



CIVIL JUSTICE RESEARCH CENTRE
A PROJECT OF THE LAW FOUNDATION OF NEW SOUTH WALES

SO WHO

DOES USE

THE COURT?

Tania Matruglio
DECEMBER 1993



SO WHO DOES USE THE COURT?

A Profile of the Users
of the Common Law Division
of the Supreme Court
of New South Wales

Tania Matruglio

December 1993

CIVIL JUSTICE RESEARCH CENTRE

Charter of the Civil Justice Research Centre

The principal purpose of the Civil Justice Research Centre is to help make the processes for resolving Civil Claims in New South Wales more efficient, more cost effective, and more accessible to the public.

The Centre examines the policies that shape the civil justice system, the behaviour of the people who participate in it, the operation of its institutions, and its effects on the community's social and economic systems.

The Centre adopts an interdisciplinary approach to the study of public policy issues; widely disseminates the results of its work to Government officials, legislators and judges; the unions; the business, consumer affairs, legal and research communities; and to the general public.

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Foreword

So, who does use the court? Many would immediately suggest that the courts are the domain of the rich. If pushed, they may also suggest that the very poor have some access to the courts through legal aid and other forms of assistance. However, there is a common belief that those in the middle, the majority of Australians, simply cannot afford the remedies offered by the civil justice system. With the co-operation of the Supreme Court of New South Wales, the CJRC decided to test that proposition and has come up with what for many will be surprising results.

The CJRC reviewed files from the Common Law Division of the Supreme Court to come up with a snapshot of who was using the Common Law division as at December 1991. The cases reviewed were included in the 1992 Special Sittings and were those next in line for hearing on the General List. Therefore, this description of court users can be considered to represent a snapshot of the pending court case load at this time.

This report describes the legal representatives, the defendants and the plaintiffs involved in the Common Law Division of the Supreme Court. When the plaintiff population was compared with the population of New South Wales, differences were found for factors such as gender, age, education, occupation and residential location. However, when they were compared to those in New South Wales who had been involved in accidents, these differences largely disappeared. This suggests that while there is unequal use of the court by the community, this may be the product of an unequal need within the community to use the courts.

This study is really the start of a profile of New South Wales court users generally. It would be very valuable to do examinations of other divisions and other courts. However, this study demonstrates how little basis there is for many of the commonly held misconceptions about our legal system. It is hoped that this study will lead policy-makers to ask more questions like "who does use the court", rather than assume answers. I commend this report to all those with an interest in the debates over costs of justice and access to the legal system.

Terence Purcell
Director, Law Foundation of New South Wales

Acknowledgments

This study could not have been completed without the help of a number of people. We are grateful to the Supreme Court of New South Wales for allowing the CJRC to access the Specialittings files and to the Court staff who helped us locate the files. In particular, thanks goes to Mr Warwick Soden, Chief Executive Officer of the Supreme Court, for his constant help with and interest in the project. Much thanks is given to Dr Terence Beed for his thoughtful review and helpful comments on the draft report. Last, a special thank you to the team of coders who patiently recorded all the information which has made this report possible.

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Introduction

1.1 Background

Of late, the issue of who uses the New South Wales court system has received considerable attention. It is argued that the general public faces exclusion from the courts as they have become "... the exclusive enclave of wealthy individuals and corporations, and their all too affluent lawyers."¹ Yet despite this common belief, there has been few systematic attempts to find out who actually does use the courts.

The CJRC has addressed this need by reviewing files from the Common Law Division of the Supreme Court.² This provided the opportunity to construct a unique profile of the users of this division of the court.

The files reviewed were those included in the 1992 Special Sittings. The Special Sittings introduced new management techniques that required the legal representatives of both sides to provide additional case information to the court. Using this additional information, the CJRC was able to construct a "snapshot" of who was using the Common Law Division of the Supreme Court as at December 1991.

1.2 The Special Sittings

The Special Sittings was a case management program introduced by the Common Law Division Delay Reduction Committee of the Supreme Court. The aim of the program was to reduce the backlog of cases in the Common Law Division.

In November 1991, 1,229 cases were selected for inclusion in the Special Sittings program. Cases included were those next in line for hearing on the General List. Therefore, any description of the Special Sittings cases can be considered to represent a snapshot of the pending case load before the Supreme Court as of November 1991. Later, a further 30 cases were added to the program bringing the total number of cases in the Special Sittings to 1,259. A period of two weeks was designated for hearing these cases, commencing 21 July 1992.

1.3 Research Approach

The Supreme Court provided the CJRC with the Master List of the cases to be included in the Special Sittings. The Master List catalogued the cases listed for the Special Sittings that had not settled by December 1991. Information was collected from 1,188 court files. Twenty one of the listed cases were not located during the period allocated to data collection.

Information recorded included details about the law firms, counsel, the defendants and the plaintiffs involved in the Special Sittings cases. Details about the types of claims taken to the Supreme Court were also collected.

It is important to note that the full range of information sought was not available for each case. Thus, disparate numbers of cases are apparent in different sections of this report. For example, the education level of plaintiffs was available on file in only 532 of the 1,188 cases.

1.4 Research Objectives

The main objective of the research was to construct a statistical profile of the users of the Common Law Division of the Supreme Court. This was done through a description of some characteristics of the court users.

A broader objective was to determine how the population of plaintiffs described compares with the population of New South Wales generally. To do this, two different measures were used. The first measure was a comparison of the cases with information provided by the Australian Bureau of Statistics (ABS) in the Basic Community Profile, New South Wales.³ This was to show whether there is equal usage of the Common Law Division across the community of New South Wales.

The second measure was a comparison of the statistical profile of the cases with information provided by the ABS from its Usage of Legal Services survey.⁴ This comparison was undertaken to determine how the population of plaintiffs described compares with the New South Wales "accident population".⁵ This comparison was considered appropriate as most of the cases examined were for personal injury resulting from an accident.

1.5 Organisation of the Report

The report is divided into three main sections:

The Legal Representatives: The Law Firms and Counsel

This section addresses the size of the law firms and the relationship between size and the number of cases represented. It also examines the number of cases represented by counsel.

The Defendants:

In this section, the five different types of defendants involved in the Supreme Court cases are examined.

The Plaintiffs:

Finally, the demographics of the plaintiffs involved in the Supreme Court are explored. The following characteristics are described:

- claim type;
- if they are men or women;
- how old they are;
- their education level;
- where they live;
- their occupation; and
- their income.

1 Church, TW, 1990, *A Consumer Perspective on the Courts*, AIJA, Australia.

2 The Common Law Division is the largest in the Supreme Court and deals with all actions brought at common law. The bulk of the work of this division is for claims for damages for personal injury which arise out of industrial or motor vehicle accidents.

3 Australian Bureau of Statistics, 1991, *Census of Population and Housing, Basic Community Profile, New South Wales*, Cat. No. 2722.1, ABS, New South Wales.

4 Australian Bureau of Statistics, 1991, *Usage of Legal Services, New South Wales, October 1990*, Cat. No. 4510.1, ABS, New South Wales. Unpublished statistics.

