

# Helping Australian People and Businesses Deal with Law

University of Adelaide Human Research Ethics Committee (HREC) Ethics Approval No. H-2017-125.  
Approval granted July 2017. Surveying completed between September 2017 to February 2018.

Results of study detailed in Mark Giancaspro, 'Testing Stewart Macaulay's Theory Down Under: A Study of Australian Small to Medium-Sized Enterprises' Understandings of, and Experiences with, Contract Law' in John Eldridge and Tom Pilkington (eds) *Australian Contract Law in the 21<sup>st</sup> Century* (Federation Press, 2020).

## LIST OF SURVEY QUESTIONS

Legend: \*Qualitative Question      ^Slider Bar Question

**Question 1:** [General Consent].

**Question 2:** What is your business size?  sole trader;  small (less than 20 employees);  medium (20-50 employees);  mid-large (50-200 employees);  large (more than 200 employees);  I do not own a small business;  I am not involved in management decision-making for the business.

**Question 3:** In years, how long has your company been in operation? (If less than a year, please round up to one year)\*

**Question 4:** In what city or cities does your company operate?\*

**Question 5:** In what sector(s) does your company operate?  private (e.g. private enterprise);  public (e.g. government).

**Question 6:** In which private industry or industries (if any) does your company operate? Select as many that apply:  Not applicable (proceed to Question 7);  Accounting;  Advertising, Arts and Media;  Aeronautical and Aerospace;  Agriculture;  Apparel and Accessories;  Automotive;  Banking;  Call Centre and Customer Service;  Construction;  Cosmetics;  Education;  Electronics;  Energy and Natural Resources;  Engineering;  Entertainment;  Financial Services;  Food and Beverage;  Health Services;  Information Technology and Internet Services;  Journalism;  Legal;  Manufacturing;  Medical;  Mining, Resources and Energy;  Music;  Real Estate and Property;  Retail and Consumer Products;  Sales;  Science;  Sports and Recreation;  Technology;  Telecommunications;  Tobacco;  Trade and Services;  Transport;  Wholesale.

**Question 7:** In which public industry or industries (if any) does your company operate? Select as many that apply:  Not applicable (please refer back to Question 6, or proceed if complete);  Agriculture;  Communications;  Defence;  Education and Training;  Employment;  Energy and Natural Resources;  Environment;  Finance;  Government (State or Federal);  Health and Human Services;  Immigration and Border Protection;  Industry and Science;  Justice;  Law Enforcement;  Local Government;  Social Services;  Transport and Infrastructure.

**Question 8:** How would you define the term 'contract'?\*

**Question 9:** Which of the following do you understand to amount to a legal 'contract'? Please select as many that you think apply:  Formal (written) agreement;  Agreement contained in an email;  Agreement contained in an SMS text message;  Agreement concluded over the phone;  Agreement concluded in person (verbally);  Handshake concluding an agreement.

**Question 10:** Where do you obtain the majority of your information regarding your contractual rights and obligations? Please specify as many sources that apply.\*

**Question 11:** Please indicate the extent to which you agree with the following statement: 'Australian contract law is comprehensible and relatively easy to understand'. If unsure, please leave blank and proceed to Question 12:  
Strongly Disagree      Neutral      Strongly Agree^

**Question 12:** Please indicate the extent to which you agree with the following statement: 'I am familiar with the sources of Australian contract law (i.e. "where it comes from")'. If unsure, please leave blank and proceed to Question 13:  
Strongly Disagree      Neutral      Strongly Agree^

**Question 13:** Please indicate the extent to which you agree with the following statement: 'Information relating to my business' contractual rights and obligations is easily accessible'. If unsure, please leave blank and proceed to Question 14:  
Strongly Disagree      Neutral      Strongly Agree^

**Question 14:** Please indicate the extent to which you agree with the following statement: ‘Government agencies do a good job of providing my business with adequate support/information regarding its rights and obligations under Australian contract law’. If unsure, please leave blank and proceed to Question 15:

Strongly Disagree      Neutral      Strongly Agree^

**Question 15:** In your view, what should Australian contract law aim to do for Australian businesses?\*

**Question 16:** How often would you estimate your business has some dealings with contracts of any kind (i.e. asked to write/sign one by the other party)?  Never;  Every now and then;  Often;  Very often;  Unsure.

