

2009 Court Appearance Survey

Snapshot – South Australia

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 South Australia (SA).

Main Findings

Size and characteristics of the survey population

Of the 195 barristers practising in SA, 158 were male (81 per cent) and 37 (19 per cent) were female. Of those, 24 male and 4 female barristers were SCs/QCs and 134 male and 33 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 SA were based on 142 matters, representing 6 per cent of the 2320 matters surveyed nationally. These matters accounted for 322 appearances by legal practitioners in SA, representing 6 per cent of the 5462 appearances nationally. The total appearance time for SA practitioners was 703 hours or 5 per cent of the 15177 hours nationally.

Type of matter, hearing and court composition

Of the 142 matters, 69 per cent were civil and 31 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 26 per cent of the matters (36 per cent nationally), 48 per cent of matters were hearings (43 per cent nationally), 10 per cent were trials (10 per cent nationally) and 16 per cent were appeals (12 per cent nationally). Eighty-five per cent of matters were heard by a single judge and 15 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 SA 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 81 per cent of the total Bar population and appeared in 75 per cent of matters, whereas female barristers comprised 19 per cent of the total Bar population and appeared in 25 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 82 per cent of matters and comprised 86 per cent of the SC/QC population at the Bar. Female SCs/QCs appeared in 18 per cent of the matters and their corresponding proportion at the Bar was 14 per cent. Nationally, male SCs/QCs appeared in 91 per cent of the matters and their corresponding proportion at the Bar was 94 per cent. Female SCs/QCs appeared in 9 per cent of the matters whereas their actual proportion at the Bar was 6 per cent.

Findings relevant to appearance rates of Junior Counsel indicated that male Junior Counsel appeared in 74 per cent of matters and their corresponding proportion at the Bar was 80 per cent. On the other hand, female Junior Counsel appeared in 26 per cent of matters and comprised 20 per cent of the Junior Counsel population. Nationally, Junior Counsel appeared in the same proportions as they existed in the Bar population (78 per cent male; 22 per cent female).

Appearance time

In SA, the average appearance time for male barristers was 2.7 hours (total hours of 534 or 76 per cent), whereas, on average, women appeared for 2.5 hours (total hours of 168 or 24 per

cent). The 8 per cent difference in appearance time between male and female barristers in SA was not statistically significant. Nationally, the average appearance time for male barristers was 3.8 hours and 2.8 hours for female barristers.

Male solicitor/advocates in SA appeared for 1.2 hours, whereas appearance time for female solicitor/advocates was 1.1 hours. Nationally, these figures were the same.

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 SA, private law firms briefed male barristers in 79 per cent of matters and female barristers in 21 per cent of matters. Male barristers were briefed by other entities in 65 per cent of matters, whereas female barristers were briefed in 35 per cent of matters. Further, male solicitor/advocates were briefed by private law firms in 64 per cent of matters and women were briefed in 36 per cent of matters. Other entities briefed male solicitor/advocates in 67 per cent of matters, while women were briefed in 33 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.