All persons aged 15 years and over included in the monthly population survey were included in the Usage of Legal Services survey, with the exception of interstate visitors. Respondents were asked if they had experienced one or more of 10 listed legal events in the past 12 months. Where the event was an accident, the criteria for inclusion as a legal event was injuries which required 3 or more days off from usual activities.

The CJRC requested information relating specifically to accidents from this data set.

5 Note the assumption that the two New South Wales population distributions are the same.

The Legal Representatives

2.1 The Law Firms

This section addresses some characteristics of the law firms whose clients' cases went to the Common Law Division of the Supreme Court. It will address whether the firms represented plaintiffs or defendants, whether they were large or small and the relationship between firm size and the number of cases represented.

The review of the court files allowed for the collection of the names of 412 separate firms. Of these, 287 (70%) represented plaintiffs only, 66 (16%) represented defendants only and 59 firms (14%) represented both plaintiffs and defendants.

The Law Society of New South Wales provided information about firm size. Information was available for 387 of the 412 law firms (279 plaintiff firms and 52 defendant firms).⁶ Firm size was decided by the number of principals and employees with practicing certificates operating in the firm:

- Small firm: 1–5 principals or employees with practicing certificates
- Medium firm: 6–15 principals or employees with practicing certificates
- Large firm: 16–50 principals or employees with practicing certificates
- Very large firm: 51+ principals or employees with practicing certificates

Table 1 presents information about the size of the firms and whether they represented plaintiffs, defendants or both plaintiffs and defendants.

Firms that represented plaintiffs only tended to be small (217:78%). Firms representing defendants were more evenly distributed across the size categories, as were the firms that represented both plaintiffs and defendants. There were 64 one-person firms in the sample (15.5%). Of these, 58 represented plaintiffs, four represented defendants and two firms represented both plaintiffs and defendants.

Of particular interest is that of the 1,188 cases, there were many more firms representing plaintiffs than there were defendants. That is, for plaintiffs there were a large number of cases spread across a large number of law firms while for defendants, a relatively large number of cases were concentrated among a small number of law firms.

Table 1. Firm size and party represented

Firm size	Plaintiff only		Defendant only		Both n	Full sample	
	n	%	n	%		n	%
Small	217		16		15	248	64
Medium	52		18		21	91	24
Large	7		11		10	28	7
Very Large	3		7		10	20	5
TOTAL	279		52		56	387	100

Source: CJRC Supreme Court file survey. Based on 387 matters where information was available about firm size and party represented.

2.2 Counsel

When available, the name of counsel representing the plaintiff and the defendant at the Special Sitings Issues and Listing Conference was recorded. In all, the names of 240 plaintiff counsel and 170 defendant counsel were recorded. The number of cases represented by each counsel is presented in Table 2.

Table 2. The number of cases counsel represented at the Special Sitings Issues and Listing Conference

Number of cases	Plaintiff counsel		Defendant counsel	
	n	%	n	%
1-5	204	85	144	85
6-10	18	7	13	8
11-15	9	4	6	3
16+	9	4	7	4
TOTAL	240	100	170	100

Source: CJRC Supreme Court file survey. Based on 410 matters where information about counsel was available.

Case load distribution for plaintiff counsel and defendant counsel at the Special Sitings Issues and Listing Conference was similar.

Eighty-five percent of both plaintiff and defendant counsel represented 1-5 cases. Seven percent of plaintiff counsel represented 6-10 cases; 4% represented 11-15 cases; and a further 4% represented 16+ cases. Eight percent of defendant counsel represented 6-10 cases; 3% represented 11-15 cases; and 4% represented 16+ cases.

Almost half of the plaintiff counsel and half of the defendant counsel represented one case only at the Special Sitings Issues and Listing Conference: 47% (112) and 46% (78) respectively.

The Defendants

Information was recorded about the nature of the defendants involved in the Special Sittings cases. Five categories of defendants were identified: business or company; public agency; multiple defendants; the Government Insurance Office (GIO)⁷ as the statutory defendant; and private individuals. The multiple defendant category was used when two or more parties were defending the same case.

Table 3. The number of defendants in each defendant category

Defendant category	n	%
Business or company	614	52
Public agency	248	21
Multiple defendants	163	14
GIO: as statutory defendant	103	9
Private individual	53	4
TOTAL	1,181	100

Source: CJRC Supreme Court file survey. Based on 1,181 matters in which information about the defendant was available.

Most of the defendants were either a business or company (52%) or a public agency (21%). This result is consistent with the sample being dominated by claims made for injuries resulting from an industrial accident (see Section 4.1). Private individuals were least likely to be involved as a defendant (4%). Claims against private individuals were mainly for "personal injury – other."⁸

⁷ At the time the cases for injuries resulting from a motor vehicle accident were commenced, the GIO was the statutory defendant in all Third Party Motor Vehicle claims in New South Wales.

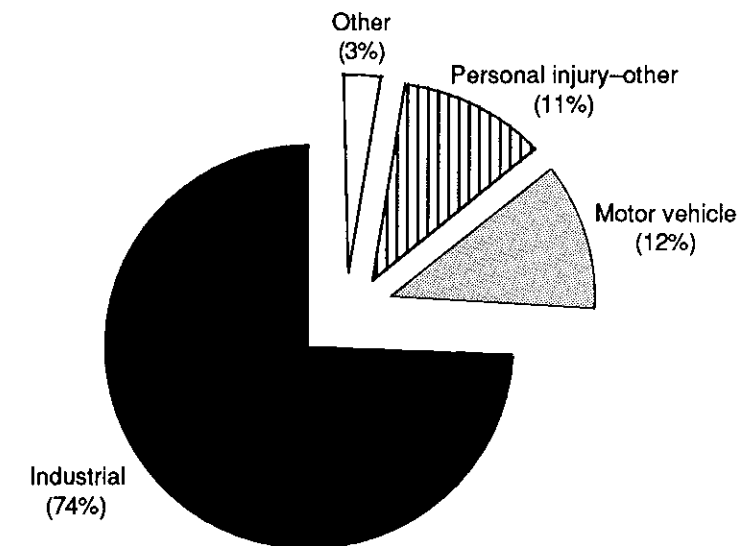
⁸ Refer to note 10 for an explanation of claim types.

The Plaintiffs

4.1 Why do people commence litigation?

Four categories of claim type were identified: industrial; motor vehicle; personal injury–other and “other” types of claims. Three quarters of the cases involved claims for injuries that were the result of industrial accidents (74%). The distribution of the remaining cases was as follows: 12% were for injuries resulting from a motor vehicle accident, 11% were for “other” personal injuries⁹ and 3% were claims for events other than a personal injury (Figure 1).¹⁰

Figure 1. The distribution of cases by claim type



Source: CJRC Supreme Court file survey. Based on 1,188 matters.

4.2 Who commences litigation?

Who are the people who commence litigation in the Common Law Division of the Supreme Court? Are they men or women; how old are they; what is their education level; where do they live; what do they do to make a living; and how much of a living do they make?

