

# Judicial Diversity in Australia: A Roadmap for Data Collection

Commissioned by the Australasian  
Institute of Judicial Administration

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The Institute also delivers programs of education to support those working in the field of judicial administration, including specific programs for court administrators, court librarians, magistrates and judges. The AIJA has also been involved in developing courses in specialised areas, including gender awareness, cultural awareness, court technology and case management.

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# Foreword

As the authors of this report lay out so clearly, judicial diversity is important for many reasons, including to maintain public confidence and legitimacy in the judicial system; ensure judicial decision-making is enhanced by, and values, different approaches and perspectives; and as a symbolic statement about equal opportunity, equal access, and equal consideration for people from diverse backgrounds to be represented in important public institutions such as the judiciary.

Gender is but one characteristic of judicial diversity that has received attention in the public and policy spheres. For more than two decades, the AIJA has collected and reported data on judicial gender statistics in Australia and, more recently, New Zealand. These statistics have offered a valuable source of data to measure and examine gender diversity in the judiciary.

However, since the AIJA began collecting these statistics, there have been significant developments in societal understandings of gender and diversity, and how best to measure them. Recognising this, the AIJA commissioned this report in order to investigate the manner in which judicial gender and other diversity statistics can best be collected to ensure data exists that is current, complete, accurate, consistent, and meaningful.

On behalf of the AIJA, I would like to thank the authors, Professors Brian Opeskin (Professor of Law and former Associate Dean (Research) at the University of Technology Sydney) and Professor Sharyn Roach Anleu (Matthew Flinders Distinguished Professor of Sociology in the College of Humanities, Arts and Social Sciences at Flinders University, Adelaide, and Fellow of the Australian Academy of the Social Sciences) for their work on this project.

This report provides a clear and compelling analysis of the key issues to consider when collecting statistical information on diversity characteristics in the judiciary. It raises important questions about what data should be captured, including which jurisdictions, bodies, judicial positions and diversity characteristics should be measured. It also addresses how these statistics should be collected, presented and disseminated, including how frequently, and by whom.

In investigating these questions, the report also proposes cogent recommendations for how to proceed with collecting and reporting meaningful statistics on Australian judicial diversity into the future, in order to ensure they can be used as a useful resource and benchmark for diversity in the judiciary.



**The Honourable Justice Jenny Blokland**

President

Australasian Institute of Judicial Administration Inc.

# Executive Summary

Since 2000, the Australasian Institute of Judicial Administration (AIJA) has collected and published annual statistics on the gender of Australian judges and magistrates. It has documented a gradual opening of the judiciary to women, who comprised only 17% of judicial officers in 2000, increasing to 43% in 2022, and it has tracked changes in different courts in the Commonwealth, states, and territories. The statistics have been used by the Australian Bureau of Statistics (ABS), state governments, judges, legal professionals, researchers, and educators. They have been essential in discussions of gender and judging in Australia, providing benchmarks for international comparison.

In 2022, the AIJA commissioned this report to investigate whether its *Judicial Gender Statistics* remain fit for purpose. The drivers for change include the growing understanding that gender is not a binary concept (as has been assumed in the statistics to date), and that there are many dimensions to judicial diversity that extend beyond gender. Both issues would require a change in the methodology of data collection—from one in which researchers collect data about judicial officers who are uninvolved in the process, to one in which judicial officers self-identify their diversity characteristics through a carefully constructed survey. The review provides an opportunity to ensure the data collected—which has evolved over its lifetime—meets standards of data integrity through its accuracy, completeness, and consistency across Australian jurisdictions.

A Draft Report was delivered to the AIJA in January 2023, and was reviewed by its Research Committee over the following months. The Committee formed preliminary views on many of the key issues raised by the Draft Report and brought these to the attention of the Council of Chief Justices in April 2023. Those views are recorded in Appendix 2. The Research Committee provided additional information on matters relevant to some of the recommendations, and we have taken that into account in producing the Final Report.

The Final Report affirms that diversity is an important quality of the judiciary. It helps to maintain public confidence in the administration of justice by having a body of judges and magistrates that better reflects the heterogeneity of the community they serve. It gives courts greater legitimacy, and thus helps citizens to accept the courts' decision-making authority even when they disagree with outcomes. It fosters different perspectives, experiences, and approaches to decision making, which promote better quality adjudication. It also serves as a symbolic statement that historical barriers to the appointment of judicial officers from non-traditional backgrounds are in decline. However, greater judicial diversity can be achieved only with reliable information about the composition of the judiciary, which can be used to underpin evidenced-based reforms to policies and practices.

The Final Report considers a wide range of issues with respect to judicial diversity, and our 20 recommendations set out a roadmap for future data collection. The main questions addressed are:

- Which jurisdictions should be included? Should the dataset extend to courts in New Zealand or other countries in the Asia-Pacific region?
- Which bodies should be included? Should the data collected extend to members of tribunals, specialist courts, or appellate courts?
- Which positions should be included? Should the dataset extend to acting judges, part-time judges, and allied personnel such as masters and judicial registrars? How should it address the issue of dual commissions?
- Which personal or social characteristics should be included? Should the dataset be extended beyond sex/gender to include race, ethnicity, Indigenous status, or other attributes?
- How frequently should the data be collected? Is annual collection sufficient, and (considering past variability) what is the preferred date of collection?
- How should the data be presented and disseminated? What mix of quantitative, graphic, and narrative formats should be used?



- What institution should collect and disseminate the data? What role should the AIJA play in future data collection and analysis, and what roles might there be for government, statutory bodies, or other entities?

A consideration of these questions demonstrates that even apparently simple statistics rely on a host of detailed decisions about the collection, analysis, and dissemination of the information. While data can only approximate or summarise the complexities of social life, it is essential to set high standards of data integrity. If judicial diversity data are used to inform policies regarding the judiciary, sound data are a prerequisite for sound policy. This Final Report is part of the ongoing effort to achieve that outcome.

# List of Recommendations

## What is Judicial Diversity and Why Does it Matter?

- 2.1 Statistics on the composition of the Australian judiciary should be maintained to promote better public understanding of the ‘third arm’ of government and to enable defensible and testable policies to enhance judicial diversity.

## Which Jurisdictions Should be Included?

- 3.1 Judicial officers exercising jurisdiction in respect of the Commonwealth territories of Jervis Bay, Christmas Island, Cocos (Keeling) Islands, and Norfolk Island should not be separately included in judicial diversity data. Jurisdiction in those polities is generally exercised by judicial officers who are already included in diversity statistics for the federal, state, or territory courts of which they are permanent members.
- 3.2 The AIJA should continue its recent practice of including the New Zealand judicial system in its judicial diversity data, but with awareness of the resource implications and the need to tailor the collection to the circumstances of New Zealand courts. If responsibility for collecting judicial diversity data shifts from the AIJA to a governmental body, that body should reassess the merits of extending the data beyond Australia.
- 3.3 If the AIJA is minded to extend judicial diversity data to include additional regional countries, such as Papua New Guinea, it should consult stakeholders in those countries to ascertain whether data collection is desirable and feasible; and it should consider the resource implications of such an extension.

## Which Bodies Should be Included?

- 4.1 In the federal sphere, diversity data should not be extended to federal tribunals, such as the AAT, because they do not exercise judicial power. In the state and territory spheres, there is merit in extending diversity data to cover ‘super-tribunals’ that exercise both judicial and non-judicial power. The AIJA should first consult the Council of Australasian Tribunals (COAT) to ascertain whether data collection is desirable and feasible; and the AIJA should consider the resource implications of any such extension.
- 4.2 Judicial diversity data should include all persons who hold judicial office on a court, whether it be a generalist or specialist court, and however the body is named. The statistics should be compiled to avoid double-counting of individuals, taking account of court structures and qualifications for appointment.
- 4.3 Judicial diversity data should disaggregate tallies for Supreme Court judges and judges of appeal in those jurisdictions where the intermediate court of appeal is constituted as a permanent body staffed wholly by specialist judges of appeal or partly by specialist judges of appeal and partly by trial judges sitting in rotation.

## Which Positions Should be Included?

- 5.1 Until such time as comprehensive data on temporary judicial officers are collected on a consistent basis across Australia, judicial diversity data should exclude temporary judicial officers from its tallies. Once such data become available, statistics should be collected separately for permanent and temporary judicial officers.
- 5.2 Until such time as comprehensive data on fractional judicial service are collected on a consistent basis across Australia, judicial diversity data should be calculated on a headcount of judicial officers rather than on their service fraction. Once such data become available, statistics should be collected on all judicial officers (full-time or part-time) and reported separately using both the headcount method and the service fraction method.

- 5.3 Where judicial officers have dual or multiple judicial commissions, they should be included once, and only once, in each annual collection of diversity data, aligned to the court in which they exercise their principal judicial functions.
- 5.4 If resources permit, diversity data should be collected on allied court personnel, such as masters, associate judges, registrars, judicial registrars, and commissioners. Any new dataset should be kept separate from diversity data on judicial officers, and its focus should be on officers who, after scrutiny, exercise significant judicial power.

### **Which Characteristics Should be Included and How Should They be Measured?**

- 6.1 Statistics regarding the gender of the judiciary should continue to be regularly recorded and reported. Judicial officers should specify their own gender, rather than it being inferred by a researcher or other person. The preferable practice is for them to do so using the closed-ended options used by the Australian Bureau of Statistics (ABS), namely: (a) man or male; (b) woman or female; (c) non-binary; (d) I use a different term (please specify); or (e) prefer not to answer.
- 6.2 Statistics regarding the race or ethnicity of the judiciary should be regularly recorded and reported. Judicial officers should have the opportunity to self-identify their race or ethnicity. To enable useful comparison with the broader population, judicial officers should be asked the standard ABS ancestry question in terms similar to the population census.
- 6.3 Statistics regarding the Indigenous status of the judiciary should be regularly recorded and reported. Judicial officers should have the opportunity to self-identify their Indigenous status. To enable useful comparison with the broader population, judicial officers should be asked the standard ABS Indigenous question in terms similar to the population census.
- 6.4 In addition to the characteristics of gender, ancestry, and Indigenous status (see Recs 6.1, 6.2, and 6.3), statistics on the judiciary should be regularly recorded through self-identification and reported with respect to age, disability, professional background, sexual orientation, socio-economic status, and year of first judicial appointment.
- 6.5 Once the diversity characteristics have been selected, careful consideration should be given to the precise formulation of survey questions, and the available response choices, having regard to ABS best practice. Diversity characteristics should be reported as counts (at a minimum), supplemented by percentages, ratios, and other summary statistics appropriate to each characteristic. Once the characteristics and response categories have been chosen, they should remain stable to facilitate comparison of data over time.

### **How Frequently Should the Data be Collected and Reported?**

- 7.1 Judicial diversity data should continue to be collected annually. For consistency, the same reference date should be used every year. The most appropriate reference date is June in successive years, especially if diversity data will be collected by a survey of judicial officers and extended to characteristics beyond gender. Publication of the data should take place as soon as practicable, but no later than six months after collection.

### **How should the data be presented and disseminated?**

- 8.1 The presentation and dissemination of judicial gender data should be improved by: (a) tallying all gender categories, (b) enhancing the time series, (c) publishing in multiple file formats, (d) publishing all available historical data, and (e) supplementing the quantitative data with graphic and narrative information.
- 8.2 The presentation and dissemination of judicial diversity data (where it extends beyond gender) should have regard to styles of reporting in comparable jurisdictions abroad, using a mix of quantitative, graphic, and narrative formats.

### **What Institutions Should Collect and Disseminate Diversity Data?**

- 9.1 Fresh consideration should be given to which institutions or agencies are best suited to collecting and disseminating judicial diversity data in the future, especially if the data are expanded in scope and collected by means of a periodic survey. That choice should be made having regard to the requisite skills, available resources, need for data confidentiality, importance of judicial trust, and desirability of producing a harmonised national dataset. A useful starting place for that conversation is the Council of Chief Justices of Australia and New Zealand, and their equivalents at other levels of the court hierarchy.

# 1 | Introduction

In liberal democracies, the judiciary wields substantial public power—to imprison or fine, to order payment by way of compensation or restitution, and to compel or enjoin action. The courts exercise these powers over individuals, corporations, and governments, and consequently there is significant public interest in the people who exercise this authority. Who are the judges and magistrates? What characteristics do they possess? Do those characteristics shape the way they exercise their power?

For much of Australia's history, little has been known about the judiciary outside legal circles. It has been a highly homogeneous profession, comprised largely of white, middle-aged, Christian males from privileged socio-economic backgrounds. That portrait is beginning to change alongside the growing expectation that the judiciary ought to reflect more closely the composition of Australian society, along key dimensions. Yet the pace of change in the judiciary has been slow, perhaps exacerbated by the circumstance that little is known about the current attributes of the judiciary, how we would like it to look in the future, or the surest path between them.

One dimension of judicial diversity that attracted early attention is gender. Commencing in the 1960s, there have been important 'firsts', such as the first appointment of a woman as a judge of a state Supreme Court (Roma Mitchell in 1965), as a magistrate (Margaret Sleeman in 1970), and as a High Court justice (Mary Gaudron in 1987). The influence of feminism and a concern to secure equal opportunity for women spurred broader public interest in the role of women before the courts and in the courts (Meyerson 2011). A significant report of the Australian Law Reform Commission (ALRC) (1994, [9.3]) addressed the role of women in the legal profession and argued that it was important for the profession (including the judiciary) to reduce barriers to women's entry and to be seen to be representative. At that time—the early 1990s—90% of all federal judicial offices were held by men.

In 2000, the Australian (later renamed Australasian) Institute of Judicial Administration (AIJA) responded to the need for better public information about women in the judiciary by producing its first iteration of the *Judicial Gender Statistics*. From the outset, the statistics were compiled by staff within the AIJA using publicly available data (e.g., annual court reports), supplemented by information from the courts, without direct involvement of judicial officers themselves. The resultant document was a simple tabulation of the number of female judicial officers in major Australian courts. It was also an annual count of all judicial officers in Australia across different courts as well as across different states and territories. From this it could be calculated that, in 2000, only 17% of the 929 incumbents were women. With minor modifications in coverage and presentation, similar data have been produced every year since, except for 2003. Today, women account for 43% of the Australian judiciary, and the AIJA data has charted the course of this incremental progression, court by court, across all federal, state, and territory polities, for over 20 years (see Appendix 3).

The importance of the dataset cannot be overstated. The statistics have been available without charge on the AIJA's website. They have been compiled by individuals with excellent access to the courts, which was especially important in the days before widespread use of the internet. They have been produced with a regularity that has ensured a long historical data series from which temporal trends can be examined. They have been national in coverage, and not restricted to certain types or levels of court.

The *Judicial Gender Statistics* has been used in many ways by different types of users. From 2011–2020, the Australian Bureau of Statistics (2020b) published *Gender Indicators for Australia*, which included data sourced from the AIJA for its indicators of 'Democracy, Governance and Citizenship'.<sup>1</sup> State governments have used the data as part of their gender equality reporting, such as Queensland's tracking of female judges and magistrates as an indicator of women in leadership (Queensland Government 2021). They surface in innumerable public addresses by judges on the state of the judiciary. Researchers, including the authors of this report, have made extensive use of them in examining the Australian judicial system (Opeskin 2021; Roach Anleu and Mack 2017, 2021). While it may be difficult to quantify the impact of the

1 In 2022, the ABS changed the scope of its gender indicators to focus on ABS data sources. In the latest iteration of the gender indicators, the AIJA's *Judicial Gender Statistics* is not included.

*Judicial Gender Statistics* on social outcomes, it has been an essential part of national conversations on gender and diversity in the judiciary.

In August 2022, the AIJA commissioned this study to investigate whether the *Judicial Gender Statistics* remains fit for purpose. The study is the product of two confluent concerns. The first is an assumption that has been implicit in the dataset from its inception, namely, that gender is a binary characteristic (male/female) that can be assessed by a third party (the researcher) without reference to the subject (the judicial officer). With greater awareness of the interconnectedness of sex, gender, and identity, the binary premise must now be questioned.

The second concern is whether the dataset's focus on gender is too narrow, given the range of characteristics that are important to the notion of a diverse judiciary. This leads to fundamental questions about why diversity matters, which characteristics are relevant, and how they should be measured. It also has implications for the method of data collection. If diversity characteristics (such as ethnicity, language, or religion) cannot be reliably observed by third parties, an alternative social research method (such as a survey) that requests information directly from judicial officers will be needed.

The timing of this study is propitious. In September 2020, the Australian Law Reform Commission (ALRC) was asked to inquire into federal laws relating to judicial impartiality and bias, and on 2 August 2022 its final report was released (Australian Law Reform Commission 2021). One of the key recommendations (Rec 8) was that 'The Attorney-General (Cth) should collect, and report annually on, statistics regarding the diversity of the federal judiciary.'

Responding to the ALRC's report, the Attorney-General (Hon Mark Dreyfus KC) noted that the Australian Government was committed to improving diversity in the judiciary, and he signalled that 'the Australian Government will engage with the federal courts to consider the processes and resourcing required for collection of personal data and to enable analysis and reporting on characteristics of the judiciary' (Australian Government 2022a). Since there are currently no regularly published diversity statistics on federal judges, other than gender, this will require a major change from past practice. The federal judiciary accounts for only 12% of judicial officers (Productivity Commission 2023, Table 7A.28). Nonetheless, the Australian Government's intention to implement the ALRC's recommendation may provide an opportunity to consider the collection of data across the entire Australian judicial system.

The two concerns flagged above—the concept of gender and the scope of diversity—underpin this study. It is also an opportunity to undertake a wholesale review of the *Judicial Gender Statistics*. To a lay user, a statistic such as '43% of the Australian judiciary are women' may appear to be an uncomplicated claim, but behind it lies myriad data issues and assumptions. Informed decisions should be made about these issues if the data are to have integrity and provide a reliable basis for informed debate and decision making. In consultation with the AIJA's Research Committee, we were asked to report on the following matters, which are addressed in successive sections below:

- What is judicial diversity and why does it matter (Part 2)?
- Which jurisdictions should be included (Part 3)?
- Which bodies should be included (Part 4)?
- Which positions should be included (Part 5)?
- Which characteristics should be included and how should they be measured (Part 6)?
- How frequently should the data be collected and reported (Part 7)?
- How should the data be presented and disseminated (Part 8)?

- What institutions should collect and disseminate diversity data (Part 9)?

Before we continue, a note on usage. The Australian judiciary comprises judges in appellate courts, judges in trial courts, and judicial officers who preside in lower courts, usually called magistrates.<sup>2</sup> For ease of reference, we refer to all such personnel as 'judicial officers' or 'judges' unless the context specifically demands otherwise.

<sup>2</sup> In the Northern Territory, judicial officers of the Local Court (the lowest court tier) are called judges: *Local Court Act 2015* (NT) s 6.

## 2 | What is Judicial Diversity and Why Does it Matter?

### 2.1 What is Judicial Diversity?

Put simply, diversity indicates variation, and almost any characteristic—cultural, social, personal, or biological—can vary among individuals. In a meritocracy, it is reasonable that lack of credentials or skills that are essential for an occupation or profession is a basis for excluding applicants, so long as they are not biased in favour of an anticipated incumbent (Thornton 1996). However, some characteristics have been the basis of discrimination and exclusion from opportunities and resources.

The origins of diversity discourse lie in the United States, at first in the context of race relations growing out of affirmative action and anti-discrimination policies, then extending to women and beyond.<sup>3</sup> Over time, diversity discourse shifted away from emphasising past exclusion and inequality, to emphasising the potential for increased innovation, creativity, productivity, and quality of performance arising from staff with diverse backgrounds and experiences. The link between different conceptions of diversity—as reducing social inequality or as enhancing pluralism—remains uneasy.

The concept of diversity is not usually defined with precision, nor are its dimensions (Roberson 2019). Diversity in the judiciary exists along various dimensions—for example, month of birth, height, number of friends, astrological sign, and so on. These dimensions are not significant in the professional lives of judicial officers because they are not categorial sources of discrimination, inequality, or exclusion from opportunities and outcomes. However, there are many demographic and social characteristics in the wider population along which diversity can be assessed, including sex/gender, age, race, ethnicity, ancestry, Indigenous status, nationality, languages spoken, education level, religion, sexuality, and social class. These dimensions have been sources of discrimination and exclusion.

Discussions of diversity tend to shift between two levels of analysis: the individual and the group (population, society). For example, gender is an individual characteristic; it is also a social category that comes with cultural beliefs and social norms that reproduce hierarchy and inequality among social groups (Ray 2019). Gender operates on a systemic or institutional level, so we can talk about gendered occupations and workplaces as well as an individual's gender identity. The relationship between increasing the number of women in an occupation and changing gender as an organising principle (i.e., work practices and arrangements that assume the gender of the ideal worker in that occupation) is not straightforward (Ridgeway 2009; Ridgeway and Correll 2004).

Since the late 1980s, the term 'judicial diversity' has been adopted to describe differences in judicial officers' attributes (Graham 1990; Hurwitz and Lanier 2003). In that period, it was regularly used in commentary on increasing heterogeneity within the United States federal judiciary and in the state of New York (Kirby 1981; New York Task Force on Judicial Diversity 1993; Russell 1990). The value of the judiciary reflecting a broader population had been discussed earlier, but usually focussed on a particular attribute (such as gender, race, or ethnicity) rather than 'judicial diversity' as a distinct concept itself.

Judicial diversity is a normative concept, with commentary supporting the idea that courts and the judiciary *should* represent—some authors prefer the term 'reflect'—the community or the wider population along certain key dimensions.<sup>4</sup> These dimensions are usually gender, race/ethnicity, and other specified dimensions of inequality or exclusion, cultural differences, and social identities (Cohen 2018; Gee and Rackley 2018; Hunter 2015; Rackley 2013; Scherer 2023; Schultz and Shaw 2013). The measure of 'representativeness' is typically numerical, that is 'statistical proportionality' (Vertovec 2012, 289),

3 Justice Powell's plurality opinion in *Regents of the University of California v Bakke*, 438 US 265 (1978) is often cited as the United States Supreme Court's first recognition of the benefits of diversity in educational organisations (Plitmann 2022).

4 Some commentators suggest that greater diversity means that various standpoints and experiences will necessarily compromise impartiality, harbour bias, and encourage advocacy of particular viewpoints. However, this incorrectly implies that a non-diverse judiciary is not influenced by background factors and experiences (Lyon and Sossin 2014; see also Harris and Sen 2019; Rachlinski and Wistrich 2017). A non-partisan approach suggests a concept of 'representation as presence' (Malleson 2003, 19; see also Myers 2014).



which compares the proportion of the judiciary possessing or identifying with a designated characteristic, with the proportion of the total population of the region, state, or nation possessing or identifying with that characteristic. Ideally, the two proportions should be identical or very similar. Thus, diversity, or lack thereof, is a characteristic of a group not an individual. In the Australian context, data supplied by the Australian Bureau of Statistics (ABS) offers the most reliable information on the distribution of specific characteristics across the entire population, or sub-populations such as the states and territories. It is therefore an important resource for gauging diversity within other sub-populations, such as the judiciary.

## 2.2 Why is Judicial Diversity Important?

Several interrelated factors underpin the value of a diverse judiciary.

- The maintenance of *public confidence in the judicial system*. Members of the general population, the legal profession, and court users, expect a heterogeneous judiciary with a range of social background characteristics and associated experiences (Lyon and Sossin 2014). Other historically male-dominated social institutions and professions are no longer homogeneous along key dimensions, and there does not seem to be a compelling reason why the judiciary should differ. Moreover, as the judiciary is a core governmental institution in liberal democracies, widespread confidence is crucial. A diverse judiciary advances fairness and absence of bias both symbolically and practically; a homogeneous judiciary constituted by judges of privileged and elite backgrounds does not (Bilotta et al. 2019; Gee and Rackley 2018; McLoughlin and Williams 2019; Rackley 2013).
- Importance for *legitimacy*. Citizens accept the decision-making authority of courts, and consequently comply with court orders, even though they might disagree with the courts' decisions on some occasions (Gibson and Nelson 2014). As the eminent sociologist, Max Weber (1947, 382) has observed, 'the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a *belief*, a belief by virtue of which persons exercising authority are lent prestige'. An important basis for legitimacy, 'as with all institutions of power, is through its composition' (Malleon 2003, 18; see also Hale 2001; Scherer 2023).
- The advantages of *different perspectives, experiences, and approaches* to judicial decision making. Early discussions of gender and the judiciary claimed that women would bring a different voice to judicial decision making—an approach more sensitive to social relations, caring, and social injustice. This calls to mind the observation of Judge Sonia Sotomayor, prior to her appointment to the United States Supreme Court, that 'I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life' (Sotomayor 2002, 92). Yet, by and large, few gender differences have been found regarding judicial decisions, and there is sparse evidence of feminist judging in practice (Hunter, Roach Anleu, and Mack 2021; Hunter 2015). Nonetheless, varied life experiences and standpoints can enhance empathy and foster engaged approaches to judging, as implied by innovations such as therapeutic jurisprudence (Nolan 2009).
- A *symbolic statement* that barriers to the appointment of judicial officers from diverse or non-traditional backgrounds are in decline. Equal opportunity means that appointments processes are transparent, and those who meet the criteria have equal access to the expression of interest or application process, and equal consideration for appointment.<sup>5</sup> Because the judiciary is a powerful public institution, especially in common law countries where precedent is a source of law, and because judicial officers make decisions about individual liberty, the appointment of judges from diverse backgrounds is symbolic, and their mere presence on the Bench can make important differences (Remiche 2015).

5 Discrimination based on protected attributes such as age, disability, race, sex, intersex status, gender identity, and sexual orientation in specified areas of public life, including education and employment, is unlawful in Australia according to state and federal anti-discrimination statutes (Gaze and Smith 2017).

Despite agreement on the value and importance of diversity, ambiguity surrounds its definition, practical implementation, and measures of success. Evaluation of diversity can be assessed in various ways, for example by comparing the judiciary at different points in time, or by comparing the judiciary with the legal profession or the wider population at a single point in time.

## 2.3 The Centrality of Data

As judicial diversity has increasingly become a policy goal, an essential starting point is the collection of data on the diversity of Australia's judicial officers. Valid and reliable measures of judicial diversity are essential for two key reasons.

- **Information.** Data that captures dimensions of diversity provide details of who are the judges that exercise public power and authority, thus enhancing transparency and public information. Maintaining diversity data over time can pinpoint changes to the size and composition of the judiciary. Without reliable and valid baseline data, indicators of increasing or decreasing diversity are unavailable.
- **Reform.** Data can also provide important evidence for the judiciary, policy makers, and governments on which to build reform to enhance diversity through changed policies, procedures, and practices. These reforms can be directed toward judicial appointments processes, including criteria for judicial appointment; training and professional development; workplace practices; and court culture. The data can also gauge the success of implemented policies, for instance by measuring whether the judiciary, or parts of it, have become more or less diverse following any policy interventions.

**Recommendation 2.1:** Statistics on the composition of the Australian judiciary should be maintained to promote better public understanding of the 'third arm' of government and to enable defensible and testable policies to enhance judicial diversity.

# 3 | Which Jurisdictions Should be Included?

The term ‘jurisdiction’ — literally the power of a court to ‘speak the law’ — has many meanings (Leeming 2020). In the present context, we use the term in a geopolitical context to consider which polities should be included in a collection of judicial diversity data. As discussed below, the answer depends in part on who is doing the collecting.

To date, the *Judicial Gender Statistics* has focussed predominantly on judicial officers in Australian courts. These have included courts of nine polities — the Commonwealth, the six states, and two internal territories. This is narrower than the entirety of Australian jurisdictions because Australia has another internal territory (Jervis Bay) and external territories with their own judicial arrangements. Central to the issue of which jurisdictions to include is whether the dataset should include any Australian territories that are currently omitted.

A second question is whether the dataset should extend to courts beyond Australia. In 2021, the *Judicial Gender Statistics* was extended to include data on judicial officers in New Zealand courts — a practice that continued in 2022. The New Zealand courts comprised four generalist courts (Supreme Court, Court of Appeal, High Court, and District Court) and three specialist courts (Employment Court, Maori Land Court, and Environment Court). One issue is whether the dataset should continue the new practice, extend its reach to other countries, or revert to examining Australian courts alone.

## 3.1 Australian Courts

It is natural for the *Judicial Gender Statistics* to have included judicial officers deployed in courts of the Commonwealth, the six states, and two internal territories, which service the needs of most of the Australian population. However, the geographic limits of Australia are not congruent with these nine polities because small communities live in other territories under Australian sovereignty. These include the internal territory of Jervis Bay, and seven external territories that were mostly acquired during the 20th century by transfer of sovereignty from the United Kingdom (Kerr 2009). Many of the external territories have no permanent residents, and while their governance arrangements are interesting, they can be left to one side for the purpose of this Report.<sup>6</sup>

The Australian Bureau of Statistics (2023) records small resident populations for some territories at 30 June 2022: Jervis Bay 312, Christmas Island 1,782, Cocos (Keeling) Islands 614, and Norfolk Island 2,211. For the sake of completeness, we discuss below whether the courts of these territories should be included in judicial diversity statistics.

