

Are there implications of New South Wales Court filing trends?

Penny Thew and Farid Assaf SC¹

As the Honourable Tom Bathurst, Chief Justice of New South Wales, recently observed, ‘the nature of the legal market is arguably different’ from that of the early 2000s.² His Honour was speaking in part of the legal market currently being a buyer’s market and observed that the profession would need to adapt to the change wrought by technological innovation, including in the form of the recent transitioning of directions hearings in the New South Wales Supreme Court registrars’ lists to the online Court system.³ His Honour posited that ‘physical appearances in Court might start to become a rarity, with perhaps more virtual appearances.’⁴

Anthony Cheshire SC similarly made reference to the online Court system in the New South Wales Supreme Court increasingly removing the need for attendance in Court, often until the later stages of litigation, and the impact of this on the opportunity for what currently is the junior Bar to gain advocacy experience.⁵

Impacting upon (or in part causing) the tightening market of which the Honourable Chief Justice spoke, is the not insignificant downward trend in Court filings in the New South Wales jurisdiction over the past 13–14 years. Between 2005 and 2018,⁶ filings in the New South Wales Supreme Court Equity Division (all lists) trended down by 33.99%, from 6,254 to 4,128 per annum.⁷ During the same period, filings in the New South Wales Supreme Court Common Law Division – Civil (all lists) decreased by 46.78%, from 6,674 to 3,552 per annum.⁸ In the New South Wales Court of Appeal, the net number of filings decreased generally during this period by 27.55%, from 490 in 2005 to 329 in 2009 and back up slightly to 355 as at 2018.⁹

Registrations of civil matters in the District Court have also trended down by



25.03% from 2005 to 2018, decreasing from 6,129 to 4,595 per annum.¹⁰ In the Local Court, civil actions have generally trended down by 46.12% between 2005 and 2018, from 144,881 civil actions commenced per annum to 78,069 per annum.¹¹

Overall, this is a decrease in civil proceedings commenced across all New South Wales Courts between 2005 and 2018 of 44.84%.¹²

By contrast to the decreased filings in New South Wales Courts, actions commenced in the Federal Court of Australia (both in the original and appellate jurisdiction) and the Federal Circuit Court of Australia have increased from 2009 to 30 June 2019 by 13.1%, albeit this is nationwide.¹³ This increase is made up of Federal Court actions commenced in the original and appellate jurisdiction trending up from 3,642 in 2009 to 6,029 as at 30 June 2019.¹⁴ Similarly to the Federal Court, actions commenced in the Federal Circuit Court have trended up from 85,984 in 2008–9 to 95,330 as at 30 June 2019.¹⁵ These numbers include both family and general federal law matters. If the same time period is considered for the New South Wales Courts (about the last ten years from 2009), there is still a reasonably significant decrease of 40.99%.¹⁶

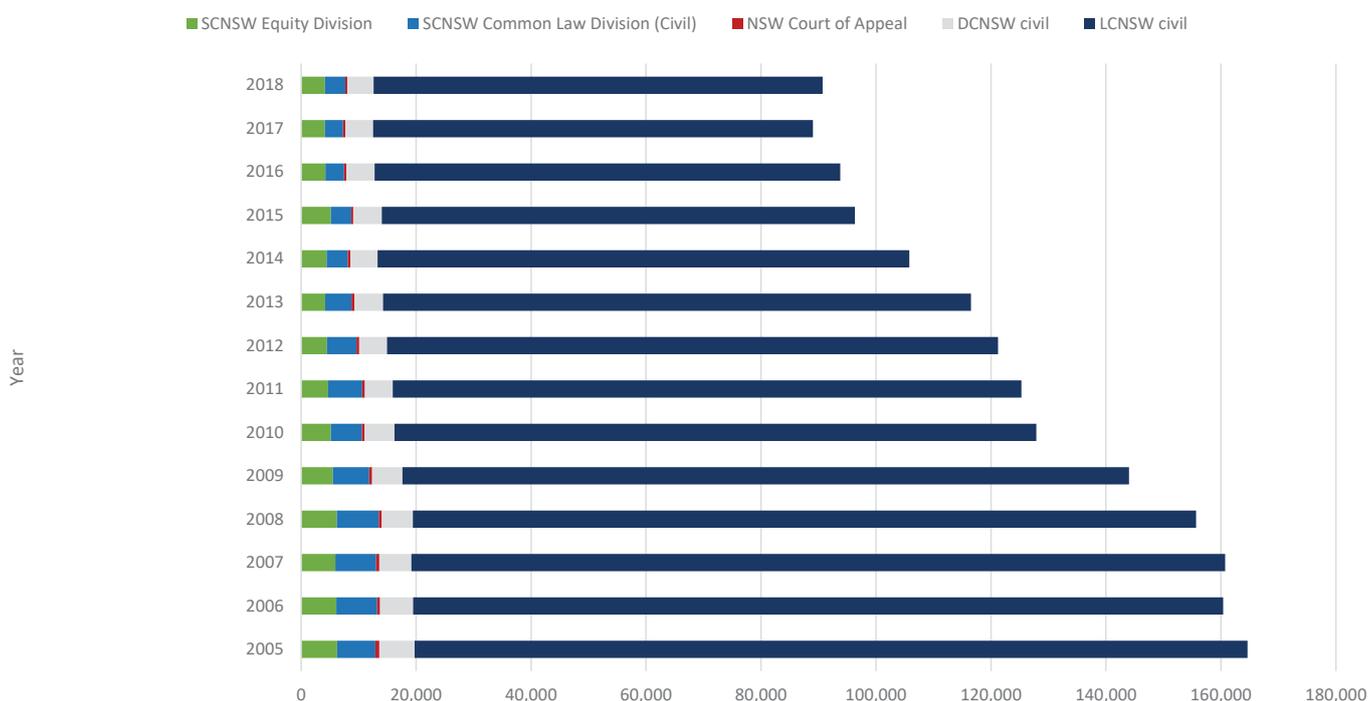
It is clear that the increase of 13.1% in actions commenced in the federal Courts nationwide over about the last ten years does not counteract the sharp decline in about the last 14 years in Court filings across the New South Wales Courts of 44.84%, or the last ten years of 40.99%. This is so particularly when the raw numbers are considered. It may be that it is timely to examine any implications for the Bar (and particularly the junior Bar) of the overall fall in Court filings, and whether it is likely to continue.