These questions are becoming ever more important as the debate about accessibility of justice to the community grows. The review of the court files allowed for the collection of demographic information about the plaintiffs' gender; age; education level; geographical location; occupation and income.

This section describes the cases in terms of these demographic variables. Further, it compares the profile of the plaintiff population with the total population of New South Wales and with the state's population of accident victims. No comparable statistics were available for the other claim types.

4.3 Gender

There were disproportionate numbers of men taking cases to the Common Law Division of the Supreme Court.¹¹ Men represented three quarters of the plaintiff population (74%), whereas they represent only half the population of New South Wales (Table 4).

Table 4. Gender: the population of plaintiffs and the population of New South Wales

Gender	Plaintiffs		New South Wales	
	n	%	n	%
Men	843	73	2,844,438	50
Women	304	27	2,887,468	50
TOTAL	1,147	100	5,731,906	100

Source: CJRC Supreme Court file survey. Based on 1,147 matters in which information about gender of the plaintiff was available, and ABS, 1991 Census of Population and Housing, *Basic Community Profile, New South Wales*, Table B01.

The fact that men in New South Wales were using the Common Law Division more frequently than women may be due to them being involved in more accidents.

This distribution of the plaintiff population is more consistent with accident figures reported for New South Wales generally (Table 5). The figures for New South Wales show that men are involved in 71% of all accidents. This consistency

appears to continue through a breakdown of accident type for motor vehicle and other accidents. It is not evident for industrial accidents, where there is a high proportion of women.¹²

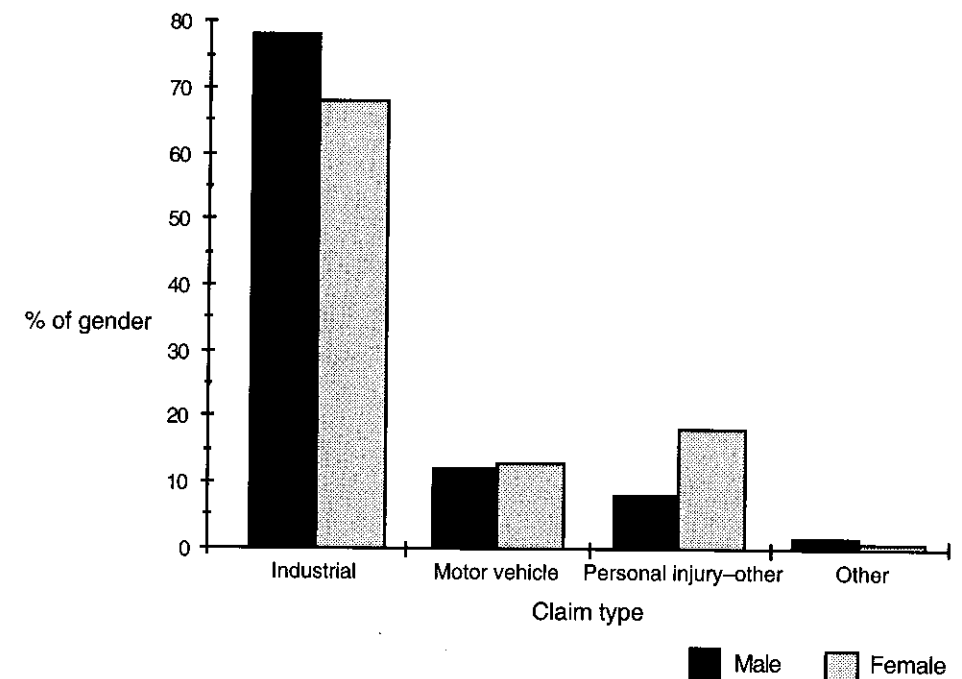
Table 5. Proportion of men and women in each accident type: plaintiff population and New South Wales accident population

Gender	Industrial		Motor vehicle		Other		All accidents	
	Plaintiffs %	NSW %	Plaintiffs %	NSW %	Plaintiffs %	NSW %	Plaintiffs %	NSW %
Men	76	83	73	62	76	61	73	71
Women	24	17	27	38	24	39	27	29
TOTAL	100	100	100	100	100	100	100	100

Source: CJRC Supreme Court file survey & ABS, *Usage of Legal Services, October 1990*. Unpublished statistics.

The data for the plaintiff population reflect those reported for the New South Wales accident population. This suggests that with regard to gender, the distribution of plaintiffs represents a fairly typical accident population.

Figure 2. Reasons for commencing litigation by gender: plaintiff population



Source: CJRC Supreme Court file survey.

Figure 2 shows claim type as a proportion of claims made by each gender. Most frequently, the type of claim taken to the Supreme Court by men and women was for injuries resulting from an industrial accident. The least frequent claims were for "other" events. Perhaps the most interesting feature of Figure 2 is the higher proportion of women in the "personal injury-other" category. Most of these claims were for medical negligence.

4.4 Age

The average age of men and women when involved in the accident or event that preceded the commencement of a claim was 37 years. Table 6 shows the age distributions for the plaintiff population and for the New South Wales population.¹³

Table 6. Age: plaintiff population and population of New South Wales

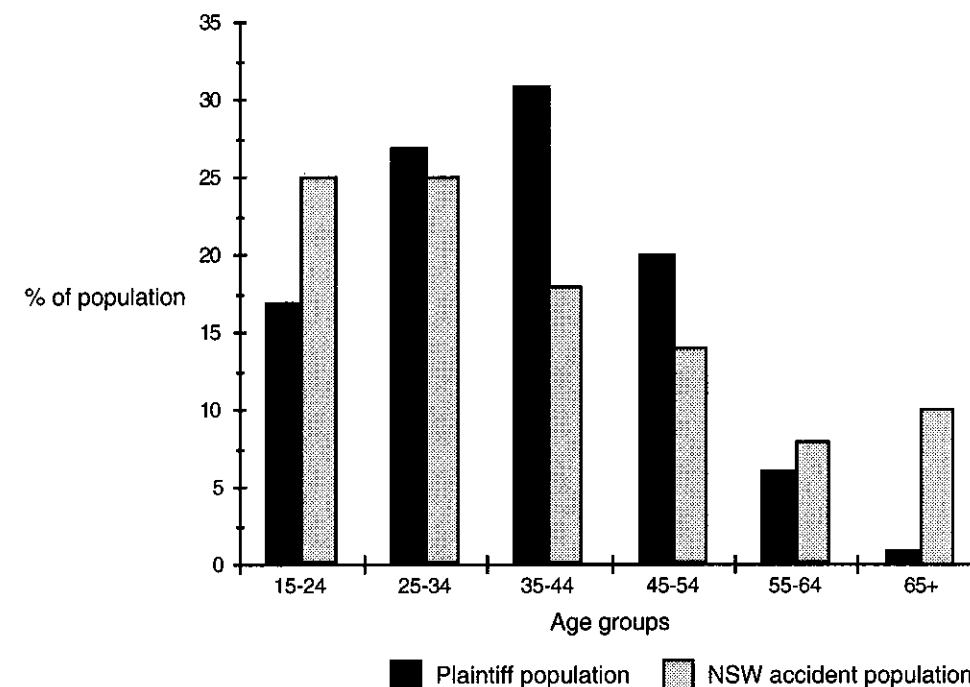
Age	Plaintiffs		New South Wales	
	n	%	n	%
5-14	21	2	1,263,050	22
15-24	148	16	878,855	15
25-34	236	26	922,644	16
35-44	272	30	858,933	15
45-54	175	19	626,798	11
55-64	54	6	500,615	9
65+	3	1	681,179	12
TOTAL	909	100	5,732,074	100

Source: CJRC Supreme Court file survey. Based on 909 matters where information about the age of the plaintiff was available, and ABS, 1991 Census of Population and Housing, *Basic Community Profile, New South Wales*, Table B05.