**Question 17:** How often would you estimate your business uses contracts for itself?  Never;  Every now and then;  Often;  Very often;  Unsure.

**Question 18:** Which method(s) does your business primarily use to make contracts for itself? Please select as many that apply:  Formal (written) agreement drafted personally;  Formal (written) agreement drafted by a lawyer;  Email;  SMS text message;  Phone call;  Personal conversation;  Handshake;  Other (please specify).

**Question 19:** Which of the method(s) you selected in Question 18 would you say you use the most and least?\*

**Question 20:** Has your business ever formed an agreement with another party without using a formal written contract?  Yes;  No;  Unsure.

**Question 21:** How important do you consider contracts are to your business?  Not at all important;  Somewhat important;  Fairly important;  Extremely important.

**Question 22:** Which of the following statements best describes your attitude to the use of formal written contracts when doing business?  I prefer not to use formal written contracts;  Sometimes I prefer to use formal written contracts, other times I prefer not to;  I prefer to use formal written contracts;  I am unsure whether I prefer to use formal written contracts or not.

**Question 23:** Which of these factors are persuasive in your business’ decision to use FORMAL written contracts? Please select as many that apply:  Large financial value of the transaction;  Unfamiliarity with the other party;  Good way of protecting our business by having paperwork with all the terms written down;  Ease of accessing lawyers or other professionals to draw up the contracts;  That’s just how we’ve always done business.

**Question 24:** Which of these factors are persuasive in your business’ decision to use INFORMAL (unwritten) contracts? Please select as many that apply:  Faster to make agreements without paperwork;  Cheaper to make agreements without paperwork;  Relationship of trust with the other party means we don’t need to rely on formal written contracts;  We prefer not to get lawyers involved;  That’s just how we’ve always done business.

**Question 25:** What are the main problems (if any) your business has experienced when using formal written contracts (i.e. disputes or misunderstandings over interpretation of terms etc.)?\*

**Question 26:** What are the main problems (if any) your business has experienced when using informal unwritten contracts (i.e. disputes as to the terms of the agreement)?\*

**Question 27:** Has your business ever overlooked a party’s breach of contract?  Yes;  No;  Unsure.

**Question 28:** If you answered ‘yes’ to Question 27, can you provide an example of how your business overlooked another party’s breach of contract?\*

**Question 29:** Why did your business overlook the breach (as you described in Question 28)?\*

**Question 30:** Who or what do you typically consult when you have a query regarding a contract? Please select as many that apply:  Colleague;  Friend;  Family relative;  Your company lawyer;  An external lawyer/law firm;  Legal advice service;  Government agency;  Written publications;  Websites;  Other (please specify).

**Question 31:** Does your business consult lawyers when forming contracts?  Yes;  No;  Unsure.

**Question 32:** If you answered ‘yes’ to Question 31, how often would you say your business consults lawyers when forming contracts?  Rarely;  Every now and then;  Often;  Very often;  Unsure.

**Question 33:** Does your business consult lawyers when interpreting contracts?  Yes;  No;  Unsure.

**Question 34:** If you answered ‘yes’ to Question 33, how often would you say your business consults lawyers when interpreting contracts?  Rarely;  Every now and then;  Often;  Very often;  Unsure.

**Question 35:** Approximately how much does your business spend on legal services annually?  \$0;  Under \$5,000;  Between \$5,001-\$10,000;  Between \$10,001-\$25,000;  Between \$25,001-\$50,000;  More than \$50,000;  Unsure.

