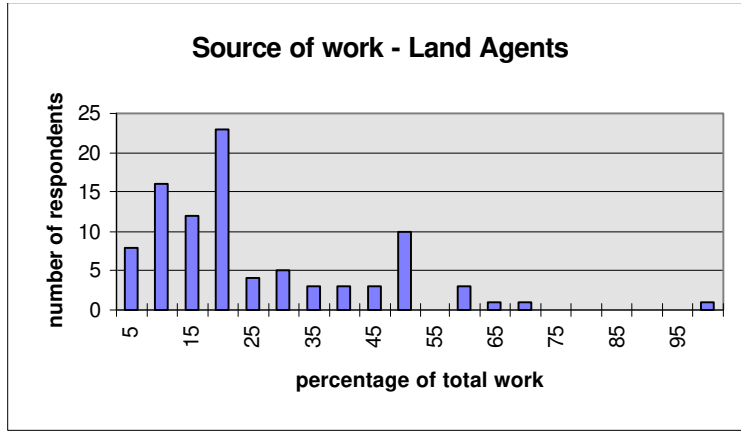


Fig. 9

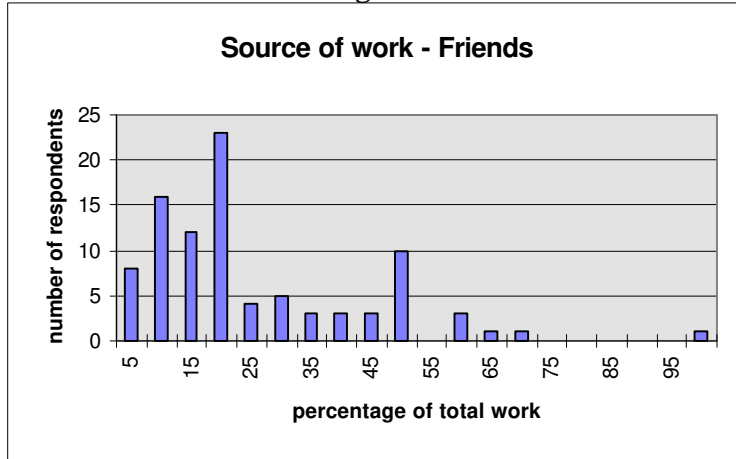


Fig. 10

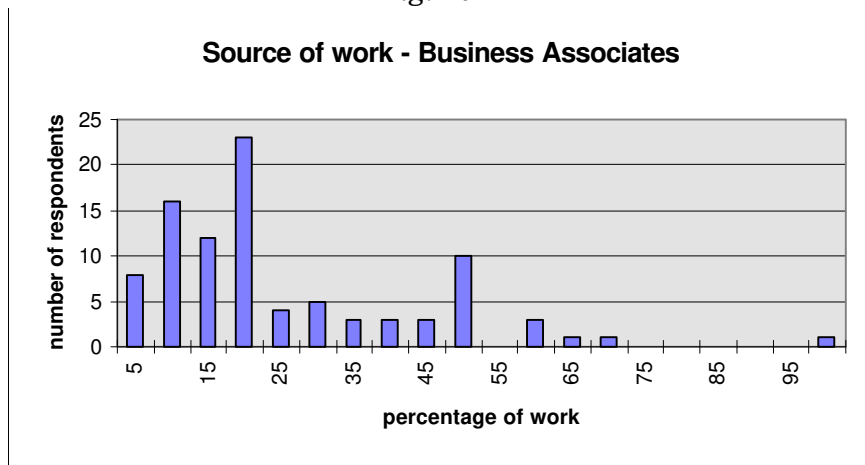


Fig. 11

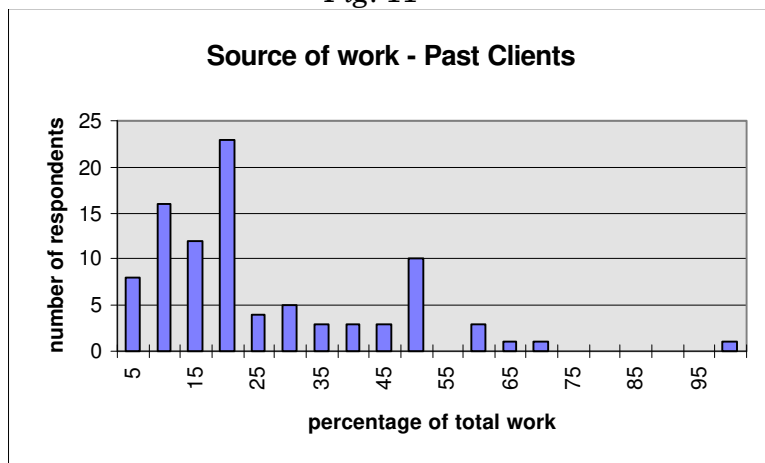


Fig. 12

The overview below shows the percentages of conveyancers who derive varying degrees of work from the sources listed.

Advertising	21%
Agents	88%
Builders	30%
Business Associates	61%
Developers	46%
Direct approach	17%
Friends	84%
Other	22%
Past clients	83%
Yellow Pages	24%

Perhaps surprisingly in this electronic age 23% of conveyancers did not have a computer while 26% had a computer package specifically designed for a conveyancing practice. Given that the computer packages can only realistically be justified economically by a very active office this figure would seem to be in line with the results regarding the number of settlements effected per week.

One in three conveyancers has a mobile phone and 2 in every three have both a fax machine, photocopier and typewriter.

If total electronic conveyancing ever becomes part of the industry then many practitioners will have to at least review the way they operate and maybe even join forces with others to be economically viable.

6.4. Searches required by Sec 7 of the Land and Business (Sales and Conveyancing) Act:

The response to the question “How often do you make a Sec 7 search” was not as good as other questions (only 60% of all respondents) and many gave multiple answers which would indicate that most conveyancers make sure that the searches are available but may not necessarily have made them themselves.

It could also be an indication that there exists some confusion about the conveyancer’s responsibilities in this regard.