A comparison of the plaintiff and New South Wales populations shows that those in the age groups 25-34, 35-44 and 45-54 are considerably over represented as court users. The age groups 5-14 and 65+ are under represented and those 15-24 and 55-64 years are proportionally represented.¹⁴

The distribution of age for the plaintiff population and for the New South Wales accident population is presented in Figure 3. A different pattern is evident for the two populations.¹⁵

Figure 3. Age: plaintiff population aged 15 and over and New South Wales accident population



Source: CJRC Supreme Court file survey. Based on 888 matters where information about the age of the plaintiff was available, and ABS, *Usage of Legal Services, October 1990*. Unpublished statistics.

The plaintiff population does not strongly reflect either the population of New South Wales generally or the accident population. These results are however consistent with the bulk of the claims being for injuries that were the result of an industrial accident. Different age groups have different kinds of accidents¹⁶ and the age-groups most likely to be involved in an industrial accident dominate the plaintiff population.

4.5 Education

The highest educational achievement of the plaintiff at the time of the accident or event that preceded the claim was recorded. This information was available in 532 of the cases.

Table 7. The distribution of the highest educational achievement: plaintiff population and New South Wales accident population

Education level	Plaintiff population		New South Wales	
	n	%	n	%
Bachelor degree or higher	21	4	10,800	7
Trade qualification or apprenticeship	90	17	37,800	26
Certificate or diploma	37	7	24,600	17
Secondary school	323	61	63,500	44
Other ¹⁷	61	11	9,300	6
TOTAL	532	100	146,000	100

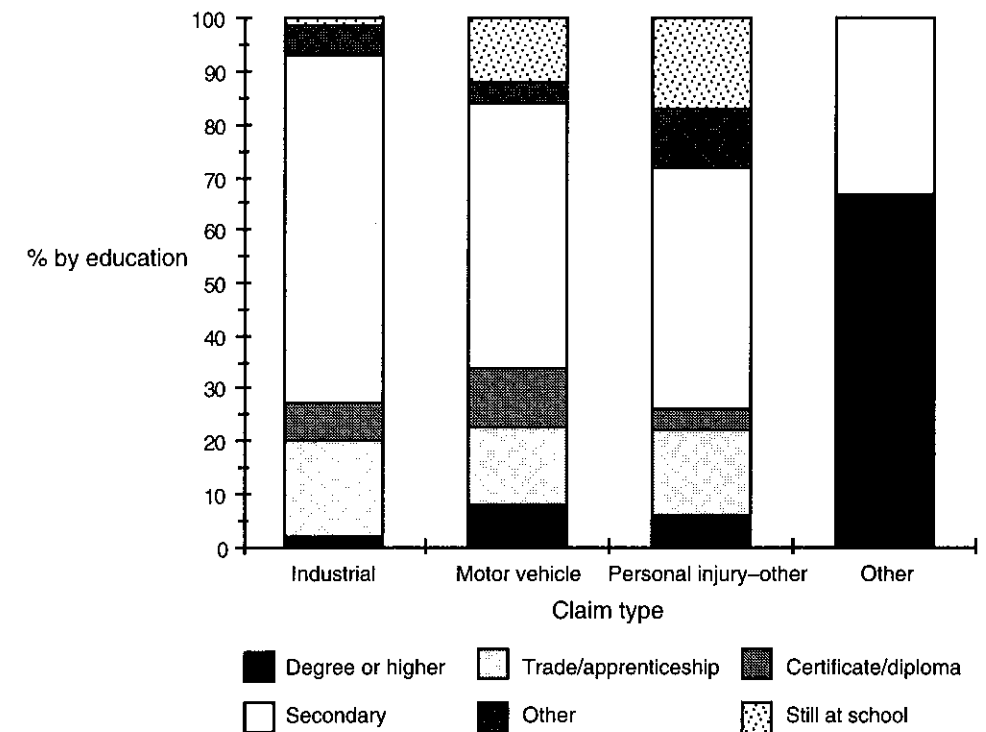
Source: CJRC Supreme Court file survey. Based on 532 matters where information was available about the highest educational achievement of the plaintiffs and ABS, *Usage of Legal Services, October 1990*. Unpublished statistics.

Table 7 shows that the distribution of the plaintiff population does not reflect the New South Wales accident population.¹⁸ No comparable figures were available for a comparison of the plaintiff and New South Wales populations for education.

More than half the plaintiff population, 64%, had achieved a secondary school level of education, 18% had a trade qualification or apprenticeship. The proportion of people in the remaining categories were: Bachelor degree or higher 4%; certificate or diploma 7%; and other 11%.

Different claims patterns were evident for different education levels. For example, "other" claims were made only by people who had a degree or higher or a secondary level of education (Figure 4).

Figure 4. The highest educational achievement of plaintiffs, by claim type



Source: CJRC Supreme Court file survey based on 532 matters where information about the education of the plaintiff was available.