**Question 36:** Do you know what the term 'renegotiation' means in contract law?  Yes;  No;  Unsure.

**Question 37:** If you answered 'yes' to Question 36, please provide a brief explanation of what you believe the term 'renegotiation' means.\*

**Question 38:** Please indicate the extent to which you agree with the following statement: 'I find it relatively easy to vary my business contracts'. If you are unsure or the question is not applicable to you, please leave blank and proceed to Question 39:  
Strongly Disagree      Neutral      Strongly Agree^

**Question 39:** Please indicate the extent to which you agree with the following statement: 'I am familiar with the legal requirements to facilitate a valid contract variation'. If you are unsure or the question is not applicable to you, please leave blank and proceed to Question 40:

Strongly Disagree      Neutral      Strongly Agree^

**Question 40:** To your understanding, what are the elements of a valid contract variation (i.e. what do you legally have to do to make an enforceable variation to your contract)?\*

**Question 41:** Have you or your business ever paid a party (in goods or services) more than originally agreed in a contract?  Yes;  No;  Unsure.

**Question 42:** If you answered 'yes' to Question 41, what were the reasons for doing this? Please select as many that apply:  To encourage satisfactory completion or performance of the contract;  To strengthen and maintain good relations between the parties;  To offset actual or potential losses caused by an external factor (e.g. natural disaster, supply shortage);  To offset actual or potential losses caused by an internal factor (e.g. poor financial management by other party);  To satisfy a personal desire to be friendly;  Other (please specify).

**Question 43:** If you answered 'yes' to Question 41, did the other party give something in return?  Yes;  Somewhat;  No;  Unsure.

**Question 44:** If you answered 'yes' or 'somewhat' to Question 43, can you provide an example?\*

**Question 45:** Have you ever been 'stung' by a contract i.e. has a party ever used a provision of a contract against you or your business in a way that you did not expect?  Yes;  No;  Unsure.

**Question 46:** If you answered 'yes' or 'somewhat' to Question 45, can you provide an example of what the other party did?\*

**Question 47:** Has a party ever requested 'something for nothing' from your business (i.e. additional time to do their work, verbal amendment to the contract terms etc.)?  Yes;  No;  Unsure.

**Question 48:** Approximately how often does this occur?  Rarely;  Every now and then;  Often;  Very often;  Not applicable (has never happened).

**Question 49:** Approximately how often do you oblige such requests?  Never;  Every now and then;  Often;  Very often;  Not applicable (has never happened).

**Question 50:** On the occasion(s) you obliged the other party's request, what were your reasons for doing so?  To encourage satisfactory completion or performance of the contract;  To strengthen and maintain good relations between the parties;  To offset actual or potential losses caused by an external factor (e.g. natural disaster, supply shortage);  To offset actual or potential losses caused by an internal factor (e.g. poor financial management by other party);  To satisfy a personal desire to be friendly.

**Question 51:** Has your business ever been involved in litigation over a contract?  Yes;  No;  Unsure.

**Question 52:** How many suppliers would you estimate your business currently has or deals with?\*

**Question 53:** How many clients/customers would you estimate your business currently has or deals with?\*

**Question 54:** Does your business use 'standard form' contracts?  Yes;  No;  Unsure.

**Question 55:** Does your business deal with international companies?  Yes;  No;  Unsure.

**Question 56:** If you answered 'yes' to Question 55, does your business (to your knowledge) comply with particular rules of international contract law?  Yes;  No;  Unsure.

**Question 57:** If yes, can you provide an example of such a law which your business complies with?\*

**Question 58:** The Australian Government is considering codifying the Australian law of contract (i.e. capturing all legal rules and principles in one piece of legislation). Do you think this would make it easier for business to understand and apply contract law?  Yes;  No;  Maybe;  Unsure.

**Question 59:** Do you think a help resource in the nature of a mobile/tablet software application ('app') which serves to assist your business with understanding its rights and obligations in commercial contracting situations, identify the specific organisations that can offer tailored support for your business, help you comprehend the law as it applies to your commercial contracting situations, and help you develop correspondence with parties relevant to said situations, would be useful to you?  Yes, it would be extremely useful;  Yes, it would be moderately useful;  I think it would be neither useful nor futile;  No, I think it would be quite futile;  No, I think it would be extremely futile;  I am unsure.

**Question 60:** Do you have additional suggestions for what such an app should do for Australian businesses?\*

**Question 61:** If you would be willing to participate in a follow-up focus interview, please include your email address in the box provided below (please note that your data WILL NOT become personally identifiable as a result and will remain confidential; your email address will only be known to me and used to contact you to arrange a follow-up discussion if you would oblige).\*