- **Jervis Bay** is an internal territory that was surrendered to the Commonwealth by New South Wales in 1915 pursuant to the *Jervis Bay Territory Acceptance Act 1915* (Cth). Section 4A provides that the laws in force in the ACT are in force in the Jervis Bay Territory as if the territory formed part of the ACT. Moreover, by s 4D each court of the ACT has jurisdiction in relation to the Jervis Bay Territory as if the territory formed part of the ACT. In so far as ACT judicial officers exercise jurisdiction in Jervis Bay, they are already accounted for in the *Judicial Gender Statistics* and there is no need for separate data collection with respect to Jervis Bay.
- **Christmas Island** was acquired from the United Kingdom in 1958 and is governed by the *Christmas Island Act 1958* (Cth). The Act established the Supreme Court of Christmas Island, which was staffed by a succession of federal and territorial judges. However, following a parliamentary review (House of Representatives Standing Committee on Legal and Constitutional Affairs 1991), s 14G of the *Territories Law Reform Act 1992* (Cth) abolished the Supreme Court of Christmas Island. This was to take effect on a day to be fixed by Proclamation, ‘being a day on which no person holds office as a Judge of that Court’.

<sup>6</sup> The external territories without permanent populations are the Ashmore and Cartier Islands, Australian Antarctic Territory, Coral Sea Islands, and Heard and McDonald Islands. Some of these territories have small, transient populations of scientific or meteorological personnel.

Abolition took effect on 10 May 2002. Today, jurisdiction over Christmas Island is exercised by the Supreme Court of Western Australia.<sup>7</sup> Because those judges are already accounted for in the *Judicial Gender Statistics*, there is no need for separate data collection with respect to Christmas Island.

- **Cocos (Keeling) Islands** were acquired from the United Kingdom in 1955 and are governed by the *Cocos (Keeling) Islands Act 1955* (Cth). Following a similar trajectory to Christmas Island, the Supreme Court of the Territory of Cocos (Keeling) Islands was established in 1958<sup>8</sup> and was staffed by a succession of federal and territorial judges. Subsequently, s 15AAG of the *Territories Law Reform Act 1992* (Cth) abolished the Supreme Court on a day to be fixed by Proclamation. Although no judge continues to hold office on that Court, it appears that no Proclamation has been made to abolish the Court. Nevertheless, service arrangements with Western Australia mean that for practical purposes there is no need for separate data collection with respect to Cocos (Keeling) Islands because the Western Australian judicial officers exercising jurisdiction with respect to the territory are already accounted for in the *Judicial Gender Statistics*.
- **Norfolk Island** is the most populous of Australia's external territories. Half of its population claim descent from the Pitcairn Islanders who were mutineers on the *HMS Bounty*. The island was a British colony until it became an Australian territory in 1913.<sup>9</sup> From 1979, Norfolk Island was a self-governing territory with its own legislative assembly,<sup>10</sup> but this was reversed in 2016, and the territory is now governed by a regional council (Wettenall 2018). A Supreme Court of Norfolk Island was established in 1957 and continues to this day by virtue of s 52 of the *Norfolk Island Act 1979* (Cth). Its judges must already be judges of another federal court (s 53), and in practice they have been largely drawn from the Federal Court of Australia. Additionally, the courts of a prescribed state or territory have jurisdiction to hear and determine matters arising under laws in force in Norfolk Island as if Norfolk Island were part of the prescribed state or territory (s 60AA). The consequence of these arrangements is that judicial officers who exercise jurisdiction in relation to Norfolk Island are already officers of other Australian courts (federal, state, or territory) and therefore are already included in the *Judicial Gender Statistics*.<sup>11</sup>

In summary, all the external territories with permanent populations have judicial arrangements that piggyback on judges who already hold office elsewhere in Australia, and the same is true of the internal territory of Jervis Bay. Sometimes this is achieved by granting dual commissions, such as the concurrent appointment of a judge of the Federal Court as a judge of the Supreme Court of Norfolk Island (Part 5.3). Other times it is achieved through different legal devices, such as the mechanism in s 60AA of the *Norfolk Island Act 1979* (Cth) authorising a judge of a state or (internal) territory to exercise jurisdiction in an external territory. In either case, if the object is to generate an accurate count of the characteristics of all judicial officers, there is no justification for including them more than once in each annual report of the *Judicial Diversity Statistics*, and it is logical to count them in the courts in which they sit regularly as permanent members.

**Recommendation 3.1:** Judicial officers exercising jurisdiction in respect of the Commonwealth territories of Jervis Bay, Christmas Island, Cocos (Keeling) Islands, and Norfolk Island should not be separately included in judicial diversity data. Jurisdiction in those polities is generally exercised by judicial officers who are already included in diversity statistics for the federal, state, or territory courts of which they are permanent members.

7 *Christmas Island Act 1958* (Cth) Pt IVA.

8 *Supreme Court Ordinance 1958* (Cth).

9 *Norfolk Island Act 1913* (Cth).

10 *Norfolk Island Act 1979* (Cth).

11 An exception is the Norfolk Island Court of Petty Sessions, which was established in 1960 and continues to this day. Its magistrates need not have contemporaneous appointments on other Australian courts: *Court of Petty Sessions Act 1960* (NI) s 6. Historically, the person appointed as Chief Magistrate of Norfolk Island has had prior experience as a magistrate in another Australian jurisdiction. The other Norfolk Island magistrates are local residents, but they are unlikely to exceed three in number.

### 3.2 New Zealand Courts and the Surrounding Region

In 2021, the *Judicial Gender Statistics* was extended to include data on judicial officers in seven New Zealand courts, and this practice continued in 2022. The rationale for doing so can be traced to the evolving mandate of the AIJA itself. When the AIJA was established in 1976,<sup>12</sup> it was named the Australian Institute of Judicial Administration, and its objects, membership, and governance reflected its Australian mission. Over time, the interests of the Institute began to reach into the neighbouring region. In 1985, individuals from New Zealand and the Pacific Islands were allowed to become members; and judges from New Zealand and Papua New Guinea joined the Council in 1987 and 1996, respectively (Waghorne 2014). From the late 1990s, the AIJA contributed to judicial training programs for judges in Timor Leste and Indonesia, and alternative dispute resolution programs were conducted in Papua New Guinea, Palau, and Samoa. Reflecting these developments, in 2006 the AIJA formally became the Australasian Institute of Judicial Administration, and today the AIJA's Rules reflect this wider interest.

The AIJA's objective, as stated in its Rules, is to 'promote excellence in the administration of justice throughout Australia, New Zealand and the surrounding region'. The term 'New Zealand' appears 15 times in the Rules in different contexts. Thus, in attaining its mission, the AIJA is to stimulate public and professional interest in the administration of justice and to make recommendations to governments in Australia and New Zealand. Membership of the 28-member governing Council is open to judicial officers, legal practitioners, government lawyers, and academics from New Zealand. One of the nine judicial members of Council must be a judge of a New Zealand court. Membership of the AIJA is open to persons, associations, or corporations, which are explicitly defined to include New Zealand law graduates and legal practitioners, as well, of course, as Australians.

When one turns to the 'surrounding region', the Rules do not stipulate any geographic limitation, but an indication of the zone of interest can be inferred from several references to Papua New Guinea. Although these references do not extend to required membership of the governing Council (as with New Zealand judges), Papua New Guinea is explicitly mentioned in relation to membership (r 17) and the remit of the Indigenous Justice Committee (r 5A).

At first sight, it may seem unusual for an institute based in Australia, and largely funded by Australian governments and members, to collect data on a foreign judicial system. However, in our opinion, three circumstances justify the inclusion of New Zealand courts in the dataset.

- The collection of *Judicial Gender Statistics* was initiated by the AIJA, and to this day the statistics remain an important part of the AIJA's contribution to public knowledge about the judiciary. It is appropriate for the scope of the dataset to reflect the AIJA's geographic mandate.
- There is a long history of trans-Tasman cooperation, underpinned by historical, cultural, and economic ties (Morris, Boston, and Butler 2011). That co-operation extends to statistical matters, including the classification of occupations and the classification of research (Australian Bureau of Statistics 2019a, 2020a).
- The need for diversity statistics is as pressing in New Zealand as it is in Australia. While there have been useful periodic reports of diversity in the New Zealand legal profession (Adlam 2020) and sporadic reports on the judiciary (Adlam 2019), there is a dearth of data that allows for the *regular* tracking of diversity characteristics of judicial officers over time. The Judicial Diversity Committee (Te Awa Tuia Tangata), established by the New Zealand Heads of Bench, commissioned a survey of judicial officers across all New Zealand courts in October 2021, the results of which have been publicly reported (Chief Justice of New Zealand 2022) (see Appendix 1). This provided an informative snapshot of judicial diversity in New Zealand, but it was not a complete enumeration of the judiciary and it is not known if the survey will be repeated regularly.<sup>13</sup>

12 The AIJA is an incorporated association under the *Associations Incorporation Act 1991* (ACT).

13 In 2021, there were 258 respondents of the 310 judicial officers in New Zealand – a response rate of 83%. As survey respondents were anonymous, it is not possible to locate or infer information via another route.

Our support for continuing the collection of diversity data for New Zealand courts comes with several caveats.

- The AIJA's continued collection of New Zealand data brings a financial cost because of the time and resources required to collect the statistics. The New Zealand judiciary is about one-quarter the size of the Australian judiciary, and the inclusion of New Zealand data might thus add a similar proportion to the cost of data collection. It is a matter for the AIJA to determine whether it wishes to expend its resources in this way.
- Despite the common English legal heritage of Australian and New Zealand legal systems, institutions develop their own paths in response to local conditions. It is critical that any enumeration of judicial officers in New Zealand be undertaken with a sensitivity to the different structures, practices, and terminology of its legal system (Hannaford-Agor 2022). This is especially important in determining which bodies to include (Part 4) and which positions to include (Part 5).
- If responsibility for collecting judicial diversity data shifts from the AIJA to an Australian executive or judicial body (Part 9), it would be difficult to justify the collection by one government of data about judicial officers of a foreign government without the consent of both governments.

The extension of data collection to regional countries beyond New Zealand raises additional challenges. While the AIJA has built connections with Papua New Guinea and some other Pacific countries, the relationships are not as well-developed as those with New Zealand. The success of adding countries to the dataset would depend on the cooperation of state organs in those jurisdictions (e.g., Departments of Attorneys-General, Departments of Justice, courts); the scope and reliability of online resources (e.g., court websites); and institutional arrangement (e.g., court structures). Any such extension would require careful consideration after consulting stakeholders in the relevant overseas jurisdiction about whether the data collection is desirable and feasible.

**Recommendation 3.2:** The AIJA should continue its recent practice of including the New Zealand judicial system in its judicial diversity data, but with awareness of the resource implications and the need to tailor the collection to the circumstances of New Zealand courts. If responsibility for collecting judicial diversity data shifts from the AIJA to a governmental body, that body should reassess the merits of extending the data beyond Australia.

**Recommendation 3.3:** If the AIJA is minded to extend judicial diversity data to include additional regional countries, such as Papua New Guinea, it should consult stakeholders in those countries to ascertain whether data collection is desirable and feasible; and it should consider the resource implications of such an extension.



## 4 | Which Bodies Should be Included?

Once the relevant jurisdictions have been identified (Part 3), another second issue of fundamental importance is the identity of the bodies within each jurisdiction that should be captured in the dataset. For much of its life, the *Judicial Gender Statistics* has been stable in its collection of data from Australian courts. In general terms, within the states and territories, the collection has included the Supreme Courts, the District/County Courts (in those jurisdictions where they exist), and the Magistrates/Local Courts. At the federal level, the collection has included the High Court of Australia, the Federal Court of Australia, the Family Court of Australia (and its successors),<sup>14</sup> and the Federal Magistrates Court (and its successors). Yet, the collection has not been static. Between 2000–2022 new courts have been created, old courts abolished, and extant courts renamed. The *Judicial Gender Statistics* has responded to these changes.

Several points should be noted about the bodies captured in the data to this point.

- While the focus has been overwhelmingly on courts, the collection has sometimes included other bodies, such as tribunals (e.g., Administrative Appeals Tribunal (AAT)) and commissions (e.g., NSW Industrial Relations Commission).
- In relation to courts, the bodies have largely been generalist courts, with specialist courts being included only in some jurisdictions or on isolated occasions.
- Appellate courts have generally not been tallied separately—for example, intermediate courts of appeal have usually been included in the totals for the Supreme Courts of which they form part.

Where deviations from these general patterns have occurred, they have tended to be in the early years of the collection, when the series was still settling into a regular pattern, and in more recent years, when questions have begun to be asked about the purpose and scope of the series. Although there is probably broad agreement that the dataset should, at a minimum, capture diversity characteristics of generalist courts, there are unresolved issues regarding the inclusion of tribunals and commissions, specialist courts, and appellate courts, which are addressed in the sections that follow.

### 4.1 Tribunals and Commissions

Courts, tribunals, and commissions are complementary mechanisms for resolving legal disputes between parties. The central question here is whether adjudicatory bodies *other than courts* should be included in diversity data. In the past, the *Judicial Gender Statistics* has focussed overwhelmingly on courts, with two exceptions. The first was the inclusion of the AAT in the first iteration of the data in 2000, and the second was the inclusion of the NSW Industrial Relations Commission from 2000–2020, after which it was dropped from the series.<sup>15</sup>

The question of scope is clouded by the fact that some tribunals and commissions are required by statute to have judicial members as their head, or in other senior roles, or they do so in practice. For example, the President of the AAT must be a judge of the Federal Court of Australia, and the President of most state ‘super tribunals’ is also required to be a judge of the respective state Supreme Court or District Court.<sup>16</sup>

14 The Family Court of Australia was established in 1975 and re-established as the Federal Circuit and Family Court of Australia (Division 1) in 2021. The Federal Magistrates Court was established in 1999, became the Federal Circuit Court of Australia in 2012, and was re-established as the Federal Circuit and Family Court of Australia (Division 2) in 2021.

15 The removal was based on advice received by the AJIA to the effect that the Industrial Relations Commission is now more properly regarded as a tribunal than a court, although its commissioners enjoy some protections of judicial office, including limitations on removal: *Constitution Act 1902* (NSW) ss 52–53.

16 *Administrative Appeals Tribunal Act 1975* (Cth) s 7; *Civil and Administrative Tribunal Act 2013* (NSW) s 13; *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 10; *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 175; *State Administrative Tribunal Act 2004* (WA) s 108; *South Australian Civil and Administrative Tribunal Act 2013* (SA) s 10. In Tasmania and the ACT, the President is a magistrate or a person eligible for appointment as a magistrate: *Tasmanian Civil and Administrative Tribunal Act 2020* (Tas) s 12; *ACT Civil and Administrative Tribunal Act 2008* (ACT) s 94. In the Northern Territory, the President is a Local Court judge or a person eligible for appointment as a Local Court judge: *Northern Territory Civil and Administrative Tribunal Act 2014* (NT) s 13. Note that in December 2022 the Australian Government (2022b) announced that the AAT would be abolished and replaced with a new system of federal administrative review.

Analogously, at one time the President of the NSW Industrial Relations Commission was customarily a judge, so that person could discharge judicial functions when the Commission sat in 'Court Session'.<sup>17</sup>

The demographic and social characteristics of tribunal members and commissioners are no doubt matters of public interest because they exercise governmental power. However, whether those individuals should be included in a collection of data on *judicial* diversity requires a distinction to be drawn between federal and state bodies.

At the federal level, the High Court of Australia's interpretation of Chapter III of the Constitution makes it imperative to strictly separate the exercise of judicial power from executive and legislative power (*Stellios* 2020). This has the dual consequence that non-judicial bodies (such as federal tribunals) generally cannot exercise federal judicial power, and judicial bodies (such as federal courts) generally cannot exercise non-judicial power. That being so, there is no convincing reason to include members of the AAT, or similar federal bodies, in data with respect to judicial diversity. We acknowledge that the public may be interested in the diversity characteristics of individuals who exercise administrative powers. Nevertheless, in our opinion, it is not appropriate to include them in a dataset focussed on the judiciary because members of federal tribunals cannot exercise judicial power.

The situation is more complex at the state level because the separation of powers is weaker in that context, with the consequence that judicial and administrative functions can be comingled in state bodies (*Christodoulou* 2020; *Cumes* 2008). An implication is that there is no bright line between state courts and state tribunals, regardless of what they are called.<sup>18</sup> Much depends on the intention of the legislation establishing the state tribunal and the powers and functions conferred on that body.

The difficulties can be seen in recent cases that have questioned the nature of the power exercised by state tribunals. In *Attorney-General v Gatsby*,<sup>19</sup> the NSW Court of Appeal held that the NSW Civil and Administrative Tribunal was not a 'court of a state' for constitutional purposes, but that it nonetheless exercised judicial power when it terminated a residential tenancy agreement under the *Residential Tenancies Act 2010* (NSW). In *Meringnage v Interstate Enterprises Pty Ltd*,<sup>20</sup> the Victorian Court of Appeal similarly held that the Victorian Civil and Administrative Tribunal was not a 'court of a state' for constitutional purposes, but that a grant of relief by the Tribunal under the *Equal Opportunity Act 2010* (Vic) would involve the exercise of judicial power. Because the complaint in question was made against the Commonwealth, the matter invoked federal judicial power, which could not be exercised by a state tribunal.

The questions of: (a) whether a specific body is a court or tribunal, (b) whether a power exercised by that body is judicial or non-judicial, and (c) whether a judicial power is federal or state power, are matters of considerable complexity, about which judicial minds may differ.<sup>21</sup> What consequence does this have for the collection of diversity data? The Draft Report recognised that judicial and administrative functions are often comingled in state tribunals, and it recommended that such bodies should not be included in diversity data unless the principal function of the body is to exercise judicial power.

17 *Industrial Relations Act 1996* (NSW) (as made) ss 147–152. The judicial functions have now been transferred to the Supreme Court, and the head of the ICR (now called the Chief Commissioner) must be a lawyer but need not be a current or former judge: s 148.

18 For example, the NSW Dust Diseases Tribunal is established as a court of record: *Dust Diseases Tribunal Act 1989* (NSW) s 4(2). Similarly, the Queensland Civil and Administrative Tribunal (QCAT) has been held to be a court for the purposes of s 77(iii) of the Constitution: *Owen v Menzies* [2013] 2 Qd R 327, 338 [20].

19 *Attorney-General v Gatsby* (2018) 99 NSW 1.

20 *Meringnage v Interstate Enterprises Pty Ltd* (2020) 60 VR 361.

21 See the separate and dissenting opinions of judges in cases just mentioned.



As a statement of principle, this seems unobjectionable. However, in consultations it was pointed out that this recommendation might not be effective in practice because the work of state tribunals is highly variable—sometimes they exercise judicial power, and sometimes non-judicial power, depending on the nature of the matter and the specific issues in question. Moreover, because each tribunal member usually hears a broad range of matters, it is not feasible to attribute judicial work to some individuals and non-judicial work to others. With this in mind, we propose that diversity characteristics should be collected in respect of state tribunals whose caseloads require the exercise of judicial power at least from time to time.

Beyond the comingling of judicial and non-judicial functions, the inclusion of state tribunals in diversity data must address a range of additional challenges.

- **Proliferation of state and territory tribunals.** All states and territories have a wide variety of bodies that can be described as tribunals or commissions (Forbes 2019). To make the exercise achievable, it is preferable to focus the data collection on the ‘super tribunals’ that exist in every state and territory and go by the acronyms ACAT, NCAT, NTCAT, QCAT, SACAT, TASCAT, VCAT, and WASAT. These bodies account for a large portion of non-curial adjudication in civil and administrative matters in Australia.
- **Abundance of tribunal members.** There is also a challenge of scale because of the large number of tribunal members. Consider this example: on 30 June 2022 there were 273 members of the New South Wales Civil and Administrative Tribunal (2022), which is just shy of the 288 judicial officers in NSW at the same date (Australasian Institute of Judicial Administration 2022). If this experience is true of other states and territories, the task of producing diversity data for tribunals may be as onerous as doing so for the courts.
- **Fixed-term, part-time, and sessional work.** In the court system, the paradigm adjudicator is a full-time judge or magistrate who holds office until reaching the statutory age of retirement. Circumstances are quite different in tribunals. Tribunal members are generally appointed for a fixed term, many work part-time, and some are appointed as occasional or sessional members to hear specified proceedings. These more tenuous affiliations may make it difficult to obtain timely information by survey or other means.<sup>22</sup> Additionally, they present methodological problems in tallying the headcount or service fraction of tribunal members, which are addressed below in relation to judges and magistrates (Part 5.1, Part 5.2).

In combination, these considerations suggest there is merit in the AIJA first consulting a coordinating body such as the Council of Australasian Tribunals (COAT) to ascertain whether data collection is desirable and feasible. The AIJA should also consider the resource implications of extending the data collection in this way.

**Recommendation 4.1:** In the federal sphere, diversity data should not be extended to federal tribunals, such as the AAT, because they do not exercise judicial power. In the state and territory spheres, there is merit in extending diversity data to cover ‘super-tribunals’ that exercise both judicial and non-judicial power. The AIJA should first consult the Council of Australasian Tribunals (COAT) to ascertain whether data collection is desirable and feasible; and the AIJA should consider the resource implications of any such extension.

## 4.2 Specialist Courts

The Australian judicial system is replete with specialist courts. These include children’s courts, coroner’s courts, drug courts, dust diseases courts, environmental courts, family courts, family violence courts, Indigenous courts, labour courts, land courts, mental health courts, small claims courts, and youth

<sup>22</sup> For example, in the latest UK Judicial Attitude Survey, the survey response rate was 99% among salaried judges but only 53% among fee-paid tribunal members (Thomas 2023).

courts. Some jurists have decried the fragmentation of the judicial system resulting from ‘the unending fascination of state governments in the creation of new “specialist” courts and tribunals’ (Gummow 2000, v). But it is clear that the proliferation of specialist courts (whose jurisdiction is typically defined by their narrow subject matter) does advance some core values of the judicial system while hindering others (Opeskin 2022). It is important to determine how judicial diversity data should treat specialist courts, even though the number of judicial officers working in those courts is quite small.<sup>23</sup>

The *Judicial Gender Statistics* has addressed this issue by focussing, for the most part, on generalist courts across Australia. However, the dataset has also included some specialist bodies: the Family Court of Australia, the Federal Circuit and Family Court of Australia (in respect of family law), the NSW Land and Environment Court, the NSW Compensation Court (until 2002); the NSW Industrial Relations Commission (until 2020), the Queensland Land Court (in 2021), the South Australian Industrial Relations Court (until 2002), and the South Australian Employment Court (from 2021). Conversely, many specialist courts have never been included, unless their members happen to have been counted in generalist courts to which they have a dual commission.

In our opinion, the scope of judicial diversity data should not be limited to generalist courts. It should cover all courts that regularly exercise judicial power, including specialist courts. To ensure the dataset is comprehensive, it is crucial that the coverage of specialist courts is not selective, as it has been in the past, but that the same principles of coverage are applied uniformly across Commonwealth, state, and territory jurisdictions.

Although this is easy to state in the abstract, several problems arise in practical application.

- The first relates to *nomenclature*. Sometimes a court wears different hats, but there is no need to separately record its membership in each of its guises because its personnel are already accounted for. For instance, the High Court of Australia sits as the ‘Court of Disputed Returns’ when hearing disputes about the validity of federal elections, yet it is still the High Court.<sup>24</sup>
- There is a second problem of *nomenclature*. Some bodies are not labelled ‘courts’ but nonetheless operate as courts and should be included in judicial diversity data. An example is the NSW Dust Diseases Tribunal, which was established in 1989 for the expeditious determination of claims for compensation for asbestos related diseases (O’Meally 2007). Although called a ‘tribunal’, this body is formally established as a court of record and is constituted by a single member who must be a judge or acting judge of the NSW Supreme Court or District Court or their equivalent.<sup>25</sup> Conversely, there are bodies that are labelled ‘courts’ but which, on analysis, lack the usual indicia of courts. An historical example is the Commonwealth Court of Conciliation and Arbitration, whose principal functions from 1904–1956 were arbitral and hence non-judicial (French 2000).<sup>26</sup> The Queensland Land Court may be another example of a specialised tribunal that is nominally a court.<sup>27</sup>
- A third problem concerns the *dynamic nature* of specialist courts, which, in comparison with generalist courts, can be established or dismantled with relative ease. Thus, in relation to establishment, in 2022 South Australia enshrined the Nunga Court in legislation as a Division of the Magistrates Court,<sup>28</sup> in contrast to its original basis within the legal principles of criminal sentencing (Bennett 2015). Conversely, specialist courts are also vulnerable to abolition. For example, the Murri Court was

23 For example, of the 281 full-time equivalent judicial officers in NSW on 30 June 2021, only 6 (2%) were affiliated with the specialist Land and Environment Court (Land and Environment Court of New South Wales 2022; Productivity Commission 2022).

24 *Commonwealth Electoral Act 1918* (Cth) s 353.

25 On acting judges, see Part 5.1 below.

26 In 1956, the Boilermakers’ Case led to the division of the judicial and arbitral functions between a new court and a commission, respectively: *R v Kirby, Ex parte Boilermakers’ Society of Australia* (1956) 94 CLR 254.

27 *Land Court Act 2000* (Qld).

28 *Magistrates Court (Nunga Court) Amendment Act 2022* (SA).

established in Queensland in 2002, closed in 2012, then reopened in 2016. This has also been the Australian experience in socially contentious areas such as employment relations, where specialist labour courts have been established on several occasions, only to be disestablished by later governments of a different political persuasion (French 2000; Moore 2000). The implication of this dynamism is that care must be taken to ensure each compilation of diversity statistics reflects the court system then in existence.

- A fourth problem relates to the way judicial specialisation is achieved through different *court structures*. A specialist court can be established either as a stand-alone court, or more commonly as a specialist division within an existing court. The name given to a specialist court does not always reveal which of these paths has been taken, but several factors can assist. These include whether the specialist court is established under its own statute; has its own jurisdiction, procedures, and rules; comprises judicial officers appointed specifically to that court; and is serviced by dedicated court staff. There are no hard and fast rules. In NSW, the Drug Court is constituted as a stand-alone court under its own statute. In Victoria and Western Australia, the Drug Court is established as a formal division within the Magistrates' Court. In South Australia, the Drug Court is established only informally as a program within the Magistrates' Court (Indermaur and Roberts 2003; Opeskin 2022).<sup>29</sup>
- Interacting with the issue of court structures is the fifth and overlapping problem of *qualifications for appointment* to specialist roles. In some cases, a specialist judge is required to be a judicial officer in another court (so that the specialist role is akin to a secondment), and in other cases not. This issue parallels the problem of dual commissions discussed in Part 5.3 below.

Since the main purpose of judicial diversity data is to record the characteristics of all Australian judicial officers, specialist courts should be listed in the dataset and their members separately tallied only if those members are not already included in a generalist court. In essence, the challenge is to avoid double-counting, about which more is said below (Part 5.3).

Court structures and qualifications for appointment have an important bearing on that issue and need to be closely scrutinised. The challenges can be seen by contrasting three examples from NSW.

- The *Land and Environment Court* is established as a stand-alone court and its judges are not generally granted a commission on another court.<sup>30</sup> Accordingly, the court should be separately listed and its members separately tallied because they are not included elsewhere.
- The *Children's Court* is established as a stand-alone court, but children's magistrates are required to be Local Court magistrates.<sup>31</sup> Accordingly, the court should not be separately listed, nor its members separately tallied, because they are included elsewhere.
- The *Small Claims Division* is established as a division of the Local Court and all proceedings (i.e., small value civil claims) are heard and determined by a magistrate who constitutes the court.<sup>32</sup> Accordingly, the division should not be separately listed, nor its members separately tallied, because they are included elsewhere.

**Recommendation 4.2:** Judicial diversity data should include all persons who hold judicial office on a court, whether it be a generalist or specialist court, and however the body is named. The statistics should be compiled to avoid double-counting of individuals, taking account of court structures and qualifications for appointment.

29 *Drug Court Act 1998* (NSW) s 19; *Magistrates' Court Act 1989* (Vic) s 4A; *Magistrates Court Act 2004* (WA) s 24; *Bail Act 1985* (SA) s 21B.

30 *Land and Environment Court Act 1979* (NSW) ss 7–8.

31 *Children's Court Act 1987* (NSW) ss 4, 7. The President of the Children's Court must be a District Court judge (s 6A).

32 *Local Court Act 2007* (NSW) ss 7, 8, 10.