4.6 Geographical Location

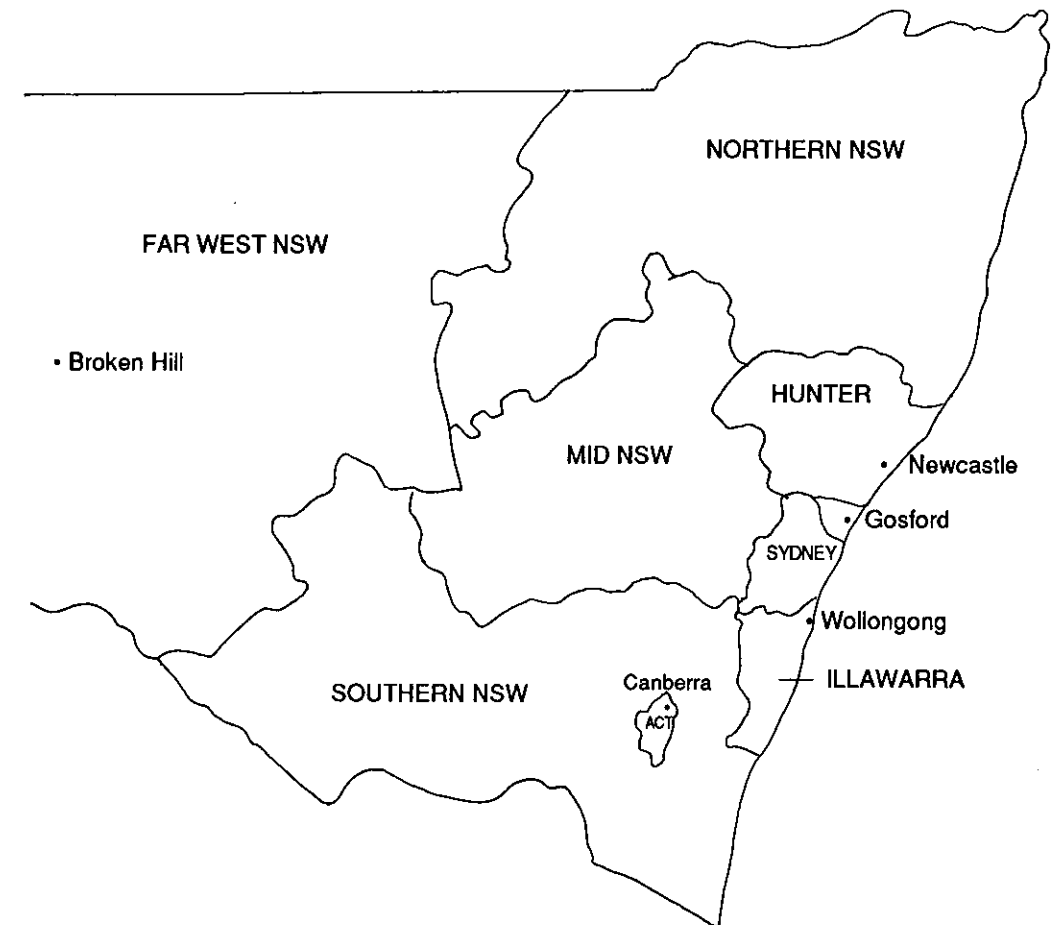
To find out where in New South Wales the plaintiffs lived, their residential postcode was recorded. During data analysis, the postcodes were coded into 12 residential zones: 11 zones comprised regions within New South Wales and one contained all interstate and Australian Capital Territory postcodes.¹⁹ The geographical distribution of the plaintiff population does not reflect that of New South Wales.²⁰ See Appendix 1 for the regions that combined to make the 11 New South Wales zones.

Table 8. The number and proportion of plaintiffs living in the 11 residential zones of New South Wales and the total zone population

Residential zones	Plaintiffs		New South Wales	
	n	%	n	%
Sydney metro	271	25	893,134	16
northern	67	6	433,752	8
south west	324	30	935,186	16
outer west	62	6	460,988	8
mid west	175	16	586,265	10
Gosford/Newcastle	72	7	743,117	13
Wollongong/Illawarra	38	3	337,478	6
Northern NSW	47	4	601,516	10
Southern NSW	15	1	429,331	7
Mid NSW	15	1	280,479	5
Far west NSW	2	1	28,183	1
TOTAL	1,088	100	5,729,429	100

Source: CJRC Supreme Court file survey, based on 1,088 matters where the plaintiff lived in NSW and their postcode was available and ABS, 1991 Census Counts for Small Areas: NSW.

Figure 5. Residential zones: New South Wales



Source: Australian Bureau of Statistics, New South Wales, sheet 1: 1986 census.

The greatest number of plaintiffs lived in the residential zones which make up the Sydney district, particularly in the metropolitan (25%), south western (30%) and mid-western (16%) zones. Considerably fewer plaintiffs lived in the remaining residential zones of New South Wales.

Given the high number of plaintiffs in the Sydney district, the zones that make up this district were examined in isolation. The metropolitan, south western and mid-western zones were split into the regions they comprised. The number of people per claim for each residential zone in Sydney was also examined. Table 9 presents both pieces of information.

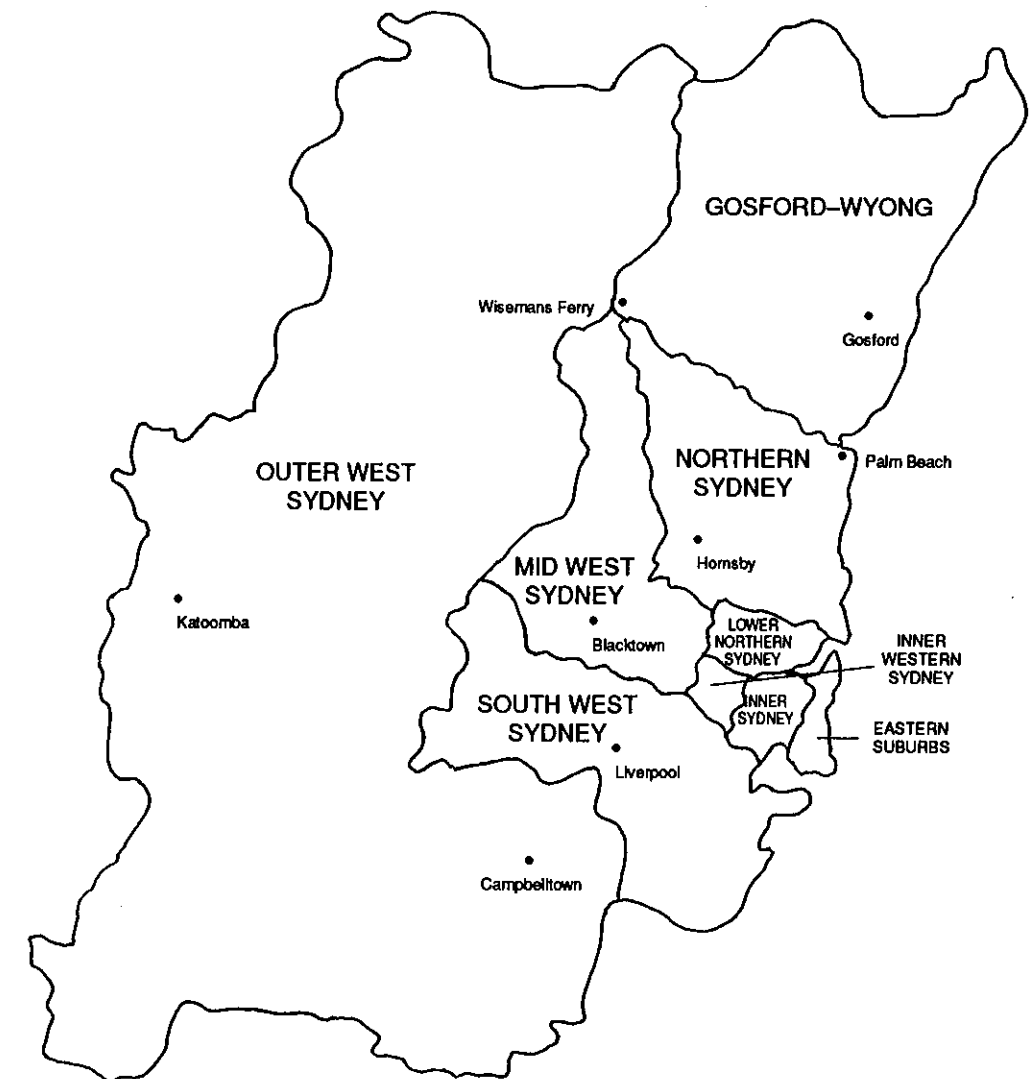
Table 9. The number and proportion of plaintiffs in the Sydney zones and the ratio of people to one claim in each zone