In any event there seems to be a need for guidelines to be laid down by the Institute and/or the Office of Consumer Affairs.

The responses to this question were :

only when acting for the Vendor	20%
only when acting for the Purchaser	10%
always, regardless of the client	57%
use the one supplied by the Agent	53%
if supplied by the Agent and not more than 2 months old	23%

Those who only make these searches when dealing with the vendor may be implying that if dealing with the purchaser they accept what the purchaser has been given by the vendor and the Agent.

6.5. Rates and taxes and adjustment statements:

Searching rates and taxes information is carried out by practically all conveyancers regardless of who their client is, although a search of Land Tax, presumably because the main place of residence is exempt, is only done when thought to be necessary. The conveyancers are in favour (54%) of the necessity for both parties to undertake the identical rates and taxes searches for any one settlement compared to 44% against.

It seems that more care could be taken with the adjustment statements since 42% report that errors are found occasionally (42%) and frequently (2.5%).

6.6. Fees

The response to questions about how the fees are set, attitudes to discounting of fees, desired calculation of fees, and salary scales gave these results:-

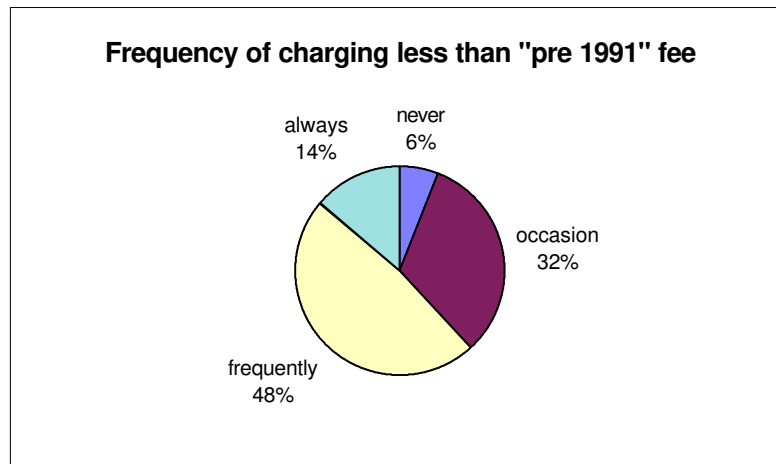


Fig. 13

As fig 13 shows, 62% of conveyancers frequently charge less than the 1991 recommended scale of fees while 32 % occasionally charge less. This would seem to be a sign of the times resulting from the encouragement given to consumers to “shop around” for the best price, not only for conveyancing but also in most other purchases.