### 4.3 Appellate Courts

The issues that arise for appellate courts are similar to those that arise for specialist courts, since appellate judges are just another ‘species of specialist’ in which the nature of the specialisation is not subject matter but method (Curthoys 2002, 10). Trial work requires a range of forensic skills, including detailed knowledge of rules of evidence, court procedure, and case management. Appellate work requires skills in abstract legal reasoning, extensive judgment writing, and a sound understanding of general legal developments (Opeskin 2022).

The *Judicial Gender Statistics* has adopted a variable approach to reporting data on appellate courts in the past. For those jurisdictions in which there is a separate intermediate court of appeal, data for that court has mostly been aggregated with data for the Supreme Court, but in some instances (e.g., Victoria from 2000–2002) the data have been presented separately. It is worthwhile clarifying which of these two practices should prevail.

There is conceptual justification for a distinct consideration of appellate courts. There may be sound reasons for separately documenting diversity (including gender) in appellate courts due to the evidence that the diversity gap in authority often intensifies further up an organisational hierarchy (Baxter and Wright 2000). It has been observed that apex courts in many common law countries paradoxically have better gender equity than the superior courts below. However, apex courts typically have far fewer judges than other courts, so the appointment or retirement of a few women can radically shift the gender balance, in either direction (Escobar-Lemmon et al. 2021; Roach Anleu 2023). Nonetheless, the publication of data that allows researchers to investigate the ‘glass ceiling hypothesis’ may be particularly valuable given the relatively flat organisational structure of most courts, and the limited opportunity for judicial officers to progress from one tier to another (Escobar-Lemmon et al. 2021).

Court structures play an important role in informing the optimal choice of data collection. Australian jurisdictions generally conform to one of three models of appellate courts (Opeskin 2001), namely:

- Model A: those constituted as permanent bodies staffed exclusively by specialist judges of appeal.
- Model B: those formed from the general pool of trial judges sitting in rotation.
- Model C: those formed as a hybrid of the preceding models, with some permanent appellate judges and some trial judges sitting in rotation.

Six Australian jurisdictions now have a nominate Court of Appeal—NSW (1966), Queensland (1991), Victoria (1994), ACT (2001), Western Australia (2005), and most recently South Australia (2021).<sup>33</sup> These developments reflect a longstanding debate about the merits of appellate specialisation, stretching back to the formation of the English Court of Appeal by the *Supreme Court of Judicature Act 1873* (UK) (Kirby 2008; Livesey 2021; Malcolm 2001).

However, the fact that there is a named ‘Court of Appeal’ can disguise important differences of structure. In most of these jurisdictions, the Court of Appeal is constituted as an appellate division of the Supreme Court, in contrast to the trial or general division, and judges of appeal are appointed to sit in that appellate division. Whether they are the only judges who hear appeals depends on whether Model A or Model C above has been adopted.

33 *Supreme Court Act 1970* (NSW) s 38; *Constitution Act 1975* (Vic) s 75A; *Supreme Court of Queensland Act 1991* (Qld) s 5; *Supreme Court Act 1935* (WA) s 7; *Supreme Court Act 1933* (ACT) s 37E, *Supreme Court Act 1935* (SA) s 6A.

By contrast, some jurisdictions form their appellate benches from the general pool of trial judges sitting in rotation (Model B). In the ACT and the Northern Territory, the Court of Appeal is simply the name given to the Supreme Court when it exercises appellate jurisdiction using trial judges in rotation.<sup>34</sup> Similarly in NSW, the Court of Criminal Appeal is the name given to the Supreme Court when it exercises appellate jurisdiction in criminal matters.<sup>35</sup> In Tasmania a similar rotational practice is adopted in civil matters with the Full Court of the Supreme Court, and in criminal matters with the Court of Criminal Appeal.<sup>36</sup> The Federal Court of Australia likewise forms its appellate body, the Full Court, from trial judges sitting in rotation.<sup>37</sup>

These disparate arrangements have clear implications for the collection of judicial diversity data. For appellate courts conforming to Model B, there is no value in separately recording diversity data for the Supreme Court and for the intermediate court of appeal. The membership of the two bodies is congruent. To list them separately would duplicate the count of some judicial officers and distort statistics on judicial diversity.

For the other jurisdictions (NSW civil appeals, Queensland, Victoria, Western Australia, and South Australia) it is possible to separately identify diversity data for judges of appeal, just as the *Judicial Gender Statistics* did briefly for the Victorian Court of Appeal from 2000–2002. In our opinion it is valuable to do so. It is common knowledge that gender equality on the High Court has often been the subject of media attention and public interest, yet the caseload of an apex court is necessarily extremely limited (Opeskin and Appleby 2020). This ensures that ‘the intermediate courts of appeal are de facto the final port of call for most litigants’ (K. Mason 2012, 310). The diversity characteristics of intermediate appellate judges are therefore a matter of significant public interest. Unless these data are tallied separately from their respective Supreme Courts, key information on diversity will not be available to the courts, government, researchers, or the public. The fact that judges of appeal may sometimes conduct trials, or that trial judges may sometimes hear appeals (especially in Model C) does not detract significantly from the merits of separate tallying. It is sufficient to record the diversity characteristics of those judges who principally exercise appellate jurisdiction in state and territory courts. To avoid double counting, the tallies for the Supreme Courts should correspondingly exclude the judges of appeal in the relevant jurisdictions.

**Recommendation 4.3:** Judicial diversity data should disaggregate tallies for Supreme Court judges and judges of appeal in those jurisdictions where the intermediate court of appeal is constituted as a permanent body staffed wholly by specialist judges of appeal (Model A) or partly by specialist judges of appeal and partly by trial judges sitting in rotation (Model C).

34 *Supreme Court Act 1933* (ACT) s 37E; *Supreme Court Act 1979* (NT) s 51.

35 *Criminal Appeal Act 1912* (NSW) s 3.

36 *Supreme Court Civil Procedure Act 1932* (Tas) s 15; *Criminal Code 1924* (Tas) s 400.

37 *Federal Court of Australia Act 1976* (Cth) ss 14, 25.

## 5 | Which Positions Should be Included?

The *Judicial Gender Statistics* does not define what type of office holders are included. That the dataset includes both judges and magistrates is clear from its coverage of federal courts, state Supreme Courts, and District/County Courts, on the one hand, and Magistrates/Local Courts, on the other. The demarcation between judges and magistrates is reasonably clear, even where office holders who were once called ‘magistrates’ are now called ‘judges’, as in the Northern Territory.<sup>38</sup> In New Zealand, magistrates courts were renamed district courts, and magistrates became District Court judges as far back as 1980 (New Zealand 1978). In our opinion, the statistics should continue to include both judges and magistrates in this way.

However, this seemingly obvious statement masks several challenges in the compilation of the data. The principal challenges relate to how to address:

- holders of temporary judicial office;
- holders of part-time judicial office;
- judicial officers who have more than one commission; and
- allied court personnel such as masters and registrars.

### 5.1 Permanent or Temporary Judicial Officers

At the core of any judicial diversity dataset lies the enumeration of persons who are permanent holders of judicial office. ‘Permanent’ no longer refers to life tenure, which has been eliminated from all Australian jurisdictions, with federal judges being the last to fall in line following a constitutional referendum in 1977.<sup>39</sup> ‘Permanent’ refers to those who have been appointed until they reach the mandatory retirement age, which ranges from 70 years to 75 years depending on the jurisdiction (Opeskin 2021).

The challenging question is whether the data should include temporary holders of judicial office, namely, those who are appointed for a fixed term of years and go by various names including ‘acting’, ‘auxiliary’, ‘reserve’, ‘temporary’, or ‘special’ judicial officers. It is not possible to appoint temporary judicial officers to federal courts because s 72 of the *Australian Constitution* requires, as a protection of judicial independence, that all federal judges be able to hold office until 70 years of age (or a lesser age prescribed by Parliament). However, the state and territory judicial systems have long made use of ‘acting’ judges appointed on temporary, renewable commissions. As Appleby et al. (2017) have documented, the use of these positions is considerable, and has likely grown in recent years. In the *Forge Case*,<sup>40</sup> the use of acting judges in the NSW Supreme Court was considered so significant that Kirby J (dissenting) found the legislation authorising the practice to be unconstitutional because it threatened the Supreme Court’s appearance of independence and impartiality.

The persistent use of temporary judicial appointments in Australia suggests that they meet continuing needs of judicial systems, and they continue to be justified on a variety of grounds. Some grounds relate to the proper resolution of litigation before the court, such as resolving conflicts of interest on the bench, or importing specialised expertise. Other grounds are systemic—addressing temporary case backlogs; testing the suitability of potential appointees; and retaining talented judges who have reached the mandatory retirement age. An often-unarticulated justification is that temporary appointments allow the executive to retain greater flexibility over the supply of judicial labour, and to do so at lower cost to the public purse.

38 *Local Court Act 2015* (NT) s 6.

39 *Constitution Alteration (Retirement of Judges) Act 1977* (Cth).

40 *Forge v Australian Securities and Investments Commission* (2006) 228 CLR 45.



As an ideal, judicial diversity data ought to capture temporary judicial officers because these individuals regularly exercise the judicial power of the state, and substantial use is made of them in some jurisdictions. The reasons that underpin the collection of diversity data on permanent office holders apply similarly to temporary office holders. It is unclear whether past *Judicial Gender Statistics* has included or excluded temporary judicial officers, and whether either possibility has been applied consistently over time. However, for reasons explained below, it may be inferred that temporary judicial officers have been excluded from the data.

Despite sound reasons of principle for including temporary judicial officers in judicial diversity data, there are pragmatic reasons for not doing so at present.

- Many courts do not report the identity of those who hold temporary judicial office—for example, they are rarely found on court websites that list judicial personnel, and they may or may not be found in court annual reports (Appleby et al. 2017).
- Even if temporary judicial officers are identified, the extent to which they are used is often not reported. Temporary judicial officers are usually engaged on a ‘needs’ basis—that is they are allocated cases by the head of jurisdiction when the workload of the court requires it. To know, say, that a court of 20 permanent judges is complemented by five temporary judges is to know little, without information about the extent to which the latter are rostered on. Moreover, useful statistics about the use of temporary judicial officers require a clear distinction between the number of days on which such an officer holds a commission as a judge and the number of days on which that officer is actively engaged in discharging judicial functions—a distinction that is rarely made in annual court reports.
- Relatedly, the use made of temporary judicial officers is typically far less than permanent judicial officers. For example, the most recent annual review of the Supreme Court of New South Wales (2022) lists four acting judges or acting judges of appeal, who acted for a total of 593 days in 2021 (an average of 148 days per judge). This is far fewer than the number of sitting days expected of a permanent judge. To account for the service of temporary judicial officers thus requires resolution of the related question of fractional judicial service, discussed below (Part 5.2).

Better national reporting of temporary judicial commissions, and the use made of these judicial office holders, may in time change the ease with which these positions can be accommodated in a nationwide collection of judicial diversity data. At present, a pragmatic solution is to omit temporary judicial officers from the statistics.

**Recommendation 5.1:** Until such time as comprehensive data on temporary judicial officers are collected on a consistent basis across Australia, judicial diversity data should exclude temporary judicial officers from its tallies. Once such data become available, statistics should be collected separately for permanent and temporary judicial officers.

## 5.2 Fractional Judicial Service

Judging in Australia has generally been regarded as full-time work. As the Council of Chief Justices of Australia and New Zealand (2017: 29) states in its *Guide to Judicial Conduct*, ‘judicial office is a full-time occupation and the timely discharge of judicial duties must take priority over any non-judicial activity’. Yet part-time work may be attractive to judicial officers with family or carer responsibilities, as well as to older judges who want ‘a bridge between employment and inactivity’ in the years leading up mandatory retirement (Bollé 1997).

The proportion of the Australian workforce in permanent part-time work has increased in recent decades (Lass and Wooden 2020), but the judiciary has been a relative latecomer to this phenomenon. NSW was the first state to act when it legislated for part-time magistrates in 1999.<sup>41</sup> In the same year, the Commonwealth made similar provision for federal magistrates; Queensland and Tasmania followed in 2003, Victoria and Western Australia in 2004, South Australia in 2006, Northern Territory in 2015, and ACT in 2018.<sup>42</sup> In each instance, part-time work has been confined to lower courts, with the exception of Victoria, where it has been permitted across all court levels since 2013 (Opeskin 2017).<sup>43</sup>

These provisions create the *capacity* to appoint part-time judicial officers, but the extent to which they have been utilised is more difficult to assess due to the paucity of published data. It is worth observing that the courts to which part-time appointments *could* be made account for nearly three-fifths of the Australian judiciary—58% of the 1,247 judicial officers at 30 June 2022 (Productivity Commission 2023). While the potential for part-time judicial work is thus high, the number of such positions appears to be very low. In a survey of judicial officers in 2007, only eight magistrates (3.3% of 242 respondents) and five judges (1.6% of 309 respondents) self-reported as being engaged in part-time work (Opeskin 2017).<sup>44</sup>

Dealing with fractional judicial service raises a fundamental question about the way judicial officers are counted for the purpose of diversity statistics. One approach is to use a *headcount*, which gives each person equal weight in tallies regardless of their full-time or part-time status. In effect, this counts the person. The other is to use a *service fraction*—also called a *full-time equivalent* (FTE)—which weights each person according to the extent of their labour contribution. In effect, this counts the position. The headcount approach appears to have been the practice used in compiling the annual *Judicial Gender Statistics* in the past. The service fraction approach is used by the Productivity Commission (2023) in reporting the number of judicial officers in its annual *Report on Government Services*.

The difference between these counting methods can be seen in the following hypothetical. Suppose a court has 100 judicial officers, comprising 50 males and 50 females. Based on a headcount, the court's composition appears to be one of gender parity, with 50% males and 50% females. However, suppose that all the males work fulltime (FTE=1.0), while all the females work half-time (FTE=0.5). In this case, the judicial workforce comprises only 75 FTE judges, of which only 33% (not 50%) are women, which is far from gender parity.

	Males	Females	Persons	%Females
<b>Headcount method</b>				
Size of Bench (headcount)	50	50	100	50%
<b>Service faction method</b>				
Average service fraction	1.0	0.5		
Size of Bench (FTE)	50	25	75	33%

41 See now *Local Court Act 2007* (NSW) s 13, sch 1.

42 See now *Magistrates Act 1991* (Qld) s 5; *Magistrates Court Act 1987* (Tas) s 4; *Magistrates' Court Act 1989* (Vic) s 7A; *Magistrates Court Act 2004* (WA) s 5, sch 1 cl 5; *Magistrates Act 1983* (SA) s 5; *Local Court Act 2015* (NT) s 54; *Magistrates Court Act 1930* (ACT) s 7C.

43 *Constitution Act 1975* (Vic) s 75C (in respect of the Supreme Court); *County Court Act 1958* (Vic) s 8A.

44 The statistics were provided by Sharyn Roach Anleu and Kathy Mack from data collected in their Judicial Research Project, Flinders University: <https://sites.flinders.edu.au/judicialresearchproject/>.



The example uses unrealistic assumptions (in practice, few women take part-time judicial appointments), but it serves to illustrate the difference between the counting methods. If all positions were full-time, the two methods would produce identical results. The larger the proportion of part-time judges, and the smaller their average service fraction, the greater the divergence from the headcount method.

In assessing the merits of the two methods, it is important to appreciate that both provide valuable information, and much depends on the purpose for which the data are used. If one were interested to know how women fare in judicial selection processes, it is useful to use a headcount, which recognises that each appointment represents a *whole* person, not a fraction of a person. However, the service fraction gives a more accurate indication of judicial labour supply and its gender characteristics.

Ideally, diversity statistics should report using both methods so data users can utilise the measure most suited to their inquiry. However, with the present state of data reporting, the fractional service method is not feasible. Most courts do not publish information about the number of judicial officers who work part-time, or the service fraction of those who do, or (with greater granularity) the number of sitting days rendered by judicial officers in each category. Whether such information is available to the Productivity Commission through its annual *Report on Government Services* is a matter deserving further inquiry. This leaves us with the headcount method as a default, but as noted above, so long as the proportion of fractional judicial officers is small, the discrepancy between the data produced using different methods will also be small.

**Recommendation 5.2:** Until such time as comprehensive data on fractional judicial service are collected on a consistent basis across Australia, judicial diversity data should be calculated on a headcount of judicial officers rather than on their service fraction. Once such data become available, statistics should be collected on all judicial officers (full-time or part-time) and reported separately using both the headcount method and the service fraction method.

### 5.3 Dual Commissions

Judicial officers may wear more than one judicial hat, which is reflected in their receipt of more than one judicial commission. For simplicity, we call this the issue of dual commissions, although concurrent judicial roles need not be limited to two.

Dual commissions fall into several recognisable patterns. Without seeking to be comprehensive, these include the following:

- A head of one court may be appointed concurrently as a member of another court that lies above it in the judicial hierarchy. Thus, in Victoria, the Chief Magistrate must also hold a commission as a judge of the Supreme Court.<sup>45</sup>
- A member of one court may be appointed concurrently by separate commission to a more senior role in another division of the same court. Thus, in NSW, a judge of the Supreme Court may be appointed as a judge of appeal and thus become a member of the Court of Appeal, which is a division of the Supreme Court.<sup>46</sup>

45 *Magistrates' Court Act 1989* (Vic) s 7(2B).

46 *Supreme Court Act 1970* (NSW) s 31.

- Dual commissions can arise from ad hoc appointments, such as those made when a judicial officer in one jurisdiction receives a temporary commission for the purpose of hearing a specific matter in another jurisdiction, e.g., to remedy a conflict of interest (see Part 5.1). There are many Australian examples of this practice (Appleby et al. 2017), including the temporary appointment of Hoeben J of the NSW Supreme Court to sit as a judge of the Queensland Supreme Court in a matter that concerned the Chief Justice of Queensland. Similarly, in 2020, Magistrate Ian Guy of the NSW Local Court acted as a reserve magistrate and coroner in Victoria for the coronial inquiry into the suicide of two Victorian magistrates.<sup>47</sup>
- There can be broad institutional arrangements to facilitate the integration of two legally distinct jurisdictions. Thus, in the ACT, the resident judges of the Supreme Court are complemented by ‘additional judges’ appointed by commission. The additional judges must concurrently serve as judges of a superior state or federal court.<sup>48</sup> At present, the ACT’s five resident judges are complemented by 22 additional judges drawn from the Federal Court (n=18) and the Supreme Court of Victoria (n=4). Similarly, a judge of the Supreme Court of Norfolk Island (an external territory) must concurrently be a judge of a federal court (see Part 3.1).<sup>49</sup>

In deciding how to address dual commissions in the dataset, an overriding consideration is the avoidance of double counting, which can inflate the total size of specific courts and distort the reported diversity characteristics of those courts. It may be possible to utilise the technological capabilities of software packages, such as conditional formulas in Excel spreadsheets, to avoid duplication in category totals. This recognises that the total number of judicial officers in a court may be less than the sum of its parts if dual commissions are involved. Whether such solutions are feasible may depend on which organisation or agency is responsible for maintaining the database (Part 9). However, it seems prudent to proceed on the basis that ongoing maintenance of the dataset should not rely on specialised technical skills or personnel.

We recommend that each judicial officer should be included in the data once, and only once, in each year of collection. Their inclusion should align with the court in which judicial officers exercise their principal judicial functions. To identify that court will require some familiarity with functional aspects of judicial arrangements, such as the four circumstances described above. This may entail an investment of time when the database is first established, but once the arrangements are known they can be employed year to year without difficulty. Applying this core principle to the examples of dual commissions given above:

- The Victorian Chief Magistrate should be included in the Magistrates Court and excluded from the Supreme Court, even though the Chief Magistrate is a member of both.
- NSW judges of appeal should be included in the Court of Appeal (if that court is separately tallied – see Part 4.3) and excluded from the Supreme Court.
- Temporary judicial officers should be included in the courts of their permanent appointment and excluded from courts of transient affiliation.
- ACT additional judges should be included in the Federal Court or state Supreme Court from where they hail and excluded from the ACT Supreme Court.

**Recommendation 5.3:** Where judicial officers have dual or multiple judicial commissions, they should be included once, and only once, in each annual collection of diversity data, aligned to the court in which they exercise their principal judicial functions.

47 *Coroners Act 2008* (Vic) s 93.

48 *Supreme Court Act 1933* (ACT) ss 4, 4A.

49 *Norfolk Island Act 1979* (Cth) s 53.

## 5.4 Allied Personnel

Beyond the cohort of judicial officers who are granted the traditional protections of judicial independence, many courts have a range of additional personnel who perform judicial or quasi-judicial functions closely allied to those performed by judges. Some positions, such as masters, have a long tradition that stretches back to the practice of the English courts on which Australia's colonial courts were modelled (Silberman 1975). Others are of more recent origin. Common to all of them is the performance of a variety of functions that help turn the wheels of justice by freeing judicial officers from more routine work, especially in civil cases—and typically at a lower cost because their salaries tend to be lower than those of judicial officers.

In the states and territories, the range of allied roles created by statute is extensive. These personnel go by a wide variety of names, including masters, associate judges, registrars, judicial registrars, and commissioners. The positions typically involve a range of judicial, quasi-judicial, and non-judicial functions, with the balance between them varying from one position to another. In some roles, the judicial functions clearly predominate. For example, in the South Australian Supreme Court, masters and judicial registrars are formally treated as part of the Court; and masters, while holding that office, are appointed as judges of the District Court.<sup>50</sup>

Within the federal sphere, the demarcation between judicial officers and allied personnel is more distinct because of the stricter application of the separation of powers doctrine. Yet even in this context there are overlaps. In 1991, the High Court of Australia upheld federal legislation that delegated judicial power from judges of the Family Court of Australia to judicial registrars.<sup>51</sup> The newly created role was designed to free the Family Court from the large volume of routine and minor contested matters by devolving less complex matters to a new class of court officer (Opeskin 2017). By majority, the High Court held that the delegation of judicial power was valid provided the officers' decisions were subject to review or appeal by the judges of the court; and provided the delegation was not too extensive—i.e., judges must continue to bear the major responsibility for the exercise of judicial power. The role of judicial registrar no longer exists in the context of family law, but legislation governing the Federal Circuit and Family Court permits delegation of judicial powers to Senior Registrars and Registrars.<sup>52</sup>

The question of whether diversity data should be extended to a broader class of court officers is a matter of debate. Because allied court personnel can and do exercise judicial power, we generally favour the collection of diversity data on the individuals who exercise that power. There is a rough analogy with data about the federal executive collected by the Australian Bureau of Statistics (2020b) for its *Gender Indicators for Democracy, Governance and Citizenship*. Those annual statistics measure not only the proportion of federal government ministers who are women but extend the dataset to individuals lower in the executive hierarchy by including gender data on the Senior Executive Service and those in the Executive Level.

However, the general desirability of collecting diversity data on allied court personnel comes with several caveats.

- Any new data should be collected as a separate data series and not aggregated with existing data on judges. This is important for the continuity of the AIJA's longstanding *Judicial Gender Statistics*.
- Any extension of the dataset will have significant resource implications, which are exacerbated by the circumstance that there is far less public information about allied court personnel than about judicial officers. The extension may therefore require a change in the method of data collection.

50 *Supreme Court Act 1935* (SA) s 7.

51 *Harris v Caladine* (1991) 172 CLR 84.

52 *Federal Circuit and Family Court of Australia 2021* (Cth) ss 97–102. See also, in respect of the Federal Court: *Federal Court of Australia Act 1976* (Cth) s 35A; *Federal Court Rules 2011* (Cth) sch 2.

- Any extension should be implemented only after a close examination of the powers and functions of the allied personnel in every court. The object is to include those individuals who exercise significant judicial power and not, at the other end of the spectrum, every staff member employed in a court's registry. Relevant indicia for inclusion are the name of the office, its establishment by statute, the method of appointment, its powers and functions, the term of office, and other protections of independence such as independent fixing of salaries, limitations on removal from office, and freedom from direction in the exercise of powers.

There is little scholarship on allied judicial personnel in Australia, and any extension of diversity data to include this group should ideally be informed by a prior independent mapping of these varied office holders across Australian courts. After that scoping exercise, the offices to be captured should remain relatively stable over time.

**Recommendation 5.4:** If resources permit, diversity data should be collected on allied court personnel, such as masters, associate judges, registrars, judicial registrars, and commissioners. Any new dataset should be kept separate from diversity data on judicial officers, and its focus should be on officers who, after scrutiny, exercise significant judicial power.

## 6 | Which Characteristics Should be Included and How Should They be Measured?

As a result of the sustained efforts of the AIJA, the gender of the judiciary has been the one characteristic systematically collected and reported in Australia as a measure of diversity. This invaluable compilation of data regarding the judicial population complements the annual statistics reported by the Productivity Commission (2023) in its *Report on Government Services*.

This Part discusses how gender has been measured and recorded in this collection process. The discussion forms the basis for considering other potential dimensions of diversity that could be included in the data collection. There are two kinds of decision to be considered:

- How are the characteristics that are chosen for inclusion to be operationalised? That is, how are concepts defined so that the attributes identified allow efficient identification and recording of information that becomes the dataset?
- Who provides information on these characteristics? Is the information compiled independently by a researcher, or does the judicial officer to whom the information relates complete the categorisation (e.g., via a survey), which is then compiled by the head of jurisdiction or courts administration?

There are many dimensions along which judicial diversity can be charted (Part 2). These dimensions vary in the extent to which judicial officers might be motivated to disclose information. Such information may be construed as wholly personal or private detail that should not be available in the public domain. Judicial officers may be concerned about anonymity and identifiability if such information were collected and stored. In any data collection process, the more the requested information is perceived by the respondent to be personal, private, or intrusive, the less the likelihood those questions will be answered. This also risks the respondent's refusal to answer other questions and may jeopardise completion and return of the survey. In deciding what personal information to seek from judges with respect to their diversity characteristics, the guiding principle should always be the purposes for which the data are collected.

Moreover, there is likely to be an inverse correlation between the number of questions asked and the frequency of a survey seeking such data. Surveys containing large numbers of questions take more time to complete and require more time and resources to analyse the data and to report the findings. Length of survey and frequency of its administration are significant practical considerations.

### 6.1 Sex and Gender

Since 2000, except 2003, the AIJA has provided annual gender statistics on its website in the form of a table: *AIJA Judicial Gender Statistics: Number and Percentage of Women Judges and Magistrates*.<sup>53</sup> This data is in the form of a census, i.e., a record of all judicial officers in office at a designated point or interval of time (see Appendix 3 for all *AIJA Judicial Gender Statistics*).

Until the most recent iterations, total numbers of judicial officers (labelled 'persons' in the tables) and numbers of women judicial officers have been reported, as well as a calculation of the percentages of women at jurisdictional level (Commonwealth, state, and territory). Given the reporting of the number of women at each court level for every jurisdiction, the percentage of women for each court can be calculated to provide more granular information.<sup>54</sup> From this data, the numbers and percentages of men can be inferred, although these numbers have not been reported explicitly.

53 Over time the title of the table has changed; 2016 appears to be the first time a label was explicitly given.

54 Since 2021, the statistics have directly stated the percentage of women for each court listed in the table.

It appears that the process of coding gender relied on the research, assessment, and knowledge of the individuals assembling the material, who have been regular staff members of the AIJA until recently. This methodology seems to have deployed a combination of physiognomy (i.e., appearance of the judge in published photos, for example, on court websites or in media releases announcing new appointments) and onomastics (i.e., implications from first names or honorific prefixes that convey gender, such as Ms, Mr, Her Honour, or His Honour), and perhaps general or taken-for-granted knowledge within the AIJA. When the judiciary is relatively homogenous, and the researcher who codes gender is of similar cultural background, then inferring gender in this way is reasonably straightforward. In this mode of data collection, response rate is not an issue because gender is attributed to each judicial officer, without their knowledge. Until recently this was an uncontroversial approach. Thus, the AIJA has been collecting data on gender (the way judges present themselves to the world, and their alignment with gender norms) rather than sex, although the distinction may not have been a consideration in the attribution process.

As a concept and a variable, gender has been treated as a simple, obvious, visible characteristic involving assignment to one of two categories. Along with much survey research, the categories provided in the *Judicial Gender Statistics* are limited to women, persons, and (by implication) men (Westbrook and Saperstein 2015). Gender is treated as a binary concept, i.e., taken for granted, common-sense, natural, and obvious—man or woman, male or female.

This approach is no longer tenable. While there is considerable scientific debate, sex generally refers to biology based on physical manifestation assigned at birth (or earlier), while gender is socially constructed, learned and performed according to culturally prescribed roles and expectations (Holmes 2007). It is often assumed that sex and gender identity align, but this is erroneous in some cases (Ridgeway 2009, 2011). The ABS *Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables* (2021c) provides that '[s]ex is understood in relation to sex characteristics', recorded at birth, while '[g]ender is about social and cultural differences in identity, expression and experience'.<sup>55</sup> For cis individuals, sex recorded at birth and gender are the same; for trans individuals, they differ.