Residential zone: Sydney		Plaintiffs		Zone	1 claim per
		n	%	population	n persons
Metro	Inner Sydney	135	15	262,261	1,943
	Eastern suburbs	36	4	224,348	6,232
	Inner West Sydney	69	8	148,095	2,146
	Lower Northern Sydney	31	3	258,430	8,336
South west	St George–Sutherland	92	10	378,748	4,117
	Canterbury–Bankstown	86	10	283,136	3,292
	Fairfield–Liverpool	146	16	273,302	1,872
Mid west	Central Western Sydney	94	11	260,496	2,771
	Blacktown–Baulkham Hills	81	9	325,769	4,022
North		67	7	433,752	6,474
Outer west		62	7	460,988	7,435
TOTAL		899	100	3,309,325	

Source: CJRC Supreme Court file survey. Based on 899 matters where the plaintiff lived in the Sydney zone and ABS, 1991 *Census Counts for Small Areas: NSW*.

Inner Sydney (metro zone) and Fairfield–Liverpool (south west zone) have the greatest numbers of claimants per head of population. The prevalence of claims was markedly low in the Lower Northern Sydney region.

Figure 6. Residential zones: Sydney region only



Source: Australian Bureau of Statistics, Sydney Statistical Division, sheet 2: 1986 census.

4.7 Occupation

Information about the occupation of the plaintiff was available for 1,036 of the 1,188 cases. In 82 cases the information was missing, in 29 cases the plaintiff was not in the labour force, in 29 the plaintiff was unemployed and in 12 the plaintiff was a full-time student. Table 10 presents the number and distribution of occupation for the plaintiff and New South Wales employed populations.²¹

Table 10. The distribution of occupation: plaintiff population and New South Wales population

Occupation	Plaintiffs		New South Wales	
	n	%	n	%
Manager/administrator	50	5	292,202	13
Professional	28	3	309,911	14
Para-professional	39	4	157,825	7
Tradesperson	205	20	325,616	14
Clerk	85	8	379,833	17
Sales/personal service worker	51	5	326,898	15
Plant/machine operator/driver	172	17	166,541	7
Labourer	391	38	294,467	13
TOTAL	1,021	100	2,253,293	100

Source: CJRC Supreme Court file survey. Based on 1,021 matters where information was available about the occupation of the plaintiffs & ABS, 1991 Census of Population and Housing, *Basic Community Profile, New South Wales*, Table B22.

The distribution of occupations in the employed plaintiff population and New South Wales population are different.²² Differences are most evident for the "labourer" category where the plaintiff proportion is 38% and the New South Wales proportion is 13%. This is followed by plant and machine operators/drivers, 17% compared with 7% and tradespersons, 20% compared with 14%.

No data was available for a comparison of the plaintiff population and the accident population of New South Wales for occupation.

4.8 Financial Profile

For those who have an interest in the operation of the civil justice system, the following quotation will have a familiar, if not repetitive, ring to it:

It is a sad fact that access to the justice system is beyond the reach of the large majority of the community. It has been said many times over that only the very rich or the very poor are able to afford to have their disputes resolved in the courts.²³

Chief Justice Gleeson of the Supreme Court of New South Wales disputes this belief. In a paper written in May 1992 he states: "Yet when I look at the people who actually commence actions in the Supreme Court of New South Wales, and, in particular, actions for damages for personal injuries, I observe that the great majority of them in fact appear to be neither very rich nor very poor."²⁴ He goes on to say that in his awareness, there has been no attempt to construct a financial profile of plaintiffs. The review of the court files gave the CJRC an opportunity to do this.

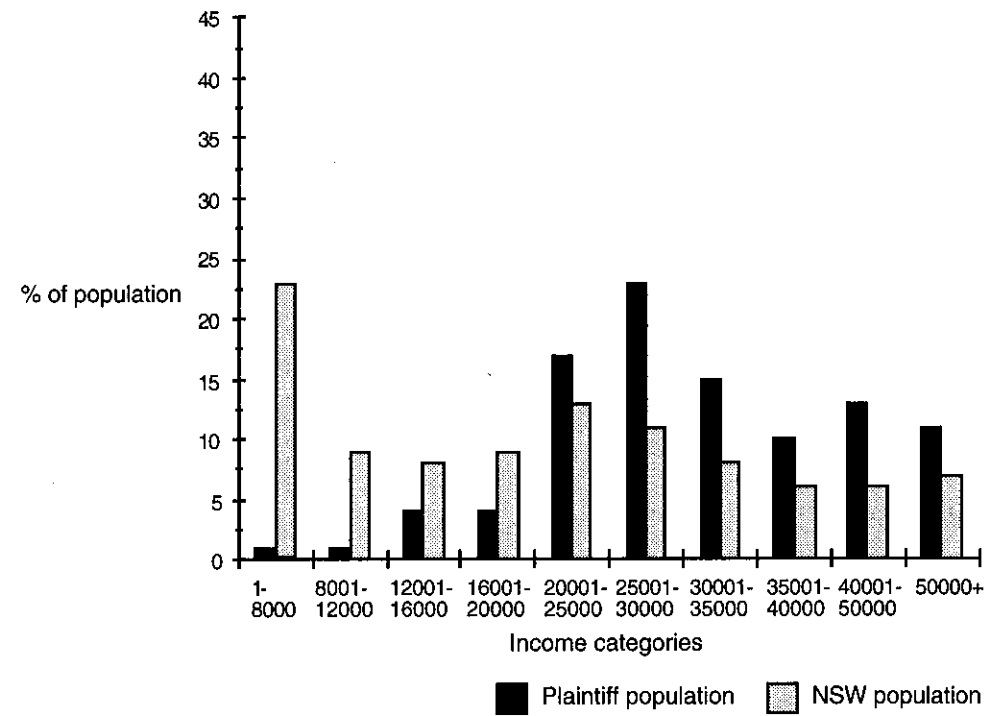
To construct a financial profile of plaintiffs, their income at the time of the accident or event that preceded the claim was recorded. The dates of these incidents varied considerably, therefore, due to inflation the incomes of the plaintiffs were not directly comparable. To rectify this, the data was manipulated using Award Rates of Pay Indexes, Australia²⁵ and linking factors to convert all incomes to the 1985-base series value.

