

2009 Court Appearance Survey

Snapshot – Tasmania

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 Tasmania.

It should be noted that during the data analysis a disproportionate number of appearances by female Junior Counsel was observed in Tasmania, based on knowledge of the characteristics of the survey population. Inquiries revealed that some associates recorded all non-SC/QC appearances as Junior Counsel, using the term generically as meaning junior counsel. Various options were considered to remedy this problem. It was decided to, where necessary, remove all the Tasmanian figures from the overall survey. The categories of legal practitioners to which the main findings below relate are SC/QC and 'other counsel' (which includes Junior Counsel and solicitor/advocates) categories.

Main Findings

Size and characteristics of the survey population

At the time when the Bar composition figures were tabulated for comparison purposes, there were 33 barristers practising in Tasmania and they were all male. Of those, 7 were SCs/QCs and 26 were Junior Counsel.

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

Characteristics of matters surveyed

The findings relevant to Tasmania were based on 88 matters, representing 4 per cent of the 2320 matters surveyed nationally. These matters accounted for 186 appearances by legal practitioners in Tasmania, representing 3 per cent of the 5462 appearances nationally. The total appearance time for Tasmanian practitioners was 572 hours or 4 per cent of the 15177 hours nationally.

Type of matter, hearing and court composition

Of the 88 matters, 31 per cent were civil and 69 per cent were criminal matters. 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 11 per cent of the matters (36 per cent nationally), 56 per cent of matters were hearings (43 per cent nationally), 25 per cent were trials (10 per cent nationally) and 8 per cent were appeals (12 per cent nationally). Ninety-two per cent of matters were heard by a single judge and 8 per cent by more than one judge. Nationally, these figures were 88 per cent and 12 per cent, respectively.

Appearance time

In Tasmania, the average appearance time for SCs/QCs was 2.0 hours. As all appearances were by male SCs/QCs, there are no corresponding figures for females. Nationally, the average appearance time for male SCs/QCs was 4.9 hours, whereas female SCs/QCs appeared on an average for 4.1 hours.

Average appearance time for 'other counsel' (that is, Junior Counsel and solicitor/advocates) was 3.3 hours for males and 2.9 hours for females. Nationally, these figures were 2.9 hours and 2.1 hours, respectively.

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). In Tasmania, both private law firms and other entities briefed male SCs/QCs in all matters, however, this is explained by the fact that there were no female barristers practising in Tasmania at the time when the Bar composition figures were tabulated. Nationally, private law firms briefed SCs/QCs in 93 per cent of matters and female barristers in 7 per cent of matters. Male barristers were briefed by other entities in 83 per cent of matters, whereas female barristers were briefed in 17 per cent of matters.

Findings in relation to 'other counsel' indicated that private law firms briefed males in 78 per cent of matters and females in 22 per cent of matters. Other entities briefed male 'other counsel' in 41 per cent of matters and females in 59 per cent of matters. Nationally, private law firms briefed male 'other counsel' in 78 per cent of matters and females in 22 per cent of matters. Male 'other counsel' were briefed by other entities in 61 per cent of matters, whereas female 'other counsel' were briefed in 39 per cent of matters.

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.