The ABS suggests the following text for questions asking about gender:

*How do you describe your gender?*

1. *Man or male*
2. *Woman or female*
3. *Non-binary*
4. *I use a different term (please specify)*
5. *Prefer not to answer.*<sup>56</sup>

As the ABS collects and reports large amounts of data regarding demographic and other characteristics of the Australian population, and sub-populations, it provides the best benchmarks for assessments of whether the distribution of a diversity characteristic in a sub-population, such as the judiciary, parallels its distribution across a larger population. This allows for comparisons and tracking of change.

55 The Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables, 2020 includes the following concepts: (a) gender identity ('who a person feels themselves to be'); (b) gender expression ('the way a person expresses their gender', which may vary depending on their location); and (c) gender experience ('a person's alignment with the sex recorded for them at birth i.e. a cis or trans experience').

56 The expansion of response options from two still may nonetheless not capture everyone.

A key difference between surveys conducted by the ABS, such as the quinquennial census, and the *Judicial Gender Statistics*, is that the person completing the census questions fills out the gender/sex questions about themselves and others in their household, while AIJA staff have inferred gender from information available to them. Thus, the question emerges in data collection processes of *who* determines the gender of those being counted (i.e., who assigns persons into categories such as man/male or woman/female) and *how* they do this (i.e., according to what criteria).

There are several possibilities regarding who identifies and codes gender, and how many categories are provided for classification.

- Self-identification and reporting via a questionnaire (bank of questions) administered via a survey. The questionnaire might consist of different types of question:
  - *Open-ended questions*: The respondent writes in their gender using their own descriptors when answering an open-ended question, without prompts or suggested categories. This option will require a researcher to group or code the responses and enter that data into a computer software program to generate the statistics. This approach is resource intensive.
  - *Closed-ended questions*: The respondent selects the relevant response from a pre-defined list (see the ABS gender question above). A consideration, then, is how many pre-defined gender categories to provide?<sup>57</sup> Once the pre-defined answers have been settled, this approach is less resource intensive as no coding of responses is needed, although there may be later recoding as part of data analysis.
- A researcher classifies a person's gender based on their observations and assessments about name, appearance, clothing, or other socially and culturally defined markers. This has been the past practice of the AIJA and many other research organisations. Current Australian government guidelines recommend that 'departments and agencies should refrain from making assumptions about a person's sex and/or gender identity based on indicators such as their name, voice or appearance' (Australian Government 2015, 6 [35]). We agree, noting that gender (rather than biological sex at birth) is the more relevant concept for the purpose of judicial diversity statistics.

We recommend maintaining a regular collection of data on the gender of judicial officers. Gender is the attribute most widely collected on judiciaries internationally (Escobar-Lemmon et al. 2021). Interest in this attribute reflects the historical exclusion of women from the judiciary and the circumstance that parity with the prevalence of men in the judiciary has not yet been achieved.

**Recommendation 6.1:** Statistics regarding the gender of the judiciary should continue to be regularly recorded and reported. Judicial officers should specify their own gender, rather than it being inferred by a researcher or other person. The preferable practice is for them to do so using the closed-ended options used by the Australian Bureau of Statistics (ABS), namely: (a) man or male; (b) woman or female; (c) non-binary; (d) I use a different term (please specify); or (e) prefer not to answer.

Now we turn to a discussion of other diversity characteristics that might be collected with respect to the judiciary. If gender is no longer (if it ever was) able to be inferred accurately by a researcher, then identifying other social or demographic characteristics (such as race, ethnicity, disability, or social class) in this way is even less reliable and less appropriate in producing credible data. Such characteristics, which include identities, are often not visible or obvious to others. Even if visible, inference can result in mis-characterisation (van Oorschot 2020). Self-disclosure is therefore essential for all diversity characteristics.

57 For example, the 2022 UK Judicial Attitude Survey (Thomas 2023) offered three response categories (Q51): 'Male', 'Female', or 'Other'. Only 0.4% of respondents marked 'Other'.



A key question for the AIJA is what characteristics, other than gender, to include in any future collection of judicial diversity statistics. In Canada, the United Kingdom, and the United States, data on gender, ethnicity, disability, sexual orientation, and other characteristics are routinely collected (see Parts 8.2, 9.2). In England and Wales and Canada, such information is formally requested during the judicial application and appointments process, thus enabling comparisons between the applicant pool and the appointees. In Canada, the questionnaire administered by the Office of the Commissioner for Federal Judicial Affairs (2017) as part of the judicial appointments process asks candidates to voluntarily self-identify with various dimensions of diversity, as well as French/English language capacity. This process applies only to appointments to federal courts and superior provincial courts. Seeking parallel data on the lower provincial or territorial courts has been more uneven and fraught (Levin and Alkoby 2017). One significant advantage of the *Judicial Gender Statistics* is its coverage of all Australian courts, be they Commonwealth, state, or territory.

As with gender, consideration must be given to measures of these characteristics, and whether any classification is pre-determined or open-ended. To the extent that open-ended responses are permitted, the resources needed to generate user-friendly data will be increased.

## 6.2 Race and Ethnicity

Because Australia is a multicultural society, data on ethnicity (which relates to cultural and language diversity) are frequently collected for research and policy purposes. In a multicultural society, the judiciary would be expected to reflect similar diversity. As with gender, a judiciary that includes individuals from diverse ethnic, cultural, and linguistic backgrounds is important for public confidence and legitimacy of decisions, perhaps especially from the viewpoint of court users (see Part 2.2). Nonetheless, race and ethnicity are complex concepts that relate to cultural, linguistic, religious, and biological factors (Malhi 2022; Steele et al. 2022). It is often not clear what is meant by race or ethnicity, and how these terms relate to concepts of ancestry or identity.

The Australian census—unlike the census in the United States (United States Census Bureau 2021), New Zealand, and Canada—does not include questions about race or ethnicity, asking instead about ancestry (Australian Bureau of Statistics 2022c).<sup>58</sup> The standard question is: *What is your ancestry?*, with provision for up to two responses.

According to the ABS (2022c), '[t]he ancestry question captures information that can provide a good indication of a person's ethnic background' (which is conceptually distinct from, albeit closely related to, ethnic identity) when used together with other variables such as country of birth of person, country of birth of mother, and country of birth of father. Other questions that can also relate to ancestry are religious affiliation, language spoken at home, and Indigenous status.<sup>59</sup> The ABS (2019b) provides a detailed discussion of the historical and current complexities in defining and measuring 'ethnicity', considering that the concept 'refers to the shared identity or similarity of a group of people on the basis of one or more distinguishing characteristics', including:

58 The 2022 UK Judicial Attitude Survey (Thomas 2023) asked (Q56): 'What is your ethnic group?'. It offered 17 fixed choices within the broad categories of: White, Mixed, Asian, Black, and Arab, plus an open-ended option: 'Any other ethnic group' – providing a box in which to write the answer.

59 The ABS classifies responses to the ancestry question using the Australian Standard Classification of Cultural and Ethnic Groups (ASCEG) (Australian Bureau of Statistics 2019b). The classification is not intended to classify people, but rather to classify all claims of association or identification with a cultural or ethnic group. In the 2021 Census, the top five ancestries were English (33.0%), Australian (29.9%), Irish (9.5%), Scottish (8.6%) and Chinese (5.5%) (Australian Bureau of Statistics 2022b).



- A long, shared history, the memory of which is kept alive.
- A cultural tradition, including family and social customs, sometimes religiously based.
- A common geographic origin.
- A common language (but not necessarily limited to that group).
- A common literature (written or oral).
- A common religion.
- Being a minority (often with a sense of being oppressed).
- Being racially conspicuous.

**Recommendation 6.2:** Statistics regarding the race or ethnicity of the judiciary should be regularly recorded and reported. Judicial officers should have the opportunity to self-identify their race or ethnicity. To enable useful comparison with the broader population, judicial officers should be asked the ABS ancestry question in terms similar to the population census.

### 6.3 Indigenous Status

Aboriginal and Torres Strait Islander people constitute 3.8% of the Australian population (n=984,000) (Australian Bureau of Statistics 2022a). If the judicial population were to reflect the general population, then approximately 47 judicial officers should identify as Indigenous.<sup>60</sup> Statistics are not collected on the Indigenous status of judicial officers, but most observers would confidently assert that there are far fewer than 47. A case for more Indigenous judicial officers might come from a recognition of the over-representation of Indigenous Australians who come into contact with the criminal justice system, especially imprisonment—on 30 June 2021, they made up 30% of the national prison population (Australian Bureau of Statistics 2021b; see also Australian Law Reform Commission 2018). A more compelling case might be that there is significant public interest in the Indigenous status of judges because of the political salience of reconciliation and constitutional recognition for First Nations peoples. Increasing the number of judicial officers who identify as Indigenous, and communicating that fact, will enhance public confidence in the judicial system.

The appropriate method for collecting information about Indigenous status is through self-identification. The ABS provides a standard question to ask about Indigenous status:

*Are you of Aboriginal or Torres Strait Islander origin?*<sup>61</sup>

1. *Non-Indigenous*
2. *Aboriginal*
3. *Torres Strait Islander*
4. *Both Aboriginal and Torres Strait Islander*
5. *Prefer not to answer.*

60 This is based on a FTE judicial population of 1,246.9 persons at 30 June 2022 (Productivity Commission 2023, Table 7A.28).

61 The term Aboriginal and Torres Strait Islander 'origin' was used in the 2021 census (Australian Bureau of Statistics 2021a). When used in the context of the ABS Standard Indigenous question it relates to a person's Australian Aboriginal and/or Torres Strait Islander descent and for some, but not all, their cultural identity.

The ABS standard Indigenous question is used in all ABS data collection, as well as across a wide range of government agencies and Australian Aboriginal and Torres Strait Islander organisations, as well as in social research. We recommend that judicial diversity statistics should include data on the judges' Indigenous status.

**Recommendation 6.3:** Statistics regarding the Indigenous status of the judiciary should be regularly recorded and reported. Judicial officers should have the opportunity to self-identify their Indigenous status. To enable useful comparison with the broader population, judicial officers should be asked the standard ABS Indigenous question in terms similar to the population census.

## 6.4 Other Characteristics

Most social surveys that ask about behaviours, experiences, attitudes, values, and perceptions also include questions about the respondents' social background and personal characteristics, sometimes termed demographic information. For example, the *2022 UK Judicial Attitude Survey*, covering salaried judges in England and Wales, and United Kingdom tribunals, included questions about: legal experience, prior appointment as QC, gender, age group, caring or financial responsibilities, disability, education, ethnic group, date of first appointment to salaried post, and tenure in current post (Thomas 2023) (see Appendix 1).

There are several dimensions—apart from sex/gender and race/ethnicity—along which judicial diversity can be charted. Other dimensions of diversity that could be considered are:

- **Age:** Knowing the age distribution of the judiciary, or of judges in particular courts or jurisdictions, may be helpful in planning the judicial workforce (Opeskin 2021). The age variable can easily be measured by asking judges their age at last birthday. Similar information could be retrieved via other questions, for example, date of birth, year of birth, age on a specific date, or selection from options regarding age bands.
- **Disability:** In Australia, data is increasingly collected about disability, which is 'an umbrella term for impairments of body function or structure, activity limitations or participation restrictions' arising from a dynamic interaction between an individual's health condition and environmental and/or personal factors (Australian Institute of Health and Welfare 2022, 11).<sup>62</sup>
- **Professional background:** Questions could be asked about the professional background and experience of judges, whether their primary pre-appointment legal experience was at the bar, as a solicitor, in government, in academia, or other.
- **Sexual orientation:** The traditional image of the judge as a heterosexual man set in train various assumptions about family life and support for the judicial career (Moran 2013). From time-to-time, judicial officers have explicitly indicated their sexuality in public statements. As with other attributes, sexual orientation is protected by anti-discrimination law in Australia, and information regarding judicial officers can indicate the extent to which sexuality might be a barrier to judicial appointment. A recent survey of the Bar in England and Wales shows how heteronormativity undergirds the Bar's professional status, resulting in repression of sexual identity, despite the rhetoric of diversity (M. Mason, Vaughan, and Weil 2023).

<sup>62</sup> The *2022 UK Judicial Attitude Survey* asked (Q54): 'If you answered YES [to having a disability] please feel free to indicate in the box below (1) whether you have asked for any reasonable adjustments to be made and (2) whether these have been satisfactorily implemented (Thomas 2023).

- **Socio-economic status:** Many members of the judiciary come from elite socio-economic backgrounds. Recording socio-economic status—sometimes termed social class—may indicate changing access to the bench by non-traditional appointees. Socio-economic background is a very complex concept with much debate about appropriate and reliable indicators. One simple indicator might be postcode of primary residence, from which social class might be inferred, albeit in a blunt and unsophisticated way. In England and Wales, the diversity statistics include information on social mobility, measured by type of school attended, and university education of parents (United Kingdom Ministry of Justice 2022).
- **Year of first appointment to bench:** This variable is important for assessing the experience of judicial officers, and the length of judicial careers. It can also provide insight into cohort or generational distinctiveness: people who were appointed to the bench at particular points in time might have certain formative experiences which affect their approaches to judicial office.

We believe that a robust dataset on judicial diversity should collect data on all the above characteristics. Although some of these data might be regarded by judicial officers as sensitive personal information, it should be remembered that, when collected via a well-designed survey, participation in the survey would be voluntary, answering any specific question would be optional, sensitive questions would include a response option such as ‘prefer not to say’ (see Appendix 1), and the survey would be administered anonymously so that answers could not be attributed to a specific individual. Moreover, failure to capture information about characteristics that have been the basis of past exclusion from the bench perpetuate the invisibility of relevant traits and hinder the ability to create a diverse and representative judiciary.

**Recommendation 6.4:** In addition to the characteristics of gender, ancestry, and Indigenous status (see Recs 6.1, 6.2, and 6.3), statistics on the judiciary should be regularly recorded through self-identification and reported with respect to age, disability, professional background, sexual orientation, socio-economic status, and year of first judicial appointment.

## 6.5 Measuring Diversity Characteristics

Whatever social or demographic characteristics are selected for inclusion in diversity data on judicial officers, decisions must be made about the *measure* or *metric* that is used to quantify and report on each variable. There are several steps:

- Formulate the precise wording of the survey question. Each question relates to a characteristic for inclusion in the dataset. As the discussion above suggests, the wording should draw on the questions developed by the ABS, as that allows for maximum comparability between judicial data and general population data.
- Identify the response choices for each question. These are the values of the variable. The issue here is how granular to go in describing diversity. For example, having many response choices might mean that some categories need to be combined later for the purpose of analysis, yet too few choices may lose important axes of variation. Each response choice must be mutually exclusive of the other choices, and together the options must be exhaustive. In other words, respondents should be able to select one response for their situation and should not find that their most appropriate response is missing from the list of options, or that multiple choices apply. For example, as has been pointed out (see Part 6.1), the binary options of male/female are insufficient and do not anticipate all possible responses, which include non-binary, or other.
- Neither the questions nor the response choices should change frequently. While it is important to refine questions and their response choices as circumstances alter, making such changes reduces the comparability of data across reporting periods, and thus limits the utility of the data.

- Depending on the format of the question, and the distribution of responses following the data collection, there will need to be data analysis.

Take the variable of age as an example. The question could be formulated as: ‘*What is your age (in years) at your last birthday?*’ This question anticipates the respondent writing in their two-digit age as a number. There is a high level of granularity in this approach. Later, frequencies can be reported for each two-digit number, or these can be combined into age bands to reduce the number of categories. Collecting data on age in this way gives maximum flexibility to combine the age categories in different ways, depending on the needs of the analysis.

Another way of organising response choices on age is to ask the respondent to select an age range, which can vary in length, for example, five years (30–34, 35–39, 40–44, 45–49, and so on) or ten years (30–39, 40–49, 50–59, 60–69, 70–79). The use of such categorisations loses detail, but depending on the question, the population responding, and the purpose of the data collection, such losses may be reasonable. Such considerations must be made for each of the questions asked in any survey on judicial diversity. The wording of questions can be a highly technical process as it is imperative that each respondent understands and interprets the question in the same way, to ensure their answers are comparable.

At the very minimum, total counts of the designated characteristics and the total judicial population across each court should be included in each reporting period. Other statistics—such as percentages, ratios, rates of change, and correlations—can be reported in addition. Making the counts available maximises the opportunity for others (e.g., researchers, courts, judicial officers) to undertake other data analyses tailored to their interests and needs.

Currently, the *Judicial Gender Statistics* uses the count and percentage of women in each court. This relies on two numbers: (a) the number of women and (b) the total number of judicial officers, from which percentages, and other summary statistics, can be calculated. This is easy for users to understand, and it offers a picture of the judiciary at one point in time.

Such a snapshot only captures the net change at the collection date resulting from all judicial arrivals and departures over the course of the collection period. This may obscure valuable information on rates of appointment and attrition by gender (or other diversity characteristic if that is collected in the future). For example, in a court of 100 judges (60 male, 40 female), if 10 females exit the court during the year and are replaced by 10 female appointees, at the end of the year the percentage of women is unchanged (40%). The gender composition of the court remains the same, but the fact that 25% (10/40) of female judges have left the court, and that 100% of new appointments were females may also be matters of interest. Collecting such data would require regular and accurate updates on judicial appointments and departures.

**Recommendation 6.5:** Once the diversity characteristics have been selected, careful consideration should be given to the precise formulation of survey questions, and the available response choices, having regard to ABS best practice. Diversity characteristics should be reported as counts (at a minimum), supplemented by percentages, ratios, and other summary statistics appropriate to each characteristic. Once the characteristics and response categories have been chosen, they should remain stable to facilitate comparison of data over time.

# 7 | How Frequently Should the Data be Collected and Reported?

## 7.1 Frequency of Collection

To date, the *Judicial Gender Statistics* has been collected and published on an annual basis over a 23-year period from 2000–2022, except for 2003. Should this frequency be retained, reduced, or increased? There is no correct answer since much depends on the nature of the data, its stability over time, and the purpose of collecting it. For example, the ABS collects different types of data on a monthly, quarterly, biannual, or annual basis, while population census data in Australia are collected quinquennially (every five years). Several considerations are relevant to the choice of data frequency, and they interact with each other, sometimes in opposition.

- **Time-sensitivity.** Economic data are often critical to government decision-making. For example, the Reserve Bank of Australia needs current data on economic activity to inform its monthly decision on the official cash rate, which is a cornerstone of monetary policy, and each decision makes detailed reference to how the economy is tracking on key indicators that month (Reserve Bank of Australia 2023). By contrast, data on judicial diversity are unlikely to be highly time sensitive.
- **Expected rate of change.** If the expected rate of change in the measured variable is slow, then there is less need for frequent measurement than if the rate of change were fast, all else being equal.
- **Source of data.** Frequency of data collection might be dictated by the source of the data. If diversity data are based on information reported by an organisation annually (as with court reports) there is no advantage in compiling the data more frequently because no additional information is available between annual reporting dates.
- **Cost of collection.** The more frequently data are collected, the greater the cost of doing so, and this cost is compounded for extensive data collections. For example, the cost of the Australian census is around \$670 million every five years, which is a substantial investment of public resources (Lateral Economics 2019).<sup>63</sup> Thus, it is no coincidence that a census is conducted only every five years, and in some other countries (e.g. United Kingdom and United States) only every decade.
- **Value of the data.** The frequency of data collection is also affected by the uses to which the statistics can be put. Despite the substantial cost of conducting the Australian census, it has been estimated to deliver \$6 of value for every \$1 spent on conducting it (Lateral Economics 2019). This emphasises that the existence of cost in data collection should not be a barrier to compiling it—one also needs to assess the benefits.
- **Survey fatigue.** Frequent surveying of time-poor professionals can result in survey fatigue, which can adversely affect response rates. Many individuals today are saturated with requests to participate in surveys in multiple contexts and through multiple channels. The busyness of modern life has led to a general decline in survey response rates from some cohorts (Anseel et al. 2010), and there is a risk that excessive surveying of judicial officers may have the same result.

Applying these considerations to diversity data suggests that the current practice of collecting gender data annually strikes a fair balance. Data collection on gender diversity entails labour costs because gender must be tallied for each one of the more than 1,200 judicial officers on every occasion the measurement is taken. The cost implications are likely to be more significant if the characteristics captured are extended beyond gender, and especially if they permit free-form textual responses from the respondent (Part 6).

The four key considerations in the case of data on gender diversity relate to time-sensitivity, rate of change, data sources, and cost of collection. As discussed above (Part 6), data about gender in the judiciary are important in developing diversity policies in relation to appointment, conditions, and retention. They are also important for legitimacy of, and public confidence in, the courts as an institution. The rate of

63 This comprises the direct resources utilised by the ABS in conducting a survey of the entire population, the ABS's taxpayer-funded costs in collating the data, and the time spent by households to complete the census forms.

change in gender diversity is slow, suggesting that frequent measurement is not needed. According to the *Judicial Gender Statistics*, the percentage of women in the judiciary was 17% in 2000 and 43% in 2022, which is an average change of 1.1 percentage points per year over 23 years. As the proportion of women approaches 50%, the rate of change may slow if the goal is parity of genders. In this context, very little would be gained by moving, say, to quarterly data collection (with an average quarterly change of 0.25%), but the additional cost would be significant and might also create survey fatigue. This is an expected phenomenon for most socio-demographic characteristics because change in such variables is inherently slow. On the other hand, there is no compelling argument for reducing the frequency below once per year (e.g., biennially). It would break continuity with the existing *Judicial Gender Statistics* and with the annual cycle of court reporting. It would also reduce the timeliness of data that may be relevant to public dialogue and policy making in relation to judicial diversity. The choice of frequency may also be constrained by the availability of data. If reliance is placed on the courts' published reports—which are required annually in most jurisdictions—this will restrict the periodicity to annual data. Finally, if diversity data are collected via survey, the cost of collection and analysis is also likely to weigh against conducting the survey more frequently than once each year.

## 7.2 Reference Date

The preceding section discussed the frequency of data collection, but this still leaves open the question of what date should be used to define boundaries between one reporting period and another. Diversity characteristics should ideally be measured at a point in time. This can be called the 'reference date', in accordance with ABS practice, because it is the moment at which the data purport to be an accurate statement of the value of the variables measured. In reality, it is impossible for data on more than 1,200 judicial officers to be collected at a single instant in time. Recording and collating the information takes time—whether this occurs through a researcher collecting data about judicial officers or through judicial officers providing information about themselves. The reference date will therefore generally be a period, but data integrity is not unduly compromised if that period is reasonably short (e.g., if a survey is completed by all respondents during a single month).

The reference date must be distinguished from the publication date, which is the date on which the statistics are uploaded to a website or otherwise distributed to users. There will always be some interval between the reference date and the publication date, the duration of which depends on the type of analysis and reporting that is undertaken. Part 8 discusses the differences between quantitative, graphic, and narrative reporting formats, which require progressively more production time. The greater the time elapsed between the two dates, the more likely it is that the population's underlying diversity characteristics will have changed between measurement and publication. This is not generally problematic because the data purport to be accurate at the reference date, not the publication date, although both dates should be clearly identified in the report.

The *Judicial Gender Statistics* has adopted a variable practice regarding the reference date over the 22 years of published data. The earliest reference date, within a given year, is stated as 8 January (in 2001), and the latest is stated as 'October' (in 2005). However, from 2007–2019, March emerged as a stable reference date, and this became June in 2020, 2021 and 2022. It is important to note that in 10 of the 22 annual reports, the reference date is identified by month, not date.

The variability in reference dates is a greater concern than the selection of a particular date because it results in significantly different periods being covered in each nominal 'year'. Ideally, data should be measured with a regularity such that one whole year elapses between consecutive measurements, or as close to one year as is feasible. In practice, the interval between measurement of gender in the *Judicial Gender Statistics* has ranged from 147 days (2000 to 2001) to 708 days (2002 to 2004, since 2003 was skipped). This variability affects the integrity of the data because an observed change in a variable between

one year and another is the combined effect of (a) changes in the prevalence of the characteristic in the population being measured and (b) changes in the interval between measurement. Consistency in the reference date is critical to data integrity.

As already noted, the most frequent reporting month so far has been March, accounting for 14 of the 22 annual reports. There is no definitive answer to the question of which month is the most appropriate. However, the choice is not arbitrary. One consideration is maintaining consistency with the existing *Judicial Gender Statistics*, and that would suggest a date in March. A contrary consideration is consistency with comparable data collections, which may suggest other dates. For example, the ABS *Gender Indicators* for 'Democracy, Governance and Citizenship' assemble gender data from a variety of non-ABS sources. (Australian Bureau of Statistics 2020b). These use several reference dates but the most common is the end of the financial year (30 June). Beyond the ABS *Gender Indicators*, 30 June is overwhelmingly the reference date for ABS data that is collected annually.

In the future, if diversity data were to be confined to the characteristic of gender, and collected using the same method as past years, there would be merit in selecting a reference date of either 30 March or 30 June, and preferably the latter, for the reasons stated above. However, if diversity data were to be extended beyond gender, or if gender data were to be collected by self-assessment, it would be necessary to survey judicial officers. Such a radical change in the scope and method of data collection lessens the need to comport with past practice. In that circumstance, and consistently with many other data series, it would make good sense to adopt June as the reference period, with data collection being conducted as far as practicable during that month in successive years.

**Recommendation 7.1:** Judicial diversity data should continue to be collected annually. For consistency, the same reference date should be used every year. The most appropriate reference date is June in successive years, especially if diversity data will be collected by a survey of judicial officers and extended to characteristics beyond gender. Publication of the data should take place as soon as practicable, but no later than six months after collection.



## 8 | How Should the Data be Presented and Disseminated?

For much of its history, the *Judicial Gender Statistics* has been published in a broadly consistent format (see Appendix 3). Each year a document of one or two pages, in PDF format, has been published on the AIJA's website, replacing the equivalent document from the preceding year.<sup>64</sup> The data have been presented as a matrix in which the rows comprise individual courts (grouped into federal, state, and territory jurisdictions) and the columns comprise the number of judicial officers in two categories: 'women' and 'total'. An additional column has shown the percentage of women, not for each court, but for all courts combined within each jurisdiction.

In recent years, changes have been made to the presentation format, which have provided more information. In 2020, a further column was added showing the change from the previous year in the percentage of female judicial officers in each jurisdiction, and notes were added identifying the data sources for each court. In 2021, the percentage of female judicial officers was added for each court (in addition to the percentage for each jurisdiction) and the temporal dimension of the data was enhanced by showing the change in the percentage of female judicial officers by court compared with one, five, and ten years previously. That year also saw the addition of data on New Zealand courts, which has been discussed above (Part 3.2). The current year, 2022, has kept the same format as 2021.

The chief goals of data presentation are to make data accessible, clear, and useful for its intended users. The approach of the *Judicial Gender Statistics* has been to present the relevant numbers and percentages on an annual basis. No use has been made of graphs or figures, nor has there been a narrative account of key changes over time, differences between jurisdictions, or differences between levels of the court hierarchy.

### 8.1 Gender Data

It is undoubtedly true that the more elaborate the published information, the greater the resources required to produce it. Nevertheless, we believe that improvements could be made to the data presentation and dissemination with little additional effort. On the assumption that judicial diversity data remains limited to gender, we consider that the following changes should be made.

- Rather than enumerating only 'women' and 'total', the layout should be altered to enumerate 'males', 'females' and 'persons', in accordance with general ABS practice on population statistics.
- In each annual publication, time series data should be enriched by including data for a five-year period (i.e., the current year and four immediately preceding years), as is done with the Productivity Commission's annual *Report on Government Services*.
- Publication should be in both PDF format and Excel format to maximise the opportunity for users to work with the data without having to re-key the statistics. This is consistent with the Productivity Commission's *Report on Government Services* and the ABS generally.
- The complete historical record of judicial gender data from 2000 to the present day, and not merely the current year, should be made available on the AIJA's website. This will enable courts, governments, and researchers to have ready access to past data for the purposes of their own research.
- If resources permit, quantitative gender data should be supplemented by key graphs and a short narrative account in a standardised format so the data can be more readily understood by its disparate users. The ABS has useful examples of how statistics can be presented in quantitative, graphic, and narrative formats for users with different needs.

<sup>64</sup> Due to a recent change of practice, the Judicial Gender Statistics posted on the AIJA website now include the three most-recent years of data.



**Recommendation 8.1:** The presentation and dissemination of judicial gender data should be improved by: (a) tallying all gender categories, (b) enhancing the time series, (c) publishing in multiple file formats, (d) publishing all available historical data, and (e) supplementing the quantitative data with graphic and narrative information.