The figures collected spanned three different Award Rates of Pay Indexes series: 1954-based, 1976-based and 1985-based. It was necessary to relate the 1954-based and the 1976-based series and the 1976-based and the 1985-based series. To do this, the Award Rates of pay Indexes: Linking Factors formula was used.²⁶ These figures were then made comparable to the value of the dollar as at 1 July 1992, the time when the Special Sitings were being conducted.²⁷

In cases where plaintiff income was recorded as a net amount, the figure was converted to a gross amount. To do this, the resident individual rates in the relevant Australian Master Tax Guides were used.²⁸

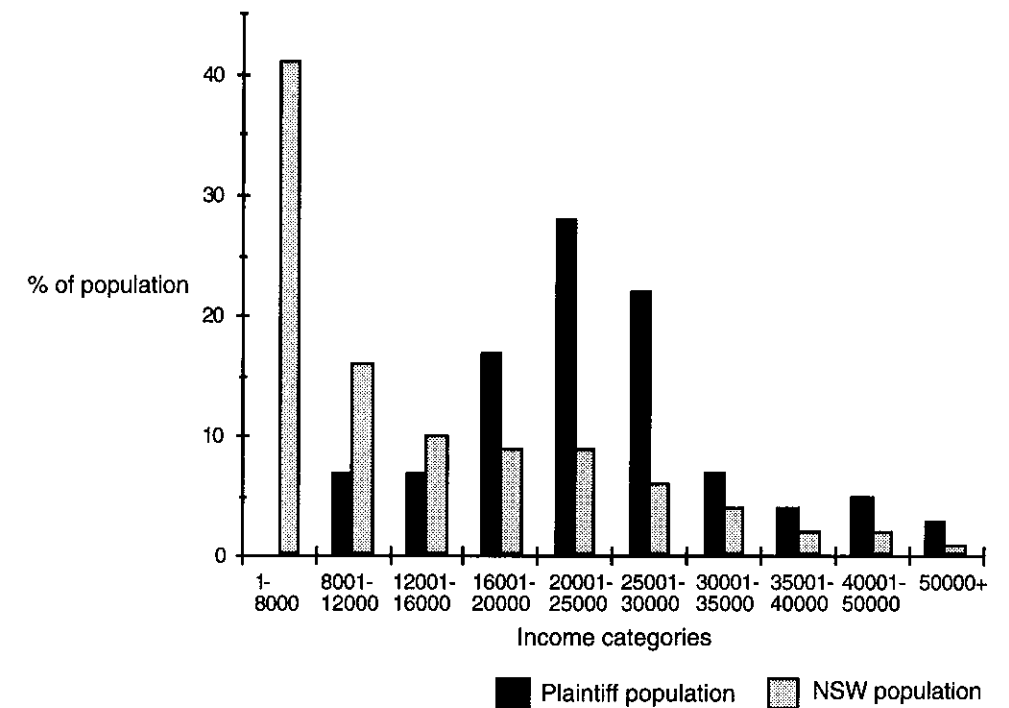
Figures 7 and 8 present the income distributions of the plaintiff and New South Wales populations, for men and women respectively.

Figure 7. Weekly income for men: plaintiff and New South Wales populations



Source: CJRC Supreme Court file survey. Based on 621 matters for which information was available on income and ABS, 1991 Census of Population and Housing, *Basic Community Profile, New South Wales*, Table B27.

Figure 8. Weekly income for women: plaintiff and New South Wales populations



Source: CJRC Supreme Court file survey. Based on 197 matters for which information was available on income and ABS, 1991 Census of Population and Housing, *Basic Community Profile, New South Wales*, Table B27.

The income distributions for the plaintiff and New South Wales populations are significantly different.²⁹ Both men and women in the plaintiff population exhibit a smaller proportion of lower incomes and a greater proportion of middle and higher incomes. This pattern is particularly evident for men (see Figures 7 and 8). The smaller proportion of plaintiffs in the lower income brackets is again consistent with the majority of claims being for injuries which were the result of an industrial accident.

For both men and women in the plaintiff population, their incomes were predominantly "middle". The average income of men in the plaintiff population was \$647.05 per week (\$33,636 per annum) and for women, \$476.13 per week (\$24,758 per annum). This result is consistent with the average income for men and women in New South Wales. The average income for men in New South Wales at the end of May 1992 was \$624.80 (\$32,490 per annum) and for women, it was \$519.70 (\$27,024 per annum).³⁰

The men and women who litigated in the Common Law Division of the Supreme Court were neither rich nor poor. With incomes which were predominantly middle, how *did* they afford to take their cases to court?

The answer to this question may lie in the following quotation:

*Those who take a case to the higher courts are corporations, government agencies, those able to qualify for legal aid and those with a strong case and a prospect of winning sufficient damages to cover the cost.*³¹

Of the cases surveyed, only 29 (2%) of plaintiffs did not receive money for damages. In the remaining 1,159 (98%) cases, their claims were successful. Therefore, it seems likely that the plaintiff population fits into the last category of court users in the quotation. They may represent those who have a strong case and a prospect of winning sufficient damages to cover the cost. Therefore, the plaintiffs need not be poor enough to qualify for legal aid nor rich enough to be able to finance all the costs of taking a case to court.

- 9 The "personal injury-other" category includes claims made for injuries which resulted from third party liability (e.g. sporting accident) and professional negligence.
- 10 The "other" category includes all claims which were not for personal injury such as contractual disputes and defamation.
- 11 Chi-square test: plaintiff population by New South Wales population (weighted by frequency), $p < 0.001$.
- 12 In the accident comparisons, the accidents which were in the "personal injury-other" claim category have been analysed separately as "other" accidents.
Chi-square tests: plaintiff population by New South Wales accident population (weighted by frequency) industrial accidents, $p < 0.01$; motor vehicle accidents, $p > 0.01$; other accidents, $p > 0.01$.
- 13 Australian Bureau of Statistics, 1991 Census of Population and Housing, *Basic Community Profile, New South Wales*, Cat. No. 2722.1, ABS, New South Wales.
- 14 Chi-square test: plaintiff population by New South Wales population (weighted by frequency), $p < 0.001$.
- 15 Chi-square test: plaintiff population by New South Wales population (weighted by frequency), $p < 0.001$.
- 16 Matruggio, T, 1992, "Some Demographics of Accidents", *Civil Issues 2*, CJRC, Law Foundation of New South Wales.
- 17 Includes still at school.
- 18 Chi-square tests: plaintiff population by New South Wales accident population (weighted by frequency), $p < 0.001$.
- 19 Australian Bureau of Statistics, *1991 Census Counts for Small Areas: New South Wales*, Cat. No. 2730.1, ABS, New South Wales.

- 20 Chi-square test: plaintiff population by New South Wales population (weighted by frequency), $p < 0.001$.
- 21 Australian Bureau of Statistics, 1991 Census of Population and Housing, *Basic Community Profile, New South Wales*, Cat. No. 2722.1, ABS, New South Wales.
- 22 Chi-square test: plaintiff population by New South Wales population (weighted by frequency), $p < 0.001$.
- 23 "Background Paper", *Access to the Civil Courts*, July 1992, The Law Society of New South Wales, Sydney.
- 24 The Hon Mr Justice Gleeson, Chief Justice of New South Wales, 1992, "Access to Justice", *The Australian Law Journal*, Volume 66, p.274.
- 25 Australian Bureau of Statistics, *Award Rates of Pay Indexes*, Australia, Cat. No. 6312.0, ABS Canberra.
- 26 Australian Bureau of Statistics, *Award Rates of Pay Indexes*, Australia, Cat. No. 6312.0, December 1987, ABS, Canberra.
- 27 Formula used: $\% \text{ change} = \frac{\text{June 1992 index} - \text{target index}}{\text{target index}} * 100$
- 28 CCH Tax Editors, *Australian Master Tax Guide*, CCH, 27, Australia.
- 29 Chi-square test: plaintiff population by New South Wales population (weighted by frequency), $p < 0.001$.
- 30 Australian Bureau of Statistics, 1992, *Average Weekly Earning, States and Australia*, Cat. No. 6302.0, ABS, Canberra.
- 31 McCutcheon, A, 1984, "Legal Costs and Access to the Law", *The Law Institute Journal*, October, Vol. 63, pp.948-950.

