

2009 Court Appearance Survey

Snapshot – New South Wales

Introduction

The Law Council of Australia funded a research survey to obtain robust, reliable and replicable data on the segment of the legal community that appears before Australian superior courts. The concept for the research was developed in association with the Australian Women Lawyers (AWL). The study was conducted in order to set a benchmark against which the nature of appearances in Australia could be considered.

The Law Council released the results of the national study in December 2009. The full report is available from the Law Council's website.

Methodology

The term 'appearances' was defined as "those occasions in which a legal practitioner raises legal argument or adduces evidence while defending or presenting a case". Therefore, procedural and management aspects of matters that are part of court processes and court statistics generally were not considered in this research.

The survey findings could only provide comparative data about the actual rate at which barristers appear in the survey with the rate at which they could be expected to appear given their representation at the Bar. It was not possible to quantify the solicitor/advocate category from any records kept by the various authorities and therefore no comparisons or conclusions can be made about this segment of the survey population.

The study considered appearances before Australian superior courts, namely the state/territory Supreme Courts and Courts of Appeal, the Federal Court of Australia, the Family Court of Australia, the Family Court of Western Australia and the High Court of Australia.

The data for all participating courts apart from the High Court was collected by the courts' associates. The data for the High Court was obtained from the transcripts of matters published on the court's website. Generally, the data was collected during a four week period commencing on 4 May and concluding on 29 May 2009. However, where necessary, data

collection was also conducted during other timeframes.

The information obtained included details regarding the seniority, number and gender of legal practitioners appearing before the court, whether the appearance related to a matter in the civil or criminal jurisdiction, the duration of the appearance, and where applicable, whether a private, government or other briefing entity was involved in selecting the legal practitioner who appeared.

Below is a snapshot of the survey findings relevant to New South Wales (NSW).

Main Findings

Size and characteristics of the survey population

Of the 2,114 barristers practising in NSW, 1744 (82 per cent) were male and 370 (18 per cent) were female. Of those, 94 male and 6 female barristers were SCs/QCs and 1418 male and 351 female barristers were Junior Counsel.

Nationally, of the 5487 barristers, 4429 (81 per cent) were male and 1058 (19 per cent) were female. Of those, 774 male and 53 female barristers were SCs/QCs and 3655 male and 1005 female barristers were Junior Counsel.

Characteristics of matters surveyed

The findings relevant to NSW were based on 686 matters, representing 30 per cent of the 2320 matters surveyed nationally. These matters accounted for 1683 of appearances by legal practitioners in NSW, representing 31 per cent of the 5462 appearances nationally. The total appearance time for NSW practitioners was 5256 hours or 35 per cent of the 15177 hours nationally.

Type of matter, hearing and court composition

Of the 686 matters, 93 per cent were civil and 7 per cent were criminal matters. NSW had the highest proportion of civil matters when compared to other jurisdictions. Nationally, civil matters accounted for 77 per cent of

matters, whereas 23 per cent were criminal matters. Appearances in these matters arose from applications in 26 per cent of the matters (36 per cent nationally), 50 per cent of matters were hearings (43 per cent nationally), 8 per cent were trials (10 per cent nationally) and 16 per cent were appeals (12 per cent nationally). Eighty-seven per cent of matters were heard by a single judge and 13 per cent by more than one judge. Nationally, these figures were 88 per cent and 12 per cent, respectively.

Proportion of appearances by gender

The overall findings (both senior and junior counsel categories) for NSW indicated that there was no significant difference between survey appearance rates and the actual Bar populations of both male and female barristers. Male barristers comprised 82 per cent of the total Bar population and appeared in 83 per cent of matters, whereas female barristers comprised 18 per cent of the total Bar population and appeared in 17 per cent of matters. Nationally, male and female barristers appeared in exactly the same proportions as they existed in the Bar population (81 per cent male; 19 per cent female).

Male SCs/QCs appeared in 91 per cent of matters and comprised 94 per cent of the SC/QC population at the Bar. Female SCs/QCs appeared in 9 per cent of the matters and their corresponding proportion at the Bar was 6 per cent. Nationally, these figures were the same.

Both male and female Junior Counsel appeared in the same proportions as they existed in the Bar population (80 per cent male; 20 per cent female). Nationally, Junior Counsel also appeared in the same proportions as they existed in the Bar population (78 per cent male; 22 per cent female).

Appearance time

In NSW, the average appearance time for male barristers was 4.3 hours (total hours of 4412 or 84 per cent), whereas, on average, women appeared for 3.9 hours (total hours of 844 or 16 per cent). The difference in appearance time in NSW was not statistically significant. When compared to the national average appearance times of 3.8 hours for males and 2.8 hours for females, NSW barristers appeared for longer periods of time.

Both male and female solicitor/advocates in NSW appeared for 1.4 hours. Nationally, these figures were 1.2 hours for male solicitor/advocates and 1.1 hours for female solicitor/advocates.

Briefing entity

There were two categories of briefing entity – private law firm (which includes incorporated legal practices and sole practitioners) and other entities (which for example includes government departments and community legal services). Private law firms briefed male barristers in 86 per cent of matters and female barristers in 14 per cent of matters. Male barristers were briefed by other entities in 74 per cent of matters, whereas female barristers were briefed in 26 per cent of matters. Further, male solicitor/advocates were briefed by private law firms in 56 per cent of matters and women were briefed in 44 per cent of matters. Other entities briefed male solicitor/advocates in 49 per cent of matters, while women were briefed in 51 per cent of matters.

Nationally, private law firms briefed male barristers in 86 per cent of matters and female barristers in 14 per cent of matters. Male barristers were briefed by other entities in 70 per cent of matters, whereas female barristers were briefed in 30 per cent of matters. Further, male solicitor/advocates were briefed by private law firms in 67 per cent of matters and women were briefed in 33 per cent of matters. Other entities briefed male and female solicitor/advocates equally (50 per cent for each gender).

Conclusion

The Law Council and AWL are committed to the principles of equality in the workplace and will continue to devise further policies or strategies to ensure equality for female barristers and advocates. In particular, the strategy to address the findings of the *2009 Court Appearance Survey* will focus on further investigation and continuous information gathering, education and promotion of structural and institutional change.