## 8.2 Other Diversity Data

A larger question arises if judicial diversity data are extended beyond gender to include other characteristics (Part 6). If so, decisions will need to be made about the way such data are presented and disseminated. To this end, it is instructive to examine the practices of other countries that report on judicial diversity across a broader range of attributes. Below we briefly describe the experience of the United States, Canada, and the United Kingdom (Opeskin 2021) (see also Appendix 1).

In the United States, the Federal Judicial Center (2022b) maintains a publicly accessible Biographical Directory of all Article III Judges, from 1789 to the present. Infographics on its website show the changing size and composition of the federal judiciary over time, including variables on age, age at appointment, length of service, gender, race, and ethnicity (Federal Judicial Center 2022c). The data are presented in a variety of graphical formats (using Tableau software), and the supporting statistics can be downloaded. For the state courts, the National Center for State Courts provides a variety of statistical and other information about the composition and work of the courts.

In Canada, the Office of the Commissioner for Federal Judicial Affairs Canada (2022) publishes statistics on judicial applicants and appointees. Diversity data are collected, via questionnaire, on gender, Indigenous status, visible minority status, ethnic/cultural group, disability, LGBTQ, and language proficiency (French and English). The statistics are published online annually in tabular format. Significantly, they relate only to judicial applicants and new appointees, not to the entire corpus of judges. They form part of a programme to promote judicial diversity by increasing the transparency and rigour of the appointments process.

In the United Kingdom, authoritative data on judicial diversity are maintained by the United Kingdom Ministry of Justice (2022). The Ministry publishes an annual statistical report on diversity in the judiciary (i.e., court and tribunal judges), focussing on gender, ethnicity, professional background, age, and 'other' characteristics (disability, social mobility, sexual orientation, and religion). The report is in long narrative format, supported by many graphics, and the background data can be downloaded in Excel format. Additional judicial diversity data are available from the longitudinal *UK Judicial Attitude Survey* (Thomas 2023), which is discussed further in Part 9.2.

These overseas examples show there are no hard and fast rules about how diversity data should be presented. The most effective models provide a mix of quantitative, graphic, and narrative accounts. The United States focusses on web-based dissemination using engaging infographics; Canada on providing simple raw data to underpin a transparent appointments process; and the United Kingdom on providing a rich contextual account of judicial diversity. In Australia, it is not possible to be definitive about the best manner of presenting and disseminating diversity data until more is known about what data are collected, who collects them, how they are collected, and the intended audiences.

**Recommendation 8.2:** The presentation and dissemination of judicial diversity data (where it extends beyond gender) should have regard to styles of reporting in comparable jurisdictions abroad, using a mix of quantitative, graphic, and narrative formats.

## 9 | What Institutions Should Collect and Disseminate Diversity Data?

Since its inception, the *Judicial Gender Statistics* has been compiled by the AIJA, which is an incorporated association whose objective is to 'promote excellence in the administration of justice throughout Australia, New Zealand and the surrounding region' (Part 3.2). Under the AIJA's Rules, the strategies to be adopted in attaining its mission include stimulating public and professional interest in the administration of justice, undertaking research, issuing publications, disseminating information, and serving as a national resource centre. The publication of the *Judicial Gender Statistics* does all these things, and there are credible reasons why the AIJA may wish to continue regularly producing gender statistics.

For most of its life, the *Judicial Gender Statistics* has been compiled by AIJA staff using data sources that were seldom stated explicitly. In a small organisation, this task necessarily occurs within the context of other activities and responsibilities, and perhaps by staff members without any specific training in research analysis. More recently, that task has been undertaken by a research assistant, under the policy guidance of the AIJA Research Committee. If the expectations for more sophisticated and detailed data analysis and presentation increase, then so will the skill set required of those tasked with providing such analyses. This has resource implications and would require a balancing against the everyday work demands of the AIJA.

Our recommendations signal two potential changes that may prompt a reconsideration of which institutions or agencies are best placed to produce judicial diversity statistics in the future. The first is the change in the breadth of the diversity data collected, from gender to the broad range of variables discussed in Part 6. The second is the change in research method, from statistics collected by researchers without the knowledge or consent of the judicial officers, to statistics collected by self-assessment in a voluntary survey.

### 9.1 Relevant Considerations

These suggested changes have ramifications for the nature of the task of collecting and disseminating judicial diversity statistics. In our view, five key factors should be considered in assessing which institutions or agencies are best placed to produce judicial diversity statistics in the future.

- **Skills.** To date, production of the *Judicial Gender Statistics* has relied on the skills of a small number of librarians, research assistants, and legal staff employed by the AIJA. Going forward, key skills will include the legal skills necessary to undertake a comprehensive review of the legislative framework of Australian courts to determine which bodies should be included (Part 4), and which positions should be included (Part 5). Once this is done, additional skills will be required in designing a questionnaire on the chosen diversity characteristics; planning the survey; formulating the questions that will measure diversity characteristics; administering the survey; follow-ups and reminders; coding the responses; removing incomplete or missing data; aggregating the data; and preparing statistical, graphical, and narrative accounts of the data. These tasks require personnel with experience in empirical research methodology and report writing.
- **Resources.** The change in data scope and research method have implications for the resources required to successfully produce the statistics on a recurrent basis. The present level of resources committed by the AIJA to the *Judicial Gender Statistics* would appear inadequate for the enlarged scope of data collection proposed in this Report. This suggests that further funding should be sought by the AIJA or that the task should be undertaken by another institution that can secure an appropriate level of funding.
- **Data Confidentiality.** The *Judicial Gender Statistics* has been based on the collation of data that is largely in the public domain, such as annual court reports and court websites. However, any expansion in the range of targeted characteristics through a periodic survey will produce a large volume of additional information, some of which may be considered sensitive personal information. It is possible that the identity of judicial officers could be ascertained if their answers to survey questions

were disclosed in a manner that permitted the combination of responses to multiple questions. For example, there might be only one person who is an Indigenous female magistrate from Queensland, even if each of those four attributes is non-identifying when considered alone. In this environment, the confidentiality of the data is paramount, and the institution responsible for collecting it must be able to ensure the highest levels of security in both storing and reporting the data.

- **Trust.** Related to the preceding point, institutions that collect judicial diversity data should ideally have the trust and confidence of judicial officers. Without trust, judges may be reluctant to participate in surveys asking for information they perceive as personal (Roach Anleu and Mack 2017). As with any survey, it will be important to stress that the value of the data is increased by a higher response rate. While it is unlikely that there would be a perfect response rate, it is noteworthy that almost all salaried judicial officers in England and Wales have responded to the Judicial Attitude Survey administered in 2014, 2016, 2020, and 2022 (Thomas 2023). The higher the response rate, the more reliable the data, and hence the more robust the research findings. Many judicial officers are wary of government involvement in judicial affairs because of the high value they place on judicial independence. This can be seen in the early history of judicial education in Australia, and the adoption of models of program delivery that have kept governments at arms' length (Appleby et al. 2022). Similarly, if personal data were collected by government, some judicial officers may have concerns about how it might be used.
- **National Coverage.** One of the strengths of the *Judicial Gender Statistics* has been its national coverage. Since the first report in 2000, it has provided an annual snapshot of courts across Australia (with a more recent extension to New Zealand). This has been a valuable aspect of the dataset, allowing both comparison among jurisdictions and an appreciation of the Australian judiciary in its entirety. The choice of an institution or agency for the collection of future diversity data should not jeopardise the goal of national coverage. The establishment of separate data collections in different jurisdictions would risk divergence in scope and timing, which would undermine the notion of a national dataset and make cross-jurisdictional comparison difficult.

## 9.2 Overseas Experience

It is instructive to consider the experience of other jurisdictions when assessing the choice of responsible agency (see also Part 8.2). These demonstrate a variety of organisational arrangements for collecting judicial diversity data.

In the United States, diversity statistics about federal judges are collected by the Federal Judicial Center. The Center was established by Congress in 1967 as a research and educational agency. It is funded by an annual appropriation from Congress and has a governing Board comprising the Chief Justice of the United States and seven judges elected by the Judicial Conference of the United States (Federal Judicial Center 2022a). State judges fall outside the purview of the Federal Judicial Center.

In Canada, diversity statistics of federally appointed judges are collected by the Office of the Commissioner for Federal Judicial Affairs. The Office was created in 1978 to safeguard the independence of the judiciary. It sits formally within the Canadian Department of Justice but operates as an arms-length agency providing support for the federal judiciary. The Office is headed by a commissioner who is appointed by the Executive after consultation by the Minister of Justice with the Canadian Judicial Council. The commissioner has the same status as a deputy head of a department. The Office has responsibility for federal judges and judges of superior provincial courts, but not lower tier provincial courts.

In the United Kingdom, data on judicial diversity are collected and published by the United Kingdom Ministry of Justice. Since 2020, statistics covering the judiciary, judicial appointments, and the legal professions have been published together in a single report. Additional judicial diversity data are available from the longitudinal *UK Judicial Attitude Survey*, which was held in 2014, 2016, 2020, and 2022. This periodic survey has been conducted under the auspices of the Judicial Institute at University College

London and led by Professor Cheryl Thomas. Although the Institute is neither an executive nor a judicial body, its surveys have had an exceptionally high degree of institutional support, with a 99% response rate in 2022 among salaried judges in courts in England and Wales, and a 91% response rate among salaried judges in United Kingdom tribunals (Thomas 2023, 7).

### 9.3 Potential Australian Bodies

Reflecting on the experience abroad, a range of Australian institutions might be contenders for a future role in collecting and disseminating broad-based judicial diversity statistics. We remain agnostic about the outcome but believe that the choice should be informed by the factors identified above. Most institutions have strengths in some domains and weaknesses in others, making the choice a matter of weighing the relevant factors. The possible classes of institutions are as follows:

- **Government departments**, exemplified by the Ministry of Justice in the United Kingdom. Benefits include resourcing and access to skilled personnel; costs include the perceived threat to judicial independence arising from direct government involvement in producing the data. In Australia, the relevant entities are the departments of the Attorney-General or Justice in the states, territories, and the Commonwealth. In a federal system, this approach is likely to result in fragmentation of what should be a national statistical collection. However, it might be possible to harmonise judicial diversity data across jurisdictions through the involvement of the Standing Council of Attorneys-General (SCAG).
- **Statutory bodies or offices**, exemplified by the Federal Judicial Center (United States) and the Commissioner for Federal Judicial Affairs (Canada). Benefits include resourcing and access to the necessary skills, while maintaining a fair degree of separation from the executive arm of government. There are no statutory bodies in Australia with a close fit for the task in question on a national basis, although possibilities might include the ABS or the Productivity Commission (which produces the annual *Report on Government Services*). The establishment of a new statutory body is unlikely if the functions could be satisfactorily performed by an extant institution. The ABS, in particular, should be given serious consideration because it is widely trusted as an apolitical body, with extensive experience and robust practices in data collection. Moreover, it already collects a vast amount of information on sub-populations of interest, and it provides a wealth of information about diversity in the Australian population, which is a key benchmark against which to assess judicial diversity.
- **Corporate bodies** are not widely used in the comparator countries but consideration could be given to several Australian bodies that are established as incorporated associations or as similar legal entities. These include the AIJA itself (which has experience in producing gender data but not in conducting broad-based surveys), the Australian Judicial Officers Association (AJOA), the Australian Academy of Law (AAL), and the National Judicial College of Australia (NJCA).
- **Informal judicial bodies** may also have an interest in the regular production of judicial diversity statistics. Examples include the Council of Chief Justices of Australia and New Zealand, and their equivalents at other levels of the court hierarchy. A New Zealand example of such an entity is the Judicial Diversity Committee (Te Awa Tuia Tangata), which was established by the Heads of Bench to report on judicial diversity in 2021 (Part 3.2, Appendix 1). Benefits include judicial involvement and therefore buy-in; costs include the absence of expertise in the required research methods and the need to fund the project from court budgets.

- **Research institutions**, exemplified by the Judicial Institute at University College London, with its longitudinal *UK Judicial Attitude Survey*. Most research institutes are aligned with universities but it would be possible to utilise independent research bodies where they exist. Benefits include access to experienced researchers and data analysts, as well as independence from both the executive and the judiciary. Costs include the vagaries of changing funding and policy priorities, which may threaten the long-term viability of the data collection.

Whichever body is chosen, decisions must be made about the survey format. The traditional method is the distribution of paper copies, but this has been largely overtaken by online survey platforms (such as Qualtrics, although there are many others) because of their efficiencies in survey administration, analysis, and reporting. Additionally, decisions must be made about the most appropriate channel for distributing the surveys. This could be done by the administering organisation through direct communication with judicial officers (e.g., via email if using an online survey), or indirectly through the Heads of Jurisdiction of the participating courts. The latter approach has the benefit of giving the Head's imprimatur to the data collection and hence may encourage a higher response rate; but an unenthusiastic Head may give the opposite signal. Whether the channel is direct or indirect, there is a clear need for prior consultation with the Heads of all participating courts about the desirability of a robust national dataset on judicial diversity. A useful starting place for that conversation is the Council of Chief Justices of Australia and New Zealand, and their equivalents at other levels of the court hierarchy.

**Recommendation 9.1:** Fresh consideration should be given to which institutions or agencies are best suited to collecting and disseminating judicial diversity data in the future, especially if the data are expanded in scope and collected by means of a periodic survey. That choice should be made having regard to the requisite skills, available resources, need for data confidentiality, importance of judicial trust, and desirability of producing a harmonised national dataset. A useful starting place for that conversation is the Council of Chief Justices of Australia and New Zealand, and their equivalents at other levels of the court hierarchy.

## 10 | Conclusions

The Final Report on *Judicial Diversity in Australia: A Roadmap for Data Collection* has sought to present a roadmap for the future collection and dissemination of data on judicial diversity, leveraging from the AIJA's experience over more than 20 years with respect to data on the gender of judicial officers. We have had regard to the best practice of other bodies that collect social data, both in Australia and abroad. While aspects of data collection are technical, they also raise policy considerations that exist in tension with each other. These include issues of data integrity, cost of collection, useability by stakeholders, continuity with past data series, and compatibility with other datasets.

We affirm the importance of the AIJA's longstanding national data collection on gender diversity. We recommend that in future each judicial officer should have the opportunity to identify their own gender. Additionally, there are important dimensions of judicial diversity that extend beyond gender. We recommend that the dataset be extended to capture age, disability, professional background, sexual orientation, socio-economic status, year of first judicial appointment, and perhaps other personal attributes. Both changes will require a transition from the current method of data collection (where researchers collect information about judicial officers who are not involved in the process) to one based on self-identification by judicial officers through a survey.

A judicial diversity survey will require a substantial investment of time and resources in the collection, analysis, and dissemination of information. Much of this would be concentrated at the front-end, as the survey questions are developed and tested, and as arrangements for the administration of the survey are settled. Some of this could be outsourced to individuals or organisations with experience in social research methods. Beyond the initial years, the resources required to conduct the survey will attenuate because the questions should not change substantially from year to year—indeed, their stability over time is vital for making temporal comparisons.

There is no single answer to the question of what judicial diversity data should be collected. Our recommendations, listed at the start of the Final Report, grapple with the key challenges of data collection, while seeking to improve and enhance information about the Australian judiciary in the future.

# References

- Adlam, Geoff. 2019. "New Zealand's Judiciary at 14 March 2019." *Law Talk* 927: 24-25.
- . 2020. "Snapshot of the Profession 2020." *Law Talk* 940: 26-42.
- Anseel, Frederik, Filip Lievens, Eveline Schollaert, and Beata Choragwicka. 2010. "Response Rates in Organizational Science, 1995-2008: A Meta-analytic Review and Guidelines for Survey Researchers." *Journal of Business and Psychology* 25 (3): 335-349.
- Appleby, Gabrielle, Jessica Kerr, Suzanne Le Mire, Andrew Lynch, and Brian Opeskin. 2022. "Judicial Education in Australia: A Contemporary Overview." *Journal of Judicial Administration* 31 (4): 187-206.
- Appleby, Gabrielle, Suzanne Le Mire, Andrew Lynch, and Brian Opeskin. 2017. *Temporary Judicial Officers in Australia*. Judicial Conference of Australia.
- Australasian Institute of Judicial Administration. 2022. "Judicial Gender Statistics, June 2022." [Web Page]. <https://aija.org.au/research/judicial-gender-statistics/>.
- Australian Bureau of Statistics. 2019a. ANZSCO: *Australian and New Zealand Standard Classification of Occupations, 2013, Version 1.3*. Catalogue No 1220.0.
- . 2019b. "Australian Standard Classification of Cultural and Ethnic Groups (ASCCEG), 2019." Australian Government. Last Modified 18 December 2019. Accessed 21 December. <https://www.abs.gov.au/statistics/classifications/australian-standard-classification-cultural-and-ethnic-groups-ascecg/latest-release>.
- . 2020a. *Australian and New Zealand Standard Research Classification (ANZSRC)*.
- . 2020b. *Gender Indicators, Australia, 2020*.
- . 2021a. "Census of Population and Housing: Census Dictionary: Indigenous Status (INGP)." Australian Government. Last Modified 15 October 2021. Accessed 21 December. <https://www.abs.gov.au/census/guide-census-data/census-dictionary/2021/variables-topic/aboriginal-and-torres-strait-islander-peoples/indigenous-status-ingp>.
- . 2021b. "Prisoners in Australia, 2021." Australian Government. Last Modified 9 December 2022. Accessed 21 December. <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release>.
- . 2021c. "Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables, 2020." Last Modified 14 January 2021. Accessed 21 December. <https://www.abs.gov.au/statistics/standards/standard-sex-gender-variations-sex-characteristics-and-sexual-orientation-variables/latest-release>.
- . 2022a. "Estimates of Aboriginal and Torres Strait Islander Australians, June 2021." Australian Government. Last Modified 21 September 2022. Accessed 21 December. <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release>.
- . 2022b. "Snapshot of Australia: A Picture of the Economic, Social and Cultural Make-up of Australia on Census Night, 10 August 2021." Australian Government. Last Modified 28 June 2022. Accessed 21 December. <https://www.abs.gov.au/statistics/people/people-and-communities/snapshot-australia/latest-release>.
- . 2022c. "Understanding and Using Ancestry Data." Australian Government. Last Modified 28 June 2022. Accessed 21 December. <https://www.abs.gov.au/statistics/detailed-methodology-information/information-papers/understanding-and-using-ancestry-data>.



---. 2023. *Regional Population 2021-22*.

Australian Government. 2015. "Australian Government Guidelines on the Recognition of Sex and Gender." Last Modified November 2015. Accessed 21 December. <https://www.ag.gov.au/rights-and-protections/publications/australian-government-guidelines-recognition-sex-and-gender>.

---. 2022a. *Government Response to Australian Law Reform Commission Report 138: Without Fear or Favour: Judicial Impartiality and the Law on Bias*.

---. 2022b. "A New System of Federal Administrative Review." Accessed 29 December 2022. [www.ag.gov.au/legal-system/new-system-federal-administrative-review#key-features](http://www.ag.gov.au/legal-system/new-system-federal-administrative-review#key-features).

Australian Institute of Health and Welfare. 2022. *People with Disability in Australia 2022*. Canberra: Australian Government.

Australian Law Reform Commission. 1994. *Equality before the Law: Justice for Women*. Report.

---. 2018. *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*. <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>.

---. 2021. *Without Fear or Favour: Judicial Impartiality and the Law on Bias*, ALRC Report 138. ALRC.

Baxter, Janeen, and Erik Wright. 2000. "The Glass Ceiling Hypothesis: A Comparative Study of the United States, Sweden, and Australia." *Gender & Society* 14 (2): 275-294.

Bennett, Paul. 2015. *Specialist Courts for Sentencing Aboriginal Offenders: Aboriginal Courts in Australia*. Federation Press.

Bilotta, Isabel, Abby Corrington, Saaid Mendoza, Ivy Watson, and Eden King. 2019. "How Subtle Bias Infects the Law." *Annual Review of Law and Social Science* 15: 227-245.

Bollé, Patrick. 1997. "Part-time Work: Solution or Trap?" *International Labour Review* 136 (4): 557-579.

Chief Justice of New Zealand. 2022. *Annual Report for the Period 1 January 2020 to 31 December 2022*.

Christodoulou, Callum. 2020. "Burns v Corbett: Federal Jurisdiction, State Tribunals and Chapter III Courts." *Sydney Law Review* 42 (3): 353-368.

Cohen, Mathilde. 2018. "Judicial Diversity in France: The Unspoken and the Unspeakable." *Law & Social Inquiry* 43 (4): 1542-1573.

Council of Chief Justices of Australia and New Zealand. 2017. *Guide to Judicial Conduct*. 3rd ed. Melbourne: Australasian Institute of Judicial Administration.

Cumes, Guy. 2008. "Separation of Powers, Courts, Tribunals and the State." *Australasian Dispute Resolution Journal* 19 (1): 10-16.

Curthoys, Jeremy. 2002. "In Conversation with Justice Robert French." *Intellectual Property Forum* 50: 6-11.

Escobar-Lemmon, Maria, Valerie Hoekstra, Alice Kang, and Miki Kittilson. 2021. *Reimagining the Judiciary: Women's Representation on High Courts Worldwide*. Oxford University Press.

Federal Judicial Center. 2022a. "About the FJC." Accessed 19 December 2022. <https://www.fjc.gov/node/12506>.

---. 2022b. "Biographical Directory of Article III Federal Judges, 1789-Present." [Web Page]. Accessed 29 November 2022. [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

---. 2022c. "Demography of Article III Judges, 1789-2020." [Web Page]. Accessed 29 November 2022. [www.fjc.gov/history/exhibits/graphs-and-maps/demography-article-iii-judges-1789-2020-introduction](http://www.fjc.gov/history/exhibits/graphs-and-maps/demography-article-iii-judges-1789-2020-introduction).

Forbes, JRS. 2019. *Justice in Tribunals*. 5th ed. Sydney: Federation Press.

French, Robert. 2000. "Federal Courts Created by Parliament." In *The Australian Federal Judicial System*, edited by Brian Opeskin and Fiona Wheeler, 123-159. Melbourne: Melbourne University Press.

- Gaze, Beth, and Belinda Smith. 2017. *Equality and Discrimination Law in Australia: An Introduction*. Cambridge: Cambridge University Press.
- Gee, Graham, and Erika Rackley, eds. 2018. *Debating Judicial Appointments in an Age of Diversity*. Abbingdon: Routledge.
- Genthon, Kathryn, and Diane Robinson. 2022. *Collecting Race & Ethnicity Data: CSP Data Governance Special Topic*. National Center for State Courts.
- Gibson, James, and Michael Nelson. 2014. "The Legitimacy of the US Supreme Court: Conventional Wisdoms and Recent Challenges Thereto." *Annual Review of Law and Social Science* 10: 201-219.
- Graham, Barbara. 1990. "Judicial Recruitment and Racial Diversity on State Courts: An Overview." *Judicature* 74 (1): 28-34.
- Gummow, William. 2000. "Foreword." In *The Australian Federal Judicial System*, edited by Brian Opeskin and Fiona Wheeler, v-vii. Melbourne University Press.
- Hale, Brenda. 2001. "Equality and the Judiciary: Why Should We Want More Women Judges?" *Public Law* [2001] ((Autumn)): 489-504.
- Hannaford-Agor, Paula. 2022. "How Exactly Does It Get Done Here? Conducting Cross-jurisdictional Research with Judges and Court Staff." paper presented at 'Empirical Research with Judicial Professionals and Courts: Methods and Practices', Oñati, Spain, 23-24 June 2022.
- Harris, Allison, and Maya Sen. 2019. "Bias and Judging." *Annual Review of Political Science* 22: 241-259. <https://doi.org/https://doi.org/10.1146/annurev-polisci-051617-090650>.
- Holmes, Mary. 2007. *What is Gender? Sociological Approaches*. London: SAGE Publications.
- House of Representatives Standing Committee on Legal and Constitutional Affairs. 1991. *Islands in the Sun: The Legal Regimes of Australia's External Territories and the Jervis Bay Territory*.
- Hunter, Rosemary. 2015. "More than Just a Different Face? Judicial Diversity and Decision-Making." *Current Legal Problems* 68 (1): 119-141.
- Hunter, Rosemary, Sharyn Roach Anleu, and Kathy Mack. 2021. "Feminist Judging in Lower Courts." *Journal of Law and Society* 48 (4): 595-617. <https://doi.org/https://doi.org/10.1111/jols.12321>.
- Hurwitz, Mark, and Drew Lanier. 2003. "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts." *State Politics and Policy Quarterly* 3 (4): 329-352. <http://search.proquest.com/docview/213774356?accountid=10910>.
- Indermaur, David, and Lynne Roberts. 2003. "Drug Courts in Australia: The First Generation." *Current Issues in Criminal Justice* 15 (2): 136-154.
- Kerr, Alan. 2009. *A Federation in These Seas: An Account of the Acquisition by Australia of its External Territories, with Selected Documents*. Attorney-General's Department.
- Kirby, Michael. 1981. "Judicial Diversity." *Reform* [1981] (22): 44-45.
- . 2008. "Judicial Supersession: The Controversial Establishment of the New South Wales Court of Appeal." *Sydney Law Review* 30 (2): 177-208.
- Land and Environment Court of New South Wales. 2022. *Annual Review 2021*.
- Lass, Inge, and Mark Wooden. 2020. "Trends in the Prevalence of Non-standard Employment in Australia." *Journal of Industrial Relations* 62 (1): 3-32.
- Lateral Economics. 2019. *Valuing the Australian Census*. Australian Bureau of Statistics.
- Leeming, Mark. 2020. *Authority to Decide: The Law of Jurisdiction in Australia*. 2nd ed.: Federation Press.
- Levin, Avner, and Asher Alkoby. 2017. "Shouldn't the Bench Be a Mirror? The Diversity of the Canadian Judiciary." *Oñati Socio-Legal Series* 7 (4): 717-751.

- Livesey, Mark. 2021. "South Australia's New Court of Appeal: History, Operation and Function." *Law Society of South Australia Bulletin* 43 (3): 6-11.
- Lyon, Sabrina, and Lorne Sossin. 2014. "Data and Diversity in the Canadian Justice Community." *Journal of Law and Equality* 11: 85-131.
- Malcolm, David. 2001. *Report of the Committee to Examine the Feasibility of the Establishment of a Court of Appeal and How it Should be Structured and Constituted*.
- Malhi, Amrita. 2022. "Should the Census Ask about Race? It's Not a Simple Question and May Reinforce 'Racial' Thinking." *The Conversation*. Last Modified 27 June 2022. Accessed 16 June 2022. <https://theconversation.com/should-the-census-ask-about-race-its-not-a-simple-question-and-may-reinforce-racial-thinking-185295>.
- Malleson, Kate. 2003. "Justifying Gender Equality on the Bench: Why Difference Won't Do." *Feminist Legal Studies* 11 (1): 1-24.
- Mason, Keith. 2012. "The Distinctiveness and Independence of Intermediate Courts of Appeal." *Australian Law Journal* 86 (5): 308-332.
- Mason, Marc, Steven Vaughan, and Benjamin Weil. 2023. "The Possible Forms of Professionalism: Credibility and the Performance of Queer Sexualities among Barristers in England and Wales." *Journal of Law and Society* 50 (1): 77-99.
- McLoughlin, Kcasey, and Joan Williams. 2019. "An Age of Diversity: Where to Next for the Judicial Diversity Project." *University of New South Wales Law Journal Forum*: 1-15.
- Meyerson, Denise. 2011. *Jurisprudence*. Melbourne: Oxford University Press.
- Moffett, Morgan, and Sarah Gibson. 2022. *Diversity on the Bench: State Court Organization Demographics*. National Center for State Courts.
- Moore, Michael. 2000. "The Role of Specialist Courts: An Australian Perspective." *Lawasia Journal*: 139-154.
- Moran, Leslie. 2013. "'May it Please the Court': Forming Sexualities as Judicial Virtues in Judicial Swearing-in Ceremonies." In *Gender and Judging*, edited by Ulrike Schultz and Gisela Shaw. Oxford: Hart Publishing.
- Morris, Caroline, Jonathan Boston, and Petra Butler, eds. 2011. *Reconstituting the Constitution*: Springer.
- Myers, K O. 2014. *Merit Selection and Judicial Diversity Revisited*. Nashville: American Judicature Society.
- National Center for State Courts. 2023. *Racial Justice Organizational Assessment Tool for Courts* NCSC.
- New South Wales Civil and Administrative Tribunal. 2022. *NCAT Annual Report 2021-2022*.
- New York Task Force on Judicial Diversity. 1993. "Report of the New York Task Force on Judicial Diversity to Governor Mario Cuomo." *Berkeley La Raza Law Journal* 6 (1): 127-137. <https://lawcat.berkeley.edu/record/1114594>.
- New Zealand. 1978. *Report of Royal Commission on the Courts (David Beattie, Chair)*. Government Printer.
- Nolan, James. 2009. *Legal Accents, Legal Borrowing: The International Problem-Solving Court Movement*. Princeton University Press.
- O'Meally, John. 2007. "Asbestos Litigation in New South Wales." *Journal of Law and Policy* 15 (3): 1209-1224.
- Office of the Commissioner for Federal Judicial Affairs Canada. 2017. "Questionnaire for Federal Judicial Appointments." Government of Canada. Last Modified October 2017. Accessed 21 December. <https://www.fja.gc.ca/appointments-nominations/forms-formulaires/cq-qc/pdf/Questionnaire-for-Federal-Judicial-Appointments-Oct-27-2017.pdf>.