All respondents were at least asked occasionally to quote for work and 78% reported the having to quote a fee as being frequently or always. At the same time as the majority feel that they have to negotiate their fee to get the work there were 87% who expressed concern that others are charging less than the “old” fee.

59% really believe that the proper way to charge a fee is according to the complexity of the transaction although 24% thought that both purchaser and vendor should be paying the same. Many conveyancers seem to charge according to a mixture of what the market will stand, the 1991 fee, the complexity of the transaction and possibly a little guess work.

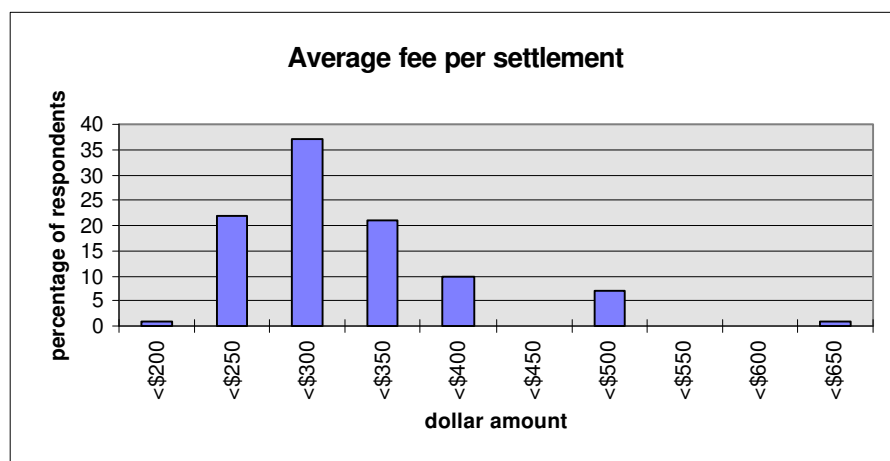


Fig. 14

Fig. 14 shows the average fee per settlement ranging from less than \$200 up to an apparently high \$650. Not surprisingly only one respondent reported that high fee

The average fee per settlement seems to be somewhere between \$250 and \$300 and more than probably unrelated to the value of the property which is the subject of the transaction.

6.7. Professional Indemnity Insurance

All of the 66% of total respondents, who answered questions about insurance, have carried insurance for periods ranging from 1 to 33 years.

83% of these were in favour of compulsory professional indemnity insurance for conveyancers because, it seems, most of them agree that there is a risk of litigation even if it is only of little real concern to them.

23% reported that there had been a claim against their insurance and that only 10 cases were successful.

43% said that they knew of claims against other conveyancers, and many knew of more than one other conveyancer being the subject of a claim. One conveyancer knew of 30 claims against conveyancers and another knew of 10 different claims.

Professional Indemnity is expected to be made compulsory this year so any comments are only academic however it does seem that most conveyancers have accepted the requirement of PI even though there is little evidence that there is much need for it. This survey cannot hope to establish it but could any of this Insurance be a substitute for operating professionally at all times ?

6.8. Education

Conveyancers were asked about their education, competency, further education since qualifying as a conveyancer and for the reference books that they used in their business.

It would surprise few in South Australia to know that 91% of conveyancers have a copy of Jessup's Lands Titles Forms and Practices. Other references included "Strata Facts" (67%) and CCH Conveyancing Reports (29%). Of particular interest is the fact that 85% reported that they keep a precedent file for reference. One can only imagine what wealth of conveyancing information is contained in these files which alone, or better still if collated and edited with the precedent files known to be kept in the Land Titles Office, would form a magnificent few volumes of reference material for the benefit of the Lands Titles Office and the entire Conveyancing profession.

Other references used by some conveyancers include :- Australian Encyclopedia of Forms and Precedents; Law of Contract ; Land Law ; Lecture notes ; REI practice manual and various references concerning Legal Drafting. One person cited the Bible as a reference.