However, if the implications for the Bar of these statistics are to be considered, additional factors may be relevant. There have, for instance, in recent years been the numerous royal commissions and inquiries continuing to require the expertise and advocacy skill and experience of the Bar. Additional relevant factors may also be the spike in class actions as well as the enhanced ability generally of Australian lawyers to practise internationally.

Overall, it may be that Court filing trends do have implications for the Bar. But, as the Honourable Chief Justice recently observed, ‘you can’t have law without lawyers’ and the ‘high-value and very complex work will likely continue in the conventional manner for some time ...’¹⁷

BN

CIVIL MATTERS FILED IN NSW



	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
■ SCNSW Equity Division	6,254	6,125	5,964	6,205	5,526	5,172	4,694	4,500	4,202	4,439	5,168	4,234	4,147	4,128
■ SCNSW Common Law Division (Civil)	6,674	7,094	7,056	7,316	6,313	5,396	5,923	5,112	4,573	3,679	3,538	3,216	3,163	3,552
■ NSW Court of Appeal	690	494	564	530	496	501	490	493	502	461	379	397	354	355
■ DCNSW civil	6,129	5,769	5,598	5,375	5,297	5,158	4,844	4,849	4,968	4,737	4,956	4,938	4,875	4,595
■ LCNSW civil	144,881	140,914	141,549	136,242	126,366	111,642	109,323	106,274	102,257	92,475	82,304	80,976	76,468	78,069

Number of civil actions commenced in NSW

ENDNOTES

- The authors would like to express their gratitude to Garth Blake AM SC, Anthony Cheshire SC, Joanne Shepard and Victoria Bridgen for the helpful feedback and suggestions on this article.
- The Honourable TF Bathurst, Chief Justice of New South Wales, 'The role of the commercial bar in the mid-21st century' [2019] *Bar News* (Winter), p28.
- Ibid, p28, p29.
- Ibid, p30.
- Anthony Cheshire SC, 'The incredible shrinking Bar' [2019] *Bar News* (Winter), p8.
- Filing data for the New South Wales Supreme Court, District Court and Local Court for the equivalent 2019 period is not yet available at the time of writing.
- These numbers have steadily decreased from 6,254 in 2005 to 5,526 in 2009 and 4,128 in 2018 (Supreme Court of New South Wales 2009 Annual Review p58 (which shows all filings from 2005 to 2009); Supreme Court of New South Wales 2018 Annual Review, p29).
- These numbers have decreased from 6,674 in 2005 to 6,313 in

- 2009 to 3,552 in 2018, although this was a 12% increase from 2017 (2009 Supreme Court of New South Wales Annual Review, p57 (which shows all filings for 2005 to 2009); 2018 Supreme Court of New South Wales Annual Review, p27).
- 2005 Supreme Court of New South Wales Annual Review, p59; 2009 Supreme Court of New South Wales Annual Review, p55; 2018 Supreme Court of New South Wales Annual Review, p45.
- Registrations of civil matters in the District Court have decreased from 6,129 in 2005 to 5,297 in 2009 and to 4,594 in 2018 (District Court of New South Wales Annual Review 2005, p14; District Court of New South Wales Annual Review 2009, p14; District Court of New South Wales Annual Review 2018, p45).
- Local Court of NSW Annual Review 2005, p12; Local Court of NSW Annual Review 2009, p22; and Local Court of NSW Annual Review 2017, p14; Local Court of NSW Annual Review 2018, p19.
- The percentage increase is calculated by reference to the difference between, on the one hand—the total of all New South Wales Court filings in 2005 (being 164,428) and, on the other hand, the total of all New South Wales Court filings as at 30 June 2018 (being 90,699).

- The percentage increase of 13.1% nationwide is calculated by reference to the difference between, on the one hand the total of all Federal Court of Australia and Federal Circuit Court of Australia actions commenced nationwide in 2009 (being 89,626) and, on the other hand, the total of all Federal Court of Australia and Federal Circuit Court of Australia actions commenced nationwide as at 30 June 2019 (being 101,359).
- Federal Court of Australia Annual Report 2009, p15; Federal Court of Australia Annual Report 2018, appendix 5; Federal Court of Australia Annual Report to 2019, p24.
- Federal Magistrates Court of Australia Annual Report 2008-9, p16; Federal Circuit Court of Australia Annual Report 2017-18, Part 3; Federal Circuit Court of Australia Annual Report 2019, p9.
- The percentage increase is calculated by reference to the difference between, on the one hand, the total of all New South Wales Court filings in 2009 (2008 for the Local Court by reason of incomplete data in 2009) (being 153,707) and, on the other hand, the total of all New South Wales Court filings as at 30 June 2018 (being 90,699).
- Op Cit, Chief Justice of NSW.