---. 2022. "Statistics Regarding Judicial Applicants and Appointees, October 29, 2020 – October 28, 2021." [Web Page]. Accessed 29 November 2022. [www.fja.gc.ca/appointments-nominations/StatisticsCandidate-StatistiquesCandidat-2021-eng.html](http://www.fja.gc.ca/appointments-nominations/StatisticsCandidate-StatistiquesCandidat-2021-eng.html).

Opeskin, Brian. 2001. *Appellate Courts and the Mangement of Appeals in Australia*. Australian Institute of Judicial Administration.

---. 2017. "The Supply of Judicial Labour: Optimising a Scarce Resource in Australia." *Oñati Socio-Legal Series* 7 (4): 847-878.

---. 2021. *Future Proofing the Judiciary: Preparing for Demographic Change*. Palgrave Macmillan.

---. 2022. "The Relentless Rise of Judicial Specialisation and its Implications for Judicial Systems." *Current Legal Problems* 75 (1): 137-188.

Opeskin, Brian, and Gabrielle Appleby. 2020. "Responsible Jurimetrics: A Reply to Silbert's Critique of the Victorian Court of Appeal." *Australian Law Journal* 94 (12): 923-935.

Plitmann, Yael. 2022. "Authentic Compliance with a Symbolic Legal Standard? How Critical Race Theory Can Change Institutional Studies on Diversity in the Workplace." *Law & Social Inquiry* 47 (1): 331-346. <https://doi.org/10.1017/lsi.2021.38>.

Productivity Commission. 2022. "Report on Government Services." Accessed 20 April. <https://www.pc.gov.au/research/ongoing/report-on-government-services>.

---. 2023. "Report on Government Services." <https://www.pc.gov.au/research/ongoing/report-on-government-services>.

Queensland Government. 2021. *2021 Gender Equality Report Cards*.

Rachlinski, Jeffrey, and Andrew Wistrich. 2017. "Judging the Judiciary by the Numbers: Empirical Research on Judges." *Annual Review of Law and Social Science* 13: 203-229. <http://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-110615-085032>.

Rackley, Erika. 2013. *Women, Judging and the Judiciary: From Difference to Diversity*. Abingdon: Routledge.

Ray, Victor. 2019. "A Theory of Racialized Organizations." *American Sociological Review* 84 (1): 26-53. <https://doi.org/https://doi.org/10.1177/0003122418822335>.

Remiche, Adélaïde. 2015. "When Judging is Power." *Journal of Law and Courts* 3 (1): 95-114. <https://www.journals.uchicago.edu/doi/pdfplus/10.1086/679450>.

Reserve Bank of Australia. 2023. Media Release: Statement by Philip Lowe, Governor: Monetary Policy Decision No 2023-13 (6 June 2023).

Ridgeway, Cecilia. 2009. "Framed Before we Know It: How Gender Shapes Social Relations." *Gender and Society* 23 (2): 145-160.

---. 2011. *Framed by Gender: How Gender Inequality Persists in the Modern World*. New York: Oxford University Press.

Ridgeway, Cecilia, and Shelley Correll. 2004. "Unpacking the Gender System: A Theoretical Perspective on Gender Beliefs and Social Relations." *Gender & Society* 18 (4): 510-531. <https://doi.org/10.1177/0891243204265269>. <http://gas.sagepub.com/content/18/4/510.abstract>.

Roach Anleu, Sharyn. 2023. "Book Review: Reimagining the Judiciary – Women's Representation on High Courts Worldwide." *Journal of Law and Society* 50 (2): 282-286.

Roach Anleu, Sharyn, and Kathy Mack. 2017. *Performing Judicial Authority in the Lower Courts*. Palgrave Macmillan.

---. 2021. *Judging and Emotion: A Socio-Legal Analysis*. Routledge.

Roberson, Quinetta. 2019. "Diversity in the Workplace: A Review, Synthesis, and Future Research Agenda." *Annual Review of Organizational Psychology and Organizational Behavior* 6: 69-88. <https://doi.org/https://doi.org/10.1146/annurev-orgpsych-012218-015243>.

- Russell, Steve. 1990. "Commentary on Representative Justice." *Thurgood Marshall Law Review* 16 (1): 57-74.
- Scherer, Nancy. 2023. *Diversifying the Courts : Race, Gender, and Judicial Legitimacy*. New York University Press.
- Schultz, Ulrike, and Gisela Shaw, eds. 2013. *Gender and Judging*. Oxford: Hart Publishing.
- Silberman, Linda. 1975. "Masters and Magistrates: The English Model." *New York University Law Review* 50 (5): 1070-1118.
- Sotomayor, Sonia. 2002. "A Latina Judge's Voice." *Berkeley La Raza Law Journal* 13: 87-93.
- Steele, Liza, Amie Bostic, Scott Lynch, and Lamis Abdelaaty. 2022. "Measuring Ethnic Diversity." *Annual Review of Sociology* 48: 48-63. <https://doi.org/https://doi.org/10.1146/annurev-soc-030420-015435>.
- Stellios, James. 2020. *The Federal Judicature: Chapter III of the Constitution*. 2nd ed.: LexisNexis.
- Supreme Court of New South Wales. 2022. *Annual Review 2021*.
- Thomas, Cheryl. 2023. 2022 UK *Judicial Attitude Survey*. UCL Judicial Institute.
- Thornton, Margaret. 1996. *Dissonance and Distrust: Women in the Legal Profession*. Melbourne: Oxford University Press.
- United Kingdom Ministry of Justice. 2022. *Diversity of the Judiciary: Legal Professions, New Appointments and Current Post-holders – 2022 Statistics*. [www.gov.uk/government/statistics/diversity-of-the-judiciary-2022-statistics](http://www.gov.uk/government/statistics/diversity-of-the-judiciary-2022-statistics).
- United States Census Bureau. 2021. "2020 Census Frequently Asked Questions About Race and Ethnicity." Last Modified 12 August 2021. Accessed 21 December. <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/faqs-race-ethnicity.html>.
- van Oorscot, Irene. 2020. "Culture, Milieu, Phenotype: Articulating Race in Judicial Sense-making Practices." *Social & Legal Studies* 29 (6): 790-811. <https://doi.org/https://doi.org/10.1177/0964663920907992>.
- Vertovec, Steven. 2012. "'Diversity' and the Social Imaginary." *European Journal of Sociology* 53 (3): 287-312. <https://www.jstor.org/stable/43282233>.
- Waghorne, James. 2014. *Improving Justice: A History of the Australasian Institute of Judicial Administration*.
- Weber, Max. 1947. *The Theory of Social and Economic Organization*. Translated by A Henderson and Talcott Parsons. Glencoe IL: The Free Press.
- Westbrook, Laurel, and Aliya Saperstein. 2015. "New Categories Are Not Enough: Rethinking the Measurement of Sex and Gender in Social Surveys." *Gender and Society* 29 (4): 534–560. <https://doi.org/https://doi.org/10.1177/0891243215584758>.
- Wettenall, Roger. 2018. "Norfolk Island as Region: A Pacific Puzzle." *Australian Journal of Public Administration* 77 (1): 120–127.



# Appendix 1: Diversity Surveys in Comparable Jurisdictions

Contemporary discussions of judicial diversity and diversity measures focus on socio-demographic characteristics such as gender, age, and ethnicity; or on social and professional background characteristics such as education and previous positions or occupations. Questions about some of these characteristics are routinely included in surveys that seek information on respondents' experiences, recollections, behaviours, and attitudes.

It is tempting to use questions from surveys undertaken in Australia, or in other countries, and incorporate them into a survey that seeks information on judicial diversity in Australia. In some circumstances, this can be a sensible approach because it allows comparisons across data sets. For example, if a survey on judicial diversity in Australia used questions formulated by the Australian Bureau of Statistics (ABS), then that would enable defensible comparison of the judiciary with the wider population along key characteristics. Thus, judicial diversity could be assessed by comparing the judiciary against itself at different points in time, as well as by comparing the composition of the judiciary with the general population or sub-populations.

Using questions from other countries might allow comparison, benchmarking, or assessment among different judiciaries. However, there are significant risks in simply taking questions from overseas surveys in the implicit assumption that they will be suitable for the Australian context, legal system, and local circumstances.

In social science research, the task of preparing and testing a survey instrument is itself a substantial project. The overseas surveys we discuss below are examples of different approaches taken elsewhere, but there is another layer of work to be done to determine whether specific questions are fit for purpose in Australia.

We have attempted to locate publicly accessible examples of judicial diversity surveys in other common law jurisdictions. While there are numerous reports of the *results* of judicial diversity surveys, it is more difficult to find the survey instruments themselves.

## 1 Canada

Practices with respect to the collection and dissemination of data on the diversity of Canadian judges have been addressed elsewhere in this Report.

To recap, diversity statistics of federally appointed judges are collected by the Office of the Commissioner for Federal Judicial Affairs (OCFJA). The OCFJA was created in 1978 to safeguard the independence of the federal judiciary. It sits formally within the Canadian Department of Justice but operates as an arms-length agency providing support for the federal judiciary. The OCFJA has responsibility for federal judges and judges of superior provincial courts, but not for lower tier provincial courts. Parallel data on the latter are harder to procure (Levin and Alkoby 2017).

The OCFJA publishes statistics on judicial applicants and appointees. Self-identified data are collected, via questionnaire, on gender, Indigenous status, visible minority status, ethnic/cultural group, disability, LGBTQ, and language proficiency (French and English). The information is requested during the judicial application and appointments process, thus enabling comparisons to be made between the applicant pool and the appointees. The statistics are published online annually in tabular format. Significantly, they relate only to judicial applicants and new appointees, not to the entire corpus of judges, because their expressed purpose is to promote judicial diversity by increasing the transparency and rigour of the appointments process.

## 2. New Zealand

In New Zealand, the Heads of Bench have formed a Judicial Diversity Committee (Te Awa Tuia Tangata) to drive change 'towards achieving an optimally diverse judiciary across all courts in Aotearoa' (Chief Justice of New Zealand 2022, 13). In October 2021, the Judicial Diversity Committee conducted a survey of current judges across all courts to provide a basis for assessing where any diversity gaps might be and to enable progress to be measured in the future. The results of the survey (258 respondents out of 310 judges, an 83% response rate) are reported in 10 infographics in the Chief Justice's *2020-2021 Annual Report*.

The Chief Justice of New Zealand, on behalf of the Judicial Diversity Committee, generously made the survey instrument available to us for the purpose of our report. The survey questions were predominantly based on those asked by the United Kingdom Judicial Appointments Commission in the judicial application process. The survey was conducted anonymously, and many questions gave the option of 'prefer not to say' for those respondents who did not wish to disclose specific information. It is expected that further judicial diversity surveys may be conducted in the future.

The survey questions were as follows:

- 1 Which bench do you sit on? (9 options)
- 2 How old were you when you were appointed to the bench? (If you have served on more than one bench, then please give your age at the first appointment) (8 options by age group)
- 3 How many years post-admission were you when you were appointed to the bench? (7 options by duration in years)
- 4 Where did you practice immediately prior to judicial appointment? (5 options plus 'Other')
- 5 Did you practice in any of the following areas before judicial appointment? (Tick all that apply) (21 options)
- 6 What ethnicity do you identify with? (Tick all that apply) (16 options plus 'Other' and 'Prefer not to say')
- 7 Did you, one or both of your parents immigrate to New Zealand? (Tick all that apply) (4 options plus 'Prefer not to say')
- 8 What secondary school(s) did you attend? (Open response)
- 9 What was the highest level of education your mother (or caregiver) attained? (4 options plus 'Prefer not to say')
- 10 What was that parental figure's occupation, prior to and after marriage (if applicable)? (Open response)
- 11 What was the highest level of education your father (or caregiver) attained? (4 options plus 'Prefer not to say')
- 12 What was that parental figure's occupation, prior to and after marriage (if applicable)? (Open response)
- 13 Where did you live as a child growing up? (Tick all that apply) (21 options plus 'Other' and 'Prefer not to say')
- 14 What gender do you identify with? (4 options plus 'Other' and 'Prefer not to say')
- 15 Is the gender you identify with the same as your sex registered at birth? (2 options plus 'Prefer not to say')
- 16 How would you describe your sexual orientation? (3 options plus 'Other' and 'Prefer not to say')
- 17 Do you have a disability? The following grounds of disability are those contained in s 21(1)(h) of the *Human Rights Act 1993*. Please tick any that apply. (9 options plus 'Prefer not to say')
- 18 What religion do you identify with, if any? (8 options plus 'Other' and 'Prefer not to say')
- 19 If you identify with a religion, do you consider yourself to be practising? (2 options)
- 20 Is there any other relevant diversity information that you would like to share? (Open response)
- 21 Finally, please feel free to provide us with feedback on this survey, and to indicate any other data you think we should be collecting. (Open response)



### 3. United Kingdom

The latest *UK Judicial Attitude Survey (2022)* was published in April 2023. It is the fourth *Judicial Attitude Survey*, previous surveys having been undertaken in 2014, 2016, and 2020. The *Judicial Attitude Survey* covers courts and tribunals in England and Wales, Scotland, and Northern Ireland, and is said to be the only known continuous survey of the working lives of judges anywhere in the world (Thomas 2023, 5).

As with previous surveys, it was carried out for the judiciary by the Judicial Institute at University College London. The survey instrument contains 53 questions, many of which are identical to previous surveys. The questions include eight 'general information' questions, which typically list available responses, with space for writing an answer if 'other' is more appropriate. The general information questions in 2022 were as follows:

44 What is your current non-judicial employment?

45 Have you been appointed a QC?

46 Are you male, female, other?

47 What is your age group?

48 Do you have any of the following—children you support financially, caring responsibilities for a family member(s)?

49 Do you have a disability?

50 This question asks about your education experience. (Please tick as many boxes as apply to you) [8 options given relating to secondary and university education.]

51 What is your ethnic group?

The 2022 survey was the first occasion on which fee-paid judges and tribunal members were surveyed, with prior survey instruments covering salaried judges only. The survey was administered via the web-based survey tool, *Opinio*. The report of the survey is readily available online.<sup>1</sup>

### 4. United States of America

Our efforts to locate survey instruments used to collect judicial diversity data in the United States (for both federal and state courts), produced mixed results. Unfortunately, it has not been possible to source the actual survey instruments, tools, or questions used.

#### **Federal Judges**

The Federal Judicial Center and the Administrative Office of the United States Courts provided several interesting pieces of information and reports, but not copies of the questions used to collect information from the federal judiciary. How the Federal Judicial Center gathers self-reported data from judges is not able to be shared outside of the judiciary. The data collection leverages an internal online tool (i.e., a set of questions) that all judges and staff are requested to voluntarily complete and update annually. It captures self-reported data regarding gender, ethnicity, race, and disability.

The list of all race and ethnicity terms currently in use can be found on the 'Diversity on the Bench' webpage,<sup>2</sup> and from this information it is possible to infer what the questions might look like. That list currently extends to 22 race or ethnicity categories.

1 United Kingdom Courts and Tribunals Judiciary, 'Judicial Attitude Survey 2022', <<https://www.judiciary.uk/guidance-and-resources/judicial-attitude-survey-2022/>>

2 Federal Judicial Center, 'Diversity on the Bench'. <<https://www.fjc.gov/history/judges/diversity-bench>>.

The Office of Legal Policy at the Department of Justice—which coordinates the federal judicial nomination process with the White House and the Senate—compiles demographic information on judicial nominees. Currently, nominees self-report information on a standard US Office of Personnel Management form, whose template is publicly available.<sup>3</sup> The template collects information that includes: ‘sex’ (male/ female), physical attributes (height, weight, hair colour, eye colour), citizenship, residential history, education history, employment history, military history, marital/relationship status, professional activities, psychological and emotional health, police record, use of alcohol or illegal drugs, financial record, litigation history, and membership of associations.

## **State Judges**

Similarly, it has not been possible to source the survey questions or tools used to collect diversity data with respect to judges in state courts. However, the National Center for State Courts (NCSC) has a range of programs and initiatives that are relevant to diversity, including the following:

- The NCSC’s *State Court Organization* platform has some demographic information on state judges, including gender, race, and ethnicity.<sup>4</sup> This is summarised in Moffett and Gibson (2022).
- The NCSC’s *Court Statistics Project* has produced a guide on collecting race and ethnicity data, primarily with respect to litigants but with potential relevance to judges (Genthon and Robinson 2022).
- The NCSC and the Conference of State Court Administrators have developed the *National Open Court Data Standards* (NODS), which establish technical data standards to support the creation, sharing, and integration of state court data. The standards include demographic data on race, ethnicity, sex, and gender—again of litigants, but with potential application to judges.<sup>5</sup>
- The National Center for State Courts (2023) has released the *Racial Justice Organizational Assessment Tool for Courts* to support the efforts of the Conference of Chief Justices in combating racial prejudice within the justice system. The tool encourages state courts to assess their data collection practices to better understand the composition of the bench and court users with respect to race and ethnicity.
- A national clerkship, internship, and externship portal for state courts—called Court Opportunity Recruitment for All (CORA)—is expected to launch mid-2023, along with user guides, video explainers, and supplementary resources on workforce diversification.

3 US Office for Personnel Management (2016) *Questionnaire for National Security Positions* (Standard Form 86).

4 National Center for State Courts Data Visualisations, *State Court Organization*, <<https://public.tableau.com/app/profile/ncscviz/viz/StateCourtOrganization/Demographics>>

5 National Center for State Courts, ‘National Open Court Data Standards (NODS)’, <<https://www.ncsc.org/consulting-and-research/areas-of-expertise/data/national-open-court-data-standards-nods>>.

# Appendix 2: AIJA Response to Draft Report

We provided a Draft Report to the AIJA in January 2023, which was considered by its Research Committee (convened by the Hon Justice Malcolm Blue) over successive meetings. The Research Committee formed several preliminary views on the recommendations in the Draft Report, which were drawn to the attention of the Council of Chief Justices by correspondence in April 2023. We were asked to reproduce here the Research Committee's preliminary views so that other bodies might have ready access to them. We note that the final recommendations are substantially similar to those in the Draft Report (referred to below), although there have been changes, such as the recommendations relating to tribunals and commissions (Part 4.1).

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7 April 2023

The Hon Chief Justice Kiefel AC  
High Court of Australia  
Dear Chief Justice

## **Australasian Institute of Judicial Administration – Judicial Diversity Statistics Reporting**

You may be aware that since 2000 the Australasian Institute of Judicial Administration (AIJA) has collected and published annual statistics on the gender of Australian (and since 2021 New Zealand) judges and magistrates. The statistics have been widely used by the Australian Bureau of Statistics, state governments, judges, legal professionals, researchers and educators.

Given a growing interest in diversity within the judiciary, including recommendations made in the Australian Law Reform Commission Report, *Without Fear Or Favour: Judicial Impartiality and the Law on Bias* (ALRC Report 138 December 2021), in late 2022 the AIJA commissioned a discussion paper from two eminently qualified academics to canvas various issues in relation to the gender statistics report, including the data that is collected; the sources of the data; what bodies and positions should be included; what other characteristics might also be included; how frequently the data should be collected, and at what point in time. The AIJA recognised that the collection of the data including issues of privacy, terminology and methodology is quite complex and was keen to explore the issues with experts.

The draft report, 'Judicial Diversity in Australia: A Roadmap for Data Collection' produced by Professor Brian Opeskin and Professor Sharyn Roach Anleu was submitted to the AIJA in January 2023 (a copy is attached), and the AIJA's Research Committee has discussed the report and the recommendations made.

We would like to bring to your attention the Research Committee's suggestions as a result of those discussions.

First, as to the question of who should collect and disseminate the data (part 9 of the draft report), the committee is of the view that, given its history and reputation for publishing the gender statistics report, the AIJA should continue to publish the data.

As to who would collect the data, the committee considers that courts and tribunals would be best placed to collect the data and pass it on to the AIJA in an anonymised form. For example, for new judicial officers, the information might be collected as part of the induction process. For existing judicial officers, it might be collected by the head of jurisdiction or chief executive of the court or tribunal or their delegate.

Part 6 of the draft report considers which characteristics should be included in the data collection. The committee considered the characteristics and made the following recommendations, noting that all should be 'self-identified':

- Gender: should be collected using three categories: female; male; and a third category for those who do not, or do not wish to, identify as male or female.
- Race and ethnicity: should ask if the judicial member identifies as Aboriginal or Torres Strait Islander, and otherwise ask an open question as to what ethnicity or cultural background they identify as.

- Disability: should be asked, using a yes/no answer format; and asking for any further details regarding that disability on an optional basis.
- Professional background: should be a list from which to choose, eg barrister, solicitor, academic, with the member identifying the category in which they predominantly practised or worked prior to appointment.
- Age: should be asked for date of birth and date of appointment to the bench.
- Socio-economic background: the committee has mixed views on this topic due principally to the difficulty of identifying a clear indicator. The committee considered alternative indicators such as whether the member went to a private or public school in their last year at school or whether either parent undertook tertiary education but the AIJA has not yet decided whether to recommend that this characteristic should be included.
- Sexual Orientation: should not be asked.

In terms of what jurisdictions should be covered in the data collection (part 3 of the draft report), the committee recommends Australia, New Zealand and Papua New Guinea.

Regarding the bodies that should be included (part 4 of the draft report), the recommendation was that all courts, tribunals and commissions (by whatever name) which predominantly exercise judicial power should be included.

Regarding the positions to be included (part 5 of the draft report), the determining factor should be that only those who predominantly exercise judicial power should be included in the data collection. Statistics should be collected separately for tenured judicial officers and non-tenured judicial officers but confined to full-time positions.

Regarding frequency of publication (part 7 of the draft report), the committee recommends that it be annually in June (the AIJA's past reports are predominantly dated as at June).

The committee's suggestions regarding the report are still to be approved by the AIJA's Council. The AIJA has also been engaging with other bodies interested in judicial diversity, including the Commonwealth Attorney General's Department; the Association of Australian Women Judges, and the Judicial Council on Diversity and Inclusion.

Once the AIJA's work has concluded, the intention is to write to the heads of courts and tribunals in Australia, New Zealand and Papua New Guinea to invite them to participate in a collaborative initiative whereby the courts collect the information and provide it to the AIJA for collation and publication as an annual diversity statistics report. Obviously this would require agreement to be reached between the AIJA and courts and tribunal on what data is to be collected, when and how, and on its dissemination.

The AIJA would be grateful if the Council of Chief Justices would lend its support in relation to the participation of Australian and New Zealand courts in this initiative. If the Council is willing in principle to lend its support, we anticipate that the Council may well have a view on the detail of the proposal, including in particular the diversity characteristics to be the subject of future reporting.

Yours sincerely



**The Hon Justice Jenny Blokland**  
(AIJA President)



**The Hon Justice Malcolm Blue**  
(AIJA Research Committee Convenor)

# Appendix 3: Historical AIJA Judicial Gender Statistics, 2000-2023

As at 14 August 2000 (NB: AIJA endeavours to update these figures as the information becomes available. These figures are approx and are subject to change).

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)
<b>Commonwealth</b>		
High Court	7	1
Federal Court	50	6
Family Court	53	15
AAT (Comm)	1	1
<b>Northern Territory</b>		
Supreme Court	9	1
Magistrates	10	1
<b>Queensland</b>		
Supreme Court	24	6
District Court	35	4
Magistrates	74	12
<b>New South Wales</b>		
Supreme Court/Court of Appeal	51	4
Land & Environment	6	1
Compensation Court	20	4
District Court	66	11
Industrial Relations Comm.	13	3
Magistrates	129	26
<b>Australian Capital Territory</b>		
Supreme Court	13	0
Magistrates	10	4
<b>Victoria</b>		
Court of Appeal	10	
Supreme Court	24	2
County Court	58	9
Magistrates	99	26
<b>Tasmania</b>		
Supreme Court	7	0
Magistrates	12	2
<b>South Australia</b>		
Supreme Court	14	1
District Court	19	1
Industrial Relations Court	4	1
Magistrates	36	6
<b>Western Australia</b>		
Supreme Court	17	1
District Court	20	5
Magistrates	38	6

<b>State/Territory</b>	<b>Judges and Magistrates (totals)</b>	<b>Judges and Magistrates (women)</b>
<i>Commonwealth</i>		
High Court	7	1
Federal Court	51	6
Family Court	54	14
Federal Magistrates Service	14	4
<i>Northern Territory</i>		
Supreme Court	9	1
Magistrates	10	1
<i>Queensland</i>		
Supreme Court	24	6
District Court	35	4
Magistrates	74	12
<i>New South Wales</i>		
Supreme Court/Court of Appeal	51	4
Land & Environment	6	1
Compensation Court	20	4
District Court	66	11
Industrial Relations Comm.	13	3
Magistrates	129	26
<i>Australian Capital Territory</i>		
Supreme Court	13	0
Magistrates	10	4
<i>Victoria</i>		
Court of Appeal	10	
Supreme Court	20	2
County Court	53	9
Magistrates	96	26
<i>Tasmania</i>		
Supreme Court	7	0
Magistrates	12	2
<i>South Australia</i>		
Supreme Court	14	1
District Court	19	1
Industrial Relations Court	4	1
Magistrates	36	6
<i>Western Australia</i>		
Supreme Court	17	1
District Court	20	5
Magistrates	38	6

These statistics were last updated on 30May 2002, from information supplied by the New South Wales Attorney-General's Department.

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	1	
Federal Court	47	4	
Family Court	52	16	
Federal Magistrates Service	19	6	
<b>TOTAL</b>	<b>125</b>	<b>27</b>	<b>22%</b>
<b>Northern Territory</b>			
Supreme Court	9	1	
Magistrates	11	1	
<b>TOTAL</b>	<b>20</b>	<b>2</b>	<b>10%</b>
<b>Queensland</b>			
Supreme Court	23	7	
District Court	35	5	
Magistrates	75	15	
<b>TOTAL</b>	<b>133</b>	<b>27</b>	<b>20%</b>
<b>New South Wales</b>			
Supreme Court/Court of Appeal	49	4	
Land & Environment	7	2	
Compensation Court	16	4	
District Court	64	14	
Industrial Relations Comm.	10	3	
Magistrates	131	35	
<b>TOTAL</b>	<b>277</b>	<b>62</b>	<b>22%</b>
<b>Australian Capital Territory</b>			
Supreme Court	13	0	
Magistrates	10	4	
<b>TOTAL</b>	<b>23</b>	<b>4</b>	<b>17%</b>
<b>Victoria</b>			
Court of Appeal	10		
Supreme Court	20	2	
County Court	53	15	
Magistrates	94	28	
<b>TOTAL</b>	<b>177</b>	<b>45</b>	<b>25%</b>
<b>Tasmania</b>			
Supreme Court	6	0	
Magistrates	12	2	
<b>TOTAL</b>	<b>18</b>	<b>2</b>	<b>11%</b>
<b>South Australia</b>			
Supreme Court	14	1	
District Court	19	2	
Industrial Relations Court	4	1	
Magistrates	36	6	
<b>TOTAL</b>	<b>73</b>	<b>10</b>	<b>14%</b>
<b>Western Australia</b>			
Supreme Court	17	2	
District Court	20	6	
Magistrates	40	6	
<b>TOTAL</b>	<b>77</b>	<b>14</b>	<b>18%</b>



These statistics were last updated on 7 May 2004.