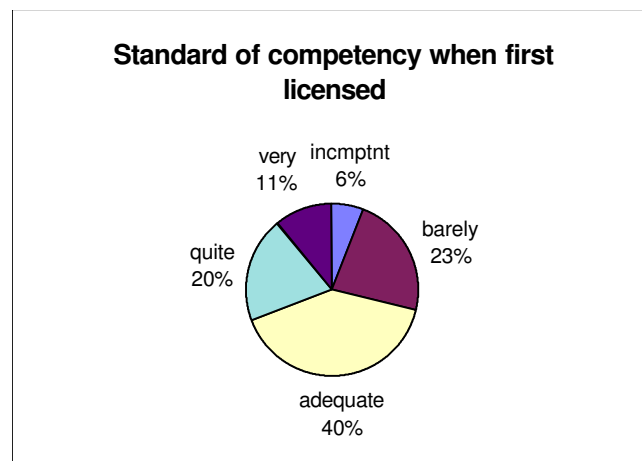


Fig. 15

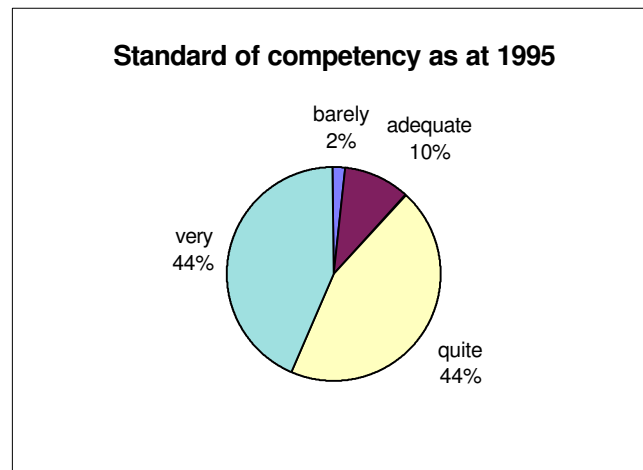


Fig. 16

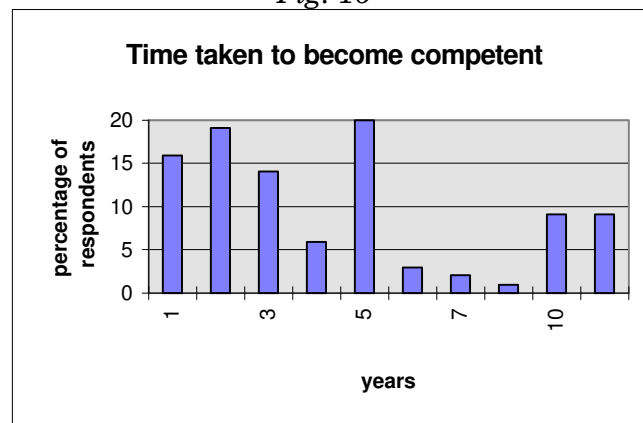


Fig. 17

It was not encouraging to discover that only 16% of conveyancers felt competent at the end of their first year in practice (fig.16) and only a further 19% felt competent at the end of the second year. Others felt that they took periods of up to 10 years (fig.17) to become competent, although this could be a way of saying that one never stops learning. It is a bit of a worry to find that 20% took 5 years and a further 20% took 10 or more years to feel competent. A good case for renewal of registration to be dependent upon evidence of practical competency.

When asked whether there was anything lacking from their own education in qualifying as a conveyancer the overwhelming majority complained of lack of practical experience and the lack of time to cover the material properly.

Lecturers were accused of not being competent (presumably at lecturing and not the knowledge). Others thought that more time should be spent in preparing the graduate for business by having more accounting, marketing the practice and in business practices.

Specialist topics should have been in more depth particularly law and land division.

Fortunately, with the advent of national competency standards, recognition of prior learning and an upgrade of the TAFE course to an Advanced Diploma level these matters have been taken into account in conveyancing courses including the Bachelor of Business (Property) at the University of South Australia.