Conclusion

The information provided in this report tells us who was using the Common Law Division of the Supreme Court as at December 1991. The main findings about the court users are summarised below.

Legal Representatives: The Law Firms and Counsel

Firms representing plaintiffs tended to be small while those representing defendants were more evenly distributed across firm size categories.

Of the 240 counsel representing plaintiffs at the Special Sittings Issues and Listing Conference 85% represented 1-5 cases and 15% more than five cases. Forty-seven percent of the 240 plaintiff counsel represented one case only. A similar pattern was evident for counsel representing defendants.

The Defendants:

Most defendants in the Common Law Division of the Supreme Court were a business or company or a government agency. Private individuals were least likely to be involved in a Common Law case as a defendant. This result was consistent with the majority of claims being for personal injury resulting from an industrial accident.

The Plaintiffs:

A comparison of some demographics of the plaintiff population and those for New South Wales showed there was not equal usage of the Common Law Division of the Supreme Court across the community of New South Wales. The plaintiff population differed from the New South Wales population with regard to gender, age, education, residential location and occupation.

However, it was found that the plaintiff population was similar to the New South Wales population with regard to average income level. This runs contrary to the belief that only the "rich" and the "poor" can afford to have their disputes resolved in a court of law.

Further comparisons were made between the plaintiff population and the New South Wales "accident" population. The plaintiff population was found to be more similar to this population for some of the demographic variables mentioned above than to the state population as a whole. This result indicates that although there is unequal use of the Court in the community generally, this may be a product of unequal need within the community to obtain compensation for personal injury.³²

This study has provided a snapshot of the users of the Common Law Division of the Supreme Court of New South Wales. It has provided some much needed information, particularly about the plaintiffs involved in such cases. It is, however, only the beginning of a construction of a profile of New South Wales court users generally. To complete such a picture, examination would need to be made of other Divisions and other courts.

³² However, in any discussion of who is using the court it is important to recognise that the number of accident victims who seek to obtain damages for injuries through the court system is low in comparison to the total number of personal injuries that occur.

APPENDIX 1

Summary of variables in the CJRC Special Sittings file-based survey

Characteristics of plaintiffs

- Age
- Sex
- Level of education
- Occupation at time of accident
- Weekly income at time of accident
- Place of residence
- Name of the firm of solicitors representing the plaintiff
- Name of Counsel representing the plaintiff

Characteristics of defendants

- Type of defendant (individual, company, public agency)
- Whether there were multiple defendants
- Name of the firm of solicitors representing the defendant
- Name of Counsel representing the defendant

Claim information

- Cause of injury (motor vehicle, workplace or other)
- Nature of injury
- Date of accident

Case history

- Date proceedings were commenced in the Supreme Court
- Total number of court appearances and the dates of these
- The date of settlement (if settled)

Lawsuit information

- The number of reports served by the plaintiff and defendant
- Whether an Issues and Listing Conference was requested
- Whether a jury trial was requested (or dispensed with)
- Number of witnesses proposed to be called
- Solicitor's estimate of settlement prospects
- Solicitor's estimate of damages and future economic loss
- Estimated length of hearing
- Actual length of hearing
- Amount of damages actually received

APPENDIX 2

The regions combined to make the 11 New South Wales zones

Sydney:	metro	Inner Sydney Eastern Suburbs Inner West Sydney Lower Northern Sydney
	northern	Hornsby-Ku-Ring-Gai Manly-Warringah
	south west	St George-Sutherland Canterbury-Bankstown Fairfield-Liverpool
	outer west	Outer Western Sydney Outer South Western Sydney
	mid west	Central Western Sydney Blacktown-Baulkham Hills
Gosford/Newcastle:		Gosford-Wyong Newcastle Hunter Statistical Division Balance
Wollongong/Illawarra:		Wollongong Illawarra Statistical Division Balance
Northern NSW:		Tweed Heads Richmond-Tweed Statistical Division Balance Clarence Hastings Northern Slopes Northern Tablelands North Central Plain

Southern NSW:	Queanbeyan Southern Tablelands (excl Queanbeyan) Lower South Coast Snowy Central Murrumbidge Lower Murrumbidge Albury Upper Murray (excl Albury) Central Murray Murray Darling
Mid NSW:	Central Macquarie Macquarie-Barwon Upper Darling Bathurst-Orange Central Tablelands (excl Bathurst-Orange) Lachlan
Far West NSW:	Far West

REFERENCES

- Australian Bureau of Statistics, 1992, *Average Weekly Earning, States and Australia*, Cat. No. 6302.0, ABS, Canberra.
- Australian Bureau of Statistics, *Award Rates of Pay Indexes, Australia*, Cat. No. 6312.0, ABS, Canberra (various).
- Australian Bureau of Statistics, December 1987, *Award Rates of Pay Indexes, Australia*, Cat. No. 6312.0, ABS, Canberra.
- Australian Bureau of Statistics, 1991, *Census Counts for Small Areas: New South Wales*, Cat. No. 2730.1, ABS, New South Wales.
- Australian Bureau of Statistics, 1991, *Census of Population and Housing, Basic Community Profile, New South Wales*, Cat. No. 2722.1, ABS New South Wales.
- Australian Bureau of Statistics, 1991, *Usage of Legal Services, New South Wales*, October 1990, Cat. No. 4510.1, ABS, New South Wales, unpublished statistics.
- Law Society, "Background Paper", *Access to the Civil Courts*, July 1992, The Law Society of New South Wales, Sydney.
- CCH Tax Editors, *Australian Master Tax Guide*, CCH, 27, Australia.
- Church, T W, 1990, *A Consumer Perspective on the Courts*, AIJA, Australia.
- The Hon Mr Justice Gleeson, Chief Justice of New South Wales, 1992, "Access to Justice", *The Australian Law Journal*, Volume 66, p.274.
- Matruglio, T, 1992, "Some Demographics of Accidents", *Civil Issues 2*, CJRC, Law Foundation of New South Wales.
- McCutcheon, A, 1984, "Legal Costs and Access to the Law", *The Law Institute Journal*, October, Volume 63, pp.948-950.

MAPS

Australian Bureau of Statistics, New South Wales, sheet 1: 1986 census.

Australian Bureau of Statistics, Sydney Statistical Division, sheet 2: 1986 census.