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<i>Commonwealth</i>			
High Court	7	0	
Federal Court	47	6	
Family Court	51	15	
Federal Magistrates Service	22	5	
<b>TOTAL</b>	<b>127</b>	<b>26</b>	<b>20%</b>
<i>Northern Territory</i>			
Supreme Court	6	1	
Magistrates	9	1	
<b>TOTAL</b>	<b>15</b>	<b>2</b>	<b>13%</b>
<i>Queensland</i>			
Supreme Court and Court of Appeal	24	7	
District Court	36	5	
Magistrates	73	14	
<b>TOTAL</b>	<b>133</b>	<b>26</b>	<b>19%</b>
<i>New South Wales</i>			
Supreme Court and Court of Appeal	47	5	
Land & Environment	7	1	
District Court	79	17	
Industrial Relations Comm.	12	3	
Magistrates	134	38	
<b>TOTAL</b>	<b>232</b>	<b>59</b>	<b>25%</b>
<i>Australian Capital Territory</i>			
Supreme Court and Court of Appeal	4	0	
Magistrates	10	4	
<b>TOTAL</b>	<b>14</b>	<b>4</b>	<b>29%</b>
<i>Victoria</i>			
Supreme Court and Court of Appeal	32	3	
County Court	62	18	
Magistrates	101	28	
<b>TOTAL</b>	<b>195</b>	<b>49</b>	<b>25%</b>
<i>Tasmania</i>			
Supreme Court	6	0	
Magistrates	12	2	
<b>TOTAL</b>	<b>18</b>	<b>2</b>	<b>11%</b>
<i>South Australia</i>			
Supreme Court	13	2	
District Court	18	2	
Magistrates	38	8	
<b>TOTAL</b>	<b>69</b>	<b>12</b>	<b>17%</b>
<i>Western Australia</i>			
Supreme Court	18	4	
District Court	22	6	
Magistrates	38	8	
<b>TOTAL</b>	<b>78</b>	<b>18</b>	<b>23%</b>

These statistics were last updated on Friday, March 13 2005.

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	0	
Federal Court	47	6	
Family Court	51	15	
Federal Magistrates Service	22	5	
<b>TOTAL</b>	<b>127</b>	<b>26</b>	<b>20%</b>
<b>Northern Territory</b>			
Supreme Court	6	1	
Magistrates	9	1	
<b>TOTAL</b>	<b>15</b>	<b>2</b>	<b>13%</b>
<b>Queensland</b>			
Supreme Court and Court of Appeal	24	7	
District Court	36	6	
Magistrates	73	14	
<b>TOTAL</b>	<b>133</b>	<b>27</b>	<b>20%</b>
<b>New South Wales</b>			
Supreme Court and Court of Appeal	47	5	
Land & Environment District Court	7	1	
District Court	79	17	
Industrial Relations Comm.	12	3	
Magistrates	134	39	
<b>TOTAL</b>	<b>232</b>	<b>60</b>	<b>26%</b>
<b>Australian Capital Territory</b>			
Supreme Court and Court of Appeal	4	0	
Magistrates	10	4	
<b>TOTAL</b>	<b>14</b>	<b>4</b>	<b>29%</b>
<b>Victoria</b>			
Supreme Court and Court of Appeal	32	3	
County Court	62	18	
Magistrates	101	28	
<b>TOTAL</b>	<b>195</b>	<b>49</b>	<b>25%</b>
<b>Tasmania</b>			
Supreme Court	6	1	
Magistrates	12	3	
<b>TOTAL</b>	<b>18</b>	<b>4</b>	<b>22%</b>
<b>South Australia</b>			
Supreme Court	13	2	
District Court	18	2	
Magistrates	38	8	
<b>TOTAL</b>	<b>69</b>	<b>12</b>	<b>19%</b>
<b>Western Australia</b>			
Supreme Court	18	4	
District Court	22	7	
Magistrates	38	8	
<b>TOTAL</b>	<b>78</b>	<b>19</b>	<b>24%</b>

These statistics were updated in October 2006

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	1	
Federal Court	48	6	
Family Court	41	16	
Federal Magistrates Service	44	10	
<b>TOTAL</b>	<b>140</b>	<b>33</b>	<b>23%</b>
<b>Northern Territory</b>			
Supreme Court	6	1	
Magistrates	11	2	
<b>TOTAL</b>	<b>17</b>	<b>3</b>	<b>17%</b>
<b>Queensland</b>			
Supreme Court and Court of Appeal	24	7	
District Court	36	6	
Magistrates	72	25	
<b>TOTAL</b>	<b>132</b>	<b>38</b>	<b>29%</b>
<b>New South Wales</b>			
Supreme Court and Court of Appeal	48	6	
Land & Environment	7	1	
District Court	72	15	
Industrial Relations Comm.	13	3	
Magistrates	132	41	
<b>TOTAL</b>	<b>272</b>	<b>66</b>	<b>24%</b>
<b>Australian Capital Territory</b>			
Supreme Court and Court of Appeal	4	0	
Magistrates	10	4	
<b>TOTAL</b>	<b>14</b>	<b>4</b>	<b>29%</b>
<b>Victoria</b>			
Supreme Court and Court of Appeal	34	6	
County Court	59	22	
Magistrates	112	30	
<b>TOTAL</b>	<b>205</b>	<b>58</b>	<b>28%</b>
<b>Tasmania</b>			
Supreme Court	6	1	
Magistrates	13	3	
<b>TOTAL</b>	<b>19</b>	<b>4</b>	<b>21%</b>
<b>South Australia</b>			
Supreme Court	13	3	
District Court	19	3	
Magistrates	38	9	
<b>TOTAL</b>	<b>70</b>	<b>15</b>	<b>21%</b>
<b>Western Australia</b>			
Supreme Court	20	4	
District Court	27	8	
Magistrates	41	11	
<b>TOTAL</b>	<b>88</b>	<b>23</b>	<b>26%</b>

Judges and Magistrates (% of Women)

These statistics were updated March 2007 State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	1	
Federal Court	48	6	
Family Court	41	16	
Federal Magistrates Service	44	10	
<b>TOTAL</b>	<b>140</b>	<b>33</b>	<b>23%</b>
<b>Northern Territory</b>			
Supreme Court	6	1	
Magistrates	11	2	
<b>TOTAL</b>	<b>17</b>	<b>3</b>	<b>17%</b>
<b>Queensland</b>			
Supreme Court and Court of Appeal	24	7	
District Court	36	6	
Magistrates	72	25	
<b>TOTAL</b>	<b>132</b>	<b>38</b>	<b>29%</b>
<b>New South Wales</b>			
Supreme Court and Court of Appeal	48	0	
Land & Environment	7	1	
District Court	72	15	
Industrial Relations Comm.	13	3	
Magistrates	132	41	
<b>TOTAL</b>	<b>272</b>	<b>66</b>	<b>24%</b>
<b>Australian Capital Territory</b>			
Supreme Court and Court of Appeal	4	0	
Magistrates	10	4	
<b>TOTAL</b>	<b>14</b>	<b>4</b>	<b>29%</b>
<b>Victoria</b>			
Supreme Court and Court of Appeal	34	6	
County Court	59	22	
Magistrates	112	30	
<b>TOTAL</b>	<b>205</b>	<b>58</b>	<b>28%</b>
<b>Tasmania</b>			
Supreme Court	6	1	
Magistrates	13	3	
<b>TOTAL</b>	<b>19</b>	<b>4</b>	<b>21%</b>
<b>South Australia</b>			
Supreme Court	13	3	3
District Court	19	3	3
Magistrates	38	9	9
<b>TOTAL</b>	<b>70</b>	<b>15</b>	<b>21%</b>
<b>Western Australia</b>			
Supreme Court	20	4	4
District Court	27	8	8
Magistrates	41	11	11
<b>TOTAL</b>	<b>88</b>	<b>23</b>	<b>26%</b>

## Judges and Magistrates (% of Women)

PRINT

These statistics were updated March 2008

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	2	
Federal Court	50	6	
Family Court	44	17	
Federal Magistrates Service	53	15	
<b>TOTAL</b>	<b>154</b>	<b>40</b>	<b>26%</b>
<b>Northern Territory</b>			
Supreme Court	6	1	
Magistrates	13	4	
<b>TOTAL</b>	<b>19</b>	<b>5</b>	<b>26%</b>
<b>Queensland</b>			
Supreme Court and Court of Appeal	26	8	
District Court	38	7	
Magistrates	85	27	
<b>TOTAL</b>	<b>149</b>	<b>42</b>	<b>28%</b>
<b>New South Wales</b>			
Supreme Court and Court of Appeal	47	8	
Land & Environment	6	2	
District Court	68	17	
Industrial Relations Comm. Magistrates	12	4	
Magistrates	132	47	
<b>TOTAL</b>	<b>265</b>	<b>78</b>	<b>29%</b>
<b>Australian Capital Territory</b>			
Supreme Court and Court of Appeal	4	1	
Magistrates	8	3	
<b>TOTAL</b>	<b>12</b>	<b>4</b>	<b>33%</b>
<b>Victoria</b>			
Supreme Court and Court of Appeal	36	7	
County Court	57	21	
Magistrates	109	39	
<b>TOTAL</b>	<b>202</b>	<b>67</b>	<b>33%</b>
<b>Tasmania</b>			
Supreme Court	6	1	
Magistrates	12	2	
<b>TOTAL</b>	<b>18</b>	<b>3</b>	<b>16%</b>
<b>South Australia</b>			
Supreme Court	13	4	
District Court	19	3	
Magistrates	40	12	
<b>TOTAL</b>	<b>72</b>	<b>19</b>	<b>26%</b>
<b>Western Australia</b>			
Supreme Court	21	4	
District Court	28	9	
Magistrates	42	13	
<b>TOTAL</b>	<b>91</b>	<b>26</b>	<b>29%</b>

## Judges and Magistrates (% of Women)

These statistics were updated March 2009

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	46	6	
Family Court	41	16	
Federal Magistrates Service	61	20	
<b>TOTAL</b>	<b>155</b>	<b>45</b>	<b>29%</b>
<b>Northern Territory</b>			
Supreme Court	6	1	
Magistrates	13	4	
<b>TOTAL</b>	<b>19</b>	<b>5</b>	<b>26%</b>
<b>Queensland</b>			
Supreme Court and Court of Appeal	26	8	
District Court	38	8	
Magistrates	86	30	
<b>TOTAL</b>	<b>150</b>	<b>46</b>	<b>31%</b>
<b>New South Wales</b>			
Supreme Court and Court of Appeal	49	8	
Land & Environment	5	1	
District Court	66	17	
Industrial Relations Comm.	8	4	
Magistrates	134	50	
<b>TOTAL</b>	<b>262</b>	<b>80</b>	<b>31%</b>
<b>Australian Capital Territory</b>			
Supreme Court and Court of Appeal	4	1	
Magistrates	9	3	
<b>TOTAL</b>	<b>13</b>	<b>4</b>	<b>31%</b>
<b>Victoria</b>			
Supreme Court and Court of Appeal	38	7	
County Court	61	21	
Magistrates	111	42	
<b>TOTAL</b>	<b>210</b>	<b>70</b>	<b>33%</b>
<b>Tasmania</b>			
Supreme Court	6	1	
Magistrates	13	2	
<b>TOTAL</b>	<b>19</b>	<b>3</b>	<b>16%</b>
<b>South Australia</b>			
Supreme Court	13	4	
District Court	20	3	
Magistrates	38	12	
<b>TOTAL</b>	<b>71</b>	<b>19</b>	<b>27%</b>
<b>Western Australia</b>			
Supreme Court	20	4	
District Court	27	10	
Magistrates	45	14	
<b>TOTAL</b>	<b>92</b>	<b>28</b>	<b>30%</b>

## Judges and Magistrates (% of Women)

These statistics were updated 31 March 2010

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	49	8	
Family Court	38	14	
Federal Magistrates Service	58	18	
<b>TOTAL</b>	<b>152</b>	<b>43</b>	<b>28%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	13	3	
<b>TOTAL</b>	<b>19</b>	<b>5</b>	<b>26%</b>
<b>Queensland</b>			
Supreme Court and Court of Appeal	24	8	
District Court	38	8	
Magistrates	86	30	
<b>TOTAL</b>	<b>148</b>	<b>46</b>	<b>31%</b>
<b>New South Wales</b>			
Supreme Court and Court of Appeal	48	9	
Land & Environment	6	1	
District Court	68	18	
Industrial Relations Comm. Magistrates	10	2	
	135	55	
<b>TOTAL</b>	<b>267</b>	<b>85</b>	<b>32%</b>
<b>Australian Capital Territory</b>			
Supreme Court and Court of Appeal	4	1	
Magistrates	7	3	
<b>TOTAL</b>	<b>11</b>	<b>4</b>	<b>36%</b>
<b>Victoria</b>			
Supreme Court and Court of Appeal	39	9	
County Court	62	25	
Magistrates	112	45	
<b>TOTAL</b>	<b>213</b>	<b>79</b>	<b>38%</b>
<b>Tasmania</b>			
Supreme Court	6	2	
Magistrates	14	3	
<b>TOTAL</b>	<b>20</b>	<b>5</b>	<b>25%</b>
<b>South Australia</b>			
Supreme Court	13	4	
District Court	22	3	
Magistrates	38	12	
<b>TOTAL</b>	<b>73</b>	<b>19</b>	<b>26%</b>
<b>Western Australia</b>			
Supreme Court	22	4	
District Court	27	10	
Magistrates	47	15	
<b>TOTAL</b>	<b>96</b>	<b>29</b>	<b>30%</b>



These statistics were updated 3 March 2011

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	45	8	
Family Court	39	13	
Federal Magistrates Service	61	20	
<b>TOTAL</b>	<b>152</b>	<b>44</b>	<b>29%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	14	4	
<b>TOTAL</b>	<b>20</b>	<b>6</b>	<b>30%</b>
<b>Queensland</b>			
Supreme Court and Court of Appeal	27	10	
District Court	39	8	
Magistrates	86	29	
<b>TOTAL</b>	<b>152</b>	<b>47</b>	<b>31%</b>
<b>New South Wales</b>			
Supreme Court and Court of Appeal	50	9	
Land & Environment	6	2	
District Court	68	18	
Industrial Relations Comm.	10	2	
Magistrates	138	57	
<b>TOTAL</b>	<b>272</b>	<b>88</b>	<b>32%</b>
<b>Australian Capital Territory</b>			
Supreme Court and Court of Appeal	4	1	
Magistrates	7	4	
<b>TOTAL</b>	<b>11</b>	<b>5</b>	<b>45%</b>
<b>Victoria</b>			
Supreme Court and Court of Appeal	43	10	
County Court	64	26	
Magistrates	111	47	
<b>TOTAL</b>	<b>218</b>	<b>83</b>	<b>38%</b>
<b>Tasmania</b>			
Supreme Court	6	2	
Magistrates	14	3	
<b>TOTAL</b>	<b>20</b>	<b>5</b>	<b>25%</b>
<b>South Australia</b>			
Supreme Court	13	3	
District Court	22	3	
Magistrates	40	14	
<b>TOTAL</b>	<b>75</b>	<b>20</b>	<b>27%</b>
<b>Western Australia</b>			
Supreme Court	22	4	
District Court	27	8	
Magistrates	46	15	
<b>TOTAL</b>	<b>95</b>	<b>27</b>	<b>28%</b>

These statistics were updated 22 March 2012

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	44	8	
Family Court	37	15	
Federal Magistrates Service	63	20	
<b>TOTAL</b>	<b>151</b>	<b>46</b>	<b>30%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	14	4	
<b>TOTAL</b>	<b>20</b>	<b>6</b>	<b>30%</b>
<b>Queensland</b>			
Supreme Court and Court of Appeal	27	10	
District Court	38	7	
Magistrates	88	30	
<b>TOTAL</b>	<b>153</b>	<b>47</b>	<b>31%</b>
<b>New South Wales</b>			
Supreme Court and Court of Appeal	50	10	
Land & Environment	6	2	
District Court	66	19	
Industrial Relations Comm.	9	2	
Magistrates	138	59	
<b>TOTAL</b>	<b>269</b>	<b>92</b>	<b>34%</b>
<b>Australian Capital Territory</b>			
Supreme Court and Court of Appeal	4	1	
Magistrates	7	4	
<b>TOTAL</b>	<b>11</b>	<b>5</b>	<b>45%</b>
<b>Victoria</b>			
Supreme Court and Court of Appeal	42	11	
County Court	66	26	
Magistrates	114	48	
<b>TOTAL</b>	<b>222</b>	<b>85</b>	<b>38%</b>
<b>Tasmania</b>			
Supreme Court	6	2	
Magistrates	14	3	
<b>TOTAL</b>	<b>20</b>	<b>5</b>	<b>25%</b>
<b>South Australia</b>			
Supreme Court	15	3	
District Court	22	3	
Magistrates	41	15	
<b>TOTAL</b>	<b>78</b>	<b>21</b>	<b>27%</b>
<b>Western Australia</b>			
Supreme Court	25	4	
District Court	27	6	
Magistrates	52	20	
<b>TOTAL</b>	<b>104</b>	<b>30</b>	<b>29%</b>

## These statistics were updated 13 March 2013

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	43	8	
Family Court	38	15	
Federal Magistrates Service	61	20	
<b>TOTAL</b>	<b>149</b>	<b>46</b>	<b>31%</b>
<b>Australian Capital Territory</b>			
Supreme Court/Court of Appeal	4	1	
Magistrates	7	4	
<b>TOTAL</b>	<b>11</b>	<b>5</b>	<b>45%</b>
<b>New South Wales</b>			
Supreme Court/Court of Appeal	48	10	
Land & Environment	6	2	
District Court	66	18	
Industrial Relations Comm.	6	1	
Magistrates	136	59	
<b>TOTAL</b>	<b>262</b>	<b>90</b>	<b>34%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	14	4	
<b>TOTAL</b>	<b>20</b>	<b>6</b>	<b>30%</b>
<b>Queensland</b>			
Supreme Court/Court of Appeal	27	9	
District Court	38	7	
Magistrates	89	30	
<b>TOTAL</b>	<b>154</b>	<b>46</b>	<b>30%</b>
<b>South Australia</b>			
Supreme Court	12	2	
District Court	25	5	
Magistrates	38	14	
<b>TOTAL</b>	<b>75</b>	<b>21</b>	<b>28%</b>
<b>Tasmania</b>			
Supreme Court	6	2	
Magistrates	14	3	
<b>TOTAL</b>	<b>20</b>	<b>5</b>	<b>25%</b>
<b>Victoria</b>			
Supreme Court/Court of Appeal	42	11	
County Court	64	25	
Magistrates	113	49	
<b>TOTAL</b>	<b>219</b>	<b>85</b>	<b>39%</b>
<b>Western Australia</b>			
Supreme Court	20	3	
District Court	28	6	
Magistrates *	53	21	
<b>TOTAL</b>	<b>101</b>	<b>30</b>	<b>30%</b>

NB: The information collated above has been compiled by the AIJA Librarian using the Court websites

\*Numbers provided by the WA Magistrates Court Customer Service

These statistics were updated 12 March 2014

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	47	11	
Family Court	37	17	
Federal Magistrates Service	65	24	
<b>TOTAL</b>	<b>156</b>	<b>55</b>	<b>35%</b>
<b>Australian Capital Territory</b>			
Supreme Court/Court of Appeal	4	2	
Magistrates	7	4	
<b>TOTAL</b>	<b>11</b>	<b>6</b>	<b>55%</b>
<b>New South Wales</b>			
Supreme Court/Court of Appeal	51	9	
Land & Environment	6	2	
District Court	64	17	
Industrial Relations Comm.	4	1	
Magistrates	132	56	
<b>TOTAL</b>	<b>257</b>	<b>85</b>	<b>33%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	14	4	
<b>TOTAL</b>	<b>20</b>	<b>6</b>	<b>30%</b>
<b>Queensland</b>			
Supreme Court/Court of Appeal	27	8	
District Court	39	8	
Magistrates	91	31	
<b>TOTAL</b>	<b>157</b>	<b>47</b>	<b>30%</b>
<b>South Australia</b>			
Supreme Court	13	2	
District Court	21	4	
Magistrates	38	14	
<b>TOTAL</b>	<b>72</b>	<b>20</b>	<b>28%</b>
<b>Tasmania</b>			
Supreme Court	6	2	
Magistrates	14	3	
<b>TOTAL</b>	<b>20</b>	<b>5</b>	<b>25%</b>
<b>Victoria</b>			
Supreme Court/Court of Appeal	43	11	
County Court	66	25	
Magistrates	117	50	
<b>TOTAL</b>	<b>226</b>	<b>86</b>	<b>38%</b>
<b>Western Australia</b>			
Supreme Court	21	3	
District Court	26	5	
Magistrates	52	20	
<b>TOTAL</b>	<b>99</b>	<b>28</b>	<b>28%</b>

NB: The information collated above has been compiled by the AIJA Librarian using the Court websites

These statistics were updated 4 March 2015

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	2	
Federal Court	46	11	
Family Court	37	17	
Federal Circuit Court	63	23	
<b>TOTAL</b>	<b>153</b>	<b>53</b>	<b>35%</b>
<b>Australian Capital Territory</b>			
Supreme Court/Court of Appeal	4	2	
Magistrates	7	4	
<b>TOTAL</b>	<b>11</b>	<b>6</b>	<b>55%</b>
<b>New South Wales</b>			
Supreme Court/Court of Appeal	52	10	
Land & Environment	6	2	
District Court	64	18	
Industrial Relations Comm.	4	1	
Magistrates	134	57	
<b>TOTAL</b>	<b>260</b>	<b>88</b>	<b>34%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	13	4	
<b>TOTAL</b>	<b>19</b>	<b>6</b>	<b>32%</b>
<b>Queensland</b>			
Supreme Court/Court of Appeal	27	7	
District Court	39	9	
Magistrates	92	32	
<b>TOTAL</b>	<b>158</b>	<b>48</b>	<b>30%</b>
<b>South Australia</b>			
Supreme Court	12	3	
District Court	20	4	
Magistrates	37	14	
<b>TOTAL</b>	<b>69</b>	<b>21</b>	<b>28%</b>
<b>Tasmania</b>			
Supreme Court	6	2	
Magistrates	14	4	
<b>TOTAL</b>	<b>20</b>	<b>6</b>	<b>30%</b>
<b>Victoria</b>			
Supreme Court/Court of Appeal	43	10	
County Court	65	23	
Magistrates	117	50	
<b>TOTAL</b>	<b>225</b>	<b>83</b>	<b>37%</b>
<b>Western Australia</b>			
Supreme Court	21	3	
District Court	28	6	
Magistrates	51	19	
<b>TOTAL</b>	<b>100</b>	<b>28</b>	<b>28%</b>

*NB: The information collated above has been compiled by the AIJA Librarian using the Court websites  
Wednesday, March 04, 2015*

## AIJA Judicial Gender Statistics© - Judges and Magistrates (% of Women) March 2016

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	48	12	
Family Court	37	17	
Federal Circuit Court	64	24	
<b>TOTAL</b>	<b>156</b>	<b>56</b>	<b>36%</b>
<b>Australian Capital Territory</b>			
Supreme Court/Court of Appeal	4	2	
Magistrates	7	4	
<b>TOTAL</b>	<b>11</b>	<b>6</b>	<b>55%</b>
<b>New South Wales</b>			
Supreme Court/Court of Appeal	52	10	
Land & Environment	7	2	
District Court	66	21	
Industrial Relations Commission	2	0	
Magistrates	134	57	
<b>TOTAL</b>	<b>261</b>	<b>90</b>	<b>34%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	14	4	
<b>TOTAL</b>	<b>20</b>	<b>6</b>	<b>30%</b>
<b>Queensland</b>			
Supreme Court/Court of Appeal	27	7	
District Court	38	9	
Magistrates	87	33	
<b>TOTAL</b>	<b>152</b>	<b>49</b>	<b>32%</b>
<b>South Australia</b>			
Supreme Court	13	3	
District Court	21	6	
Magistrates	40	15	
<b>TOTAL</b>	<b>74</b>	<b>24</b>	<b>32%</b>
<b>Tasmania</b>			
Supreme Court	6	2	
Magistrates	13	4	
<b>TOTAL</b>	<b>19</b>	<b>6</b>	<b>32%</b>
<b>Victoria</b>			
Supreme Court/Court of Appeal	43	10	
County Court	65	26	
Magistrates	117	52	
<b>TOTAL</b>	<b>225</b>	<b>88</b>	<b>39%</b>
<b>Western Australia</b>			
Supreme Court	21	3	
District Court	28	7	
Magistrates	47	15	
<b>TOTAL</b>	<b>96</b>	<b>25</b>	<b>26%</b>

AIJA Judicial Gender Statistics© - Judges and Magistrates (% of Women) March 2016  
 NB: The information collated above has been compiled by the AIJA Librarian using the Court websites

## AIJA Judicial Gender Statistics© - Judges and Magistrates (% of Women) March 2017

The information collated below has been compiled by the AIJA Librarian using the Court websites.

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	46	11	
Family Court	30	12	
Federal Circuit Court	65	27	
<b>TOTAL</b>	<b>148</b>	<b>53</b>	<b>36%</b>
<b>Australian Capital Territory</b>			
Supreme Court/Court of Appeal	6	2	
Magistrates	7	4	
<b>TOTAL</b>	<b>13</b>	<b>6</b>	<b>46%</b>
<b>New South Wales</b>			
Supreme Court/Court of Appeal	51	11	
Land & Environment	6	2	
District Court	72	23	
Industrial Relations Commission	4	1	
Magistrates	135	58	
<b>TOTAL</b>	<b>268</b>	<b>95</b>	<b>35%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	13	4	
<b>TOTAL</b>	<b>19</b>	<b>6</b>	<b>32%</b>
<b>Queensland</b>			
Supreme Court/Court of Appeal	27	8	
District Court	39	9	
Magistrates	93	36	
<b>TOTAL</b>	<b>159</b>	<b>53</b>	<b>33%</b>
<b>South Australia</b>			
Supreme Court	12	3	
District Court	22	6	
Magistrates	40	14	
<b>TOTAL</b>	<b>74</b>	<b>23</b>	<b>31%</b>
<b>Tasmania</b>			
Supreme Court	6	2	
Magistrates	14	4	
<b>TOTAL</b>	<b>20</b>	<b>6</b>	<b>30%</b>
<b>Victoria</b>			
Supreme Court/Court of Appeal	44	11	
County Court	64	25	
Magistrates	123	56	
<b>TOTAL</b>	<b>231</b>	<b>92</b>	<b>40%</b>
<b>Western Australia</b>			
Supreme Court	21	3	
District Court	28	7	
Magistrates	48	17	
<b>TOTAL</b>	<b>97</b>	<b>27</b>	<b>28%</b>



## AIJA Judicial Gender Statistics© - Judges and Magistrates (% of Women) March 2018

The information collated below has been compiled by the AIJA Librarian using the Court websites.

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	53	13	
Family Court	28	11	
Federal Circuit Court	68	29	
<b>TOTAL</b>	<b>156</b>	<b>56</b>	<b>36%</b>
<b>Australian Capital Territory</b>			
Supreme Court/Court of Appeal	5	2	
Magistrates	7	4	
<b>TOTAL</b>	<b>12</b>	<b>6</b>	<b>50%</b>
<b>New South Wales</b>			
Supreme Court/Court of Appeal	52	12	
Land & Environment	6	2	
District Court	71	25	
Industrial Relations Commission	6	2	
Magistrates	137	60	
<b>TOTAL</b>	<b>272</b>	<b>101</b>	<b>37%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	14	5	
<b>TOTAL</b>	<b>20</b>	<b>7</b>	<b>35%</b>
<b>Queensland</b>			
Supreme Court/Court of Appeal	28	8	
District Court	39	10	
Magistrates	102	41	
<b>TOTAL</b>	<b>169</b>	<b>59</b>	<b>35%</b>
<b>South Australia</b>			
Supreme Court	12	3	
District Court	23	7	
Magistrates	41	14	
<b>TOTAL</b>	<b>76</b>	<b>24</b>	<b>32%</b>
<b>Tasmania</b>			
Supreme Court	6	1	
Magistrates	15	4	
<b>TOTAL</b>	<b>21</b>	<b>5</b>	<b>24%</b>
<b>Victoria</b>			
Supreme Court/Court of Appeal	45	11	
County Court	67	28	
Magistrates	126	57	
<b>TOTAL</b>	<b>238</b>	<b>96</b>	<b>40%</b>
<b>Western Australia</b>			
Supreme Court	20	3	
District Court	31	10	
Magistrates	47	18	
<b>TOTAL</b>	<b>98</b>	<b>31</b>	<b>32%</b>

## AIJA Judicial Gender Statistics© - Judges and Magistrates (% of Women) March 2019

The information collated below has been compiled by the AIJA Librarian using the Court websites.