The Authorities should be seriously considering the requirement for conveyancers to only be permitted to practice for limited periods on showing satisfactory evidence that they are competent and conversant with current practices. 56% of the total respondents agree that the renewal of a conveyancer's right to practice should depend on demonstrating a minimum standard of competence.

6.9. Further Education :

As shown in the following table, 62 conveyancers said that they had undertaken more study since qualifying as a conveyancer. The majority of these undertook personal development programs while a significant number went on to take a University degree or graduate diploma. Two even repeated the conveyancing course to consolidate their knowledge.

degree or graduate diploma	7
diploma or graduate diploma	4
accounting studies	5
computer course	4
sales or agents course	7
strata management	4
valuer	3
repeat conveyancing subjects	2
personal development programmes	10
further legal education	5
business management seminars TAFE	3
languages	2
REI short course	3
other	3

Seminars held by the Real Estate Institute, Australian Institute of Valuers and Land Economists and the Australian Institute of Conveyancers offered some attraction to conveyancers. Naturally enough the biggest (75%) attendance was at the AIC seminars. REI and AIVLE attracted (10%) while other unspecified seminars attracted 15%.

Only 17% found these seminars to be extremely helpful, 46% found them quite helpful and 37% said that they were marginally, or not at all, helpful.

As for the University of South Australia's degree in Conveyancing, not many admitted to knowing much about it but 31% were prepared to say they weren't interested in it while 61% indicated that they could be interested within the next few years. Unfortunately these promising signs have not become reality yet.

The implications of these results are that there is a real interest in practitioners to further their knowledge and upgrade their skill but they are selective in what they want. Part of this survey revealed the topics that many wanted to see published in the Conveyancer's magazine. These topics should give the organisers of these seminars something to consider to appeal to a wider range of participants.

6.10. The Conveyancing Industry

The conveyancers were asked who they thought should control conveyancers and their activities. In the past it was the Registrar General who issued licences but this authority was subsequently given to the Commissioner for Consumer Affairs. Later still the licencing gave way to registration still under the control of the Commissioner.

An overwhelming majority (55%) support the idea that the AIC be the governing body with a further 8% suggesting a "committee of peers" which could be interpreted to be the same thing. Thus 63% believe that the control should be exercised by the conveyancers themselves.

Only 16% thought that the government should be responsible and 17% thought the Registrar General should be responsible.

71% of respondents were members of the Australian Institute of Conveyancers .

Of these, 40% thought that the Institute was only performing its role partly or not at all while the remainder thought that its performance ranged from adequate to entirely fulfilled.

Only 12% of respondents never (3%) or occasionally (9%) read the AIC Conveyancer magazine while 13% read it frequently and 76% always read it. Comments received, about what the content of this magazine should be, include articles about conveyancing standard practices, case notes and precedents, changes in the law, hints for drafting documents, details of government and bank departments useful for settlement purposes, letters to the editor, items of interest from members, problems to solve, salary guides, tips and hints. The magazine already includes a number of these types of articles but it is also true that not many practitioners contribute articles of any kind much less articles for which they would be eminently qualified to write.

6.11. Other Participants

There is often much talk and complaining about the main participants that a conveyancer must deal with in the settlement process. It is fairly common, and indeed popular, to joke and complain about the public service and public servants and to complain about the banks and their “inconvenient, inflexible and tedious” office procedures.

The responses to questions about the level of satisfaction with these Authorities tends to belie the popular opinions although clearly some areas may need improvement.

Rating of standard of facilities available to conveyancers					
	v.poor	poor	adequate	v.good	excellent
L.T.O	13%	17%	38%	31%	5%
S.D.O	1%	3%	25%	51%	19%
SAW	7%	10%	40%	35%	8%

Fig. 18

Fig.18 shows the ratings given to the Lands Titles Office (LTO), the Stamp Duties Office (SDO) and SA Water (SAW) for the standard of facilities that they make available to conveyancers.

Rating of standard of service given to conveyancers					
	v.poor	poor	adequate	v.good	excellent
L.T.O	3%	6%	35%	48%	12%
S.D.O	1%	3%	31%	51%	15%
SAW	6%	14%	40%	33%	9%
BANKS	3%	14%	45%	34%	5%
COUNCIL	6%	23%	50%	22%	

Fig. 19

While complaints are often heard about the quality of service from the Authorities, the response to the question “How do you rate the service” tends to support mainly complaints against SA Water and Councils. The results shown in Fig. 19 confirm the answers to other questions in this survey which indicate that the Councils, SA Water and Banks have the most reason for improving their image in their dealings with conveyancers.

Rating of level of communication with conveyancers					
	v.poor	poor	adequate	v.good	excellent
L.T.O	1%	7%	34%	46%	13%
S.D.O		5%	37%	46%	14%
SAW	7%	14%	46%	29%	6%

Fig. 20

Good communications are necessary in efficient and professional conveyancing practices, no less than in any other business. The rating of the level of satisfaction of communications between conveyancers and Authorities shows that generally it is good.

6.12. Respondents were also asked to identify specific services of any Authority that they would like to see improved.

The answers were varied and often obviously related to specific instances that had occurred to the conveyancer. There was however some uniformity in the types of problem which prompted the suggestions for improvement.

The suggestions can be summarised as follows:

Banks and Credit Unions:

need to become more flexible in procedures and requirements ; be more helpful and cooperative; remove certain fees ; have more than one person able to answer queries regarding a particular transaction; reduce time waiting on the phone; improve communications with conveyancers; better qualified staff.

To quote one disgruntled conveyancer “since centralised operations banks are beyond help”

Councils :

improve turn around time for mandatory searches and settlement information ; improve telephone service and be more helpful.

SAW:

improve accuracy of information; need more staff at busy times; special meter readings should be done quicker; conveyancing information should be available within 24 hours; search information should be available via the computer from remote stations; generate cordial relations with conveyancers.

LTO:

accept payment of stamp duty at time of lodgement; improve quality control of titles and related information; improve communications between examiners and conveyancers; quicker examination and registration time; improve settlement facilities; quicker Sec 7 searches; improve client advice ; improve attitude of staff

SDO

have an additional fast lane in peak periods; faster processing; more staff during peak periods; improve speed of computer system for processing purposes; be more flexible

6.13. Causes for Complaints

Generally there were not enough responses to all parts of these questions to make any definitive conclusions so a selection of the comments received are included for interest only. In addition, there was a certain amount of duplication of answers to this question and to the question asking what improvement should be made by the various Authorities.

The most common cause for complaint amongst **Banks** in general include their inflexible attitude, their arrogance, no appreciation of problems facing a conveyancer in a difficult contract and the use of inexperienced staff.

Amongst the complaints a few conveyancers reported positive comments such as “there are no complaints”, “Banks are very good”, “usually good” and that “most are cooperative”.

Causes for complaint against other **Conveyancers** include lateness, lack of communication and slow responses to settlement information. A few cited part-timers as being reason to complain and inferred that part-time equated to lack of knowledge and professionalism.

Solicitors fared as well as, or as badly as, Conveyancers in being the source of complaints. It seems that they too are late, slow to provide settlement information and often have unqualified (perhaps meaning inexperienced) people attending settlement. Other comments range from “no complaints at all” to “hopeless and of doubtful integrity”. It seems that the traditional rivalry between solicitors and conveyancers is not yet dead.

6.14. Constructive Comments:

A few of the comments received, in response to a very general question designed to enable respondents to say anything in explanation of previous comments or to raise other issues that were important to them, are included for interest only.

“the profession is at a watershed - continuation of the present attitudes will further diminish fee, professional standards and the relevance of conveyancers”.

“education must be coupled with full time participation in the industry to be properly competent.

One conveyancer identifies new conveyancers and part-timers as being the problem with the industry.

I conclude this report with the thoughts of two of the respondents :

Respondent One : “too many conveyancers feel threatened by each other and forget about the importance of the job that they are doing for their client”

Respondent Two : “the AIC should inject a sense of pride and professionalism or this long time industry will self destruct”. A further comment from the same person suggested that “the fee war will be responsible for discontent in the industry, closure of some business and that the legal practitioners will reap the rewards.

Trevor Mills
Lecturer in Conveyancing
January 1998