State/Territory	Judges and Magistrates (totals)	Judges and Magistrates (women)	Percentages
<b>Commonwealth</b>			
High Court	7	3	
Federal Court	50	13	
Family Court	35	15	
Federal Circuit Court	65	26	
<b>TOTAL</b>	<b>157</b>	<b>57</b>	<b>36%</b>
<b>Australian Capital Territory</b>			
Supreme Court/Court of Appeal	5	2	
Magistrates	8	5	
<b>TOTAL</b>	<b>13</b>	<b>7</b>	<b>54%</b>
<b>New South Wales</b>			
Supreme Court/Court of Appeal	52	11	
Land & Environment	6	2	
District Court	81	27	
Industrial Relations Commission	7	2	
Magistrates	140	64	
<b>TOTAL</b>	<b>286</b>	<b>106</b>	<b>37%</b>
<b>Northern Territory</b>			
Supreme Court	6	2	
Magistrates	14	5	
<b>TOTAL</b>	<b>20</b>	<b>7</b>	<b>35%</b>
<b>Queensland</b>			
Supreme Court/Court of Appeal	29	9	
District Court	40	11	
Magistrates	99	42	
<b>TOTAL</b>	<b>168</b>	<b>62</b>	<b>37%</b>
<b>South Australia</b>			
Supreme Court	12	3	
District Court	22	6	
Magistrates	40	14	
<b>TOTAL</b>	<b>74</b>	<b>23</b>	<b>31%</b>
<b>Tasmania</b>			
Supreme Court	6	1	
Magistrates	15	4	
<b>TOTAL</b>	<b>21</b>	<b>5</b>	<b>24%</b>
<b>Victoria</b>			
Supreme Court/Court of Appeal	45	13	
County Court	68	27	
Magistrates	132	64	
<b>TOTAL</b>	<b>245</b>	<b>104</b>	<b>42%</b>
<b>Western Australia</b>			
Supreme Court	21	4	
District Court	30	11	
Magistrates	49	19	
<b>TOTAL</b>	<b>100</b>	<b>34</b>	<b>34%</b>

**AIJA Judicial Gender Statistics**  
**Number and Percentage of Women Judges and Magistrates at 30 June 2020**

These statistics were compiled by Prof Brian Opeskin, University of Technology Sydney (Brian.Opeskin@uts.edu.au) on behalf of the AIJA using the data sources identified below

JURISDICTION	NOTES	JUDICIAL OFFICERS		Percentage women	Change from 2019
		Persons	Women		
<b>COMMONWEALTH</b>					
High Court	1	7	3		
Federal Court	2	52	14		
Family Court	3	38	18		
Federal Circuit Court	4	68	26		
<b>TOTAL</b>		<b>165</b>	<b>61</b>	<b>37.0%</b>	<b>+0.7%</b>
<b>NEW SOUTH WALES</b>					
Supreme Court/Court of Appeal	5	54	12		
District Court	6	82	30		
Local Court	7	142	57		
Land & Environment Court	8	6	3		
Industrial Relations Commission	9	5	2		
<b>TOTAL</b>		<b>289</b>	<b>104</b>	<b>36.0%</b>	<b>-1.1%</b>
<b>VICTORIA</b>					
Supreme Court/Court of Appeal	10	45	15		
County Court	11	76	31		
Magistrates Court	12	145	74		
<b>TOTAL</b>		<b>266</b>	<b>120</b>	<b>45.1%</b>	<b>+2.7%</b>
<b>QUEENSLAND</b>					
Supreme Court/Court of Appeal	13	28	10		
District Court	14	41	11		
Magistrates Court	15	105	45		
<b>TOTAL</b>		<b>174</b>	<b>66</b>	<b>37.9%</b>	<b>+1.0%</b>
<b>WESTERN AUSTRALIA</b>					
Supreme Court	16	21	4		
District Court	17	30	13		
Magistrates Court	18	44	20		
<b>TOTAL</b>		<b>95</b>	<b>37</b>	<b>38.9%</b>	<b>+4.9%</b>
<b>SOUTH AUSTRALIA</b>					
Supreme Court/Court of Appeal	19	12	3		
District Court	19	22	8		
Magistrates Court	19	41	15		
<b>TOTAL</b>		<b>75</b>	<b>26</b>	<b>34.7%</b>	<b>+3.6%</b>
<b>TASMANIA</b>					
Supreme Court	20	6	1		
Magistrates Court	21	15	5		
<b>TOTAL</b>		<b>21</b>	<b>6</b>	<b>28.6%</b>	<b>+4.8%</b>
<b>AUSTRALIAN CAPITAL TERRITORY</b>					
Supreme Court/Court of Appeal	22	5	2		
Magistrates Court	23	9	4		
<b>TOTAL</b>		<b>14</b>	<b>6</b>	<b>42.9%</b>	<b>-11.0%</b>
<b>NORTHERN TERRITORY</b>					
Supreme Court/Court of Appeal	24	6	2		
Local Court	25	14	6		
<b>TOTAL</b>		<b>20</b>	<b>8</b>	<b>40.0%</b>	<b>+5.0%</b>
<b>GRAND TOTAL</b>		<b>1119</b>	<b>434</b>	<b>38.8%</b>	<b>+1.4%</b>

## AIJA Judicial Gender Statistics Number and Percentage of Women Judges and Magistrates at June 2021

These statistics were compiled by the AIJA using the data sources identified below.

JURISDICTION	NOTES	JUDICIAL OFFICER Persons	JUDICIAL OFFICER Women	PERCENTAGE WOMEN	CHANGE FROM 2020	CHANGE FROM 2016	CHANGE FROM 2011
<b>COMMONWEALTH</b>							
High Court	1	7	3	42.9%	0.0%	0.0%	0.0%
Federal Court	2	52	14	26.9%	0.0%	1.9%	9.1%
Family Court	3	27	15	55.6%	8.2%	9.6%	22.2%
Federal Circuit Court	4	66	28	42.4%	4.2%	4.9%	9.6%
<b>TOTAL</b>		<b>152</b>	<b>60</b>	<b>39.5%</b>	<b>2.5%</b>	<b>3.6%</b>	<b>10.5%</b>
<b>NEW SOUTH WALES</b>							
Supreme Court/Court of Appeal	5	56	11	19.6%	-2.6%	0.4%	1.6%
District Court	6	82	30	36.6%	0.0%	4.8%	10.1%
Local Court	7	147	72	49.0%	8.8%	6.4%	7.7%
Land & Environment Court	8	6	3	50.0%	0.0%	21.4%	16.7%
<b>TOTAL</b>		<b>291</b>	<b>116</b>	<b>39.9%</b>	<b>3.9%</b>	<b>5.1%</b>	<b>7.0%</b>
<b>VICTORIA</b>							
Supreme Court/Court of Appeal	9	48	15	31.3%	-2.1%	8.0%	8.0%
County Court	10	72	33	45.8%	5.0%	5.8%	5.2%
Magistrates Court	11	142	75	52.8%	1.8%	8.4%	10.5%
<b>TOTAL</b>		<b>262</b>	<b>123</b>	<b>46.9%</b>	<b>1.8%</b>	<b>7.8%</b>	<b>8.9%</b>

**AIJA Judicial Gender Statistics**  
**Number and Percentage of Women Judges and Magistrates at June 2022 (revised as at August 2023\*)**

These statistics were compiled by the AIJA using the data sources identified below.

JURISDICTION	NOTES	JUDICIAL OFFICERS Persons	JUDICIAL OFFICERS Women	PERCENTAGE WOMEN	CHANGE FROM 2021	CHANGE FROM 2017	CHANGE FROM 2012
<b>COMMONWEALTH</b>							
High Court	1	7	3	42.9%	0.0%	0.0%	0.0%
Federal Court	2	52	18	34.6%	7.7%	10.7%	16.4%
Family Court	3	41	17	41.5%	-14.1%	1.5%	0.9%
Federal Circuit Court	3	73	40	54.8%	12.4%	13.3%	23.0%
<b>TOTAL</b>		<b>173</b>	<b>78</b>	<b>45.1%</b>	<b>5.6%</b>	<b>9.3%</b>	<b>14.6%</b>
<b>NEW SOUTH WALES</b>							
Supreme Court/Court of Appeal	4	55	12	21.8%	2.2%	0.2%	1.8%
District Court	5	81	32	39.5%	2.9%	7.6%	10.7%
Local Court	6	147	71	48.3%	-0.7%	5.3%	5.5%
Land & Environment Court	7	6	3	50.0%	0.0%	16.7%	16.7%
<b>TOTAL</b>		<b>289</b>	<b>118</b>	<b>40.8%</b>	<b>1.0%</b>	<b>5.2%</b>	<b>6.2%</b>
<b>VICTORIA</b>							
Supreme Court/Court of Appeal	8	46	19	41.3%	10.1%	16.3%	15.1%
County Court	9	74	34	45.9%	0.1%	6.9%	6.6%
Magistrates Court	10	151	80	53.0%	0.2%	7.5%	10.9%
<b>TOTAL</b>		<b>271</b>	<b>133</b>	<b>49.1%</b>	<b>2.1%</b>	<b>9.3%</b>	<b>10.8%</b>
<b>QUEENSLAND</b>							
Supreme Court/Court of Appeal	11	29	9	31.0%	-1.1%	1.4%	-6.0%
District Court	12	42	14	33.3%	6.5%	10.3%	14.9%
Magistrates Court	13	107	49	45.8%	1.7%	7.1%	11.7%
<b>TOTAL</b>		<b>178</b>	<b>72</b>	<b>40.4%</b>	<b>2.2%</b>	<b>7.1%</b>	<b>9.7%</b>
<b>WESTERN AUSTRALIA</b>							
Supreme Court/Court of Appeal	14	23	6	26.1%	7.0%	11.8%	10.1%
District Court	15	35	16	45.7%	-2.8%	20.7%	23.5%
Magistrates Court	16	54	26	48.1%	4.1%	12.7%	9.7%
<b>TOTAL</b>		<b>112</b>	<b>48</b>	<b>42.9%</b>	<b>2.5%</b>	<b>15.0%</b>	<b>14.0%</b>
<b>SOUTH AUSTRALIA</b>							
Supreme Court/Court of Appeal	17	16	5	31.3%	2.7%	6.3%	11.3%
District Court	17	21	9	42.9%	6.5%	15.6%	29.2%
Magistrates Court	17	46	18	39.1%	1.9%	4.1%	9.9%
Employment Court	18	8	1	12.5%	0.0%	12.5%	12.5%
<b>TOTAL</b>		<b>91</b>	<b>33</b>	<b>36.3%</b>	<b>2.9%</b>	<b>5.2%</b>	<b>9.3%</b>
<b>TASMANIA</b>							
Supreme Court	19	7	2	28.6%	11.9%	-4.8%	-4.8%
Magistrates Court	20	16	7	43.8%	6.3%	15.2%	22.3%
<b>TOTAL</b>		<b>23</b>	<b>9</b>	<b>39.1%</b>	<b>7.3%</b>	<b>9.1%</b>	<b>14.1%</b>
<b>AUSTRALIAN CAPITAL TERRITORY</b>							
Supreme Court	21	6	3	50.0%	10.0%	16.7%	25.0%
Magistrates Court	22	10	4	40.0%	-4.4%	-17.1%	-17.1%
<b>TOTAL</b>		<b>16</b>	<b>7</b>	<b>43.8%</b>	<b>0.9%</b>	<b>-2.4%</b>	<b>-1.7%</b>
<b>NORTHERN TERRITORY</b>							
Supreme Court/Court of Appeal	23	7	3	42.9%	-7.1%	9.5%	9.5%
Local Court	24	13	7	53.8%	11.0%	23.1%	25.3%
<b>TOTAL</b>		<b>20</b>	<b>10</b>	<b>50.0%</b>	<b>5.0%</b>	<b>18.4%</b>	<b>20.0%</b>
<b>GRAND TOTAL</b>		<b>1173</b>	<b>508</b>	<b>43.3%</b>	<b>2.6%</b>	<b>8.2%</b>	<b>10.4%</b>
<b>Total Superior Courts</b>		<b>368</b>	<b>140</b>	<b>38.0%</b>	<b>5.3%</b>	<b>8.4%</b>	<b>10.6%</b>
<b>Total Inferior Courts</b>		<b>805</b>	<b>368</b>	<b>45.7%</b>	<b>1.2%</b>	<b>8.2%</b>	<b>10.6%</b>

## COURTS OF NEW ZEALAND\*\*

COURT	NOTES	JUDICIAL OFFICERS Persons	JUDICIAL OFFICERS Women	PERCENTAGE WOMEN	CHANGE FROM 2021
Te Kōti Mana Nui/Supreme Court	25	6	3	50.0%	0.0%
Te Kōti Pira/Court of Appeal	26	10	3	20.0%	10.0%
Te Kōti Take Mahi/Employment Court	27	5	3	60.0%	0.0%
Te Kooti Whenua Māori/Maori Land Court	28	14	7	50.0%	4.5%
Te Kōti Matua/High Court	29	42	18	42.9%	0.4%
Te Kōti ā Rohe/District Court	30, 31	170	73	42.9%	1.9%
Te Koti Taiao/Environment Court	32	6	3	50.0%	10.0%
<b>GRAND TOTAL</b>		<b>253</b>	<b>110</b>	<b>43.5%</b>	<b>2.3%</b>



### NOTES ACCOMPANYING JUDICIAL GENDER STATISTICS

The data has been sourced predominantly from court websites, supplemented by other sources (such as annual reports and judicial biographies) where gender was not otherwise apparent.

To maintain data consistency with previous years, the tally is not exhaustive, and excludes small, specialised courts in some jurisdictions.

The tally includes judges and magistrates but excludes allied court personnel such as judicial registrars, masters etc, however named. It also excludes acting judges, including acting-warranted judges, alternate judges, reserve judges etc, however named.

**\*2022 data reported here incorporates revisions to the figures applied in 2023.**

**\*\*As the New Zealand data set was introduced in the 2021 Report, previous 5-year and 10-year comparisons are not available.**

1	<a href="https://www.hcourt.gov.au/justices/about-the-justices">https://www.hcourt.gov.au/justices/about-the-justices</a>
2	<a href="https://www.fedcourt.gov.au/about/judges/current-judges-appointment">https://www.fedcourt.gov.au/about/judges/current-judges-appointment</a>
3	<a href="https://www.fcjco.gov.au/judges">https://www.fcjco.gov.au/judges</a>
4	<a href="https://www.supremecourt.justice.nsw.gov.au/Pages/SC02_contactus/judicialcontacts/judicialcontacts.aspx">https://www.supremecourt.justice.nsw.gov.au/Pages/SC02_contactus/judicialcontacts/judicialcontacts.aspx</a>
5	<a href="https://www.districtcourt.nsw.gov.au/district-court/contact-us/judges-contact-details.html">https://www.districtcourt.nsw.gov.au/district-court/contact-us/judges-contact-details.html</a>
6	<a href="https://www.localcourt.nsw.gov.au/local-court/about-us/chief-magistrate.html">https://www.localcourt.nsw.gov.au/local-court/about-us/chief-magistrate.html</a>
7	<a href="https://www.lec.nsw.gov.au/lec/about-us/judicial-officers-and-decision-makers.html">https://www.lec.nsw.gov.au/lec/about-us/judicial-officers-and-decision-makers.html</a>
8	<a href="https://www.supremecourt.vic.gov.au/about-the-court/our-judiciary/judges">https://www.supremecourt.vic.gov.au/about-the-court/our-judiciary/judges</a>
9	<a href="https://www.countycourt.vic.gov.au/contact-us/judicial-support">https://www.countycourt.vic.gov.au/contact-us/judicial-support</a>
10	<a href="https://www.mcv.vic.gov.au/judicial-officers">https://www.mcv.vic.gov.au/judicial-officers</a>
11	<a href="https://www.courts.qld.gov.au/contacts/judiciary-contacts/judges-of-the-supreme-court">https://www.courts.qld.gov.au/contacts/judiciary-contacts/judges-of-the-supreme-court</a>
12	<a href="https://www.courts.qld.gov.au/contacts/judiciary-contacts/judges-of-the-district-court">https://www.courts.qld.gov.au/contacts/judiciary-contacts/judges-of-the-district-court</a>
13	<a href="https://www.courts.qld.gov.au/contacts/judiciary-contacts/magistrates-in-queensland">https://www.courts.qld.gov.au/contacts/judiciary-contacts/magistrates-in-queensland</a>
14	<a href="https://www.supremecourt.wa.gov.au/C/current_judges_and_masters.aspx">https://www.supremecourt.wa.gov.au/C/current_judges_and_masters.aspx</a>
15	<a href="https://districtcourt.wa.gov.au/1/judges.aspx">https://districtcourt.wa.gov.au/1/judges.aspx</a>
16	<a href="https://www.wa.gov.au/organisation/law-almanac/state-courts">https://www.wa.gov.au/organisation/law-almanac/state-courts</a>
17	<a href="https://www.courts.sa.gov.au/our-judiciary/">https://www.courts.sa.gov.au/our-judiciary/</a>
18	<a href="https://www.saet.sa.gov.au/about-saet-3/members-and-registrars/">https://www.saet.sa.gov.au/about-saet-3/members-and-registrars/</a>
19	<a href="https://www.supremecourt.tas.gov.au/the-court/judges/">https://www.supremecourt.tas.gov.au/the-court/judges/</a>
20	<a href="https://www.magistratescourt.tas.gov.au/about_us">https://www.magistratescourt.tas.gov.au/about_us</a>
21	<a href="https://www.courts.act.gov.au/supreme/about-the-courts/judiciary">https://www.courts.act.gov.au/supreme/about-the-courts/judiciary</a>
22	<a href="https://www.courts.act.gov.au/magistrates/about-the-courts/magistrates-court-judiciary">https://www.courts.act.gov.au/magistrates/about-the-courts/magistrates-court-judiciary</a>
23	<a href="https://supremecourt.nt.gov.au/about/judges">https://supremecourt.nt.gov.au/about/judges</a>
24	<a href="https://localcourt.nt.gov.au/contact-us">https://localcourt.nt.gov.au/contact-us</a>
25	<a href="https://www.courtsfnz.govt.nz/the-courts/supreme-court/judges/">https://www.courtsfnz.govt.nz/the-courts/supreme-court/judges/</a>
26	<a href="https://www.courtsfnz.govt.nz/the-courts/court-of-appeal/judges/">https://www.courtsfnz.govt.nz/the-courts/court-of-appeal/judges/</a>
27	<a href="https://employmentcourt.govt.nz/about/judges/">https://employmentcourt.govt.nz/about/judges/</a>
28	<a href="https://maorilandcourt.govt.nz/about-mlc/judges/">https://maorilandcourt.govt.nz/about-mlc/judges/</a>
29	<a href="https://www.courtsfnz.govt.nz/the-courts/high-court/judges/">https://www.courtsfnz.govt.nz/the-courts/high-court/judges/</a>
30	<a href="https://www.districtcourts.govt.nz/about-the-courts/the-district-court-judiciary/the-judges/">https://www.districtcourts.govt.nz/about-the-courts/the-district-court-judiciary/the-judges/</a>
31	This figure does not include judicial officers appointed to the Environment Court but does include those appointed as Chief Coroner and those appointed to the Independent Police Complaints Authority, Alcohol Regulatory and Licensing Authority, and Immigration and Protection Tribunal.
32	<a href="https://environmentcourt.govt.nz/about/judges/">https://environmentcourt.govt.nz/about/judges/</a>

**AIJA Judicial Gender Statistics**  
**Number and Percentage of Women Judges and Magistrates at June 2023**

These statistics were compiled by the AIJA using the data sources identified below.

JURISDICTION	NOTES	JUDICIAL OFFICER Persons	JUDICIAL OFFICER Women	PERCENTAGE WOMEN	PERCENTAGE POINT CHANGE IN WOMEN 1-YEAR CHANGE (2022)*	PERCENTAGE POINT CHANGE IN WOMEN 5-YEAR CHANGE (2018)	PERCENTAGE POINT CHANGE IN WOMEN 10-YEAR CHANGE (2013)
<b>COMMONWEALTH</b>							
High Court	1	7	4	57.1%	14.3%	14.3%	14.3%
Federal Court	2	54	18	33.3%	-1.3%	8.8%	14.7%
FCFCOA (Div 1)**	3,4	76	44	57.9%	3.1%	15.2%	25.1%
FCFCOA (Div 2)**	3,5	43	19	44.2%	2.7%	4.9%	4.7%
<b>TOTAL</b>		<b>104</b>	<b>41</b>	<b>39.4%</b>	<b>-5.7%</b>	<b>3.5%</b>	<b>8.6%</b>
<b>NEW SOUTH WALES</b>							
Supreme Court/Court of Appeal	6	52	15	28.8%	7.0%	5.8%	8.0%
District Court	7	79	33	41.8%	2.3%	6.6%	14.5%
Local Court	8	146	72	49.3%	1.0%	5.5%	5.9%
Land & Environment Court	9	7	4	57.1%	7.1%	23.8%	23.8%
<b>TOTAL</b>		<b>284</b>	<b>124</b>	<b>43.7%</b>	<b>2.8%</b>	<b>6.4%</b>	<b>8.9%</b>
<b>VICTORIA</b>							
Supreme Court/Court of Appeal	10	43	16	37.2%	-4.1%	12.8%	11.0%
County Court	11	73	34	46.6%	0.6%	4.8%	7.5%
Magistrates Court	12	154	85	55.2%	2.2%	10.0%	11.8%
<b>TOTAL</b>		<b>270</b>	<b>135</b>	<b>50.0%</b>	<b>0.9%</b>	<b>9.7%</b>	<b>11.2%</b>
<b>QUEENSLAND</b>							
Supreme Court/Court of Appeal	13	28	10	35.7%	4.7%	7.1%	2.4%
District Court	14	40	12	30.0%	-3.3%	4.4%	11.6%
Magistrates Court	15	98	48	49.0%	3.2%	8.8%	15.3%
<b>TOTAL</b>		<b>166</b>	<b>70</b>	<b>42.2%</b>	<b>1.7%</b>	<b>7.3%</b>	<b>12.3%</b>
<b>WESTERN AUSTRALIA</b>							
Supreme Court/Court of Appeal	16	24	8	33.3%	7.2%	18.3%	18.3%
District Court	17	35	18	51.4%	5.7%	19.2%	30.0%
Magistrates Court	18	57	30	52.6%	4.5%	14.3%	13.0%
<b>TOTAL</b>		<b>116</b>	<b>56</b>	<b>48.3%</b>	<b>5.4%</b>	<b>16.6%</b>	<b>18.6%</b>
<b>SOUTH AUSTRALIA</b>							
Supreme Court/Court of Appeal	19	15	6	40.0%	8.8%	15.0%	23.3%
District Court	20	23	10	43.5%	0.6%	13.0%	23.5%
Magistrates Court	20	41	18	43.9%	4.8%	9.8%	7.1%
Employment Tribunal	21	8	2	25.0%	12.5%	-	-
<b>TOTAL</b>		<b>87</b>	<b>36</b>	<b>41.4%</b>	<b>5.1%</b>	<b>9.8%</b>	<b>13.4%</b>
<b>TASMANIA</b>							
Supreme Court	22	7	2	28.6%	0.0%	11.9%	-4.8%
Magistrates Court	23	17	7	41.2%	-2.6%	14.5%	19.7%
<b>TOTAL</b>		<b>24</b>	<b>9</b>	<b>37.5%</b>	<b>-1.6%</b>	<b>13.7%</b>	<b>12.5%</b>
<b>AUSTRALIAN CAPITAL TERRITORY</b>							
Supreme Court	24	5	4	80.0%	30.0%	40.0%	55.0%
Magistrates Court	25	9	3	33.3%	-6.7%	-23.8%	-23.8%
<b>TOTAL</b>		<b>14</b>	<b>7</b>	<b>50.0%</b>	<b>6.3%</b>	<b>0.0%</b>	<b>4.5%</b>
<b>NORTHERN TERRITORY</b>							
Supreme Court/Court of Appeal	26	6	3	50.0%	7.1%	16.7%	16.7%
Local Court	27,28	13	6	46.2%	-7.7%	10.4%	17.6%
<b>TOTAL</b>		<b>19</b>	<b>9</b>	<b>47.4%</b>	<b>-2.6%</b>	<b>12.4%</b>	<b>17.4%</b>
<b>GRAND TOTAL</b>							
<b>Total Superior Courts</b>		<b>1084</b>	<b>487</b>	<b>44.9%</b>	<b>2.3%</b>	<b>8.7%</b>	<b>11.8%</b>
<b>Total Superior Courts</b>		<b>291</b>	<b>109</b>	<b>37.5%</b>	<b>-0.6%</b>	<b>7.7%</b>	<b>10.0%</b>



## COURTS OF NEW ZEALAND\*\*\*

COURT	NOTES	JUDICIAL OFFICER	JUDICIAL OFFICER	PERCENTAGE WOMEN	PERCENTAGE POINT CHANGE IN WOMEN 1-YEAR CHANGE (2022)
		Persons	Women		
Te Kōti Mana Nui/Supreme Court	29	6	3	50.0%	0.0%
Te Kōti Pira/Court of Appeal	30	10	4	40.0%	10.0%
Te Kōti Take Mahi/Employment Court	31	5	3	60.0%	0.0%
Te Kooti Whenua Māori/Maori Land Court	32	13	7	53.8%	3.8%
Te Kōti Matua/High Court	33	41	14	34.1%	-8.7%
Te Kōti ā Rohe/District Court	34,35	168	78	46.4%	3.5%
Te Koti Taiao/Environment Court	36	8	5	62.5%	12.5%
<b>GRAND TOTAL</b>		<b>251</b>	<b>114</b>	<b>45.4%</b>	<b>1.9%</b>



### Sources of Judicial Gender Statistics

The data has been sourced from publicly available information, predominantly court websites, supplemented by other sources (such as annual reports and judicial biographies) where gender was not otherwise apparent.

To maintain data consistency with previous years, the tally is not exhaustive, and excludes small, specialised courts in some jurisdictions.

The tally includes judges and magistrates but excludes allied court personnel such as judicial registrars, masters etc, however named. It also excludes acting judges, including acting-warranted judges, alternate judges, reserve judges etc, however named.

\*2022 data reported here incorporates revisions to the figures applied in 2023.

\*\*The Family Court of Australia, and the Federal Circuit Court of Australia, were amalgamated in 2021 to become the Federal Circuit and Family Court of Australia (FCFCOA) (Divisions 1 and 2). The 5- and 10-year changes for the FCFCOA (Div 1 and Div 2) are based on comparing figures of the former Family Court with the current judicial officers of the FCFCOA (Div 1) judicial officers, and comparing figures of the former Federal Circuit Court with the current judicial officers of FCFCOA (Div 2).

\*\*\*As the New Zealand data set was introduced in the 2021 Report, previous 5-year and 10-year comparisons are not available.

### Notes

1	<a href="https://www.hcourt.gov.au/justices/about-the-justices">https://www.hcourt.gov.au/justices/about-the-justices</a>
2	<a href="https://www.fedcourt.gov.au/about/judges/current-judges-appointment">https://www.fedcourt.gov.au/about/judges/current-judges-appointment</a>
3	<a href="https://www.fcfcOA.gov.au/Judges">https://www.fcfcOA.gov.au/Judges</a>
4	<a href="https://www.directory.gov.au/portfolios/attorney-generals/federal-circuit-and-family-court-australia-division-1">https://www.directory.gov.au/portfolios/attorney-generals/federal-circuit-and-family-court-australia-division-1</a>
5	<a href="https://www.directory.gov.au/portfolios/attorney-generals/federal-court-australia/federal-circuit-and-family-court-australia-division-2">https://www.directory.gov.au/portfolios/attorney-generals/federal-court-australia/federal-circuit-and-family-court-australia-division-2</a>
6	<a href="https://www.supremecourt.justice.nsw.gov.au/Pages/SCO2_contactus/judicialcontacts/judicialcontacts.aspx">https://www.supremecourt.justice.nsw.gov.au/Pages/SCO2_contactus/judicialcontacts/judicialcontacts.aspx</a>
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13	<a href="https://www.courts.qld.gov.au/contacts/judiciary-contacts/judges-of-the-supreme-court">https://www.courts.qld.gov.au/contacts/judiciary-contacts/judges-of-the-supreme-court</a>
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18	<a href="https://lawalmanac.justice.wa.gov.au/M/magistrates_court_of_western_australia.aspx?uid=7158-8724-6136-1509">https://lawalmanac.justice.wa.gov.au/M/magistrates_court_of_western_australia.aspx?uid=7158-8724-6136-1509</a>
19	<a href="https://www.courts.sa.gov.au/our-judiciary/">https://www.courts.sa.gov.au/our-judiciary/</a>
20	<a href="https://www.courts.sa.gov.au/our-judiciary/">https://www.courts.sa.gov.au/our-judiciary/</a>
21	<a href="https://www.saet.sa.gov.au/about-saet-3/members-and-registrars/">https://www.saet.sa.gov.au/about-saet-3/members-and-registrars/</a>
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33	<a href="https://www.courtsofnz.govt.nz/the-courts/high-court/judges/">https://www.courtsofnz.govt.nz/the-courts/high-court/judges/</a>
34	<a href="https://www.districtcourts.govt.nz/about-the-courts/the-district-court-judiciary-the-judges/">https://www.districtcourts.govt.nz/about-the-courts/the-district-court-judiciary-the-judges/</a>
35	<a href="https://www.ipca.govt.nz/Site/about-us/Our-People.aspx">https://www.ipca.govt.nz/Site/about-us/Our-People.aspx</a>
36	<a href="https://environmentcourt.govt.nz/about/judges/">https://environmentcourt.govt.nz/about/judges/</a>

